

leading to a two-year associate degree or certificate; and

* * * * *

13. Section 406.3 is amended by revising paragraph (b)(2) to read as follows:

§ 406.3 What activities may the Secretary fund?

* * * * *

(b) * * *

(2) Consist of the two years or four years of secondary school preceding

graduation and two years of higher education, or an apprenticeship training program of at least two years following secondary instruction, with a common core of required proficiency in mathematics, science, communications, and technologies designed to lead to an associate degree or certificate in a specific career field;

* * * * *

14. Section 406.10 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 406.10 What must the State application contain?

* * * * *

(b) * * *

(2) * * *

(ii) Are developed in consultation with business, industry, labor unions, and institutions of higher education that award baccalaureate degrees; and

* * * * *

[FR Doc. 94-18203 Filed 7-27-94; 8:45 am]

BILLING CODE 4000-01-P

Federal Register

Thursday
July 28, 1994

Part IV

**Department of
Education**

Educational Media Research, Production,
Distribution, and Training Program;
Notice

DEPARTMENT OF EDUCATION

Educational Media Research,
Production, Distribution, and Training
Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Funding
Priorities.

SUMMARY: The Secretary proposes priorities under the Educational Media Research, Production, Distribution, and Training Program. The Secretary takes this action to focus Federal financial assistance on those areas of greatest need. These priorities are intended to ensure the continued availability of closed-captioned daytime television programming, provide cultural experiences to deaf and hard of hearing individuals, continue to provide educational books on audiotapes to people who are visually or print disabled, continue the operation of the captioned films/video distribution system, and support video description of national television programming.

DATES: Comments must be received on or before August 29, 1994.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Ernest E. Hairston, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4629, Switzer Building, Washington, DC 20202-2731.

FOR FURTHER INFORMATION CONTACT: Ernest E. Hairston Telephone: (202) 205-9172; Users of telecommunications devices for the deaf (TDDs) may call (202) 205-8169; or the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: This notice contains five proposed priorities under the Educational Media Research, Production, Distribution, and Training Program authorized under Part F of the Individuals with Disabilities Education Act (IDEA). The purposes of the program are to promote the general welfare of deaf and hard of hearing individuals and individuals with visual impairments, and to promote the educational advancement of individuals with disabilities.

The priorities proposed in this notice would ensure the continued availability of closed-captioned daytime television programming. In addition, the proposed priorities would support activities that provide cultural experiences to enrich the lives of deaf and hard of hearing individuals, including children and youth, as well as adults. The proposed priorities would provide educational

reading materials and textbooks on audiotape to persons who are visually or print disabled.

Additional proposed priorities would support a captioned films/videos distribution system to provide hearing impaired and other qualified individuals with access to captioned educational and general interest films and videos on a nonprofit free loan basis, and video description of national television programming in order to make television more accessible to persons with visual impairments.

This program supports the National Education Goals by assisting those with disabilities in school readiness and adult literacy.

The Secretary will announce the final priorities in a notice in the *Federal Register*. The final priorities will be determined by comments received in response to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the content of the final priorities, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications. A notice inviting applications under these competitions will be published in the *Federal Register* concurrent with or following publication of the notice of final priorities.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priorities. The Secretary proposes to fund under these competitions only those applications that meet these absolute priorities:

Proposed Absolute Priority 1—Closed-Captioned Daytime Television Programs*Background*

This proposed priority would continue and expand closed-captioning of a variety of daytime television programs broadcast nationally for persons who are deaf or hard of hearing during this segment of the day that has proven to be the most difficult in terms of private sector support.

Priority: To be considered for funding under this proposed priority, a project must—

(1) Include the criteria used to determine which programs are proposed

for captioning. These criteria must take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general educational and cultural experiences of individuals with hearing impairments;

(2) Determine the total number of hours and the projected cost per hour for each program to be captioned;

(3) For each proposed program to be captioned, identify the source of private or other public support and the projected dollar amount of that support;

(4) Identify the methods of captioning to be used for each hour and the projected cost per hour for each method used;

(5) Provide and maintain back-up systems that would ensure successful, timely captioning service;

(6) Demonstrate the willingness of major national television networks and companies to permit captioning of their programs; and

(7) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations.

Proposed Absolute Priority 2—Cultural Experiences for Deaf and Hard of Hearing Individuals*Background*

This priority supports a variety of cultural activities designed to enrich the lives of deaf and hard of hearing individuals, including children and youth, as well as adults. These activities must use an integrated approach that mixes children, youth, and adults, who are deaf and hard of hearing with those who can hear while conducting cultural experiences that will increase public awareness and understanding of deafness and other hearing impairments and of the artistic and intellectual achievements of deaf and hard of hearing individuals.

During FY 1992 the Department funded projects that: (1) provided theatrical experiences for deaf and hard of hearing individuals, and (2) used integrated approaches by having among cast members a mixture of deaf, hard of hearing and hearing performers. During FY 1993 cultural experiences were extended specifically to younger people with hearing impairments and to the creation of art as well as theatrical experiences, using the same approaches. Projects under this proposed priority can include a variety of artistic approaches such as the creation of works of art (painting, drawing, designing, etc.), dance, and storytelling,

as well as developing and performing dramatic productions. A grantee may not use funds under this priority for passive activities such as viewing a play or video, or passively watching a storyteller or artist at work.

Priority: To be considered for funding under this priority, a project must—

(1) Use an integrated approach that mixes children, youth, and adults who are deaf and hard of hearing, with those who are hearing in carrying out project activities; and

(2) Develop and implement strategies that will increase public awareness and understanding of deafness and other hearing impairments and of the artistic and intellectual achievements of deaf and hard of hearing individuals, including children, youth, and adults. Outreach activities such as promoting the project to schools, community organizations, news media, and relevant national organizations are encouraged.

Invitational Priority

Within this absolute priority 2, the Secretary is particularly interested in applications that meet the following invitational priority. However, pursuant to 34 CFR 75.105(c)(1), an application that meets this invitational priority does not receive competitive or absolute preference over applications that do not meet this priority:

Projects that include people from a variety of cultural, racial, and ethnic backgrounds.

Proposed Absolute Priority 3—Captioned Films and Videos Distribution System

Background

This proposed priority would support the operation of a captioned films/videos distribution system which provides deaf and hard of hearing individuals, as well as other eligible individuals with disabilities, with access to captioned educational and general interest films and videos on a nonprofit free-loan basis. Activities under this proposed priority include, but are not limited to: 1) a computerized user-registration process; 2) circulation of captioned films and videos; 3) development or updating of a catalog of captioned films and videos in the collection; and 4) outreach activities. This proposed priority would provide students and other eligible individuals with disabilities with captioned films and videos so they may benefit from the same educational media used to enrich the educational experiences of students and other individuals who do not have disabilities.

Priority: To be considered for funding under this proposed priority, the project must—

(1) Develop strategies and procedures to be implemented in operating a distribution system, consisting of local and regional centers including depositories, and one central general interest and educational films/video center. Local and regional centers may include State schools for disabled individuals, public or private school systems, public libraries, colleges or universities, or other distribution points that distribute captioned films/videos.

(2) Ensure that the system permits interdepository circulation of captioned films/videos, allows individuals, depositories, and local and regional centers to access booking information from the computerized depositories and the general interest and educational films/video center via modem and generic communication software, and provides immediate confirmation or denial of a request;

(3) Establish and describe the computerized registration procedures that will be used to register users. The current computerized system configuration may be used as a basis;

(4) Develop and implement criteria and procedures for replacing irreparable films/videos;

(5) Prepare, update, and distribute copies of a catalog listing all captioned films/videos available under this project;

(6) Convene an annual meeting of depository managers, librarians, and audiovisual and other personnel from local, regional, and State educational agencies for the purpose of training, planning, sharing, brainstorming, and other activities related to improving the access of eligible individuals to audiovisual materials. The Washington, D.C. metropolitan area will be the site of the meeting;

(7) Implement outreach activities, especially activities that reach out to local school systems to make them aware of the open and closed captioned materials that are available to them under this program and from other sources; and

(8) Submit quarterly progress reports to the grants and project officers.

Proposed Absolute Priority 4—Recorded Audio Cassettes for Visually and Print Disabled Students

Background

This proposed priority would support recording, producing, duplicating, and distributing $1\frac{1}{2}$ ips (inch per second) four-track cassette versions of textbooks and other educational reading materials

for students (elementary, secondary, postsecondary & graduate) who are visually or print disabled. These cassette tapes will help provide equal educational opportunities to target students and lessen some of the barriers they face in classrooms.

Priority: To be considered for funding under this priority, the project must—

(1) Handle all requests for materials, including confirmation of eligibility by disability;

(2) Arrange for use of copyrights from publishers of supplied textbooks;

(3) Record or duplicate the books on $1\frac{1}{2}$ ips (inch per second), four-track cassettes of one hour per track recording time. (Publishers must be provided rights to copies of the master tape and rights to market the cassettes as they see fit);

(4) Mail the cassettes on a free-loan, postage paid basis; and

(5) Handle returned cassettes, preservative re-recording, and all other associated administrative and circulation functions.

(6) To the extent that funds are not sufficient to meet the demand for free materials, place a priority on providing free materials that are not otherwise required to be provided by educational agencies or institutions.

Proposed Absolute Priority 5—Video Description Project

Background

This proposed priority supports the description of national television programming in order to make television more accessible to persons with visual impairments. The intent of this priority is to provide access to a diversity of programming available in order to enhance shared educational, social, and cultural experiences for persons who are visually impaired. The range of programs proposed for description may include, but is not limited to, children's programs, prime time programming, emergency broadcasts, sports programs, and documentaries.

Priority

To be considered for funding under this proposed priority, a project must—

(1) For selecting programs to be video described, include criteria that take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general educational, social, and cultural experience of individuals with visual impairments;

(2) Determine the total number of hours and the projected cost per hour for each program to be described;

(3) For each program to be described, identify the source of private or other public support, if any, and the projected dollar amount of that support;

(4) Identify the methods to be used in the provision of described video;

(5) Demonstrate the willingness of major national television networks and companies to permit video description of their programs; and

(6) Implement procedures for monitoring the extent to which an accurate description is provided and use this information to make refinements in the video description operations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to these proposed priorities will be available for public inspection during

and after the comment period, in Room 4620, Switzer Building, 330 C Street, S.W., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR Parts 330, 331, and 332.

Program Authority: 20 U.S.C. 1451, 1452 (Catalogue of Federal Domestic Assistance Number: 84.026, Educational Media Research, Production, Distribution, and Training Program)

Dated: July 22, 1994.

Howard R. Moses,
Acting Assistant Secretary for Special Education and Rehabilitative Services.
[FR Doc. 94-18340 Filed 7-27-94; 8:45 am]
BILLING CODE 4000-01-P

Federal Register

Thursday
July 28, 1994

Part V

Department of Justice

Office of Juvenile Justice and
Delinquency Prevention

Office of Justice Programs; Juvenile
Mentoring Program (JUMP) Guidelines;
Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and
Delinquency PreventionOffice of Justice Programs; Juvenile
Mentoring Program (JUMP) Guidelines

AGENCY: Office of Justice Programs,
Office of Juvenile Justice and
Delinquency Prevention.

ACTION: Notice of the Juvenile Mentoring
Program (JUMP) Guidelines and
Application Procedures.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing this Notice of Juvenile Mentoring Program (JUMP) Guidelines. Part G of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended by the Juvenile Justice and Delinquency Prevention Amendments of 1992, established the authority for this program and Congress appropriated \$4,000,000 for Fiscal Year 1994. JUMP will support one-to-one mentoring programs for youth at-risk of educational failure, dropping out of school, or involvement in delinquency activities. The goals of JUMP are to reduce juvenile delinquency and gang participation, improve academic performance and reduce the dropout rate through the use of adult mentors for at-risk youth. Both local education agencies (LEA) and public/private non-profit organizations may apply for a grant that covers a period of time up to but not exceeding three years, but there must be collaboration with the LEA when the primary applicant is a public/private non-profit agency and collaboration with the public/private non-profit when the LEA is the primary applicant. Individual awards will range from \$60,000 to \$180,000 for up to a three-year project and budget period. Application narratives may not exceed 25 double-spaced pages. Program requirements are set forth in this Notice.

DATES: Applicants are requested to submit the original, signed application (Standard Form 424) and four copies to OJJDP. The due date for applications is September 14, 1994. Applications must be received by mail or delivered by 5 P.M. e.d.t. on or before that date.

ADDRESSES: Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue N.W., Room 758, Washington, D.C. 20531.

FOR FURTHER INFORMATION CONTACT: Program inquiries can be addressed to Betty M. Chemers, Program Manager, Special Emphasis Division (202) 307-5914.

SUPPLEMENTARY INFORMATION: The Office of Juvenile Justice and Delinquency

Prevention (OJJDP) is a component of the Office of Justice Programs in the U.S. Department of Justice. In 1992, the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (JJDP Act) was reauthorized by the Juvenile Justice and Delinquency Prevention Amendments of 1992. These Amendments established a new Part G Mentoring Program, providing three-year grants to, or in partnership with, local education agencies for the implementation of mentoring programs designed to link at-risk youth with responsible adults to discourage youth involvement in criminal behavior and violence. This Notice sets forth the guidelines for the Part G Juvenile Mentoring Program (JUMP). An OJJDP Application Kit containing an application form (Standard Form 424), the OJJDP Peer Review Guideline, OJJDP Competition and Peer Review Procedures, and other supplemental information relevant to the application process can be obtained by calling the Juvenile Justice Clearinghouse, toll-free, 24 hours a day, at (800) 638-8736.

JUMP applications will undergo peer review as part of the selection process. In order to facilitate peer review, OJJDP requests that each applicant submit a Notice of Intent to Apply to Betty M. Chemers, Program Manager, Special Emphasis Division, OJJDP, 633 Indiana Avenue, N.W., Washington, D.C. 20531 by August 12, 1994.

Guideline for the Juvenile Mentoring Program

Purpose: To support one-to-one mentoring programs for youth at risk of educational failure, dropping out of school, or involvement in delinquency activities.

Background: Part G of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (JJDP Act), establishes authority for the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to fund a new Juvenile Mentoring Program (JUMP). For Fiscal Year 1994, Congress appropriated \$4,000,000 to implement this program.

Mentoring, as the term is currently used, can be defined as a one-to-one relationship between a pair of unrelated individuals, usually of different ages, which takes place on a regular basis over an extended period of time. It is usually characterized by a "special bond of mutual commitment" and "an emotional character of respect, loyalty and identification." (Hamilton, 1990.)

As a movement, mentoring has its roots in the closing decades of the 19th century with "Friendly Visitors" who would serve as role models for children of the poor. In 1904, Ernest K. Coulter

founded a new movement which utilized "Big Brothers" to reach out to children who were in need of socialization, firm guidance and human connection with mainstream adults. The resulting program, Big Brother/Big Sisters of America, continues to operate today as the largest mentoring organization of its kind.

Mentoring underwent a second reincarnation in the 1970's as corporations heralded the concept as one which fosters achievement. Mentoring was seen as a particularly critical ingredient to success on the corporate ladder (Freedman, 1992).

Within the past ten years, mentoring has taken on a new dimension and a new target group, disadvantaged children and youth. It has emerged as a promising approach for enriching children's lives; addressing the isolation of youth from adult contact; and providing, on a one-to-one basis, support and advocacy to children who need it. Mentoring is also recognized as an important vehicle for harnessing the talents of volunteers to address the problems of poverty (Freedman, 1992).

Congress has recognized the potential of mentoring as a tool for addressing two critical concerns: poor school performance and delinquent activity. Accordingly, OJJDP is making funds available for mentoring programs that specifically address these concerns. Congress also has recognized the importance of school collaboration in mentoring programs, whether as a primary applicant or in partnership with other public/non-profit private entities.

Goals of Mentoring Programs:

To reduce juvenile delinquency and gang participation;

To improve academic performance; and

To reduce the dropout rate through the use of mentors for at-risk youth.

Objectives:

Provide general guidance to at-risk youth;

Promote personal and social responsibility among at-risk youth;

Increase at-risk youth participation in and enhance their ability to benefit from elementary and secondary education;

Discourage at-risk youths' use of illegal drugs and firearms, involvement in violence, and other delinquent activity;

Discourage involvement of at-risk youth in gangs; and

Encourage at-risk youths' participation in service and community activity

Program Strategy: Applicants may submit funding requests for project periods up to but not exceeding three

years. OJJDP encourages new programs to apply as well as those which have proven track records of implementing programs and a desire to expand their programs in accordance with these guidelines. All applicants must address the following elements in their application.

1. The Nature of the Partnership with Local Educational Agencies

Both local education agencies (LEA) and public/private non-profit organizations may apply. When public/private non-profit agencies are the primary applicant, their programs must involve collaboration with the LEA. Likewise an LEA must collaborate with a relevant public/private non-profit agency. Because two goals of this program are to improve academic performance and reduce the dropout rate, applications must contain written assurance from the LEA that it will agree to provide academic records in accordance with its own regulations for use in carrying out a funded program and that it will cooperate to the fullest extent possible with a national program evaluator. Another example of the form this collaboration would take would include the designation of a school employee to be a school coordinator. Suggested responsibilities might include assisting with the selection of mentees, advising on the academic needs of the mentee, coordinating meetings, providing academic records when needed, and notifying mentors of the inability of mentees to meet.

