

APPENDIX G

***HAZARDOUS WASTE MANAGEMENT
SYSTEM; IDENTIFICATION AND LISTING OF
HAZARDOUS WASTE; RECYCLED USED OIL
MANAGEMENT STANDARDS***

59 Federal Register 10550-10560 (March 4, 1994)

Important Note

This Federal Register notice is taken from the U.S. EPA web site at the following URL:

<http://www.epa.gov/OSWRCRA/hazwaste/usedoil/fr/fr030494.txt>

The notice has been reformatted to aid in readability. The footnote is provided at the end of the notice (page G-21).

You should refer to the original Federal Register notice to assure accuracy.

Federal Register / VOL. 59, No. 43 / Friday, March 4, 1994 / Rules and Regulations
(Pages 10550 - 10560)

40 CFR Parts 271 and 279

[EPA/530-2-42-011; FRL-4845-2]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 10, 1992, EPA exempted used oil inserted into crude oil pipelines from the part 279 used oil management standards. EPA is today clarifying the existing pipeline exemption and expanding the exemption to other petroleum refinery applications. Today's document clarifies that the exemption from the used oil management standards did not intend to exclude used oil mixed with crude oil or natural gas liquids (hereinafter referred to as "crude oil") in pre-pipeline units (e.g., stock tanks, production separators) prior to being introduced into the crude oil pipeline. In addition, today's rule expands the used oil exemption to include transportation and/or storage of mixtures of small amounts of used oil (i.e., less than 1%) and crude oil that are destined for insertion into a petroleum refining facility process at a point prior to crude distillation or catalytic cracking.

Today's rule exempts from the part 279 standards, used oil that is inserted into the petroleum refining facility process after distillation or catalytic cracking operations provided that the used oil meets the used oil specification prior to insertion.

Today's rule also exempts from the part 279 standards used oil that incidentally enters and is recovered from a refinery's hydrocarbon recovery system or wastewater treatment system (i.e., process sewer, storm sewer, or wastewater treatment units), if the recovered used oil is subsequently inserted into the petroleum refinery process.

In addition, today's rule expands the definition of transfer facility to allow used oil to be held more than 24 hours but less than 35 days prior to specified activities.

Finally, EPA is today amending the used oil processor standards to clarify that a specific set of on-site maintenance, filtering, and separation activities were not intended to be covered under the used oil processor standards. EPA is also correcting errors in regulations that appeared in the May 3, 1993, Federal Register.

EFFECTIVE DATE: April 4, 1994.

ADDRESSES: The regulatory docket for this rulemaking is available for public inspection at room 2427, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The docket number is F-94-UOTA-FFFFF. 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 regulatory document at no cost. Additional copies cost \$.20 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington,

DC 20460; Telephone (800) 424-9346 (toll free) or, in the Washington DC, metropolitan area at (703) 920-9810.

For information on specific aspects of this rule, contact Ms. Eydie Pines, telephone (202) 260-3509, U.S. EPA, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

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Authority

The regulations promulgated today are issued under the authority of sections 1004, 1006, 2002(a), 3014, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and as amended by the Used Oil recycling Act, as amended, 42 U.S.C. 6903, 6905, 6912(a), 6935, and 6974.

II. Background

A. Summary of Recent Regulatory Actions Pertaining to Used Oil

1. Summary of May 20, 1992, Federal Register Notice

On May 20, 1992, EPA published a final listing determination for used oils that are destined for disposal (see 57 FR 21524). The Agency determined that used oils destined for disposal did not have to be listed as a hazardous waste because used oils do not typically and frequently meet the technical criteria for listing a waste as hazardous. EPA gave considerable attention, in reaching its determination, to the current Federal regulations that govern the management of used oils that are disposed, including the requirement for used oil that exhibits a characteristic of hazardous waste under subtitle C of RCRA.

The May 20, 1992, Federal Register notice also included a categorical exemption from the definition of hazardous waste in Sec. 261.4 for non-terne-plated used oil filters that have been hot-drained to remove used oil. EPA based this exemption on data submitted to the Agency indicating that these filters do not typically and frequently exhibit the toxicity characteristic.

2. Summary of September 10, 1992, Federal Register Notice

On September 10, 1992, EPA promulgated a final listing decision for used oils that are recycled and simultaneously promulgated management standards for used oil, codified at 40 CFR part 279 (see 57 FR 41566). EPA determined that used oil destined for recycling did not have to be listed as a hazardous waste because the used oil did not meet the technical criteria for listing a waste as hazardous, particularly in light of the new management standards and other federal requirements which control the risks posed by improper management of used oil. The standards cover used oil generators, transporters, processors, re-refiners, off-specification burners and marketers. The standards included an exemption from the management standards for used oil placed directly in a crude oil pipeline.

