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40 CFR Part 279

[FRL–5529–1]

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

AGENCY: Environmental Protection Agency.

ACTION: Final rule, notice of judicial vacatur of administrative stay.

SUMMARY: On January 19, 1996, the United States Court of Appeals for the District of Columbia Circuit vacated the Environmental Protection Agency's (EPA) October 30, 1995, administrative stay of part of the regulatory provision, known as the ''used oil mixture rule', set forth in 40 CFR 279.10(b)(2). The provisions of the used oil mixture rule at issue relate to mixtures of used oil destined for recycling and characteristic hazardous waste (including waste listed as hazardous because it exhibits a hazardous waste characteristic). This action clarifies the regulatory status of mixtures of used oil and the hazardous wastes destined for recycling described above in light of the Court's vacatur of the administrative stay and eliminates the explanatory note to 40 CFR 279.10(b)(2) that was included in the notice of the administrative stay. In addition it notifies the public as to the provisions of a recent EPA proposal that may affect such mixtures.

EFFECTIVE DATE: June 28, 1996.

ADDRESSES: EPA does not seek comment on this notice, however any data the public wishes EPA to consider concerning mixtures of used oil and characteristic hazardous waste should be submitted to the public docket. Submissions should include the original and two copies, should reference docket No. F–96–U2SW–FFFFF, and should be addressed to: RCRA Docket Information Center, Office of Solid Waste (5305W), U.S. Environmental Protection Agency Headquarters, 401 M Street, SW., Washington, DC 20460. Hand deliveries should be made to the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9:00 to 4:00, Monday through Friday, except federal holidays. To review docket materials at the RIC, it is recommended that the public make an appointment by calling 703 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at 800 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington D.C. metropolitan area at 703 412–9810 or TDD 703 412–3323. For more detailed information on specific aspects of this action, contact Tracy Bone, Office of Solid Waste (5304w), U.S. EPA, D.C., 20460 at 703 308–8826.

SUPPLEMENTARY INFORMATION:

Background Information

Legal Challenge to the Used Oil Mixture Rule. On September 10, 1992, EPA promulgated regulations pursuant to section 3014(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6935(a), governing the management of used oil destined for recycling. 57 FR 41566 (September 9, 1992). These regulations are codified at 40 CFR Part 279. As part of these regulations, EPA promulgated a used oil mixture rule, 40 CFR 279.10(b), that specifies when mixtures of used oil destined for recycling and hazardous waste are regulated as used oil and when they are regulated as hazardous waste. Among other things, the used oil mixture rule specifies that mixtures of used oil destined for recycling and characteristic hazardous waste are regulated as a hazardous waste under Subtitle C of RCRA only if the resultant mixture exhibits a hazardous waste characteristic. 40 CFR 279.10(b)(2)(I). If the mixture does not exhibit a hazardous waste characteristic, it is regulated under the used oil management standards, and the hazardous waste regulations (including those relating to land-disposal restrictions (LDRs)) are inapplicable to the mixture. Further, wastes which are hazardous solely because they exhibit the characteristic of ignitability may be mixed with used oil and the mixture regulated as used oil so long as the mixture does not exhibit the characteristic of ignitability (despite exhibiting any of the other characteristics). 40 CFR 279.10(b)(2)(ii)-(iii). The hazardous waste regulations and LDR requirements continue to apply to the hazardous waste prior to mixing with used oil.

Petitions for review challenging EPA's used oil mixture rule subsequently were filed in the United States Court of Appeals for the District of Columbia Circuit. Petitioners argued, in relevant part, that the provision of the management standards which governed mixtures of recycled used oil and characteristic hazardous waste was inconsistent with the Court's decision in *Chemical Waste Management, Inc.* v. *EPA,* 976 F.2d 2 (D.C. Cir. 1992), *cert. denied,* 113 S. Ct. 1961 (1993) (''Chem Waste''). *Chem Waste,* which was issued two weeks after the management standards were promulgated, held that EPA could not allow certain wastes exhibiting the hazardous characteristics of ignitability, reactivity, or corrosivity to be diluted to eliminate the characteristic and then be land-disposed unless the hazardous constituents in the waste were adequately treated to minimize threats to human health and the environment.

On September 12, 1994, petitioner, Safety-Kleen, and EPA filed a joint motion requesting the Court to vacate the mixture provision and remand the issue to EPA. Intervenors in the *Safety-Kleen* litigation opposed this motion. On September 15, 1994, the Court remanded the record in this matter to EPA, stating: ''If the EPA determines that its rule is invalid, [citation omitted], it can proceed accordingly.'' Order (Sept. 15, 1994) (citing *American Tele. & Telegraph Co.* v. *FCC,* 978 F.2d 727, 733 (D.C. Cir. 1992)). The Court did not vacate the mixture rule.