2. Target Population

Programs are to be targeted to at-risk youth. These are youth at risk of educational failure, dropping out of school, or involvement in delinquent activities. Priority will be given to programs involving at-risk youth in high crime areas, programs which have 60% or more of their youth eligible to receive Chapter I funds under the Elementary and Secondary Education Act of 1965, and programs which have a considerable number of youth who drop out of school each year.

3. Program Goals and Design

These must be clearly stated. The applicant must show how the proposed program will meet the goals and objectives defined earlier. The role of the mentor, the mentoring site, and specific implementation steps should be provided. These include organizational commitment, mentor recruitment, mentor orientation, mentor screening and training, youth selection and orientation, matching, monitoring, mentor support, and evaluation. Criteria for mentor termination should be specified. Each funding partner and program participant's responsibilities

should be spelled out up front: local educational agency, non-profit public/private agency, business, etc., mentors, mentees and mentees' parents. At a minimum, programs must specify that each individual mentor one child for a period of at least a year. It is also recommended that mentor-mentee contact not be less than four hours a month, preferably scheduled weekly.

4. Recruitment, Selection and Screening of Mentors

Only programs using adult mentors qualify. An adult is defined as being 21 years or older. Efforts to enlist mentors who are responsible adults such as law enforcement officers, persons with local businesses, and persons with community-based organizations should be made.

All prospective employees and volunteers who would have contact with youth must be screened. Each program is required to have a written screening policy that would be implemented with great care and applied consistently to all mentors. At a minimum, this policy shall require the names of two to three character references (at least one work reference) and the applicant's consent to check his/her name through criminal and child abuse records. A written form for reference checks should be used and kept on file.

Background searches should include investigations as may appear appropriate under the circumstances and as required by applicable statute or regulation. For example, programs involving young mentees and contacts/activities that do not occur at the school or work site or as part of a larger group should require criminal history checks on all matched volunteers from local, state or national law enforcement authorities, where legally permissible. In general, no background information obtained from screening is an automatic bar to participate unless otherwise provided by statute or regulation. A candidate may be disqualified in order to reasonably protect youth from physical, psychological and/or sexual abuse. A mentor applicant's failure to provide information requested would result in automatic disqualification of the applicant.

5. Youth Selection and Orientation

Criteria should be developed for youth selection based on the program's goals. Parents should be included in an orientation session and written permission for the child's participation obtained.

6. Matching Criteria

The mechanism for matching youth with mentors should be described. Where possible, there should be a match

of similar ethnic and gender characteristics.

7. Mentor Support and Training Activities

Mentor support is essential to ensure program success. Each program must employ a program coordinator for mentors to contact for feedback and advice. Periodic feedback from mentors and mentees should be obtained, especially during the first two months of the relationship.

8. Mentor/Mentee Activities

Applicants must assure that projects operated in secondary schools will provide mentees with a variety of activities, including an opportunity to spend time or participate in the work environment, witness job skills useful for obtaining employment, obtain assistance with homework, and be exposed to positive new experiences. Projects involving elementary school age children should include such activities as academic assistance, exposure to positive new activities, and emotional support.

9. Evaluation Methods and Processes

Evaluation is critical to assuring that the mentoring program is operating as designed and that it is meeting its goals both in terms of the process and the impact on the mentee. Data on the program operations must be collected as well as data on whether mentoring is having an impact on academic performance and behavior. OJJDP is required by the Congress to submit a report regarding the success and effectiveness of these programs 120 days after the programs' termination; consequently, programs funded under JUMP must be capable of providing this information and must provide written assurance that they will participate in a national program evaluation.

Applicants should address how their programs either currently comply with these guidelines or describe the steps they will take to assure compliance. Applicants must demonstrate that they have or will create an infrastructure capable of fully supporting their program.

Applicants should provide a specific timetable for all program activities indicating what will be accomplished the first year, the second year, and the third year, if they are requesting funding for multiple years.

Applicants must demonstrate that they have the support of schools and, where appropriate, public agencies and other community groups that might be directly involved.

Applications should not exceed 25 double-spaced pages.

10. Staffing/Budget

Whether the school or an eligible public/private non-profit group is the primary applicant, it is suggested that one full-time staff coordinator oversee up to 60-70 matches. In addition, a second individual, either a volunteer, paid, or assigned employee, should generally be expected to devote at least 6-7 hours a week to this project. A cost of \$75 per mentoring-match per year is also recommended. Program funds cannot be used directly to compensate mentors except for reimbursement for reasonable incidental expenses, such as transportation, that are directly associated with the mentoring program.

Products: If appropriate, applicants should describe what written materials they will produce and how materials may be useful to their own program participants and others hoping to replicate their efforts.

References

- Freedman, Marc, *The Kindness of Strangers: Reflections on the Mentoring Movement*, Public/Private Ventures, Philadelphia, Pennsylvania, Winter 1992.
 Hamilton, Stephen F., *Apprenticeship for Adulthood*, Free Press, New York 1990, p. 156.

Eligibility Requirements: Applications are invited from local education agencies and public/private non-profit organizations that can demonstrate knowledge of and/or experience with mentoring programs, as well as working with volunteers and youth. When a local education agency is the primary applicant, it must partner with a public or private agency or a public/private non-profit agency. Likewise, a public/private non-profit agency which applies

as a primary applicant must partner with the local education agency. National organizations are not eligible for these funds. Consideration will be given to the geographic distribution (urban and rural) of applications and a variety of program designs.

Selection Criteria: Applications will be rated by a peer review panel on the extent to which they meet the following criteria:

1. **Problem Statement (15 points)**
 The application clearly identifies the need for this project, describes the target population, and establishes that it has the characteristics associated with effective mentoring programs.
2. **Goals and Objectives (10 points)**
 The goals and objectives are clearly defined and the objectives are clear, measurable, and obtainable.
3. **Project Design (30 points total, including 5 points for innovative design)**
 - a. The project design is sound and complies with the requirements outlined in the guidelines. The application includes a workplan and timeline for the grant period.
 - b. Up to five additional points will be given for innovative program design.
4. **Project Management (15 points)**
 The project's management structure and staffing are adequate to complement and complete the project successfully. The applicant demonstrates that the project will be appropriately staffed. Collaborative relationships are established in writing.
5. **Organizational Capability (20 points)**
 The applicant organization's potential to conduct the project successfully, as

well as its history of working with volunteers and youth, is documented

6. Budget (10 points)

Budgeted costs are reasonable, allowable and cost effective for the activities proposed.

Award Period: Grantees selected for award will be funded for a project period not to exceed three years.

Award Amount: OJJDP is limiting the amount of individual awards to a minimum of \$60,000 and a maximum of \$180,000 for up to a three-year project and budget period. Total amount of the funds for the JUMP program in Fiscal Year 1994 is \$4,000,000. This amount will include support for any grants covering a project period of up to three years under this request for application. Future funding support beyond the three years is not contemplated.

Due Date: Applications must be received by mail or delivered to OJJDP on or before 5:00 p.m. e.d.t. on September 14, 1994. Application narratives may not exceed 25 double spaced pages. In order to facilitate peer review, it is requested that each applicant intending to apply, submit a brief statement entitled Notice of Intent to Apply by August 12, 1994.

Contact: For further information, contact Betty M. Chemers, Program Manager, Special Emphasis Division, (202) 307-5914.

John J. Wilson,
 Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.
 [FR Doc. 94-18447 Filed 7-27-94; 8:45 am]
 BILLING CODE 4410-18-P

Federal Register

Thursday
July 28, 1994

Part VI

Environmental Protection Agency

40 CFR Part 372

Alternate Threshold for Low-Level
Releases and Transfers; Toxic Chemical
Release Reporting; Community Right-to-
Know; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPPTS-400087; FRL-4776-8]

RIN 2070-AC70

Alternate Threshold for Low-Level Releases and Transfers; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to establish an alternate reporting threshold for those facilities with low-level releases and transfers that would otherwise meet reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). A facility that meets the current section 313 reporting thresholds, but estimates that the sum of its annual releases on-site and transfers off-site (for the purposes of treatment and/or disposal only) of a listed chemical is below 100 pounds, may be eligible to take advantage of this proposed alternate reporting threshold, for that chemical in that year, provided that certain conditions are adhered to. EPA is proposing to establish this alternate reporting threshold in response to petitions received from the Small Business Administration and the American Feed Industry Association.

DATES: Written comments on this proposed rule must be received by August 29, 1994.

ADDRESSES: Written comments should be submitted in triplicate to: OPPT Docket Clerk, TSCA Document Receipt Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NE-B607, 401 M St., SW., Washington, DC 20460. Comments should include the document control number for this proposal, OPPTS-400087.

FOR FURTHER INFORMATION CONTACT: Tim Crawford, Project Manager, (7408), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. For specific information on this proposed rule, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1-800-535-0202, in Virginia and Alaska: 703-412-9877 or Toll free TDD: 1-800-553-7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This proposed rule is issued under sections 313(f)(2) and 328 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023(f)(2) and 11048. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA).

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals in excess of the applicable threshold quantities to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities began reporting pollution prevention and recycling data for listed chemicals, pursuant to section 6607 of the Pollution Prevention Act, 42 U.S.C. 13106. This information is submitted on EPA form 9350-1 (Form R) and compiled in an annual Toxic Release Inventory (TRI). Each covered facility must file a separate Form R for each listed chemical manufactured, processed, or otherwise used in excess of the reporting thresholds established in section 313(f)(1). EPA has authority to revise these threshold amounts pursuant to section 313(f)(2); however, such revised threshold amounts shall obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to section 313. A revised threshold may be based on classes of chemicals or categories of facilities. Section 328 provides EPA with general rulemaking authority to develop regulations necessary to carry out the purposes of the Act.

B. Background on Petitions

On August 8, 1991, the Small Business Administration (SBA) petitioned EPA to exempt from TRI reporting requirements facilities reporting low volumes of chemicals released and transferred. This petition states that:

Currently, EPA's implementation of SARA mandates a collection of both significant and insignificant data. It unreasonably includes many small facilities whose compliance with present section 313 regulations is overly burdensome. The TRI database is not meaningfully improved by countless entries of zero or de minimis release figures, as it now appears with current Congressionally-specified thresholds. Based on 1988 data, the Office of Advocacy estimated that EPA could generally exclude facilities with releases and transfers of less than 5,000 pounds annually for the vast majority of section 313 chemicals and still satisfy the right to know objectives and the statutory requirements. (Ref. 1).

EPA published this petition in the *Federal Register* (October 27, 1992, 57

FR 48706) (SBA Notice), and received a substantial number of comments in response to this notice. Copies of these comments are available in the TSCA docket, OPPTS docket number 400072. The proposal being put forth in this document is EPA's response to the SBA petition.

EPA received a similar request in a petition from the American Feed Industry Association (AFIA) on February 14, 1992. AFIA requested an exemption of Standard Industrial Classification (SIC) code 2048 from TRI reporting. The general basis of this request is that SIC code 2048, "Prepared Feeds and Feed Ingredients for Animals and Fowls, Except Dogs and Cats," has such small releases of chemicals (primarily feed additives) that the industry as a whole does not contribute information that furthers the purposes of EPCRA and therefore the imposition of TRI reporting on the feed industry is unfair. The AFIA petition suggested, as an alternative to the requested SIC code deletion, EPA's adoption of the approach proposed in the SBA petition.

EPA published this petition in the *Federal Register* (April 13, 1993, 58 FR 19308), and received a substantial number of comments. These comments are available in the TSCA docket, OPPTS docket number 400077.

At this time, EPA has decided to focus on a revision of current reporting requirements that would be applied equally to all industries subject to section 313, as opposed to a revision restricted to target industrial sectors or SIC codes. EPA believes the proposal put forth in this document would effectively address the major points of the AFIA petition. Based on the information provided in the AFIA petition and results from EPA's analysis, approximately 50 percent of all of the facilities reporting under SIC code 2048 will qualify for the threshold modification being proposed (Ref. 4). EPA therefore considers the proposal put forth in this document as a response to the AFIA petition.

II. Explanation for the Alternate Threshold for Low-Level Releases and Transfers

A. General Approach

Congress intended that the data collected by EPA under EPCRA section 313 be used to inform persons about releases of toxic chemicals to the environment, assist the government, researchers, and the public in the conduct of research and data gathering, to aid in the development of appropriate regulations, guidance, and standards, and for other similar purposes (EPCRA

section 313(h)). Congress directed EPA to make this information publicly available on a cost-reimbursable basis through a computer data base, which EPA has done using the on-line TRI system (EPCRA section 313(j)).

EPCRA section 313 established a list of more than 300 chemicals and 20 categories for which TRI reporting is required (EPCRA section 313(c)). Facilities in SIC codes 20-39 which manufacture, process, or otherwise use over certain threshold amounts of a listed chemical must annually report their releases of such chemicals to EPA and the States. However, Congress recognized that this statutory framework need not remain immutable should EPA's experience in collecting data under TRI indicate that certain revisions to the reporting structure may be warranted. In directing and authorizing EPA to maintain and manage the TRI program, Congress also provided EPA with authority to revise the nature of and manner in which TRI data is reported to and collected by the Federal government.

In particular, Congress provided EPA authority to add or delete SIC codes (section 313(b)(1)(B)), apply the reporting requirements to additional facilities (section 313(b)(2)), add chemicals to or delete chemicals from the TRI list (section 313(d)), revise the reporting thresholds (section 313(f)(2)), modify the reporting frequency (section 313(i)), and prescribe such other regulations as may be necessary to carry out the Act (section 328). In providing EPA these authorities, Congress also recognized that EPA may see fit to tailor any such revisions to specific facility or chemical, a broad category of facilities or class of chemicals, to all or only some forms submitted to EPA, or to a specific or more general geographic area.

In the spirit of this broad statutory mandate, and Congressional recognition of the need for flexibility given changing national needs and priorities, EPA has already announced its intent to significantly expand the scope of the TRI program. EPA's proposed rule to add 313 chemicals and a chemical category to the list of reportable chemicals established under EPCRA section 313(c) (January 12, 1994, 59 FR 1788) is expected to add an estimated 28,000 new reports to TRI based on the current threshold levels. In addition, EPA is in the process of identifying and evaluating additional industry sectors for inclusion in TRI reporting. The addition of industry sectors beyond the current manufacturing sector is expected to substantially increase the level of current reporting.

EPA recognizes that the addition of this new information to TRI is expected to carry significant reporting costs to industry, as well as Federal and state costs to manage and provide the data to the public. Nonetheless, given existing national and local concerns over chemical management practices, consistent with its statutory authorities, EPA believes that these anticipated expansions, and their attendant costs, are necessary to provide the public more complete information on significant chemical uses and releases.

However, EPA also believes that its years of experience with the collection of TRI data allow EPA to propose certain changes to the nature of the reporting obligations imposed on industry without compromising EPA's duty to collect and disseminate relevant information to the public on chemical releases. EPA has examined whether some of the information currently collected under TRI as presently structured may be of lesser "value" than some of the new reports expected to be received as a result of EPA's efforts to expand TRI. In particular, many of the forms currently submitted report volumes of zero for releases and transfers. Additionally, there are forms that report zero volumes for all elements on the form. EPA believes that the space that such reports consume in the data base and the effort necessary to submit them would be better applied to those additional reports that contain positive values for releases and transfers of toxic chemicals. This proposal attempts to balance additional data needs with the burden to supply such data. EPA believes that it is possible, and consistent with its authorities under EPCRA, to create an alternative reporting threshold applicable to those facilities which annually release on transfer off-site (for the purpose of treatment and/or disposal) less than a specified amount of a listed TRI chemical. EPA further believes that this alternative reporting threshold, if implemented as proposed, will not result in a significant loss of data on chemical releases.

By creating such an alternative reporting threshold, the number of TRI reports annually submitted to EPA could be reduced by an estimated 20,500. This would result in a cost savings to both government and industry, and would offset some of the expected added costs associated with the anticipated expansions of the TRI program. Today's proposal attempts to balance the additional data needs represented by EPA's TRI expansion efforts with the burden to supply such data.

The proposed revision of the manufacture, process, and otherwise use thresholds described below is based on EPA's analysis and comments received during the pre-proposal process. As part of the pre-proposal process, which included a consideration of the comments received on the SBA Notice, EPA held a public meeting on February 16, 1994, to present its analytical findings and open discussions regarding reduced reporting for low volume releases and transfers. Comment was taken from a variety of positions. Results from EPA's preliminary analysis are presented in an issues paper, *Toxic Release Inventory—Small Source Exemption* (January 27, 1994) (Issues paper), and can be obtained in the TSCA docket, OPPTS docket number 400087 along with copies of the testimony presented at the Public Meeting.

Based on EPA's analysis and comments received, EPA believes that reducing the number of TRI reports by raising reporting thresholds for those facilities having low-level amounts released and transferred will help EPA, states, and the reporting community to focus their attention and resources on reducing chemical uses and releases that are of greatest concern. Therefore, EPA is proposing the development of an alternative threshold based on a category of facilities that have releases and transfers below a specified amount. EPA believes that this optional, alternative threshold will help balance costs (current and anticipated) that are associated with providing TRI information. This analysis is discussed further in part C of this section.

B. Description of Proposal

EPA is proposing that certain facilities may take advantage of a higher reporting threshold than those set out in 40 CFR 372.25 for any listed toxic chemical, if the sum of amounts of that chemical released and transferred (but only for the purpose of treatment and/or disposal) for that facility is below 100 pounds per year.