3. May 3, 1993, and June 17, 1993 Correction Notices

On May 3, 1993, EPA published technical amendments and corrections to the May 20, 1992 and September 10, 1992, Federal Register Notices (see 58 FR 26421). On June 17, 1993, EPA corrected several errors in the May 3, 1993, notice (see 58 FR 33341).

B. Summary of the 1985 Comments Regarding Used Oil Mixed With Crude Oil Destined for Refineries

On November 29, 1985, EPA proposed to list all used oil as a hazardous waste (50 FR 49248). Commenters responded that used oil mixed with crude oil be exempt from such regulation because the small quantities of used oil mixed with crude oil posed no threat to the environment when refined with crude oil.

C. Summary of 1991 Comments

On September 23, 1991, EPA proposed that the two exemptions from subtitle C requirements promulgated in 1985 (see 40 CFR 261.6(a)(3) (v)-(viii)) for oil-bearing hazardous waste and fuels derived from these wastes, also apply to used oils. (56 FR 48026, 48042) EPA proposed exemptions from the used oil management requirements (whether or not EPA ultimately listed used oil as a hazardous waste) for: (1) Used oils that are reinserted as feedstocks at primary petroleum refineries; and (2) fuels derived from those used oils.

Commenters (mainly the primary petroleum refining industry) stated that if EPA chose to list used oil as hazardous waste, the Agency should exempt used oil that is reintroduced into the refinery process from hazardous waste or used oil management standards requirements. Commenters further stated that if EPA did not adopt this exemption, the entire refinery process could be subject to hazardous waste management requirements, including permits. Commenters stated that this would be unwarranted because the reintroduction of used oil into the refining process contributes only insignificant concentrations of metals to the crude oil or finished petroleum product. Other commenters stated that refiners that handle used oil should be subject to the same requirements for used oil management as are used oil re-refiners.

Commenters from the primary petroleum refining industry also stated that EPA should not limit the exemption to those instances where used oil is inserted before fluid catalytic cracking or distillation, since other conversion and distillation processes in the refinery would also remove, alter or immobilize impurities in the oil. They asserted that limiting the point of insertion could foreclose the future development of used oil recycling activities. These commenters also stated that limiting the insertion point could preclude refineries from accepting DIY oil. Commenters asserted that DIY oil might have to undergo certain pre-processing at refineries prior to its insertion into the refining process. They also asserted that under the proposed exemption, this pre-processing would not be exempt and would be a hazardous waste activity. Commenters stated that these activities are part of the refining process.

Commenters from the primary petroleum industry further stated that EPA should extend the exemption to apply to used oil inserted into the pipeline at marketing, E&P and pipeline facilities for use in the refinery process. They asserted that used oil recovered from oil and gas exploration and production is placed in pipelines and trucks and returned to the refinery from other petroleum facilities. Commenters stated that the recovered oils are useful, valuable raw materials that are reintroduced into the crude stream for their economic value.

III. Analysis of New Part 279 Provisions

On September 10, 1992, EPA promulgated a final listing decision for used oils that are recycled and simultaneously promulgated standards in 40 CFR part 279 for the management of used oil under RCRA section 3014. Under Sec. 279.10(g) of part 279, EPA granted an exemption for used oils introduced directly into crude oil pipelines from part 279 standards at the point at which they are introduced. EPA did not address the proposed exemptions for used oil inserted into the petroleum refining facility process either prior to or after crude distillation or catalytic cracking.

The American Petroleum Institute filed a petition for review of the September 10, 1992, rule, on December 8, 1992, raising the issue that EPA had not addressed the proposed exemptions for petroleum refining, production, and transportation in the September 10, 1992, final rule. Today's rule responds to comments and addresses outstanding issues related to used oil and petroleum refining facility processes.

A. Summary of Comments From Interested Parties

Today's rule was distributed in draft form for comment to the litigants and intervenors concerning the 1992 rule, and other concerned members of the regulated community, States, and environmental groups. The primary substantive comments received on the draft and EPA's responses to those comments are summarized below.

EPA received several comments from the petroleum industry on the exemption from part 279 for storage and transportation of mixtures of used oil and crude oil that contain less than 1% used oil and are destined for insertion into petroleum refining process. These commenters objected primarily to provisions in the draft final rule limiting the exemption to mixtures that contain less than 1% used oil. The commenters also objected to limiting the amount of used oil that can be directly inserted into the petroleum refining process to 1% of the crude oil process unit throughput at any given time. EPA has retained the 1% limit in both cases in today's final rule for reasons discussed in section III.B.2 of this preamble.