Administrative Stay of the Used Oil Mixture Rule. In 1995, EPA issued an order staying the used oil mixture rule. The Agency determined that a stay was necessary to the effective implementation of the recycled used oil management program, pending the Agency's completion of a rulemaking on the issue of whether the used oil mixture rule should be modified or repealed in light of the Court's decision in *Chem Waste.* See 60 FR 55202 (Oct. 30, 1995).

On January 19, 1996, the Court, in ruling on a motion filed by the intervenors, vacated the Administrative stay. The Court explained that EPA could not suspend a promulgated rule without notice and comment. The Court further noted that, if EPA determines that the used oil mixture rule is invalid, it may be able to rely on the good cause exception, 5 U.S.C. 553(b), to vacate the rule without notice and comment rulemaking.

Effect of the Court's Vacatur of the Administrative Stay. The vacatur of the administrative stay reinstates the used oil mixture rule found at 40 CFR 279.10(b)(2) as part of the federal used oil management standards. Accordingly, as a matter of federal RCRA law, the regulated community may mix certain characteristic hazardous wastes and used oil to be recycled (*e.g.*, mixtures of solvents compatible with the use of

used oil as fuel) without triggering LDR requirements. Of course, whether the used oil mixture rule is in effect in a particular state depends on whether a state is, or is not, authorized to administer and enforce the RCRA program. Furthermore, whether a used oil mixture provision is in effect in an authorized state, depends on whether the state has adopted such a provision under its state law and whether EPA has authorized the state to administer and enforce such a provision.

The vacatur of the administrative stay only had an immediate impact on the RCRA requirements for the regulated community in the states and territories that did not have an authorized state RCRA program at the time the administrative stay became effective (*e.g.*, Alaska, Hawaii, Iowa and Puerto Rico). The vacatur immediately reinstated the federal used oil mixture rule in these four states and territories, because the regulated community in these states and territories, in the absence of an authorized state RCRA program, is subject to the federal RCRA regulations. The regulated community in these states and territories, therefore, may continue to manage mixtures of used oil destined for recycling and characteristic hazardous waste as used oil to the extent allowed under the federal used oil management standards.

The administrative stay of the federal used oil mixture rule, and its subsequent vacatur, did not affect the legal obligations of the regulated community in the forty-nine states and territories with an authorized state RCRA program, because the regulated community in a state with an authorized RCRA state program is subject to the applicable state, not federal, regulations. None of the authorized states revised their programs to incorporate the stay during the three weeks that the stay was in effect. Accordingly, after the vacatur of the stay (as well as at the time that the stay was in effect) the regulated community in the authorized states remains subject to those state used oil regulations, including any state used oil mixture provisions, that were in effect prior to the issuance of the administrative stay. In those states that are authorized for both the RCRA program and the used oil mixture rule the regulated community may continue to rely on the state used oil mixture rule applicable in that state. In those states that are authorized for the RCRA program but not for the used oil mixture rule, the regulated community cannot use the used oil mixture rule until a state obtains authorization for the rule as part of its RCRA program. States not already authorized for the used oil mixture rule may wish to consider not seeking such authorization until the validity of the used mixture rule is determined.

In light of the D.C. Circuit's vacatur of the administrative stay of the rule, EPA is deleting the explanatory note added to 40 CFR Section 279.10(b)(2) in the notice of the administrative stay, to withdraw the notice of the administrative stay. See 60 FR 55202, 55206 (Oct. 30, 1995).

Comparable Fuel Provisions of EPA's Revised Standards for Hazardous Waste Combustors. On April 19, 1996, the Agency proposed the Hazardous Waste Combustion Rule in which the discussion of ''Small Business Considerations'' may be of particular interest to used oil handlers (61 FR 17468). Small businesses may, hypothetically, generate wastes (such as mineral spirits used to clean automotive parts) that could meet a comparable fuel specification as a class. In this section the Agency proposes to consider a petition process through which classes of generators could document that a specific type of waste is consistently likely to meet the comparable fuel specification. By promulgating such a provision, EPA could allow classes of materials from specific small businesses to be excluded from RCRA jurisdiction without following the detailed implementation requirements that are associated with waste stream specific application of the comparable fuels exclusion. Such an outcome would need to be supported by data reviewed by the authorized regulatory agency and would be the subject of notice and comment rulemaking.