The revised thresholds would apply to a category of facilities on a per chemical basis for which the sum of the amounts described above is below 100 pounds per year. The alternate manufacture, or process, or otherwise use thresholds for each of the chemicals meeting the "low-level release" category would be an amount equal to or greater than 1 million pounds per year. If a facility meets these conditions, then that facility would not be required to file a Form R report for the reporting year for each chemical for which these conditions are met.

A facility would make several determinations to ascertain if it could take advantage of the higher alternate reporting threshold. The facility would first determine if it was a "covered facility" pursuant to 40 CFR 372.22. Currently, a facility is a "covered facility" for purposes of EPCRA section 313 reporting if it: (a) Has 10 or more full-time employees, (b) is in SIC codes 20 through 39, and (c) manufactures, processes, or otherwise uses a listed toxic chemical in excess of the applicable statutory thresholds. EPA is proposing to amend the last condition to include those facilities which elect to apply the alternate reporting thresholds under the proposed 40 CFR 372.27. Therefore, a facility applying the alternate threshold would still be considered a "covered facility" under 40 CFR 372.22.

Once a facility makes this determination, it would then estimate the sum of its releases and transfers (for purposes of treatment and/or disposal) for each listed chemical manufactured, processed, or otherwise used at the facility. If this sum is below 100 pounds per year, the facility could then apply the higher alternate reporting threshold of 1 million pounds to determine its reporting obligation for that chemical, provided that it also meets the concomitant certification and recordkeeping requirements. A facility eligible for and choosing to apply, the alternate revised threshold, would only be required to file a certification statement and maintain certain records in support of this certification. The facility would not be required to file a full Form R report for that chemical.

To take advantage of the revised thresholds, a facility would be required to: (a) Submit in writing an annual certification, indicating that the chemical for which the alternate threshold applies was released and transferred for the purposes of treatment and/or disposal in the sum of an amount less than 100 pounds per year; and (b) maintain and make available upon request accurate records substantiating the calculations supporting the release and transfer determination.

C. Explanation and Rationale for Proposal

Current reporting thresholds for manufacture, process, or otherwise use of listed section 313 chemicals are set forth in EPCRA section 313(f)(1). EPCRA section 313 does not provide EPA with direct authority to establish a reporting threshold under section 313(f)(1) based solely on amounts of estimated chemical releases. EPCRA section 313(f)(2) does, however, provide EPA

authority to revise the established activity threshold amounts in section 313(f)(1).

The Administrator may establish a threshold amount for a toxic chemical different from the amount established by paragraph (1). Such revised threshold shall obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements of this section. The amounts established under this paragraph may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

Today, EPA is proposing to define a category of facilities based on the volume of chemicals released. By establishing a class of chemicals or category of facilities, a threshold modification associated with that class or category can be applied selectively. Facilities having total releases less than a certain amount for one or more chemicals would constitute a category of facilities. This category would then be eligible to take advantage of a revised manufacture, process, or otherwise use threshold for that specific chemical. In this way, only those facilities that fit within the category, and relevant chemicals at those facilities, would be affected.

EPA believes that it is appropriate to base the category determination on releases and transfers (for the purpose of treatment and/or disposal only). Although other elements on Form R may have significant volumes associated with them, EPA believes the combination of releases and such transfers on Form R approximate a facility's actual and/or potential environmental loadings. EPA believes that the proposed aggregate release level of less than 100 pounds represents an optimum balance between the need to limit the loss of TRI information made available to the public while eliminating reporting of data that is of lesser utility to the public. Based on 1991 data, an estimated 20,500 forms, or approximately one quarter of all Form Rs submitted, would qualify for the alternate threshold. As indicated in Table 1 below, the number of reports affected increase at a relatively proportionate rate as the aggregate release level for the category increases. However, above the 100 pound category level, the volumes of releases and transfers (for the purpose of treatment and/or disposal) depict a notable increase from 200,000 to 1,400,000 pounds for the respective category levels of 100 and 250 pounds. Results between the 100 and 250 pound category levels also indicate a significant increase in total waste generated, as well as in the number of

counties with resultant decreases of information. These results indicate a natural break in the data indicating a point of balance between the two objectives of reducing the reporting burden and continuing to provide information of the greatest utility to the public. The selection of the alternate threshold for manufacture, process, or otherwise use of 1 million pounds represents a compromise that seeks to provide those facilities with aggregate releases and transfers below 100 pounds per chemical with an effective exemption from Form R reporting, while recognizing that even the most "well-controlled" facilities would find it difficult to manage chemicals in amounts of nearly 1 million pounds per year and only incur aggregate releases and transfers of below 100 pounds per year.

As noted above, EPCRA section 313(f)(2) requires that any revision to the current reporting thresholds continue to capture a substantial majority of total releases of the chemical. EPA believes this requirement should be interpreted as applying to each listed chemical or category, and not to total releases for all chemicals nationally. EPA believes such an interpretation is consistent with the intent of Congress.

The Administrator may modify these threshold amounts for a particular chemical, provided the revised threshold results in reporting on a substantial majority of the aggregate releases of the chemical at facilities subject to this section, but it would not necessarily require reporting from each facility (Ref. 2).

The analysis described in the *Impact on Reporting* discussion below indicates that there would be an almost complete loss of reports on a very limited number of chemicals with very low volumes of releases and transfers based on an alternate reporting threshold below the 100 pound release level. This is confirmed by similar results conducted on the 1992 data set which is also provided in the *Impact on Reporting* discussion. However, EPA believes that the proposed annual certification requirement, if implemented as proposed, would serve to maintain reporting on a substantial majority of releases of all chemicals that may be affected by the proposed alternate reporting threshold, including those discussed below in the unit titled *Impact on Reporting*.

Annual Certification. EPA is proposing that each qualifying facility which chooses to apply the revised manufacture, process, or otherwise use thresholds must file an annual certification statement in lieu of a full

Form R report. The proposed annual certification would provide an indication that the sum of amounts released and transferred for the purpose of treatment and/or disposal for each listed chemical for which the alternate threshold is being applied did not exceed 100 pounds. This information can be made available in the same manner that the information reported on Form R is made available. Currently, facilities releasing less than 100 pounds may indicate on Form R that they released from 1 to 10 pounds and 11 to 499 pounds. This is known as a "range report." The certification statement would act as the functional equivalent of a range report of zero to 99 pounds for combined releases and transfers for treatment and/or disposal. In this way, information on a substantial majority of both releases and transfers for the purpose of treatment and/or disposal would be maintained, which would satisfy the statutory intent of EPCRA section 313(f)(2). EPA also believes that this approach would address several of the concerns addressed by comments during the pre-proposal process.

During the development of this proposal and at the February 16, 1994 Public Meeting, EPA received a number of comments regarding a certification requirement. Some of the commenters favor a one-time certification by a facility that releases and transfers are within the limits established for the alternate threshold. The facility and chemical information would be recorded, and if there are changes in amounts released or transferred which would no longer allow the application of the alternate threshold, then full reporting would be reinstated.

Other commenters support an annual certification. These commenters contend that an annual certification has the effect of continued verification that releases and transfers are below the level established for a facility category. These commenters believe that without an annually submitted certification statement, reports for prior years would have to be compared with each consecutive reporting year to identify a potential non-reporter. Any attempt to verify if non-reporting may have occurred would require a follow up activity. Comments also assert that an annual statement helps to ensure that operators are aware of specific chemical

uses and releases, thereby promoting good housekeeping practices. Additional comment in support of an annual certification statement described some state programs that currently survey facilities that reported in prior years but did not submit reports for the year under review.

After considering these comments, and the language of section 313(f)(2), EPA believes that an annual certification statement best addresses the statutory mandates and the public's right-to-know. EPA believes that the proposed annual certification will provide information relating to the location of facilities manufacturing, processing, or otherwise using these chemicals, that the chemicals are being manufactured, processed or otherwise used at current reporting thresholds, and that chemical releases and transfers for the purpose of treatment and/or disposal are below 100 pounds per year (i.e., within a range of zero to 99 pounds per year). This provides a sufficient indication of the potential volume of releases and such data can be made available to the public in the same manner as current Form R data. An annual statement will assist users of TRI data in distinguishing facilities which changed their chemical uses, and therefore were no longer required to report, from those that were required to, but did not report. An annual certification would assist those states that do not have the resources to survey facilities operating in their state as well as the public that use the data.

Finally, EPA believes the proposed annual certification requirements would foster continued attention to chemical management practices and provide a locational tool vital to any compliance program or other interested party. EPA believes it necessary to receive some type of specific indication that a facility was taking advantage of the alternate threshold annually to assist in any compliance monitoring and enforcement efforts.

EPA is interested in receiving comment on this approach and on alternatives, for example, requiring a certification statement every 3 or 5 years as opposed to annually. EPA would also like comment on the elements contained in the certification statement. In particular, are the elements appropriate for such a certification statement, and

are all such elements necessary and sufficient? The elements EPA is proposing can be found in the amendment to the regulatory text of § 372.85.

Recordkeeping. EPA is also proposing that each facility taking advantage of the alternate threshold be required to maintain and make available upon request records for a period of 3 years from the date of the submission of the certification statement. These records would provide substantiation that an appropriate threshold determination was made and that estimated releases and transfers, for the purpose of treatment and/or disposal, were below 100 pounds for that reporting year. This documentation is necessary for any compliance effort verifying the claims made by a facility taking advantage of the alternate threshold.

Impact on Reporting. In developing this proposal, EPA analyzed TRI data to determine the impact of various options on the number of Form R reports that would no longer be received by EPA, amount and nature of chemical release information that would no longer be available to the public, and savings to industry, EPA, and State governments due to the reduced reporting and data management costs. EPA's preliminary analysis was contained in an Issues Paper made available at the Public Meeting held on February 16, 1994 (Ref. 3).

After the public meeting, EPA conducted additional analysis to estimate the impact on reporting of the creation of an alternate reporting threshold for a category of facilities for which annual releases and transfers off-site for the purpose of treatment and/or disposal were reported as below certain threshold levels, ranging from zero to below 5,000 pounds.

The following analytical results are based on 1991 and 1992 TRI data. These are the only data sets that contain the information on releases and transfers for the purpose of treatment and/or disposal plus the elements reported under the Pollution Prevention Act needed to calculate the impact of the alternate threshold being proposed by this document. A summary of the major findings for the volume-based category options considered are provided below:

Table 1.—Summary of Analytical Findings (Alternate Reporting Threshold Based on Releases and Transfers*)

Threshold Level (pounds)	No. of Reports Affected (1,000)	Volume Release and Transfers* Affected (pounds)	Percent of Total Release and Transfer*	Volume Total Waste Affected (million pounds)	Percent Total Waste	No. of Counties with 91-100 % Loss of Release and Transfer* Data
0/NA	10.2	0.0	0.00%	1,203.7	3.3%	0

Table 1.—Summary of Analytical Findings (Alternate Reporting Threshold Based on Releases and Transfers*)—Continued

Threshold Level (pounds)	No. of Reports Affected (1,000)	Volume Release and Transfers* Affected (pounds)	Percent of Total Release and Transfer*	Volume Total Waste Affected (million pounds)	Percent Total Waste	No. of Counties with 91–100 % Loss of Release and Transfer* Data
10	16.2	35,000	0.00%	1,687.3	4.9%	36
100	20.5	200,000	0.01%	2,260.7	6.3%	52
250	26.2	1,400,000	0.03%	3,059.7	8.5%	94
500	33.0	4,000,000	0.1%	3,864.3	10.7%	141
1,000	38.9	8,400,000	0.2%	5,583.8	15.5%	177
5,000	50.1	36,200,000	0.8%	7,786.7	21.6%	254

*Release and transfers for the purpose of treatment and/or disposal. (Data taken from 1991 reporting.)

EPA estimates that a total of 20,500 forms reported releases and transfers, as defined by this proposal, within the range of zero to 99 pounds based on both 1991 and 1992 data. For 1991, these forms originated from an estimated 10,200 facilities, of which 3,600 facilities would have met the "low-level release" category determination for all chemical reports submitted. For 1992 reporting, the 20,500 forms affected by the alternate thresholds originated from an estimated 10,600 facilities, of which 3,800 facilities would have met the "low-level release" category determination for all chemical reports submitted.

The amounts reported for releases and transfers as defined by EPA's proposal for the 20,500 forms totaled approximately 200,000 pounds for 1991 reporting and 164,200 pounds for 1992. This represents less than 1/100th of 1 percent of the total (4.5 billion) pounds reported for releases and transfers for treatment and/or disposal for 1991. Results for 1992 data are basically the same. Those Form R reports that indicated a range code of B, which represents a range between 11 and 499 pounds in any of the data elements used to make the "low-level release" category determination, were not counted. For the purpose of data management, a midpoint value is assigned in places where a range code is reported. The value assigned to range code B is 250 pounds. A report that submitted a range code of B in any element used to make the "low-level release" category determination, regardless of the amounts submitted in the remaining elements, would appear to be over the 100 pound category level. Therefore, the following results of EPA's analysis could underestimate the number of reports impacted in cases where actual amounts released or transferred for the purpose of treatment and/or disposal were below 100 pounds and the corresponding report indicated a range code of B. Based on 1991 data,

approximately 4,600 Form Rs reported a range code indicating volumes within the range of 11–499 pounds for at least one element being used to define the category.

The total wastes volumes (amounts defined by releases and transfers for the purpose of treatment and/or disposal plus the Pollution Prevention Act reporting elements) associated with the 20,500 forms totaled approximately 2,260,700,000 pounds. This represents approximately 6.3 percent of the total 36 billion pounds reported by all forms for 1991. Total waste volumes associated with the 20,500 forms estimated to be eligible to apply the alternate threshold for 1992 was 6,105,300,000 pounds, which represents approximately 16.7 percent of total waste reported for all forms.

EPA's analysis found that, based on 1991 data, 15 chemicals would no longer be reported on Form R to the Agency. In 1991, these 15 chemicals were reported on a total of 26 Form Rs. The total amounts released and transferred for the purpose of treatment and/or disposal from these 26 forms was less than 350 pounds.

Based on 1991 data, the 15 chemicals for which most or all of the information on Form R would no longer be reported are presented below with the corresponding number of reports submitted per chemical and the total pounds released and transferred for the purpose of treatment and/or disposal.

Chemical Name	Number of Reports	Total pounds
Alpha-Naphthylamine	2	10
4-Aminobiphenyl	1	4
C.I. Food Red 15	4	46
C.I. Solvent Yellow 3	2	15
2-Chloroacetophenone	1	2
2,4-Diaminoanisole	1	85
3,3'-Dimethoxybenzidine	2	4
Heptachlor	1	5

Chemical Name	Number of Reports	Total pounds
Isosafrole	1	10
Methyl Hydrazine	2	1
Michler's Ketone	1	3
P-Anisidine	3	26
2,4,6-Trichlorophenol	2	82
2,6-Xyldine	2	21
Zineb	1	5
Total	26	319

From these numbers, it can be seen that these are chemicals for which very low releases and transfers are reported nationally. A similar analysis was conducted on 1992 data. Results from the 1992 data, indicate that 7 chemicals would no longer be reported on Form R with a "low-level release" category determination of less than 100 pounds. These 7 chemicals were reported on a total of 14 TRI reporting forms, with total amounts released and transferred for the purpose of treatment and/or disposal of less than 300 pounds.

Based on the 1992 data, the 7 chemicals for which Form R would no longer be filed are presented below with the corresponding number of reports submitted per chemical and the total pounds released and transferred for the purpose of treatment and/or disposal for each chemical.

Chemical Name	Number of Reports	Total Pounds
Alpha-Naphthylamine	2	10
4-Aminobiphenyl	1	3
Cupferron	1	79
3,3'-Dimethoxybenzidine	3	8
p-Anisidine	3	31
2,4,6-Trichlorophenol	1	87
2,6-Xyldine	3	59
Total	14	277

D. Alternative Options

The following four options are being presented for comment as alternatives to EPA's proposal. The first three options are constructed in the same manner as EPA's proposal, except the amount of "low-level releases" presented by the sums of releases and transfers for the purpose of treatment and/or disposal per chemical per year are: (1) Less than 500 pounds, (2) less than 10 pounds or, (3) zero (or not applicable). The fourth alternative that EPA is considering creates a facility category based on amounts reported for total waste generation.

1. *Category: less than 500 pounds per year.* This option would allow facilities that meet current reporting requirements but that have a chemical or chemicals for which the sum of amounts released and transferred for the purpose of treatment and/or disposal is below 500 pounds, to apply a higher reporting threshold to that chemical or chemicals. As described in unit B above, the alternate thresholds for manufacture, process, or otherwise use would be applied on a per chemical basis. The alternative reporting threshold would be equal to or greater than 1 million pounds.

Based on 1991 data, EPA estimates that a total of 33,000 forms reported total releases and transfers for the purpose of treatment and/or disposal of less than 500 pounds. The combined total reported for releases and transfers for the purpose of treatment and/or disposal by these forms was approximately 4,000,000 pounds. This represents approximately 1/10th of 1 percent of the total 4.5 billion pounds reported for such releases and transfers for 1991. The total waste volumes (sum of amounts released and transferred for the purpose of treatment and/or disposal plus the Pollution Prevention Act reporting elements) associated with these 33,000 forms totaled approximately 3,864,300,000 pounds. This represents approximately 10.7 percent of the total 36 billion pounds reported by all forms for 1991.