EPA received comments from used oil re-refiners (i.e., "secondary" petroleum industry--a type of used oil processor) regarding the regulatory status of petroleum refineries that receive used oil from off-site and store the used oil on-site before mixing it with crude oil. The draft rule proposed to regulate petroleum refining facilities as used oil transfer facilities in these circumstances. Commenters stated, however, that petroleum refineries that receive used oil from off-site pose the same potential concerns from receipt of adulterated used oil and improper storage of used oil as re-refiners and should therefore be subject to the requirements for used oil processor/re-refiners prior to mixing. EPA agrees and has revised the draft rule accordingly. These changes are discussed in greater detail below.

EPA also received numerous comments on provisions clarifying what constitutes a used oil processor. Provisions contained in the draft document would have prohibited both on- and off-site burning of used oil generated from specified activities that EPA is today clarifying are not subject to the used oil processor standards. Commenters stated that the used oil generated from these activities would be suitable for burning in accordance with the part 279, subpart G standards and that burning should not be further restricted. In response to these comments, EPA has decided to allow on-site burning of the used oil generated from these activities but has retained the prohibition against off-site burning. The basis for this decision is discussed in section III.C of today's preamble.

B. Section 279.1--Definition of Petroleum Refining Facility

Today's rule establishes a regulatory definition for "petroleum refining facility." EPA believes it is necessary to define this term in order to provide a clear distinction between what the Agency considers to be and regulates as primary petroleum refining facilities and facilities that EPA considers to be used oil re-refiners for regulatory purposes. Under today's rule, "petroleum refining facility" is defined as follows:

"Petroleum refining facility" means an establishment primarily engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, and lubricants, through fractionation, straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking or other processes (i.e., facilities classified as SIC 2911).

A used oil re-refiner, in contrast, is a facility that processes used oil to produce lube base stocks and greases, industrial fuels, asphalt extenders, diesel like fuels, and other products.

EPA is aware that petroleum refiners and used oil re-refiners employ similar production processes and produce similar products. Consequently, the Agency has avoided defining these facilities in terms of the process steps employed to produce a finished product or the type of products produced. As defined by today's rule, petroleum refining facilities and used oil re-refining facilities differ primarily in the material that constitutes the primary initial feed to the process. In order for a facility to be considered a petroleum refining facility, the material fed to the front end of the refining process must be comprised primarily of crude oil. In order to be considered a used oil re-refiner, the material entering the front end of the process must be comprised primarily of used oil.

C. Section 279.10(g)--Used Oil Introduced Into Crude Oil Pipelines or Petroleum Refining Facilities

1. Section 279.10(g)(1)--Used Oil Introduced Into Crude Oil Pipelines

The September 10, 1992, final used oil regulations provided an exemption at Sec. 279.10(g) from management standards for used oil that is placed directly into a crude oil pipeline (see 57 FR 41613). Today's rule replaces Sec. 279.10(g) with Sec. 279.10(g)(1) which clarifies the original intent of the pipeline exemption. Section 279.10(g) of the September 10, 1992, final rule provided that "Used oil that is placed directly into a crude oil, oil or natural gas pipeline is subject to the management standards of [part 279] only prior to the point of introduction into the pipeline. Once the used oil is introduced to the pipeline, the material is exempt from the requirements of [part 279]."

EPA is concerned that the phrase, "placed directly into a crude oil or natural gas pipeline," can be literally interpreted to apply more narrowly than the Agency had intended. EPA understands that it is standard practice to first mix small amounts of used oil, typically less than 1%, with crude oil in stock tanks, production separators or other tank units that are connected via pipeline to the petroleum refining facility (i.e., pre-pipeline units). It was not EPA's intent to exclude used oil that is mixed with crude oil in these pre-pipeline units from the Sec. 279.10(g) pipeline exemption. Rather, EPA intended to include this practice within the meaning of "direct insertion." Because used oil is typically inserted into the petroleum pipeline through these pre-pipeline units, to exclude these units from the pipeline exemption would effectively render the exemption meaningless. Clearly this was not EPA's intent. Today's rule revises the language of the exemption to clarify that used oil may be inserted into the pipeline via pre-pipeline units (which contain crude oil) exempt from the requirements of part 279. It should be noted here that the Sec. 279.10(g)(1) pipeline exemption established by today's rule is limited to pipelines that convey crude oil from off-site locations to the petroleum refining facility. The exemption does not apply to pipelines that convey crude oil from one on-site location within a petroleum refinery to another. If such on-site piping contains used oil, it is exempt only if it qualifies under Secs. 279.10(g)(2)-(5) discussed below. Also, if processing of the used oil is performed prior to mixing with crude oil in these pre-pipeline units, such processing remains subject to the part 279, subpart F standards for used oil processors and re-refiners. Used oil that is generated and stored at the pipeline is subject to the used oil generator standards prior to mixing with crude oil. Used oil that is transported to the pipeline and immediately mixed with crude oil or stored for less than 24 hours prior to such mixing is subject to all Subpart E transporter standards except for Sec. 279.45 which applies to transfer facilities. Used oil that is transported to and subsequently stored at the pipeline for more than 24 hours and less than 35 days prior to mixing with crude oil is subject to all the part 279, subpart E transporter/transfer facility requirements.