If the Agency granted such a petition through rulemaking, such waste would be classified as inherently comparable fuel. As such, the generator would not be subject to the proposed implementation requirements for the comparable fuel exclusion: notification, sampling and analysis, and record keeping. In addition, such inherently comparable fuel could be blended, treated, and shipped off-site without restriction because they had been excluded from regulation as a hazardous waste. Such comparable fuels could then be mixed with used oil and burned according to Part 279 without the land disposal restrictions or other hazardous waste regulations applying.

Regulatory Requirements

A. Regulatory Flexibility Act

This action makes a technical amendment to the CFR, and does not impose any requirements on regulated entities. Therefore, EPA certifies that this action will not have a significant impact on a substantial number of small entities.

B. Executive Order 12866 and the Paperwork Reduction Act

This action is exempt from review by the Office of Management and Budget under Executive Order 12866. This action does not impose any reporting or record keeping requirements.

C. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's technical amendment contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

D. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 279

Environmental protection, Hazardous waste, Recycling, Used oil.

Dated: June 20, 1996.

Elliott Laws,

Assistant Administrator.

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

PART 279—STANDARDS FOR THE MANAGEMENT OF USED OIL

1. The authority citation for part 279 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001 through 3007, 3010, 3014, and 7004 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, and 6974); and Sections 101(37) and 114© of CERCLA (42 U.S.C. 9601(37) and 9614(c)).

§ 279.10 [Amended]

2. Section 279.10 is amended by removing the note immediately after paragraph (b)(2)(iii).

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48 CFR Part 1552

[FRL–5525–6]

Acquisition Regulation; Coverage on Information Resources Management (IRM)

AGENCY: Environmental Protection Agency

ACTION: Final rule.

SUMMARY: This final rule amends the Environmental Protection Agency Acquisition Regulation (EPAAR) coverage on Information Resources Management (IRM) by providing electronic access to EPA IRM policies for the Agency's contractors. Electronic access is available through the Internet or a dial-up modem. Agency contractors will be required to review the Internet or access the dial-up modem when receiving a work request (i.e. delivery order or work assignment) to ascertain the applicable IRM policies. The intended effect of this rule is to ensure that contractors perform IRM related work in accordance with current EPA policies.

EFFECTIVE DATE: This rule is effective July 15, 1996.

FOR FURTHER INFORMATION CONTACT: Edward N. Chambers at (202) 260–6028.

SUPPLEMENTARY INFORMATION:

A. Background

The required EPA Information Resource Management (IRM) policies are currently referenced in a clause contained in all Agency solicitations and contracts. While this clause provides for revised and new directives through attachments to contracts, because of the rapid changes in the IRM field, EPA may still be at risk for requiring compliance with outdated directives. By providing the references and the full text of all required IRM policies on the Internet, or through a dial-up modem, EPA will be able to update this information as changes occur to ensure contractor compliance with current IRM policies. This effort to provide electronic access is consistent with the Federally mandated Government Information Locator Service (GILS), a key initiative of the National Performance Review (NPR).

This regulation was published as a proposed rule in the Federal Register on July 11, 1995. No comments were received.

Minor edits have been made to clarify the nature and protocols of the electronic access. While the proposed rule referenced a dial-up modem bulletin board service (BBS), EPA has subsequently decided that this mode of electronic access does not qualify as a BBS. Therefore, the final rule drops the reference to a BBS.

B. Executive Order 12866

This is not a significant regulatory action under Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44. U.S.C. 3501, et. seq.

D. Regulatory Flexibility Act

The rule is not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, U.S.C. 601 et seq.

The Internet and dial-up modems are widely available mechanisms to access information, used commonly in the conduct of business by both small and large entities. Compliance with this requirement will require minimal cost or effort for any entity, large or small.

E. Unfunded Mandates Reform Act

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

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Private sector costs for this action relate to expenditures that are far below the level established for UMRA applicability. Thus, the rule is not subject to the requirements of section 202 and 205 of the UMRA.

F. Regulated Entities

EPA contractors are entities potentially regulated by this action.

Category	Regulated Entities
Industry	EPA contractors.

Questions regarding the applicability of this action to a particular entity, should be directed to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

List of Subjects in 48 CFR Part 1552

Government Procurement, Specifications, Standards, and other Purchase Descriptions, Solicitation Provisions and Contract Clauses.

For reasons set out in the preamble, Chapter 15 of Title 48 Code of Federal Regulations is amended as set forth below:

PART 1552—[AMENDED]

1. The authority citation for 48 CFR Part 1552 continues to read as follows:

Authority: Section 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Section 1552.210–79 is amended by revising paragraphs (b), (c), and (d); and by removing paragraphs (e) and (f) to read as follows:

1552.210–79 Compliance with EPA Policies for Information Resources Management.

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