An alternate threshold applied to a category of less than 500 pounds is estimated to result in 20 chemicals which would no longer be reported on Form R. These 20 chemicals were reported on 37 forms with a national total of 1,814 pounds of releases and transfers for treatment and/or disposal based on 1991 data. The 20 chemicals for which most or all of the information on Form R would no longer be reported are presented below with the corresponding number of reports submitted per chemical and the total

pounds released and transferred for the purpose of treatment and/or disposal.

Chemical Name	Number of Reports	Total Pounds
Alpha-Naphylamine	2	10
4-Aminobiphenyl	1	4
4-Aminoazobenzene	1	441
p-Anisidine	3	26
2-Chloroacetophenone	1	2
C.I. Food Red 15	4	46
C.I. Solvent Yellow 3	2	15
2,4-Diaminoanisole	1	85
1,2-Dibromo-3-Chloropropane	2	290
Dichlorobromomethane	1	200
3,3'-Dimethoxybenzidine	2	4
p-Dinitrobenzene	1	164
Heptachlor	1	5
Isosafrole	1	10
Methyl Hydrazine	2	1
Michler's Ketone	1	3
Propyleneimine	6	400
2,4,6-Trichlorophenol	2	82
2,6-Xylydine	2	21
Zineb	1	5
Total	37	1,814

A facility category based on the sum of amounts released and transferred for the purpose of treatment and/or disposal of less than 500 pounds will certainly allow many more facilities to apply for the alternate threshold. Based on 1991 reporting, approximately 40 percent of those forms submitted would be eligible. However as can be seen from referencing Table 1, these additional forms account for a significantly larger amount of release, transfer, and total waste generation data that would no longer be available.

2. *Category: less than 10 pounds per year.* This option would allow facilities that meet current reporting requirements but that have a chemical or chemicals for which the sum of amounts released and transferred for the purpose of treatment and/or disposal is below 10 pounds, to apply a higher reporting threshold to that chemical or chemicals. As described in part B above, the alternate thresholds for manufacture, process, or otherwise use would be applied on a per chemical basis. The alternative reporting threshold would be equal to or greater than 1 million pounds.

Based on 1991 data, EPA estimates that a total of 16,200 forms reported total releases and transfers for the purpose of treatment and/or disposal of less than 10 pounds. The combined total reported for releases and transfers for the purpose of treatment and/or disposal by these forms was approximately 35,000 pounds. This

represents less than 1/100th of 1 percent of the total 4.5 billion pounds reported for such releases and transfers for 1991. The total waste volumes (sum of amounts released and transferred for the purpose of treatment and/or disposal plus the Pollution Prevention Act reporting elements) associated with these 16,200 forms totaled approximately 1,687,300,000 pounds. This represents approximately 4.9 percent of the total 36 billion pounds reported by all forms for 1991.

An alternate threshold applied to a category of less than 10 pounds is estimated to result in 9 chemicals which would no longer be reported on Form R. These 9 chemicals were reported on 12 forms with a national total of 44 pounds of releases and transfers for treatment and/or disposal based on 1991 data. The 9 chemicals for which most or all of the information on Form R would no longer be reported are presented below with the corresponding number of reports submitted per chemical and the total pounds released and transferred for the purpose of treatment and/or disposal.

Chemical Name	Number of Reports	Total Pounds
Alpha-Naphylamine	2	10
4-Aminobiphenyl	1	4
2-Chloroacetophenone	1	2
3,3'-Dimethoxybenzidine	2	4
Heptachlor	1	5
Isosafrole	1	10
Methyl Hydrazine	2	1
Michler's Ketone	1	3
Zineb	1	5
Total	12	44

It is apparent from these numbers that a facility category of less than 10 pounds would impact a subset of the information reported by those reports comprising the less than 100 pound category.

3. *Category: zero pounds or not applicable.* This option would create a category of facilities based on the sum of amounts released and transferred for the purpose of treatment and/or disposal of zero pounds or not applicable. As described in EPA's proposal, the alternate manufacture, process, or otherwise use thresholds would be applied on a per chemical basis for those listed chemicals where the sum of amounts released and transferred for the purpose of treatment and/or disposal from a facility was zero pounds or not applicable. The corresponding alternate threshold

would be equal to or greater than 1 million pounds.

A report may indicate not applicable in such cases where a release is not associated with a particular medium for a given chemical. An example of this could be a constituent that is part of an aqueous waste and remains in solution with all releases directed to a receiving stream where there are no direct releases to land. In this case, elements on the form pertaining to land releases would not apply.

EPA estimates that a total of 10,200 forms reported releases and transfers, for the purpose of treatment and/or disposal, of zero or not applicable. These forms originated from an estimated 6,100 facilities, of which 1,900 facilities would have met the "low-level release" category determination for all chemical reports submitted.

By definition, no amounts were reported for releases and transfers, for the purpose of treatment and/or disposal, by the 10,200 forms. However, these forms do have total wastes volumes associated with them. An estimated total of 1,203,700 pounds

were reported by the 10,200 forms for the Pollution Prevention Act reporting elements for 1991. This represents approximately 3.3 percent of the total 36 billion pounds reported by all forms.

Form Rs reporting total releases and transfers for treatment or disposal equal to zero pounds or not applicable would by definition not impact the continued collection of a substantial majority of releases for the chemical reported.

4. *Alternate threshold based on total waste generation.* This alternative creates a category based on the total of all volumes reported. Reporting elements included in the total waste generation option include information collected under section 6607 of the Pollution Prevention Act such as amounts treated on-site, amounts recycled on-site and off-site, and volumes used for energy recovery on-site and off-site. This information was first publicly made available in reports submitted for reporting year 1991. The rationale for using this approach is that the data set collected currently is much broader than the data set collected under TRI prior to 1991 and provides more information on the TRI chemicals

being managed by reporting facilities. Setting a category designation by only the volume of releases and transfers for treatment and/or disposal results in the loss of the more detailed waste management and source reduction efforts both current and projected. There can be situations in which low volumes of releases in any given year are still associated with large volumes of the TRI chemicals in waste that are treated, recycled or burned for energy recovery. For example, the zero level represented by Alternative 3 above results in a loss of reporting of over 1 million pounds of waste management activity.

One purpose of the Pollution Prevention Act is to help users of the data understand the details of facility waste management and source reduction practices. This reporting also encourages facilities to focus attention on both the current and future potential for release reductions as well as source reduction opportunities.

Presented below in Table 2 are data taken from 1991 indicating the impact of a facility category based on total waste generation at various levels.

Table 2.—Summary of Analytical Findings (Alternate Reporting Threshold Based on Total Waste Generation*)

Category Level (pounds)	No. of Reports Affected (1,000)	Volume Total Waste Affected (million pounds)	Percent Total Waste	No. of Counties with 91-100% Loss of Total Waste Generation* Data
0/NA	6.3	0.0	0.0%	0
10	10.0	0.02	0.0%	13
100	13.0	0.15	0.0%	24
250	16.7	0.94	0.0%	52
500	21.3	2.66	0.01%	89
1,000	25.7	5.86	0.02%	117
5,000	34.8	28.81	0.08%	171

*Total waste generation includes releases and transfers plus the Pollution Prevention Act data. (Data taken from 1991 reporting.)

Based on these figures, it is evident that a cut-off level for defining the category of facilities eligible for the revised threshold based on total waste generation would have to be set at a higher level than one based only on releases and transfers (for the purpose of treatment and/or disposal only) to achieve a similar reduction in the number of Form R reports. For example, in order to eliminate the submission of an estimated 20,500 reports based on a release and transfer category definition, the cut-off level for eligibility would be 100 pounds. See Table 1 above. To achieve a similar reduction in number of reports, an estimated 21,300 reports, based on a total waste category definition, the cut-off level for eligibility would have to be set at 500 pounds. See Table 2 above.

A disadvantage of establishing a category of facilities based on total

waste generation is that it provides a much higher standard for facilities to meet in order to take advantage of an alternate threshold. In addition, establishing a category based on total waste generation would require the facility to complete all of the calculations on Form R for a given chemical. This would further diminish the savings in time and resources in preparing these calculations which would be provided by this proposed rule. Finally, EPA would have to carefully consider whether an alternate manufacture, process, or otherwise use threshold of 1 million pounds would be sufficient to effectively exempt those Form R submissions.

III. Other Approaches Considered

EPA requested comment in the SBA notice on alternative approaches to the development of a TRI reporting

exemption based on releases and transfers. Numerous suggestions were submitted, and alternative approaches for modifying current reporting were considered. These approaches fall within four main categories: (1) Modifications to the manufacture, process, or otherwise use thresholds based on classes of chemicals or categories of facilities (being proposed in this document); (2) general revision to the manufacture, process, or otherwise use thresholds; (3) altering the frequency of reporting; and (4) other administrative changes, such as a revision of the article exemption.

1. *Threshold modifications based on classes of chemicals or categories of facilities.* The approach put forth in EPA's proposal is a threshold modification for a facility category based on amounts released and transferred for the purpose of treatment

and/or disposal. Another option that falls within an approach based on classes of chemicals or categories of facilities is that put forth in SBA's petition. For the purposes of organizing discussion in this section, SBA's approach will be referred to as a List Division.

List Division. The SBA petition proposed dividing the list of section 313 reportable chemicals and applying different exemption levels to each set of chemicals. The two primary principles behind a list division would be to set a lower reporting threshold for those chemicals thought to pose greater potential hazard concerns, and to ensure that reporting on a substantial majority of releases would be retained for lower volume chemicals. SBA asserts that one benefit of such an approach is that it could eliminate a significant number of reports on "high volume" chemicals while preserving reports on "highly toxic" chemicals released in low volumes. The results of EPA's analysis are presented in Appendix B-1 of the Issues paper (Ref. 3).

Comment received on the SBA Notice addressed the impact of and basis upon which a list division could be created. Some commenters suggested that the list division proposed in the SBA petition was unfounded, and that adopting the Reportable Quantity (RQ) scheme associated with the reporting of extremely hazardous substances (EHS) under EPCRA section 304 would be a more supportable approach because the methodology that distinguishes among chemicals already exists. The classification scheme used to determine reporting obligations under EPCRA section 304 divides the list into chemicals having RQs of 1, 10, 100, 1,000, and 10,000 pounds, depending on the chemical. The application of these values to the TRI listed chemicals could create as many as five classes of chemicals with each having a different release and transfer level. Many of the TRI listed toxic chemicals do not have RQ values assigned to them. This approach would add multiple levels of complexity to the TRI reports. In addition, EPA has received comment regarding the lack of conclusive data supporting a division of the currently listed chemicals to adequately address concerns of carcinogenicity, teratogenicity, and general hazards that may be posed from continued low-level releases that might go unreported if a reporting modification is made. In addition, EPA believes that creating different categories with varying levels assigned by chemical would further complicate an attempt to provide a reduction in burden associated with TRI

reporting. It is EPA's intent to develop a reporting modification that can be implemented as simply as possible, while preserving the utility of the TRI data.

2. Revision of the otherwise use threshold. EPA has authority under section 313(f)(2) to revise the manufacture, process, or otherwise use threshold amounts. An upward revision of any of these amounts would eliminate reports from those facilities that manufacture, process, or otherwise use a listed chemical below the revised activity threshold level.

Form R does not request information on amounts manufactured, processed, or otherwise used for the chemical being reported. However, the amounts of listed chemicals otherwise used by TRI facilities can be estimated based on analytically plausible assumptions. For this reason, EPA conducted an analysis on an estimated change in the otherwise use threshold. The description of this analysis and the associated findings can be found in Appendix B-2 of the Issues paper (Ref. 3).

One benefit of this approach is that it is simpler to implement and enforce compared to revisions based on sums of volumes reported on Form R, such as that described as an Alternative Threshold Modification. Identifying the amounts otherwise used, manufactured, or processed is one of the first pieces of information a facility develops as part of its compliance determination.

A disadvantage of this approach is that it is much less selective in its ability to equate an effective exemption with a report of relatively low volume of releases. For example, raising the otherwise use threshold from 10,000 to 25,000 pounds could eliminate an estimated 18,000 reports. However, the release information contained in any such report could range from zero to 25,000 pounds per year because certain uses may result in environmental releases of all quantities used.

3. Altering the reporting frequency. Section 313(i)(A) provides EPA authority to modify the current annual reporting frequency. Such a modification cannot increase reporting to be more often than on an annual basis. Such a modification can be applied either nationally or to a specific geographic area, to the following: all toxic chemical release forms, a class of chemicals or a category of facilities, a specific toxic chemical, and a specific facility. By reducing the frequency of reporting, facilities would not be subject to an annual reporting requirement, but might be requested to maintain activity information for non-reporting years and submit this information during a

reporting year. For example, a class of facilities may be identified as operating in a very similar manner with little chemical use or release changes. For these facilities, it may be sufficient to have Form R reports submitted less frequently than on an annual basis. It could also be possible to define a category of facilities, similar to the alternate threshold modification described above, and make their reporting frequency "0" years, thus effectively exempting these facilities from reporting.

Under section 313(i), to propose a revision of the current reporting frequency, EPA must meet certain conditions. One such condition requires EPA to notify Congress 1 year prior to initiating rulemaking procedures, in addition to making certain findings and meeting a substantial evidence standard of review. EPA believes that such an approach could unduly lengthen the time required to implement the alternative threshold provision.

4. Revision of the article exemption. Comments on the SBA notice included suggestions to revise the article exemption, 40 CFR 372.38(b), so that the absence of releases from "articles" would no longer be a condition for retaining the article status of materials processed or used at a facility. Currently, if a toxic chemical is released from the normal processing or use of an item at the facility, then that item cannot be considered an article, unless all such releases are recycled.

By eliminating the release condition within the article definition, more items could be considered as articles and the listed chemicals associated with them would not be counted toward reporting thresholds.

EPA does not believe that elimination of this release criterion is appropriate nor does it provide an effective alternative for establishing a specific low volume, released-based approach for reducing the current level of reporting burden.

IV. Request for Comment on the Issues Listed Below

EPA requests comment on any aspect of this proposal. However, EPA requests specific comment as detailed in the following paragraphs.

Should an alternate reporting threshold based on low-levels of releases and transfers carry with it a provision that would require some period of full Form R reporting prior to taking advantage of the alternate reporting threshold? This provision would apply to reporting by new facilities added either by a change in chemical activity or inclusion of

additional industry sectors, or by adding chemicals to the section 313(c) TRI list. Such a provision could be useful for establishing a "baseline" of activity that would provide reporting on all of the elements contained on Form R prior to accepting an annual certification.

EPA would like to hear from those states that have adopted EPCRA and EPCRA-like laws regarding how adopting an alternate threshold such as that being proposed would affect their program.

Would states find an alternative reporting threshold based on zero releases and transfers more difficult to enforce than an alternative reporting threshold based on another release level (e.g., 10-500 pounds)?

EPA requests comment on the potential loss of Pollution Prevention Act data that would result from adopting a facility category approach defined by amounts released and transferred for the purpose of treatment and/or disposal at any level.

EPA requests comment on the effectiveness, in terms of providing a reduction in the current level of reporting burden with the need to continue to collect data on and promote total waste management, of establishing a facility category based on amounts reported for total waste generation.

EPA requests comment on any activity that has focused on reports of low-level releases, specifically for such reports that would be effected by this proposal.

V. Rulemaking Record

All documents related to this rulemaking (reference docket number OPPTS-400087) are available to the public in the TSCA Nonconfidential Information Center (NCIC) from noon to 4 p.m., Monday through Friday, excluding legal holidays. The NCIC is located at EPA headquarters, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

VI. References

(1) Memo, "Significance of Small Source Releases in Total Releases and Transfers for TRI Chemicals - Preliminary Data Tables - 1988 TRI Data," Kevin Bromberg to Mary Ellen Weber, Environmental Protection Agency, February 28, 1991.

(2) U.S. Congress, House of Representatives. "Conference Report No. 962," 99th Cong., 2nd Session. 296 (1986).

(3) USEPA/OPPT. Toxic Release Inventory--Small Source Exemption, (Issues Paper). U.S. Environmental Protection Agency, Washington, DC, (January 27, 1994).

(4) SIC Code 2048 Analysis.

VII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

EPA's economic analysis estimates that 20,500 reports submitted on Form R for the currently listed chemicals would be eligible for the certification as a result of the proposed alternative reporting threshold outlined in Unit II.B. of this preamble. This would result in savings of \$26 million per year for affected facilities, and \$680,000 per year for EPA.

Pursuant to the terms of this Executive Order, EPA has determined that this proposed rule is "significant."

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities would be significantly affected by the proposed rule. Because the proposed rule would result in cost savings to facilities, EPA certifies that small entities would not be significantly affected by the proposed rule.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An

Information Collection Request document has been prepared by EPA (ICR No. 1704.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch, (Mail Code 2136), EPA, 401 M St., SW., Washington, DC 20460 or by calling (202)260-2740.

This collection of information has an estimated reporting burden averaging 27 hours per response and an estimated annual recordkeeping burden averaging 4 hours per respondent. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The burden for this reporting activity will be subtracted from the Form R information collection when that ICR (No. 1363) is renewed.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, (Mail Code 2136), EPA, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: July 15, 1994.
Carol M. Browner,
Administrator.

Therefore, it is proposed that 40 CFR part 372 be amended as follows:

PART 372--[AMENDED]

1. The authority citation for part 372 would continue to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

2. In § 372.10, by adding a new paragraph (d) to read as follows:

§ 372.10 Recordkeeping.

(d) Each person who determines that they may apply the alternative reporting threshold as specified under § 372.27(a) must retain the following records for a period of 3 years from the date of the submission of the certification as required under § 372.27(b):

(1) A copy of each certification submitted by the person under § 372.27(b).