2. Section 279.10(g)(2)--Storage and Transportation of Mixtures of Used Oil and Crude Oil

Section 279.10(g)(2) of today's rule expands the used oil management standard exemption to include: (1) Mixtures of used oil and crude oil containing less than 1% used oil that are being stored at the petroleum refining facility or in discrete units remotely located from the pipeline, as long as the mixture is destined for the refinery and inserted prior to crude distillation or catalytic cracking; and (2) mixtures of used oil and crude oil containing less than 1% used oil that are being transported (via truck, rail, or vessel) to the petroleum refinery or the pipeline for insertion into the petroleum refining process prior to crude distillation or catalytic cracking. The former exemption provided at Sec. 279.10(g) did not apply either to mixtures of used oil and crude oil that are stored at the petroleum refinery or in remotely located units, or to the transportation of mixtures of used oil and crude oil. The previous, more narrow exemption was based on the assumption that used oil was placed directly into the pipeline (or into units directly connected to the pipeline as previously discussed). EPA assumed that the mixing of used oil and crude oil occurred at the point at which used oil was inserted into the pipeline. EPA has since learned, however, that mixing frequently occurs at exploration and production sites that are remotely located from the pipeline or the petroleum refinery.

For example, used oil generated during on- and off-shore drilling activities (e.g. from compressors, trucks and other heavy equipment) is routinely mixed with crude oil in units (e.g. production separators, seagoing vessels, stock tanks, etc.) located at the exploration and production site and then transported, as a mixture, to the pipeline or petroleum refining facility. Depending on the location of the drilling activities, the mixture of used oil and crude oil may need to be transported (by vessel, truck, rail, etc.) to a separate location for introduction into the pipeline or the petroleum refining facility. In the case of off-shore drilling sites for example, conveyance of the mixture may involve multiple modes of transportation (i.e., from the off-shore platform to land by vessel or pipeline and then to the crude oil pipeline by land-based transport). Today's exemption covers all modes of transportation of mixtures of used oil and crude or natural gas liquids, as long as the mixture contains less than 1% used oil and is destined for insertion into a petroleum refining facility process at a point prior to crude distillation or catalytic cracking. In addition, today's exemption covers storage of mixtures of used oil and crude oil, provided that the mixture contains less than 1% used oil and is inserted into a petroleum refining facility process prior to crude distillation or catalytic cracking.

Used oil that is generated at exploration and production sites continues to be subject to used oil generator standards prior to being mixed with crude oil such that it is exempt under today's rule. Used oil that is generated off-site and transported to or stored at an exploration and production site is subject to the transporter and transfer facility standards, as applicable, up until the point at which the used oil is mixed with crude oil such that it is exempt under Sec. 279.10(g)(2).

EPA is exempting mixtures of used oil and crude oil held in discrete units at a refinery or at remote locations because the Agency understands that the amount of used oil contained in these mixtures is extremely small relative to the large quantities of crude oil. In developing today's rule, EPA held numerous discussions with petroleum refinery industry representatives regarding the maximum amount of used oil contained in mixtures of used oil and crude oil that are destined for insertion into a petroleum refining process prior to crude distillation or catalytic cracking. Industry representatives repeatedly informed the Agency that used oil constitutes less than 1% of these mixtures. In gathering information for today's rule, EPA held conference calls with representatives from a number of petroleum refining companies (e.g., Mobil Oil Corporation and Phillips Petroleum Inc.). The Agency also conducted several site visits, including visits to an Amoco refinery in Whiting, Indiana and a Mobil Oil Corporation refinery in Paulsboro, New Jersey. In each case, EPA was informed that used oil does not currently, and will not comprise greater than 1% of the crude oil/used oil mixture because of the sheer volumes of crude oil that are continuously being produced and processed

relative to the amount of used oil that is generated at production sites or refineries. This recent information is consistent with comments submitted in response to the 1985 Used Oil Proposed Rule in which Exxon Company, USA stated that the average percentage of used oil in refinery feed stock streams is less than 0.02% and Texaco, Inc., indicated that used oil would constitute no more than 0.01% of the refinery input.

EPA does not believe it is necessary to apply the used oil management standards to the less than 1% fraction of used oil that is being held temporarily in discrete units or transported from those units to the pipeline or the petroleum refinery for recycling as part of a mixture that is composed overwhelmingly of crude oil. In essence, because of the high ratio of crude oil to used oil, EPA considers the mixture to be equivalent to crude oil for regulatory purposes. EPA's part 279 standards were designed to control those particular risks associated with the management of used oil (e.g., uncontrolled burning, improper storage practices by used oil handlers) pursuant to section 3014 of RCRA.