(2) All supporting materials and documentation used by the person to make the compliance determination that the facility or establishments is a covered facility under §§ 372.22 or 372.45.

(3) Documentation supporting the certification submitted under § 372.27(b) including:

(i) Data supporting the determination of whether the alternative reporting threshold specified under § 372.27(a) applies for each toxic chemical.

(ii) Documentation supporting the calculations of the quantity of each toxic chemical released to the environment or transferred to an off-site location.

(iii) Receipt or manifests associated with the transfer of each chemical in waste to off-site locations.

3. In § 372.25, by revising the introductory paragraph to read as follows:

§ 372.25 Thresholds for reporting.

Except as provided in § 372.27, the threshold amounts for purposes of reporting under § 372.30 for toxic chemicals are as follows:

* * * * *

4. By adding a new § 372.27 to read as follows:

§ 372.27 Alternate threshold and certification.

(a) With respect to manufacture, process, or otherwise use of a toxic chemical, a covered facility may apply

an alternative reporting threshold of 1 million pounds per year if the facility calculates that it would have reported releases of less than 100 pounds per year of the toxic chemical, as a combined total of the following:

(1) Releases pursuant to § 372.85(b)(15), and

(2) Transfers, but only for the purpose of treatment and/or disposal, pursuant to § 372.85(b)(16).

(b) If the facility determines that it may apply the alternative reporting threshold specified in paragraph (a) of this section for a specific toxic chemical, the facility is not required to submit a report for that chemical under § 372.30, but must submit a certification statement including the information required under § 372.85(c). The facility must also keep records as specified in § 372.10(d).

(c) Each certification statement under this section for activities involving a toxic chemical that occurred during a calendar year at a covered facility must be submitted on or before July 1 of the next year.

5. In § 372.85, by adding a new paragraph (c) to read as follows:

§ 372.85 Toxic chemical release reporting form and instructions.

* * * * *

(c) Alternative threshold certification statement elements. The following information must be reported on an alternative threshold certification statement pursuant to § 372.27(b):

(1) Reporting year.

(2) An indication of whether the chemical identified is being claimed as trade secret.

(3) Chemical name and CAS number (if applicable) of the chemical, or the category name.

(4) Signature of a senior management official certifying the following:

I hereby certify that for each toxic chemical listed in this report, the combined releases and transfers (for the purpose of treatment and/or disposal only) were less than 100 pounds for this reporting year and that the chemical was not manufactured, processed, or otherwise used in amounts equal to or greater than 1 million pounds during this reporting year.

(5) Date signed.

(6) Facility name and address.

(7) Mailing address of the facility if different than paragraph (c)(6) of this section.

(8) Toxic chemical release inventory facility identification number if known.

(9) Name and telephone number of a Technical Contact.

(10) SIC code(s).

(11) Latitude and longitude.

(12) Dun and Bradstreet Number.

(13) EPA Identification Number(s) (RCRA I.D. Number(s)).

(14) Facility NPDES Permit Number(s).

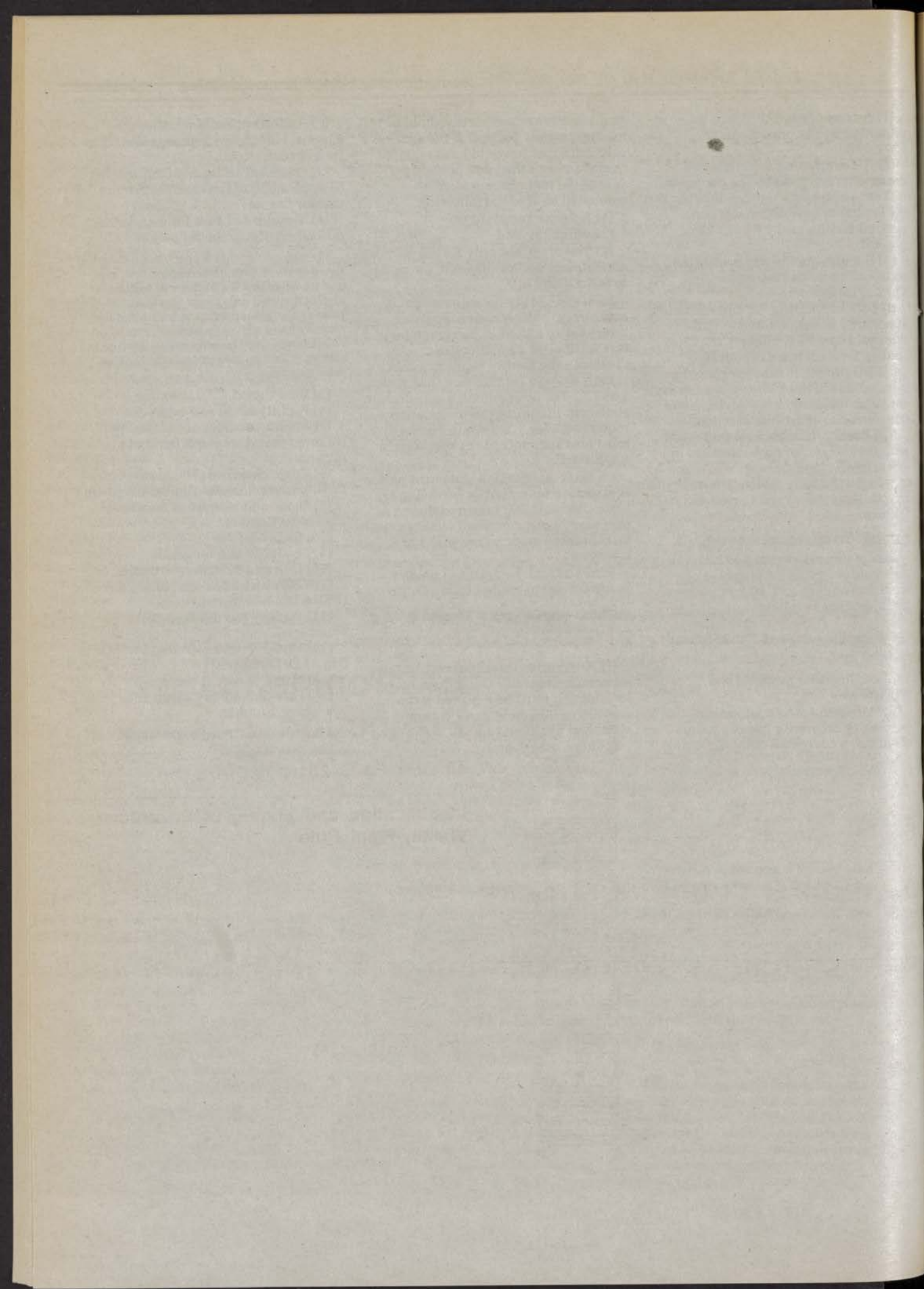
(15) Underground Injection Well Code (UIC) I.D. Number(s).

(16) Name of parent company.

(17) Parent company's Dun and Bradstreet Number.

[FR Doc. 94-18449 Filed 7-27-94; 8:45 am]

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Thursday
July 28, 1994

Part VII

**Environmental
Protection Agency**

40 CFR Parts 261 and 266

**Identification and Listing of Hazardous
Waste; Final Rule**

Federal Register

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 266

[EPA-530-Z-94-009; SWH-FRL-5022-4]

Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is today excluding from the RCRA regulatory definition of solid waste certain in-process recycled secondary materials utilized by the petroleum refining industry. Specifically, today's rule states that oil recovered from petroleum refinery wastewaters and from other sources, both on-site and off-site, is excluded from the regulatory definition of solid waste if it is subsequently inserted (along with normal process streams) into the petroleum refining process prior to crude distillation or catalytic cracking.

EFFECTIVE DATE: This final rule is effective on July 28, 1994.

ADDRESSES: The official record for this rulemaking is identified as Docket Number F-94-SWF-FFFFF and is located in the EPA RCRA docket, Room 2616, 401 M Street SW., Washington, DC 20460. The docket is open from 9:00 to 4:00, Monday through Friday, except for 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 from any one regulatory docket at no cost. Additional copies cost \$.15 per page.

FOR FURTHER INFORMATION CONTACT: General questions about the regulatory requirements under RCRA should be directed to the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; Telephone: toll-free at (800) 424-9346, or locally at (703) 412-9810. For the hearing impaired, the number is (800) 553-7672 (toll-free) or (703) 412-3323 (local). For information on specific aspects of today's notice, contact Ross Elliott, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260-8551.

SUPPLEMENTARY INFORMATION:

Outline of Today's Rule

- I. Authority
- II. Background

- A. Statutory Definition of Solid Waste
- B. Prior Litigation
- C. January 8, 1988 Proposal
- D. Description of Petroleum Exploration, Development & Production, and the Petroleum Refining Process
- E. Petroleum Refining Wastewater Treatment
- F. Recovered Oil and Recovered Oil Systems
- G. Status of Wastewater Streams, Wastewater Treatment Units, Recovered Oil, and Recovered Oil Systems Under Current RCRA Rules
- III. Summary of Today's Final Rule
- IV. Scope of Today's Final Rule
- A. Limiting Scope to Recovered Oil from Petroleum Refining, Exploration and Production
- B. Rationale for Excluding Recovered Oil and Not Wastewater from Being a Solid Waste
- C. Rationale for Excluding Recovered Oil from Off-Site Sources
- V. Rationale for Conditioning the Exclusion on Recovered Oil Not Being Placed on the Land and Not Being Accumulated Speculatively
- VI. Rationale for Not Excluding Recovered Oil that is Inserted into the Petroleum Refining Process After Crude Distillation or Catalytic Cracking (i.e., into Petroleum Coker)
- VII. Rationale for Not Excluding Other Oil-Bearing Hazardous Materials
- VIII. Demonstration that Recovered Oil Meets Conditions of Exclusion
- IX. Examples of How Today's Rule Operates
- X. Relationship to Other Programs
- A. Clean Air Act (Benzene NESHAP)
- B. Clean Water Act
- C. RCRA
1. RCRA Air Emission Standards
2. Used Oil
- D. Enforcement; Effect of Today's Final Rule on RCRA 3007, 3013, 7002 and 7003 Authorities
- XI. State Authority
- A. Applicability of Rules in Authorized States
- B. Effect on State Authorization
- XII. Regulatory Requirements
- A. Regulatory Impact Analysis Pursuant to Executive Order No. 12866
- B. Regulatory Flexibility Act
- C. Paperwork Reduction Act

I. Authority

These regulations are issued under the authority of Sections 2002 and 3001 *et seq.* of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6912 and 6921 *et seq.*

II. Background

A. Statutory Definition of Solid Waste

The statutory definition of solid waste, RCRA Section 1004 (27), is the starting point for determining RCRA Subtitle C jurisdiction. This is because the term "hazardous waste" is a subset

of "solid waste." RCRA Sections 1004 (5) and 1004 (27). The statutory definition of solid waste indicates that "garbage, refuse, sludge * * * and other discarded material" are solid wastes. The critical issue is when secondary materials (see definition at 50 FR at 616 n. 4, Jan. 4, 1985) that are going to be recycled can be solid wastes. Today's rulemaking addresses this question for certain operations commonly occurring in the petroleum refining and related industries.

The reader should note that EPA is conducting an assessment of the RCRA Definition of Solid Waste, as described in the EPA report, *RCRA Implementation Study Update*.¹ This ongoing effort may result in proposed regulatory changes to the definition set forth in 40 CFR 261.2 and related requirements. Today's action, however, is fairly narrow, applying to situations where certain oil-bearing secondary materials are used or reused within the petroleum refining process. EPA will continue its broad policy review of the Definition of Solid Waste, but deemed unnecessary any delay in issuing today's rule.

B. Prior Litigation

In its decision in *American Mining Congress v. EPA*, 824 F. 2d 1177 (D.C. Cir. 1987) (*AMC I*), a divided panel of the District of Columbia Circuit held that the Agency's rules defining the statutory term "solid waste," RCRA Section 1004 (27), exceeded the Agency's statutory authority to the extent that the rules asserted RCRA authority over "materials that are recycled and reused in an ongoing manufacturing or industrial process." *Id.* at 1186 (emphasis original). Because "these materials have not yet become part of the waste disposal problem", *id.*, they are not yet "discarded" within the meaning of Section 1004 (27) and so cannot be considered to be "solid wastes." Subsequent judicial decisions confirm that the holding in *AMC I* is limited to situations involving "materials that are 'destined for immediate reuse in another phase of the industry's ongoing production process' and that 'have not yet become part of the waste disposal problem.'" *American Mining Congress v. EPA*, 907 F. 2d 1179, 1186 (D.C. Cir. 1990) (*AMC II*) (emphasis original); *American Petroleum Inst. v. EPA*, 906 F. 2d 729, 740-41 (D.C. Cir. 1990) (*API*); *Shell Oil v. EPA*, 950 F. 2d 741, 755-56 (D.C. Cir. 1991); *Chemical Waste Management v. EPA*, 976 F. 2d 2,

¹ RCRA Implementation Study Update: The Definition of Solid Waste, U.S. EPA, July 1992. #EPA530-R-92-021.

14 (D.C. Cir. 1992), cert. denied 113 S.Ct. 1961 (1993).

C. January 8, 1988 Proposal

On January 8, 1988, EPA proposed rules to implement the *AMC I* opinion. Of particular significance to today's action, EPA proposed certain amendments relating to the scope of the regulatory definition of solid waste as applied to operations occurring within the petroleum refining industry. In particular, the Agency proposed to exclude from the regulatory definition of solid waste secondary materials associated with "on-going fuel production activities in the petroleum refining industry. These activities involve situations where crude oil is refined, and oil-bearing residues from that refining process are returned for further refining as part of one continuous and on-going process." 53 FR at 525 (Jan. 8, 1988). The Agency specifically proposed to exclude oil-bearing residues from the refining process when those residues are generated on-site and inserted into that on-site petroleum refining process or coker, provided that these residues are not managed in such a way as to be "characterized by elements of discard" such as placement in a disposal unit like a surface impoundment. *Id.* EPA is not taking any action today with respect to the portions of the January 8, 1988 proposal dealing with non-petroleum materials. These issues are being addressed by other on-going Agency activities (see above, Section II.A.). The Agency is, as described below, taking final action with respect to the petroleum materials.

D. Description of Petroleum Exploration, Development & Production, and the Petroleum Refining Process

The presence of petroleum in geologic formations is confirmed by the drilling of exploratory wells. Once located, the development of a petroleum reservoir includes the drilling of additional wells to extract the oil or gas, and well completion and stimulation techniques designed to increase the recovery of oil or gas from that reservoir. Petroleum production generally includes all the activities associated with the recovery of petroleum from the geologic formation. These production activities involve the operation and maintenance of the producing well, and the handling and separation of the recovered crude oil, natural gas, natural gas liquids, and water. The separation of water/crude oil emulsions is performed in tanks by gravity settling, or heat may be added to separate emulsions. Crude oil is then transported via pipeline, vehicle or

vessel to stock tanks and ultimately to the refinery.

Petroleum refining involves several manufacturing operations and processes, including crude desalting, atmospheric and vacuum distillation, hydrotreating, catalytic cracking, thermal processing and residual upgrading, light hydrocarbon processing, hydrocracking, catalytic reforming, extraction, isomerization, lubricating oil processing, sulfur removal and recovery, and product blending and inventory. Products manufactured from petroleum refining include hydrogen, fuel gas, sulfur, liquefied petroleum gas, butane, aromatic feedstocks, leaded and unleaded motor gasolines, jet fuel, kerosene, diesel, heating oil, fuel oil, and asphalt. See generally, 55 FR at 46359 (Nov. 2, 1990); and EPA's Development Document for the effluent guidelines for the petroleum refining industry.²

E. Petroleum Refining Wastewater Treatment

Petroleum refining operations generate large amounts of wastewater that require treatment in order to reduce or remove wastewater pollutants so as to produce effluent that meets discharge requirements of the Clean Water Act. Principal sources of wastewater are refinery process units (where wastewater comes in direct contact with oil), as well as oily cooling waters from cooling towers and heat exchangers. Storm water, which may be subject to minor oil contamination from leaks or spills, is also a type of wastewater at a petroleum refinery.³

Wastewater treatment systems at petroleum refineries generally consist of: (1) a drainage and collection system to collect and carry wastewaters to treatment units; (2) a primary treatment system to separate oil/water/solids, and (3) a secondary treatment system, normally involving biological treatment, to remove soluble biodegradable wastewater pollutants. Some refineries have tertiary treatment systems as well, consisting of water polishing steps before discharge. Secondary and tertiary treatment is frequently conducted using surface impoundments. Primary treatment, i.e. the initial separation of

water, oil, and solids, normally occurs in tanks.

F. Recovered Oil and Recovered Oil Systems

Today's rule deals primarily with the status under RCRA Subtitle C of recovered oil which is returned to the petroleum refining process. "Recovered oil" is a generic term that applies to secondary materials consisting primarily of oil such as oil separator skimmings from plant wastewaters, slop oil and emulsions, oil skimmed from ballast water tanks, and oil from refinery process units (e.g., off-specification process streams). As explained in detail below, today's rule excludes from the definition of solid waste recovered oil from petroleum exploration and production, petroleum refining, and transportation incident to either of these activities, when the recovered oil is reinserted into a petroleum refining process. The exclusion does not apply to recovered oil generated from petroleum operations downstream of refining such as marketing or retail sales—because this oil is already excluded for the most part, as discussed below —, or from non-petroleum industry operations.