The reason for EPA's imposition of a 1% limit on the amount of used oil contained in mixtures of used oil and crude oil being stored or transported to a crude oil pipeline or petroleum refinery prior to insertion into the refining process is that, while we have determined that the small amounts of used oil that are being added to crude oil under current practices pose no incremental risk over normal crude oil, we have not evaluated whether larger amounts of used oil also pose no incremental risk. Given the information provided to EPA by the petroleum refining industry regarding the inherent limitations on the amount of used oil that is or should be contained in mixtures of used oil and crude oil (i.e., less than 1%), and given that EPA has received no information, either recently, or in response to previous rulemakings that provides basis for an alternative limit, the Agency sees no point in imposing a higher cap. Imposition of a higher cap could have the effect of encouraging mixing of used oil with crude oil that would not otherwise occur during the normal course of petroleum refining operations. Such an incentive might lead to increased incremental risk from management of large amounts of used oil, exempt from the part 279 standards, at petroleum refineries. EPA also concluded that a less precise limit (i.e., "de minimis" or "small amounts"), as was suggested by some commenters from the petroleum refining industry, would needlessly cause uncertainty, given that EPA was told repeatedly that amounts currently introduced are far less than 1%.

3. Section 279.10(g)(3)--Used Oil Inserted Into the Petroleum Refining Process Without Prior Mixing and Mixtures of Greater Than One Percent Used Oil

As previously stated, under today's rule, mixtures of used oil and crude oil containing less than 1% used oil that are transported to or stored at a petroleum refinery, and are introduced prior to crude distillation or catalytic cracking, are exempt from part 279 standards under Sec. 279.10(g)(2). It is EPA's understanding, based on information received from petroleum industry representatives, that used oil can potentially be inserted directly into the petroleum refining process prior to crude distillation or catalytic cracking without either: (1) Mixing the used oil with crude oil feedstocks, or (2) pre-processing of the used oil to ensure that any contaminants in the used oil will not interfere with the refining process (e.g., contaminants fouling a catalyst, etc.). Based on this understanding, today's exemption also applies to used oil that is introduced directly into the petroleum refining process at a point prior to crude distillation or catalytic cracking as long as the used oil comprises less than 1% of the crude oil feed to a petroleum refining facility process unit at any given time. Again, because of the high ratio of crude oil to used oil, EPA considers these mixtures to be equivalent to crude oil for regulatory purposes. Therefore, the Agency believes that this activity would pose no significant increase in risk.

Used oil that is inserted directly into the petroleum refining process (at a volume of less than 1% of the crude oil process unit feed at any given time) is considered mixed, and therefore exempt from part 279, at the point at which it enters the process. This exemption applies both

to used oil generated at the petroleum refining facility where the used oil is being inserted, and to used oil generated off-site that is collected and transported to the petroleum refining facility for insertion into the refining process prior to crude distillation or catalytic cracking.

Used oil that is inserted into the petroleum refining process without first being mixed with crude oil feedstocks (e.g. in crude oil stock tanks) is subject to part 279 standards prior to insertion. Used oil that is generated on-site and then stored without prior mixing and used oil generated on-site that constitutes greater than 1% of a mixture of used and crude oil continues to be subject to the part 279, subpart C standards for generators. With the exception of used oil that is exempt from the part 279 standards because it constitutes less than 1% of a mixture of used oil and crude oil, used oil that is generated off-site and then transported to or stored at a petroleum refining facility, continues to be subject to the applicable part 279 requirements i.e., to the requirements for used oil transporters and transfer facilities while being transported and to the requirements for used oil processors upon receipt at the petroleum refining facility. Petroleum refining facilities that receive used oil from off-site for direct insertion into the petroleum refining process are subject to the used oil processor standards from the point at which they receive the used oil up until the point at which the used oil is inserted into the petroleum refining process. Finally, it is important to reiterate that the exemptions provided under both Secs. 279.10(g)(2) and 279.10(g)(3) of today's rule apply at the point of mixing and only to mixtures that contain less than 1% of used oil.

Although petroleum industry representatives have raised concerns that a 1% limit on the amount of used oil that can be inserted directly into the petroleum refining process may be technology limiting, EPA has not received any information that would support this position, nor has the Agency received information to support an alternative level. The Agency believes that by limiting the amount of used oil that can be introduced directly into the refining process exempt from the used oil processing standards, it can better ensure against mixing only to avoid compliance with the part 279 processing standards. If information becomes available that the 1% limit is inhibiting used oil recycling, the Agency will consider whether any change to the rules is necessary.

In the draft rule, EPA proposed to regulate petroleum refining facilities that receive used oil from off-site as used oil transfer facilities prior to mixing. However, EPA agrees with comments on the draft rule that petroleum refining facilities that receive used oil from off-site pose the same potential concerns associated with receipt of adulterated used oil and improper storage of used oil as used oil re-refiners. Petroleum refining facilities that receive used oil from off-site may not have adequate information to ensure that the used oil has not been improperly mixed with listed hazardous waste. Also, the volumes of used oil that may be managed require adequate planning for dealing with emergency releases. EPA has therefore revised the final rule to provide that petroleum refining facilities that receive and store used oil from off-site are subject to the used oil processor standards prior to mixing. The principal effect of this change is that petroleum refiners that receive used oil from off-site must prepare a waste analysis plan to ensure that the used oil has not been mixed with hazardous waste and must maintain an operating record to document compliance with the waste analysis plan. In addition, such refineries will have to adopt or amend emergency contingency plans to address used oil in accordance with Sec. 279.52 of the used oil management standards.

4. Section 279.10(g)(4)--Used Oil Inserted Into the Petroleum Refining Process After Crude Distillation or Catalytic Cracking

Under Sec. 279.10(g)(4) of today's rule, used oil that is inserted into the petroleum refining process after crude distillation or catalytic cracking is exempt from the part 279 standards provided that the used oil meets the used oil specification prior to insertion. Used oil remains subject to part 279 standards up until its actual insertion into the petroleum refining process. As previously discussed, used oil generated on-site must be stored according to part 279,

subpart C standards for used oil generators. Used oil generated off-site must be transported according to the part 279, subpart E standards for transporters and transfer facilities and stored according to the part 279, subpart F standards for used oil processor/re-refiners.

EPA's use of the terms "before" and "after" crude distillation or catalytic cracking is intended to distinguish between the initial part of the petroleum refining process where crude oil is the primary feedstock and is refined by undergoing crude distillation or catalytic cracking and the latter part of the petroleum refining process where crude oil residuals constitute the primary feed, and coke and asphalt are the primary products. Refinery processes that occur after crude distillation or catalytic cracking do not provide refining to the same extent as that which occurs as a result of crude distillation or catalytic cracking. Crude distillation or catalytic cracking is expressly designed to remove, alter, or otherwise immobilize contaminants in the normal course of the refining process. EPA has insufficient information on post-crude distillation or catalytic cracking units identified by commenters (e.g., asphalt towers, petroleum cokers), and is concerned about the possible environmental effects (e.g., air emissions, transfer of inorganics to asphalt or petroleum coke) of placing large amounts of off-specification used oil into the petroleum refining process without passing through the crude distillation or catalytic cracking units. In contrast, on-specification used oil may be burned in the same manner as virgin petroleum fuel in other situations, therefore it makes little sense to restrict its use as a feedstock to the petroleum coker (or in any other process "after" crude distillation or catalytic cracking).

It should be noted that if off-specification used oil is inserted into petroleum refining processes after crude distillation or catalytic cracking (e.g., a coker), the facility would be subject to the used oil processing requirements in part 279, subpart F. In addition, petroleum refining facilities that wish to insert on-specification used oil into the refining process after crude distillation or catalytic cracking and that are the first to claim that the used oil is on-specification (whether generated at the refinery, or at an off-site location), would be defined as marketers subject to the requirements for used oil marketers found in part 279, subpart H.

5. Section 279.10(g)(5)--Used Oil Captured by the Refinery's Hydrocarbon Recovery System or Wastewater Treatment System and Inserted Into Petroleum Refining Process

Section 279.10(g)(5) of today's rule exempts from the part 279 standards used oil that incidentally enters and is recovered from a petroleum refining facility's hydrocarbon recovery system or its wastewater treatment system (e.g., process sewer, storm sewer, or wastewater treatment units), if the recovered used oil is subsequently inserted into the petroleum refining process. Oil (that may contain small amounts of used oil) that has been recovered from a refining facility's hydrocarbon recovery or wastewater treatment system is typically used as a feedstock in petroleum refining to produce more petroleum products. EPA understands that used oil, generated from routine refinery process operations and that incidentally enters a refinery's recovery or wastewater treatment system (e.g., drips, leaks, and spills from compressors, valves, and pumps), represents a small portion of the total oil that enters (and is then recovered from) the recovery or wastewater treatment system. Thus, the oil recovered from the system is more properly characterized as crude feedstock than used oil. Provided the used oil is inserted into the petroleum refining process, EPA believes that regulation under part 279 standards is unwarranted. This exemption from the part 279 standards does not extend to used oil which is intentionally introduced into a petroleum refinery's recovery or wastewater treatment system (e.g., pouring collected used oil into any part of the hydrocarbon recovery system, storm or process sewer system or into wastewater treatment units). Used oil may not be introduced to the refinery's hydrocarbon recovery or wastewater treatment system as a way to avoid meeting the conditions specified in Sec. 279.10(g)(4).