This rule also does not exclude hazardous sludges (such as wastes K048, K051, or F037) or other similar wastes from regulation. Distinguishing between these wastes and recovered oil is sometimes difficult. Factors EPA will consider in making this distinction include water content, solids content, and potentially, metals content. See generally 50 FR at 49170 n. 16 (Nov. 29, 1985). EPA repeats, however, that the salient characteristic of recovered oil is the obvious one: that it consist primarily of oil.

Used oil also is not a type of recovered oil, and hence remains subject to the applicable regulations for used oil. See generally 59 FR 10550 (March 4, 1994). The only exception is when *de minimis* quantities of used oil are incidentally captured by refinery wastewater treatment systems. This could occur, for example, when small leaks, spills, or drippings of used oil from machinery, pumps, or other refinery equipment during normal operations are lost to the wastewater treatment system. In these instances, the used oil present in *de minimis* quantities in wastewater is not subject to the used oil standards. See generally 57 FR at 41566 (Sept. 10, 1992).

The objective of a recovered oil system is to gather and recycle oil generated throughout the refinery, or (to a lesser extent) generated from off-site

² Section III of Development Document for Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Petroleum Refining Point Source Category, U.S. EPA, October 1982, National Technical Information Service #PB838-172569.

³ *Id.*, and see Manual on Disposal of Refinery Wastes: Volume on Liquid Wastes, American Petroleum Institute, 1969, pp. 3-4 to 3-5.

sources.⁴ Recovered oil operations almost always occur in tanks, usually a series of tanks that successively purify the oil to the point where it is sufficiently clean and dewatered to be inserted into the petroleum refining process. 53 FR at 525. Some oil is collected directly from process units and sent by means of pipes or vacuum trucks to the refinery's dedicated oil tanks. Occasionally this recovered oil is of sufficient purity that it can be inserted directly into the refining process with little or no treatment in the recovered oil system.

Recovered oil from plant wastewater operations is most often a water-in-oil emulsion, which is sent first to tanks where gravity separates much of it into oil, emulsion, and water layers. The intermediate layer of emulsions then may be sent to other tanks where it will undergo further emulsion-breaking treatment (e.g., mechanical centrifuging, heating, or chemical additives). At the end of each stage, the separated water is returned to the refinery oil/water separators, while the oil is either further treated or, if sufficiently dewatered, is returned to one or more refinery process units. These may include crude oil distillation or catalytic cracking units.⁵

G. Status of Wastewater Streams, Wastewater Treatment Units, Recovered Oil, and Recovered Oil Systems Under Current RCRA Rules

Under present RCRA regulations, petroleum refinery wastewaters upstream of a wastewater discharge that is subject to regulation under Sections 307(b) or 402 of the Clean Water Act, are solid wastes. See 40 CFR 261.4(a)(1) and (2). Such petroleum refinery wastewaters are hazardous if they exhibit a characteristic of hazardous waste, or are listed hazardous wastes (although there are presently no specific hazardous waste listings for petroleum refining industry wastewaters). Petroleum refining wastewater storage and treatment operations generate a number of listed hazardous wastes. In particular, sludges from primary treatment operations are listed under the generic F037 and F038 listings. Sludges from Dissolved Air Flotation (DAF) wastewater treatment units and API separators (particular types of primary wastewater treatment devices) are listed as wastes K048 and K051, respectively. Slop oil systems generate listed wastes as well: slop oil emulsion solids are listed as K049. Also, EPA is

studying additional petroleum refining wastes as part of a listing determination required by RCRA 3001 (e)(2).

In addition, petroleum refineries typically generate large volumes of wastes that exhibit hazardous waste characteristics. Individual wastewater streams upstream of wastewater treatment may exhibit the Toxicity Characteristic, particularly for chromium, lead and benzene (see 40 CFR 261.24), or the characteristics of corrosivity or ignitability (40 CFR 261.21 and 261.22, respectively). These wastewaters may also contain other hazardous constituents that are not part of the Toxicity Characteristic. See Tables in Section V, *Development Document for Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Petroleum Refining Point Source Category*. Sludges generated from secondary or tertiary wastewater treatment also may exhibit one or more hazardous waste characteristics.

Tanks storing listed wastes which engage in primary wastewater treatment operations are presently exempt from federal Subtitle C regulation because they are wastewater treatment units (i.e., tanks). 40 CFR 264.1 (g)(6) and 265.1 (c)(10). Hazardous wastes removed from those units are subject to regulation upon exiting the tanks. However, recovered oil is exempt from Subtitle C regulation, as is any fuel produced from such oil, under the current exemptions at § 261.6 (a)(3)(iv)-(vii). The units engaged in recovered oil operations would also be exempt under current regulations, to the extent that these units are managing materials exempt under § 261.6 (a)(3)(iv)-(vi).

III. Summary of Today's Final Rule

EPA is finalizing a revised version of the January 8, 1988 proposal in today's notice. The final rule states in essence that recovered oil from petroleum refinery operations, petroleum exploration and production, and transportation incident thereto, is excluded from the regulatory definition of solid waste if it is subsequently inserted into the petroleum refining process prior to crude distillation or catalytic cracking. The recovered oil thus need not be generated at the site of the refining process—a potentially significant expansion of the proposal. This exclusion applies, however, only if the oil is not managed in land disposal units or accumulated speculatively before it is inserted.

EPA expects that most of the recovered oil affected by this rule will be generated from wastewater treatment operations. As explained below, EPA is

narrowing the proposal (which would have excluded petroleum refining wastewaters containing oil that eventually gets recycled) by finding that refinery operations upstream of recovered oil systems involve wastewater treatment, not an on-going refining process. Thus, petroleum refinery wastewaters undergoing treatment should not be excluded from the definition of solid waste. In addition, even if these wastewater treatment operations are characterized as also involving recycling, the operations involve discarded residuals that can be part of the waste disposal problem, and hence the wastewater treatment operations need not be characterized as part of an "ongoing production process" for purposes of excluding materials from the definition of solid waste. Once oil is recovered, however, the Agency believes it reasonable to exclude it from the definition of solid waste if the oil is to be reused in the refining process (even though the oil may still require a significant amount of further processing before it can actually be so reused). This is because the recovered oil and its management within refining operations can be viewed as part of the petroleum refining process and not part of the waste disposal problem.

EPA is also slightly amending the regulatory exemption for petroleum coke produced using oil-bearing refinery hazardous waste (see § 261.6 (a)(3)(vii), redesignated (a)(3)(vi) in today's rule). The Agency is slightly broadening the current exemption so that it also applies to coke produced by a single petroleum refining entity, but the coker is located at a different facility from where the hazardous wastes are generated.

As a matter of drafting, the principal change brought about by today's rule takes the form of an exclusion from the regulatory definition of solid waste. Specifically, paragraph (12) is being added to the list of exclusions in § 261.4 (a). In addition, EPA is removing the regulatory exemption in § 261.6(a)(3)(v) which is superseded by today's exclusion, and redesignating the remaining exemptions in § 261.6(a)(3) (vi) and (vii) as § 261.6(a)(3) (v) and (vi), respectively, in order to maintain consecutive numbering. EPA is also revising two other regulatory exemptions in § 261.6(a)(3). Finally, EPA is making conforming changes to §§ 261.3(c)(2)(ii)(B) and 266.100(b)(3), both as a result of today's rulemaking, and to reflect conforming changes that EPA inadvertently omitted during promulgation of the used oil final rule (57 FR 41566 (September 10, 1992)).

⁴ See RCRA Docket No. F-87-SWRP-FFFFF, submission by the American Petroleum Institute on "Recovered Refinery Oil System", April 16, 1993.

⁵ Id.

IV. Scope of Today's Final Rule

A. Limiting Scope to Recovered Oil From Petroleum Refining, Exploration and Production

As noted above, today's rule excludes recovered oil generated from petroleum exploration, production and refining activities, and from the transportation incident thereto, from being a solid waste when the recovered oil is inserted into a designated point in a petroleum refining process. This section of the preamble discusses why EPA is crafting the exclusion in this manner. More specifically, we discuss why the exclusion does not cover oil recovered in operations downstream from petroleum refining, and why the exclusion does not apply to recovered oil from industries other than petroleum refining, exploration, or production.

EPA is not excluding recovered oil from operations downstream of refining, such as marketing or retail sales, because such oil is already excluded from regulation (so long as it is not disposed of). Under existing section 261.33, unused commercial chemical products that are recycled in most manners are not solid wastes when they are recycled. This principle applies to unused fuels that are recycled by being returned to fuel-production processes. (See also RCRA section 3004 (q)(1), establishing a similar principle.) Thus, for example, if a bulk oil storage terminal has a spill of product and is able to capture the spill and return it to a refinery or other legitimate fuel production operation, the spilled product is not a solid waste. (As noted at 55 FR 22671 (June 1, 1990) however, mere assertion of an intent to recycle a commercial product spill does not convert the spill into a non-waste. There must be objective indicia that recycling is reasonable, and that it will occur in a timely manner.)

For different reasons, EPA is not extending the exclusion to recovered oil from non-petroleum industries. First, such an exclusion is beyond the scope of the proposed rule. It is also beyond the scope of the judicial decisions construing the definition of solid waste. These decisions indicate that when one industry sends its residual materials to another industry for recycling, the initial industry can be considered to have discarded them. *API v. EPA*, 906 F.2d at 741-42; *Ilco v. EPA*, 996 F.2d 1126 (11th Cir. 1993). EPA is also concerned that when recovered oil originates with non-petroleum industries, the likelihood increases that the oil can be contaminated with toxic constituents that would not normally be found in petroleum industry recovered

oil. See generally, 56 FR at 48009 (Sept. 23, 1991); and see, e.g., EPA's Development Document for effluent guidelines for the iron and steel industry (skimmed oil from iron and steel industry contains contaminants not found in petroleum recovered oil).⁶ Such oily material consequently is more likely to differ from the feedstocks customarily processed by refineries and thus need not be viewed as part of that process, and may also pose risks that can be viewed as part of the waste disposal problem. Finally, the Agency is studying this issue under the aegis of the Solid Waste Definition Task Force and is not at a point where it is in a position to make a final determination.⁷

B. Rationale for Excluding Recovered Oil and Not Wastewater from Being a Solid Waste

EPA is also determining today that the oil that is skimmed from plant wastewaters during wastewater treatment (normally during the initial oil/water/solids separation step occurring during primary wastewater treatment), as well as oil recovered from other sources, is not a solid waste if it is going to be inserted into the refining process prior to the point in the process where crude distillation or catalytic cracking occurs. Thus, the recovered oil systems themselves would not be waste management units. (These units may, however, contain hazardous wastes, such as K049, which become subject to regulation when removed from such units. See 40 CFR 261.4 (c), which says that hazardous waste regulation does not begin for (among other things) hazardous waste which is generated in an associated non-waste-treatment-manufacturing unit until the waste is removed from the unit.)

The petroleum industry argued in its public comments to the January 8, 1988 proposal that plant wastewaters containing oil are not solid wastes either. Rather, they characterize the primary wastewater treatment operations in which oil is skimmed

from plant waters as still being part of the refining process. Thus, the argument goes, any step at a refinery that involves some recovery of oil for further use is still part of the ongoing refining process and cannot involve solid waste under the holding of *AMC I*.

EPA disagrees with respect to primary wastewater treatment operations. These operations do not involve secondary materials that are "recycled and reused in an ongoing manufacturing or industrial process", *AMC I*, 824 F.2d at 1186 (emphasis original); see also *AMC II*, 907 F.2d at 1186 (*AMC I* concerns only "materials that are 'destined for immediate reuse in another phase of the industry's ongoing production process'" (emphasis original)). Primary wastewater treatment operations exist to treat plant wastewater. The percentage of oil in plant wastewaters that form the influent to primary wastewater treatment is minuscule, on the order of .0001 % to .000001 % (i.e. from 1 to 100 parts per million oil). See Tables in Section V, *Development Document for Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Petroleum Refining Point Source Category*. While some oil may be recovered from this wastewater (an activity the Agency certainly encourages, and indeed requires to prevent the oil's discharge to surface waters and POTWs), the amounts are not significant in the context of a refinery's overall production activities. Clearly, wastewater treatment is the main purpose of the systems in question, and any oil recovery is of secondary import.

Refinery wastewater is not a "secondary material immediately reused within an industrial process". *Chemical Waste Management v. EPA*, 976 F.2d at 14. Primary wastewater treatment is the first step in the wastewater treatment process that purifies the discarded wastewaters from the refining process so that those discarded waters can ultimately be discharged to navigable waters pursuant to Clean Water Act requirements. That a small amount of oil is removed from these wastewaters in the course of treatment does not make wastewater treatment a petroleum refining operation. Put another way, the fact that a small amount of oil may be recovered from large volumes of the discarded plant wastewaters does not require EPA to consider those operations to involve non-discarded materials, and hence to exclude all of the materials going to primary wastewater treatment operations from the definition of solid waste. *AMC II*, 907 F.2d at 1186-7 ("discarded" is an

⁶ Volumes I-V of *Development Document for Effluent Limitations Guidelines and Standards for the Iron and Steel Manufacturing Point Source Category*, U.S. EPA, May 1982, National Technical Information Service #PB82-240-425, -433, -458, -466, and -474. See specifically Volume III, pp. 395-398; Volume IV, pp. 107-129; Volume V, p. 227.

⁷ EPA also notes that when Congress created certain exemptions (not exclusions) from hazardous waste fuel labelling requirements to accommodate certain petroleum industry practices involving recovered oil, it limited the scope of those exemptions to fuels produced from oily materials "resulting from normal petroleum refining, production and transportation practices", RCRA section 3004 (r)(3). This is similar to the scope of today's rule.

ambiguous term that EPA may interpret in a reasonable manner, and EPA's interpretation that recoverable materials managed in wastewater treatment operations containing surface impoundments were discarded solid wastes was reasonable).

On the other hand, recovered oil systems can be legitimately viewed as part of the petroleum refining process. The input to the recovered oil systems is primarily oil skimmed from wastewater treatment operations as well as oil recovered from other sources, not discarded refining process wastewaters. Recovered oil systems do not exist to remove contaminants from wastewater. Rather, their purpose is to restore recovered oil to sufficient purity so that it can be reused as a feedstock material in the refining process. This is a natural point to characterize activities as being part of the refining process.

It is thus EPA's view that until oil is recovered from refinery process wastewaters, the wastewaters are discarded materials and hence solid wastes potentially subject to regulation under RCRA.⁸ (Wastewaters remaining after oil has been recovered are still solid wastes, and are typically returned to an upstream point in the refinery's wastewater treatment system.) The oil recovered from such wastewaters is not a solid waste, however (assuming it is reinserted into the refining process). This reading is not only in accord with common sense, as explained above, but also is in accord with RCRA's goals and purposes. *AMC II*, 907 F. 2d at 1186-87; *API*, 906 F. 2d at 740-41. As these cases make clear, EPA may ordinarily consider secondary materials that have "become part of the waste disposal problem" to be discarded. *API*, 906 F. 2d at 741; *AMC II*, 907 F. 2d at 1186. That is the case here. Discarded plant wastewaters up to and including the primary wastewater treatment step, can contain high loadings of hazardous constituents that may pose environmental harm if released. It is estimated that an average of 34% of the

benzene (a human carcinogen) entering a petroleum refinery's wastewater treatment system is emitted to air from the wastewater collection portion of the system; when primary wastewater treatment (i.e., a non-enclosed oil-water separator) is included in this calculation, the amount of benzene emitted relative to the influent concentration rises to 47%.⁹ Primary wastewater treatment also is sometimes conducted in land-based or in-ground units, which can (and have) resulted in environmental contamination.¹⁰ This further indicates that these operations can be part of the waste management problem.

In addition, petroleum refineries frequently generate individual wastewater streams that exhibit characteristics of hazardous waste, which streams are mixed together so that the characteristic is removed. (The characteristic can be removed either before or during primary treatment.) These aggregated wastewater streams may still contain high volumes of hazardous constituents, however, because aggregation (i.e. dilution) and primary treatment do not significantly remove or destroy all hazardous constituents. See Tables in Section V, *Development Document for Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Petroleum Refining Point Source Category*. The aggregated wastewaters are then managed in surface impoundments, where biological treatment occurs. The D.C. Circuit has made clear, in *Chemical Waste Management v. EPA*, that in such circumstances the decharacterized wastewaters cannot be managed in surface impoundments unless they have first been treated to meet the treatment requirements of RCRA Section 3004(m) (requiring treatment that substantially removes or destroys hazardous constituents so that threats to human health and the environment are minimized), or unless treatment equivalent to Section 3004(m) treatment occurs before the wastewaters are discharged. *Id.* at 7, 20-24.¹¹ The court

indeed repeatedly referred to these treatment standards as the core of RCRA's hazardous waste management scheme. *Id.* at 23, 24.