For the purposes of the exemption in today's rule, the examples cited in the existing de minimis wastewater exclusion (Sec. 279.10(f)) provide guidance on what types of releases to a refinery's

hydrocarbon recovery or wastewater treatment system would be considered "routine" or "incidental". The exemption is intended to cover losses from drippage, minor spillage, etc., that cannot be reasonably avoided. For example, used oil that has been collected from equipment or vehicle maintenance activities and intentionally introduced into a refinery's wastewater treatment system would not be exempt under Sec. 279.1(g)(5) from the part 279 standards once recovered. Similarly, used oil that is generated off-site and is brought to the refinery may not be added to any portion of the refinery's wastewater treatment system (i.e., process sewer, storm sewer, or wastewater treatment units), and still be exempt under Sec. 279.10(g)(5) once recovered; such oil is clearly not "incidentally captured" by the refinery's wastewater treatment system. In fact, unless specifically exempted under Sec. 279.10(g)(2) or Sec. 279.10(g)(3) of today's rule, this type of activity would meet the definition of used oil processing under the existing used oil management standards (see 40 CFR 279.1).

Today's rule does not preclude intentional introduction of used oil in to the facility's recovered oil tanks. EPA is aware that used oil from both on- and off-site is often added directly to the petroleum refining facility's recovered oil tanks. Mixtures of used oil and recovered oil that contain greater than 1% used oil are regulated as used oil. Mixtures of used oil and recovered oil that contain less than 1% used oil and are inserted into the petroleum refining process prior to crude distillation or catalytic cracking are exempt from the part 279 used oil management standards under Sec. 279.10(g)(2). Mixtures of used oil and recovered oil that contain less than 1% used oil and are inserted into the petroleum refining process after crude distillation or catalytic cracking are exempt from the part 279 standards (under Sec. 279.10(g)(4)) only if the used oil meets the used oil specification prior to mixing with recovered oil.

6. Section 279.10(g)(6)--Stock Tank Bottoms

Section 279.10(g)(6) of today's rule exempts tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil from the part 279 standards. Like the actual mixtures of used oil and crude oil, the bottoms from these mixtures are expected to contain insignificant amounts of used oil. Therefore, the Agency does not believe that the bottoms from tanks (or other units) containing mixtures of used oil and crude oil should be subject to the used oil management standards. The tank bottoms are subject to all other applicable requirements, i.e., the Sec. 262.11 requirement to determine if they are hazardous waste.

D. Used Oil Transportation

Section 279.1--Definition of Transfer Facility

Today's rule revises the definition of transfer facility to allow used oil to be held at a location (i.e., a transfer facility) temporarily prior to activities that are not subject to the processor standards as a result of today's rulemaking. In the September 10, 1992 final rule, a transfer facility was defined as a transportation-related facility where shipments of used oil are held for more than 24 hours but less than 35 days during the normal course of transportation. Today's rule expands that definition to allow used oil to be held for more than 24 hours but less than 35 days during the normal course of transportation or prior to an activity performed pursuant to Sec. 279.20(b)(2). Under the amended definition, as discussed below in section F of this preamble, a site to which used oil from oil-bearing electrical transformers is transported for filtering prior to reuse would be considered a transfer facility under today's definition.

E. Section 279.20(b)(2)(ii)--Used Oil Processing by Generators and Transfer Facilities

Since the promulgation of the September 10, 1992, Used Oil Management Standards, a number of parties have raised concerns regarding the definition of used oil processor and the types of activities that are covered by that definition. The commenters are concerned that a broad construction of the term processor inappropriately includes a number of very basic

on-site generator activities that the Agency did not intend to regulate under the used oil processor standards (e.g. reconditioning/maintenance to extend the life of used oil, separation of used oil from wastewater discharge, etc.). EPA agrees that activities such as these, when performed by the generator, were not intended to be covered under the used oil processor standards because used oil processing is not their primary purpose, as explained below in greater detail. In fact, too broad an interpretation of the processor definition may discourage environmentally beneficial recycling and waste minimization activities by imposing an unwarranted regulatory burden on owners and operators that EPA did not intend to regulate as used oil processors.

Therefore, today's rule revises the used oil management regulations to clarify the Agency's intent regarding the definition of a used oil processor by specifying those on-site maintenance, filtering, and separation activities that are not, and were not intended to be subject to the used oil processing standards. Under today's rule, generators¹ who only handle used oil in a manner specified under Sec. 279.20(b)(2)(ii) are not processors provided that the used oil is generated on-site and is not being sent directly off-site to a burner of on- or off-specification used oil fuel. (Section 279.20(b)(2)(ii) also applies to collection centers and aggregation points since these entities are regulated as generators.)