EPA's interpretation that the influent into primary wastewater treatment consists of discarded wastes, not in-process petroleum, is fully in accord with these core principles of RCRA. Decharacterized wastewaters that are going to be managed in surface impoundments would nevertheless receive Section 3004 (m) treatment before their ultimate discharge, as required by the *Chemical Waste Management* opinion. Under industry's preferred reading, however, the decharacterized wastewaters would not be solid wastes at all until all oil recovery has been completed, even if held in impoundments. At that point, the wastewaters would no longer exhibit a characteristic (because they have been diluted through aggregation), and thus would not be prohibited wastes subject to Section 3004 (m) treatment. The "core principles of RCRA" would thus be avoided. EPA considers its interpretation of "discarded," that assures proper treatment of characteristically hazardous petroleum refinery wastewaters that are going to be managed in surface impoundments, to be more reasonable.¹²

EPA acknowledges that it initially proposed to exclude all such wastewaters from the definition of solid waste. 53 FR 525-526. However, the Agency's reasoning was based in part on the same mistaken view of the scope of *AMC I* that was later rejected by the *API* court. 906 F. 2d at 740-41. (EPA even relied in part on the overbroad "indigenous" concept, 53 FR 525, 526, that was remanded in *API*. 906 F. 2d at 739, 742.) The Agency is obviously not bound by its proposal, and subsequent case law makes clear that the Agency has more interpretive discretion than it imagined in 1988. The interpretation adopted in today's rule is reasonable and in accord with statutory goals and purposes.

Nor is today's action inconsistent with *AMC I*'s statements regarding the scope of petroleum refining activities that are outside the scope of Subtitle C. That opinion indicated that in

⁸ On a similar note, the Agency is aware of activities at petroleum management facilities where free-phase hydrocarbon (from spills, etc.) is removed from the water table as part of groundwater remediation (see 56 FR at 13406 (Apr. 2, 1991)). These hydrocarbon recovery operations can recover materials ranging from mostly water to mostly oil; only recovered materials that are primarily oil, and that can be inserted into a refinery's recovered oil system without pretreatment (or can be inserted directly into the refining process itself), would be considered "recovered oil" eligible for today's exclusion. The management of petroleum-contaminated groundwater in separation and treatment units is clearly solid waste (and potentially hazardous waste) management, essentially wastewater treatment.

⁹ The Agency addressed benzene emissions from waste operations in a final rule published January 7, 1993 (58 FR 3072) using risk-based standards for benzene. See also EPA, *Final NESHAP Standards for Waste Operations: Basis for Impact Calculations*, February 16, 1990. This document is available in the Benzene Waste Operations NESHAP docket.

¹⁰ "Background Document to Support Listing of Primary Oil/Water Separation Sludges from the Petroleum Refining Industry," U.S. EPA, December 22, 1989, pp. 6, 10-12.

¹¹ EPA is still working to interpret the scope of the "equivalence" requirement in the *Chemical*

Waste Management opinion, and the language in the text should not be taken as representing the Agency's resolution of the issue. It is clear, however, that the opinion imposes obligations on facilities that use impoundments to manage wastewaters that are decharacterized by means other than full-scale section 3004 (m) treatment.

¹² EPA views the facts here as similar to those in the *AMC II* case. In particular, both situations involve wastewater treatment operations, where plant wastewaters could ultimately be managed in surface impoundments.

petroleum refining operations "(a)ny hydrocarbons that are not usable in a particular form or state are returned to an appropriate stage in the refining process so they can eventually be used. Likewise, the hydrocarbons and materials which escape from a refinery's production vessels are gathered and, by a complex retrieval system, returned to appropriate parts of the refining process." 824 F. 2d at 1181. Today's rule does not assert RCRA jurisdiction over any refining operations that process hydrocarbons into products, nor over hydrocarbons that are lost from process vessels and are gathered for return to refining. Rather, the Agency is stating that up to and including primary wastewater treatment, plant wastewaters are just that, and their management is potentially subject to Subtitle C controls. Oil that is recovered from wastewater, however, is no longer a solid waste, and recovered oil systems that do engage in retrieval of hydrocarbons for eventual refining are not subject to RCRA controls.¹³

C. Rationale for Excluding Recovered Oil From Off-Site Sources

Today's final rule, in defining the scope of recovered oil subject to the exclusion, excludes recovered oil from both off-site and on-site sources. EPA believes that recovered oil from petroleum refining, exploration and production, and transportation incident thereto, whether generated from these off-site or on-site sources, is essentially the same raw material (i.e., "oil") as that which is normally and routinely transported to, and inserted into, petroleum refining processes. Therefore, recovered oil from off-site sources should also be excluded when it is going to be recycled in this manner.¹⁴

¹³ The Agency also views its action as consistent with its rulemaking involving residues from coke by-product operations that are returned to the coking process, or related processes. 57 FR 27880 (June 22, 1992). The Agency stated that such materials were not solid wastes provided they were not land disposed before reinsertion. See 40 CFR 261.4(a)(10). However, unlike the petroleum wastewaters containing small amounts of oil at issue here, the coke byproduct residues were found to be very similar to the raw material being replaced, and required no further purification to be usable. They could be inserted more or less directly into the coking or related tar-refining processes. Such residues are conceptually analogous to the purified oil coming from a petroleum slop oil facility.

¹⁴ Certain wastes from petroleum exploration, development and production are currently exempt from Subtitle C regulation under § 261.4(b)(5). There may be a degree of overlap between the materials excluded by today's action, and materials currently exempt under § 261.4(b)(5). See 53 FR at 25446 (July 6, 1988), 58 FR 15284 (Mar. 22, 1993), and Report to Congress, *Management of Wastes from the Exploration, Development, and Production of Crude Oil, Natural Gas, and Geothermal Energy*.

Examples of off-site sources of recovered oil include oil recovered from other petroleum refineries, and from oil and gas drilling operations.¹⁵

This exclusion is somewhat broader than that proposed in the January 8, 1988 notice, which would have limited the exclusion to materials generated on-site. 53 FR 525. However, the 1988 proposal would not have been limited to recovered oil, but rather would have included all oil-bearing secondary materials, so that the Agency was particularly concerned with limiting the exclusion's scope because such materials as listed sludges, tank bottoms and contaminated media could be excluded. *Id.* In addition, if the exclusion was to cover oil-bearing hazardous secondary materials, EPA was concerned that RCRA Section 3004(r)(2) would be rendered meaningless. *Id.* These concerns are no longer present when the exclusion is limited to recovered oil.

The main reason for extending the exclusion to recovered oil generated at locations other than a refinery (when such oil is ultimately returned to a refinery) is that the oil is essentially the same (in terms of physical composition and potential risk) as recovered oil generated on-site. (The only significant difference is that recovered oil generated off-site is transported—in the same manner as crude oil. EPA does not regard this distinction as significant enough to warrant different regulatory status for off-site recovered oil.) The Agency thus is responding to comments received from industry, urging the Agency to extend the scope of the exclusion to certain off-site activities. However, these commenters argued further that refineries comprise but one segment of a large, integrated industry, extending from the production field, through the pipeline, to the refinery, to the marketing terminal, to tank trucks, and, ultimately, to the customer. EPA does not necessarily accept this argument, which is unnecessary to justify today's rule. Again, EPA will continue its broader policy review of the Definition of Solid Waste. EPA notes as

Volumes 1-3 and Executive Summaries, December 1987, EPA/530-SW-88-003, for descriptions and clarifications of exempt and non-exempt wastes from oil and gas exploration, development, and production.

¹⁵ As noted above, recovered oil does not include "used oil" (as defined in 40 CFR 279.1) brought to a refinery from off-site sources. (De minimis quantities of used oil that are incidentally captured by refinery wastewater treatment systems and subsequently recovered with other oil are not considered used oil.) See 57 FR 41566 (September 10, 1992) and 59 FR 1994 (March 4, 1994) for discussion on the scope of the definition of used oil. See also Section X.C.2 "Used Oil" later in this preamble.

well that the action in today's rule is not precedential for other industries. Determining what activities are a part of on-going production activities and not part of the waste disposal problem necessarily entails fact-specific evaluation. The Agency's conclusions regarding secondary materials generated by particular industries thus need not be germane to the regulatory status of secondary materials generated by other industries.

V. Rationale for Conditioning the Exclusion on Recovered Oil Not Being Placed on the Land and Not Being Accumulated Speculatively

This rule does not exclude land-based hazardous waste management units from which oil may be recovered. Thus, if recovered oil, or material containing oil, is placed in land-based units such as surface impoundments or land treatment units, those units remain subject to Subtitle C requirements (provided the material being placed is hazardous under RCRA). The Agency considers material placed in such units to be discarded, and hence solid wastes. See also *AMC I*, 824 F. 2d at n.20. These are classic disposal practices (see RCRA Section 1002(b)(7)), and placement of oily materials in such units (whether for storage, treatment, or disposal) is inconsistent with the use of the material as a valued product. In addition, the D.C. Circuit held in *AMC II* that materials destined for recycling were still solid wastes if held in surface impoundments before being recycled (907 F. 2d at 1186).

The final condition for the exclusion to apply is that recovered oil not be accumulated speculatively (as defined in § 261.1(c)(8)) before it is recycled back into a petroleum refining process. This is a standard condition that the Agency applies to otherwise excluded secondary materials (see, e.g., § 261.2(e)(2)(iii)) to prevent the materials being held for prolonged periods without being recycled, with attendant increased environmental risk. See 50 FR at 634-635, 658-661 (Jan. 4, 1985). No commenter seriously questioned applying this condition. Thus, recovered oil that would otherwise be excluded that is accumulated speculatively is considered to be discarded and hence a solid waste.

VI. Rationale for Not Excluding Recovered Oil That Is Inserted Into the Petroleum Refining Process After Crude Distillation or Catalytic Cracking (i.e., Into a Petroleum Coker)

Today's final rule is narrower in scope than the January 8, 1988 notice in that the Agency is not finalizing the

proposed exclusion of recovered oil that is converted to petroleum coke. EPA is deferring the exclusion at this time because EPA lacks data assuring that hazardous constituents from petroleum refining do not end up in the product in quantities that, when such product is utilized as a fuel, could be harmful to human health and the environment. EPA is also concerned that toxic constituents, such as heavy metals, can be discarded by simple incorporation into the coke product. In effect, the product would be used as a disposal medium for toxic constituents, and so could be part of the "waste disposal problem." The Agency also lacks sufficient data to show whether oil recovered from refinery wastewater treatment systems contains toxic metals that are not present in the normal feed to a petroleum coker. Such metals could end up in the coke product.

In contrast, the Agency is excluding recovered oil inserted at or before a point in the refining process designed to remove toxic metal and organic contaminants, *i.e.*, prior to crude distillation or catalytic cracking. See 50 FR 28725 (July 15, 1985) and 50 FR 49169 (November 29, 1985). As explained there, the distillation process splits the feedstock into fractions based on the differing boiling points of feedstock components. Data submitted by API at that time indicated that most metals concentrate in the heavier petroleum fractions, thereby increasing the probability of contaminant removal from many fuel fractions produced using distillation (and other contaminant-removing processes). See 50 FR 49170.

Although the proposed exclusion of recovered oil that is converted to petroleum coke is not being finalized in today's rule, for different reasons EPA is slightly amending the regulatory exemption at § 261.6(a)(3)(vii) (redesignated § 261.6(a)(3)(vi) in today's rule) for petroleum coke produced using oil-bearing refinery hazardous waste. The exemption states that such coke is subject to regulation only if it exhibits a characteristic of hazardous waste. (The exemption recites the provisions of RCRA section 3004(q)(2)(A).) The purpose of the statute, and the exemption, is to allow petroleum companies to recycle their oily refinery waste to their petroleum coker, without automatically subjecting the coke output to the rules applicable to hazardous waste fuels. (Such automatic effect could occur without the exemption, if listed wastes are being reinserted into the coker, because of the derived-from rule.) S. Rept. No. 298, 98th Cong. 1st Sess. 39 (1983).

Both the statutory and current regulatory exemption, however, are worded so as to apply only to situations where petroleum coke is produced from hazardous wastes "at the same facility at which such wastes were generated * * *". EPA believes that this limitation is unnecessarily narrow, and does not foreclose a regulatory expansion. In particular, so long as a petroleum refinery is coking its own wastes, it should not matter whether the coker is located at the site where wastes are generated or at a different facility. Since the generator and coker operator remain the same entity (or "person", as defined in § 260.10) there is sufficient guarantee that hazardous wastes of unknown or uncertain composition will not be used in the coking process, which is the evident concern behind the limitation in the statute. Cf. 50 FR at 28725 (July 15, 1985); 50 FR 49170 (Nov. 29, 1985). Since the hazardous wastes would remain regulated under RCRA when they are generated, transported, and stored prior to recycling, *id.*, potential concerns regarding tracking are also addressed. EPA also sees no difference in the composition of coke produced partially from on-site and off-site hazardous wastes when the coke is produced by the same entity. Consequently, the Agency is slightly broadening the current regulatory exemption so that it applies to coke produced by a single petroleum refining entity, even if the coker is located at a different facility from where the hazardous wastes are generated.

Finally, the coking process itself continues to be exempt from RCRA regulation as a recycling unit, provided this recycling is legitimate. Section 261.6(c)(1) ("The recycling process itself is exempt from regulation except as provided in § 261.6(d)."). Today's rule does not affect this provision.

VII. Rationale for Not Excluding Other Oil-Bearing Hazardous Materials

Just as EPA is not excluding oil-bearing wastewaters from the definition of solid waste, it is not excluding other similar types of oil-bearing materials, such as hazardous wastewater treatment sludges. These materials are not composed primarily of oil; they are unlike raw materials normally used in the petroleum refining process; and the units in which they are managed—API separators, DAF units, land treatment units and surface impoundments—are not parts of the refining process, but rather function as waste holding and treatment units. In addition, there have been many damage incidents associated with management of such materials as

toxic sludges from wastewater treatment, confirming that these materials are part of the waste disposal problem, rather than part of an on-going manufacturing operation. (See, for example, the Listing Background Documents for Hazardous Wastes K048-052 and F037-038.) For these reasons, the Agency continues to classify these materials as discarded, within the meaning of RCRA Section 1004 (27). Recovered oil that is obtained from such wastes, however, is excluded from the definition of solid waste under today's final rule (assuming the rule's conditions are satisfied).

The Agency is also aware of various types of units designed to treat wastes K048-K052 and F037-F038, in order to reduce the volume and toxicity of these wastes, as well as to recover oil. See, e.g., 57 FR 37198 (August 18, 1992). EPA does not view these units as part of the manufacturing (*i.e.*, refining) process, because such units are not part of a continuing series of unit operations that crack/distill/fractionate crude oil. The input to these units are materials such as wastewater treatment sludges, that contain relatively small amounts of oil. A different determination frustrates the Congressional objective that hazardous waste be treated properly. These types of units are the basis for treatment standards under the land disposal restrictions for K048-K052 and F037-F038. If the sludges treated in these units are no longer hazardous waste, they would not need to be treated by application of BDAT so as to minimize the threats they pose. Cf. *API*, 906 F.2d at 741-742. Thus, excluding such sludges from jurisdiction until properly treated could contribute to the waste disposal problem that Congress sought to remedy. Finally, although EPA is not excluding these types of oil-bearing materials (such as hazardous wastewater treatment sludges), the units in which the recovery of oil is occurring may still be a type of recycling unit, and therefore may be exempt from RCRA permitting requirements under 40 CFR 261.6(c)(1).

VIII. Demonstration That Recovered Oil Meets Conditions of Exclusion

Under § 261.2(f), persons claiming that recovered oil is excluded from the definition of solid waste bear the burden of proof in enforcement actions to demonstrate that they qualify for the exclusion. This would normally require some type of demonstration that the recovered oil is going to be and actually is used in a petroleum refining operation prior to crude distillation or catalytic cracking. For on-site sources, this documentation could be entries in

the operating records of the facility showing where the oil is recovered and where it re-enters the refining process. For off-site sources, this demonstration is especially important. Adequate documentation could entail *bona fide* contractual agreements with other facilities to take the recovered oil, shipping or delivery records to the receiving facility, or other similar records. These records are important to show enforcement personnel that the conditions of the exclusion have been met. Without this documentation, the burden of proof will ordinarily not be satisfied because enforcement personnel will have no way of verifying that the recovered oil actually was used in the refining process and the assumption can be made that the oil was not reused, and was instead sent off-site or managed on-site as a hazardous waste.

IX. Examples of How Today's Rule Operates

Example 1

Petroleum refinery A generates wastewater. As part of primary wastewater treatment, it skims oil from the wastewater. This operation occurs in wastewater treatment tanks. The skimmed oil is then gathered and inserted directly into crude oil storage units for insertion into the refining process.

The refinery process wastewater is still considered to be a solid waste, notwithstanding that some oil is skimmed from it. The wastewater treatment tanks used for treating the wastewater are exempt from subtitle C regulation. Section 264.1(g)(6), 265.1(c)(10). The skimmed oil is recovered oil that is excluded from being a solid waste under today's regulation because it originates from petroleum refining, it is not land disposed before being recycled, and it is returned to the designated part of the petroleum refining process. (This answer assumes that the recovered oil is not being accumulated speculatively.)

Example 2

Same facts as Example 1, except that the skimmed oil requires processing in the plant's slop oil system. This process involves demulsifying and separation via chemical addition, thermal treatment, and gravity separation.

Same answer as in Example 1. It should also be noted that water and solids from the slop oil system can be wastes, and if hazardous, can be subject to Subtitle C regulation once they are removed from the slop oil tank.

Example 3

Same facts as Example 1, except that the source of the recovered oil is a petrochemical plant wastewater treatment system.

The oil is not excluded from being a solid waste under today's rule because it does not come from petroleum refining, exploration or production operations.

Example 4

Facility B recovers oil from spills at exploration and production operations. The oil is trucked to a tank, where separation occurs. The separated oil is put into a pipeline for ultimate insertion into crude oil storage units at a petroleum refinery.

The oil recovered from the spills is excluded from being a solid waste. It is a type of recovered oil, and is excluded because it originates from exploration and production activities, is not land disposed or accumulated speculatively, and is inserted into a refining process.

Example 5

Facility C is a bulk petroleum storage facility. Oil spilled from its product storage tanks is too contaminated to be directly used as product. The oil is sent back to a refinery where it is placed in a slop oil system and returned to the refining process.

The spilled oil is excluded from being a solid waste, not under today's rule, but under § 261.33 (and § 261.2 Table 1) because it is a commercial chemical product that is being recycled rather than abandoned. (EPA interprets this principle to apply to commercial chemical products that exhibit characteristics as well as those listed in § 261.33. 50 FR 14219 (April 11, 1985).) (This answer assumes that the oil is recovered promptly and that the spills do not create permanent land disposal units. See 55 FR 22671 (June 1, 1990).)

All of these answers assume that legitimate recycling is occurring. See discussion of sham recycling criteria in many prior Agency notices, such as 53 FR 522 (Jan. 8, 1988) and 56 FR 7143, 7185 (Feb. 21, 1991).

X. Relationship to Other Programs

A. Clean Air Act (Benzene NESHA)

On January 7, 1993 (58 FR 3072) EPA promulgated under Section 112 of the Clean Air Act (42 U.S.C. 7412) final amendments to the benzene waste operations national emission standards for hazardous air pollutants (NESHA) (V FF at 40 CFR part 61). Sources affected by V FF include chemical manufacturing plants, by-product recovery plants, petroleum refineries, and facilities at which waste management units are used to treat, store, or dispose of waste generated by chemical manufacturing plants, by-product recovery plants, or petroleum refineries.

B. Clean Water Act

Today's rule does not affect petroleum facilities' obligations under the Clean Water Act, and is consistent with the Agency's prior descriptions of primary wastewater treatment activities at petroleum refineries as involving wastewater treatment, not recycling of in-process material.

C. RCRA

1. RCRA Air Emission Standards

EPA has issued regulations that implement portions of RCRA Section 3004(n), which provision requires EPA to issue rules regulating air emissions resulting from facilities that treat, store, or dispose of hazardous wastes. 40 CFR parts 264 and 265 Subparts AA and BB. These rules control organic emissions from vents and equipment leaks from units managing hazardous wastes, which units either are already subject to RCRA Subtitle C permitting requirements, or are recycling units located at facilities which has other units already subject to Subtitle C permitting requirements.

Today's rule does not affect any units that are subject to regulation under subparts AA or BB. This is because the units that are affected by today's rule are not presently subject to Subtitle C regulation, either because they are wastewater treatment tanks exempt from regulation under §§ 264.1(g)(6) and 265.1(c)(10), because they are recycling units not covered by the Subpart AA or BB regulations (i.e., are not "distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation", see §§ 264.1030(b), 264.1050(b), 265.1030(b), and 265.1050(b)) and otherwise exempt from regulation under § 261.6(c)(1), or because they manage materials exempt from regulation under § 261.6(a)(3) (iv), (v) and (vi).

2. Used Oil

Today's rule does not affect petroleum facilities' obligations under the Used Oil Rule. See generally, 57 FR 41566 (September 10, 1992) and 59 FR 1994 (March 4, 1994). Today's rule excludes from RCRA Subtitle C requirements only recovered oil as described. Whether or not recovered oil excluded under today's rule is subject to the used oil management standards depends on whether or not the recovered oil does or does not also meet the definition of used oil. *Id.* The Agency recently issued a final used oil rule on March 4, 1994 (see 59 FR 10550) which affects the definition of used oil and deals with issues similar to those in today's rule. According to this final used oil rule, *de minimis* quantities of used oil that are incidentally captured by a refinery's wastewater treatment system and subsequently recovered along with other oil in a refinery's recovered oil system are not regulated as used oil. 59 FR 10550 (March 4, 1994).

D. Enforcement; Effect of Today's Final Rule on RCRA 3007, 3013, 7002 and 7003 Authorities

EPA's action today affects only the final regulatory definition of solid waste. It does not interpret the scope of the term "solid waste" for purposes of the non-regulatory authorities in RCRA Sections 3007, 3013, 7002 and 7003. See 40 CFR § 261.1(b). Thus, for purposes of those authorities, the Agency (or citizens in the case of citizen suits under Section 7002(a)(1)(B)) would have the benefit of the full jurisdictional reach of the statutory definition of solid waste. See *Comite Pro Rescate de la Salud v. Puerto Rico Aqueduct and Sewer Authority*, 888 F. 2d 180, 185 (1st Cir. 1989), cert. denied, 494 U.S. 1029 (1990) (upholding reasonableness of applying narrower definition for regulatory purposes than for purposes of imminent and substantial endangerment authority); *Connecticut Coastal Fishermen's Association v. Remington Arms Company*, 989 F. 2d 1305 (2d Cir. 1993) (noting potential appropriateness of applying narrower regulatory definition of solid waste for determining scope of Subtitle C regulation, but applying broader statutory definition in non-regulatory contexts such as RCRA Sections 7002 and 7003).

XI. 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, authorized States have primary enforcement responsibility, although EPA retains enforcement authority under Sections 3008, 7003 and 3013 of RCRA.

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 which 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 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.

Today's amendments are not imposed pursuant to HSWA. The rule changes, therefore, will become effective immediately only in those States without interim or final authorization, not in authorized States. The effect of the rule changes on authorized State programs is discussed next.

B. Effect on Authorized State Programs

Today's rule will not be effective in authorized States since the requirements are not being imposed pursuant to HSWA. Thus, 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 laws.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modifications to EPA for approval. However, it should be noted that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. See 40 CFR 271.1(k). Today's amendments to § 261.4 reduce the scope of the existing Federal requirements. Therefore, authorized States will not be required to modify their programs to adopt requirements equivalent or substantially equivalent to the provisions proposed today.

However, as noted above, States are required by § 271.21 to revise their programs to reflect Federal program changes. 51 FR 33722 (September 22, 1986). A number of States qualified for final authorization prior to being required to adopt the redefinition of solid waste rulemaking of January 4, 1985 (50 FR 614). Since the January 4,

1985 rule is more stringent than the rule under which such States were authorized, such States were required to revise their programs in accordance with Part 271.21. Today's changes will not preclude EPA's ability to authorize States which have subsequently adopted the January 4, 1985 rule since it would reduce the scope of the Federal requirements. However, certain aspects of the State's regulation will be broader in scope than the Federal program and therefore not part of the authorized State program. This means that while they are enforceable under State law, they are not subject to Federal enforcement.

40 CFR 271.21(e) provides for extensions of time at the discretion of the Regional Administrator for States to adopt changes to their regulations and/or statutes to conform to change in the Federal program. The question arises, however, of whether States which have not yet adopted the January 4 rule must adhere to EPA's published compliance schedules for such adoption. Where States have delayed rulemaking pending today's rulemaking clarifying the impact of the court's decision, the EPA Regional Administrators may be flexible in further extending the modification deadlines. EPA Regional Administrators should take into account the States' regulatory and/or legislative procedures in deciding what further extensions may be warranted. However, any States which have delayed rulemaking should now proceed to expeditiously adopt the January 4, 1985 rules as amended by today's notice.

XII. Regulatory Requirements

A. Regulatory Impact Analysis Pursuant to Executive Order No. 12866

Under Executive Order No. 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal

mandates, the President's priorities, or the principles set forth in the Executive Order.

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354), requires Federal regulatory agencies to consider the impact of rulemaking on "small entities." If a rulemaking will have a significant impact on a substantial number of small entities, agencies must consider regulatory alternatives that minimize economic impact.

Today's rulemaking does not have a significant impact on any small entity. Rather, it excludes from the definition of solid waste certain petroleum materials being recycled within the petroleum industry. Accordingly, this deregulatory action will not add any economic burdens to any affected entities, small or large, and a regulatory flexibility analysis is not required. Therefore, the Administrator certifies pursuant to 5 U.S.C. 601 *et seq.*, that this rule will not have a significant impact on a substantial number of small entities because today's amendments reduce the scope of the Subtitle C regulatory program.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This rule will not impose any new information collection requirements.

List of Subjects

40 CFR Part 261

Environmental protection, Hazardous waste, Solid waste, Petroleum, Recycling.

40 CFR Part 266

Environmental protection, Energy, Hazardous waste, Petroleum, Recycling.

Dated: July 15, 1994.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, Chapter I of title 40 of the

Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

2. In § 261.3, paragraph (c)(2)(ii)(B) is revised to read as follows:

§ 261.3 Definition of hazardous waste.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) Waste from burning any of the materials exempted from regulation by § 261.6(a)(3) (iv) through (vi).

* * * * *

3. A new paragraph (a)(12) is added to § 261.4 to read as follows:

§ 261.4 Exclusions.

* * * * *

(a) * * *

(12) Recovered oil from petroleum refining, exploration and production, and from transportation incident thereto, which is to be inserted into the petroleum refining process (SIC Code 2911) along with normal process streams prior to crude distillation or catalytic cracking. This exclusion applies to recovered oil stored or transported prior to insertion, except that the oil must not be stored in a manner involving placement on the land, and must not be accumulated speculatively, before being so recycled. Recovered oil is oil that has been reclaimed from secondary materials (such as wastewater) generated from normal petroleum refining, exploration and production, and transportation practices. Recovered oil includes oil that is recovered from refinery wastewater collection and treatment systems, oil recovered from oil and gas drilling operations, and oil recovered from wastes removed from crude oil storage tanks. Recovered oil does not include (among other things) oil-bearing hazardous wastes listed in 40 CFR part 261 D (e.g., K048-K052, F037, F038). However, oil recovered from such wastes may be considered recovered oil. Recovered oil also does not include used oil as defined in 40 CFR 279.1.

4. In § 261.6, paragraph (a)(3)(v) is removed, paragraph (a)(3)(vi) is redesignated as (a)(3)(v), and paragraph (a)(3)(vii) is redesignated as (a)(3)(vi). Section 261.6 is further amended by revising paragraphs (a)(3)(iv) and newly redesignated (a)(3)(vi) to read as follows:

§ 261.6 Requirements for recyclable materials.

* * * * *

(a) * * *

(3) * * *

(iv) Fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under § 261.4(a)(12);

* * * * *

(vi) Petroleum coke produced from petroleum refinery hazardous wastes containing oil by the same person who generated the waste, unless the resulting coke product exceeds one or more of the characteristics of hazardous waste in part 261, subpart C.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

5. The authority cite for part 266 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6934.

6. Section 266.100(b)(3) is revised to read as follows:

§ 266.100 Applicability.

* * * * *

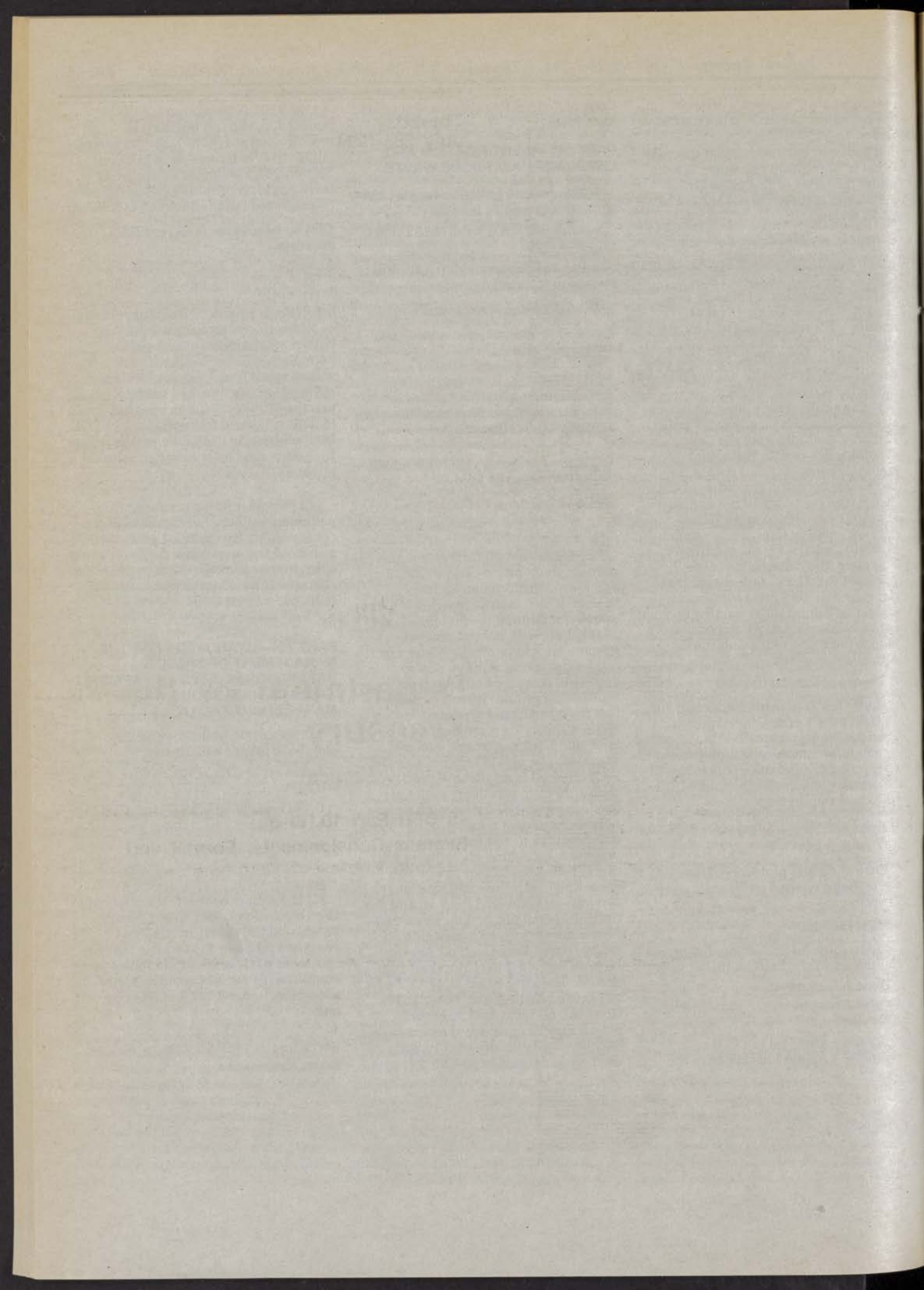
(b) * * *

(3) Hazardous wastes that are exempt from regulation under §§ 261.4 and 261.6(a)(3) (iv) through (vi) of this chapter, and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under § 261.5 of this chapter; and

* * * * *

[FR Doc. 94-18452 Filed 7-27-94; 8:45 am]

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Thursday
July 28, 1994

Part VIII

**Department of the
Treasury**

Customs Service

19 CFR Part 10, et al.

Express Consignments; Formal and
Informal Entries of Merchandise;
Administrative Exemptions; Rule

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 101, 111, 123, 128, 141, 143, 145, 148, 159

[T.D. 94-61]

RIN 1515-AB53

Express Consignments; Formal and Informal Entries of Merchandise; Administrative Exemptions**AGENCY:** Customs Service, Department of the Treasury.**ACTION:** Notice of Temporary Restraining Order Enjoining Implementation and Effectiveness of Interim Regulations.

SUMMARY: This document gives notice that a temporary restraining order was issued by the United States Court of International Trade on July 25, 1994, enjoining Customs from implementing and making effective the interim regulations regarding express consignments, formal and informal entries of merchandise and administrative exemptions that were published in the *Federal Register* on June 13, 1994. The interim regulations were to become effective on July 28,

1994. Unless extended by the court, the temporary restraining order expires on August 10, 1994. A hearing on a motion for a preliminary injunction is scheduled for August 9, 1994.

DATES: As of July 25, 1994, the effective date of the interim regulations published at 59 FR 30289 is delayed by the temporary restraining order.

FOR FURTHER INFORMATION CONTACT: Richard McManus, Office of the Chief Counsel (202) 927-6900.

SUPPLEMENTARY INFORMATION: On June 13, 1994, a document was published by U.S. Customs in the *Federal Register* (59 FR 30289) as T.D. 94-51 setting forth interim regulations implementing certain statutory amendments to the Customs laws contained in the Customs modernization provisions of the North American Free Trade Agreement Implementation Act and clarifying certain procedures for shipments brought into the U.S. by express consignment operators or carriers.

The document provided for a 45-day delayed effective date, with a 30-day comment period preceding that effective date. The effective date was to become July 28, 1994, and comments were requested by July 13, 1994.

On July 25, 1994, the National Customs Brokers and Forwarders Association of America, Inc. filed a motion for a temporary restraining order with the United States Court Of International Trade (Court No: 94-07-00423). Pursuant to the motion, the temporary restraining order was issued by the court; consequently, Customs is restrained and enjoined from implementing and making effective the interim regulations.

Pending the outcome of the hearing on motion for a preliminary injunction, unless otherwise extended by the court, Customs is enjoined until August 10, 1994, from making T.D. 94-51 effective. Consequently, the interim regulations will not become effective prior to August 10, 1994. A hearing on a motion for a preliminary injunction is scheduled for August 9, 1994. When appropriate, Customs will provide further notice, to be published in the *Federal Register*, concerning the effective date of the interim regulations.

Dated: July 26, 1994.

Harold M. Singer,
Chief, Regulations Branch.

[FR Doc. 94-18586 Filed 7-27-94; 10:35 am]

BILLING CODE 4820-02-P