Activities that EPA did not intend to include under the definition of used oil processor are described below. EPA does not believe that the activities identified in Sec. 279.20(b)(2)(ii) should be subject to the used oil processor standards because used oil processing is not the primary purpose of these activities i.e., the primary purpose of these activities is not to produce from used oil or to make it more amenable for the production of used oil derived products, and the Agency does not expect these limited activities will pose the same kinds of environmental problems that may occur at processor facilities. Instead, in these cases, the act of mixing, filtering, separating, draining etc., used oil by the generator constitutes a basic step that is incidental or ancillary to a primary activity which is distinct from used oil processing. It is important to note, however, that owners or operators who generate used oil as a result of any of the activities specified in Sec. 279.20(b)(2)(ii) are considered used oil generators and are subject to the generator standards in subpart C.

EPA is allowing on-site but not off-site burning of used oil generated from designated on-site activities because the Agency believes that this approach best enables EPA to strike a reasonable balance between encouraging beneficial on-site reuse and recycling activities that should pose very limited risks, on one hand, and ensuring that activities undertaken primarily to make used oil more amenable for burning (i.e., used oil processing) are adequately controlled under the more stringent used oil processing standards.

The definition of a used oil processor is based on the purpose for which used oil is being filtered, separated, or otherwise reconditioned (i.e., whether the activity is designed to produce used oil derived products or to make used oil more amenable for the production of used oil derived products). The Agency is concerned that in situations where used oil is being filtered, separated or otherwise reconditioned and then sent to off-site burners, the purpose of the activity may prove difficult to discern and that consequently, Sec. 279.20(b)(2)(ii) provisions may be used as a means to avoid compliance with the used oil processor standards (i.e., by persons who claim not to be used oil processors under the Sec. 279.20(b)(2)(ii) provisions but whose primary purpose is to make the used oil more suitable for burning). Therefore, EPA believes it is necessary to adopt an objective measure of the purpose of the activity. The Agency believes that a prohibition against sending used oil generated from specified on-site activities to off-site burners provides the most practical and effective way to ensure that activities undertaken only to make used oil more amenable for burning are subject to the used oil processor standards.

1. Definition of Used Oil Processor

(A) Reconditioning used oil before returning it for reuse by the generator. Under today's rule facility owners or operators who clean, separate, or otherwise recondition used oil generated on-site and then reuse it are not considered used oil processors, provided that the reconditioned used oil is being reused by the owner or operator who generated it. Examples of activities covered under this category include filtering of metalworking fluids for reuse, and filtering and then replacing oil from oil-bearing transformers and turbines during routine maintenance.

Most manufacturing facilities have in place central filtration systems designed to remove contaminants from and extend the life of water-soluble metal working fluids (e.g., lubricants and coolants), used in machining, grinding, and boring equipment. These filtration systems are on-site systems that filter chips, metal fines, dirt, water, and other contaminants from cutting fluids, drawing lubricants and coolants used in machining operations. The filtration of these extraneous materials is designed to extend the life of the reusable coolants and lubricants and is incidental to the production process. Today's rule clarifies that this type of filtration activity is not subject to the used oil processing standards when the generator reuses the filtered oil.

Similarly, during regularly scheduled maintenance of oil-bearing transformers and turbines, the oil in the electrical equipment is removed so that repairs/maintenance can be performed. In some instances, the oil is filtered prior to replacement. The filtering of the used oil is done to extend the life of the used oil, not because the oil is no longer useful, and is therefore ancillary to the equipment repair and maintenance. While, under today's rule, the owner or operator would not be considered a processor in these cases, the draining of the used oil from the transformer constitutes generation of used oil so that the facility would be considered a used oil generator.

The Agency is aware that not all used transformer oil is drained and filtered in the field. Instead, the oil-bearing electrical equipment may be transported to a central location where the oil is removed, filtered, and replaced. Or, the used oil may be removed from the transformers or turbines in the field and then transported separately in a tanker truck to a central location where it is filtered and put back into electrical equipment. Under today's rule, in cases where electrical equipment containing used oil is transported to a central location, the transporter of the oil bearing electrical equipment would not be considered a used oil transporter. However, the owner or operator would become a generator at the point at which the used oil is drained from the equipment (i.e., at the site where the oil is drained and filtered).

In cases where the used oil is removed from the transformers or turbines in the field and then transported separately in a tanker truck to a central location for filtering prior to replacement into electrical equipment, the owner or operator would become a generator in the field (i.e., at the point at which the used oil is drained). The person who then transports the used oil would also be considered a used oil transporter subject to the transporter standards. In these cases, the location at which the used oil is filtered would be considered a used oil transfer facility subject to the transfer facility standards in Sec. 279.45, provided that the used oil is stored at the site for more than 24 hours and less than 35 days. If the used oil is filtered within 24 hours of being drained (i.e., during transport) only the part 279 standards for used oil transporters would apply. This filtering activity should not raise the kind of environmental concerns that would be present at used oil processors; essentially, the filtering is incidental to the transportation and storage and should not change a facility's regulatory status. As discussed in more detail below, today's rule provides that transporters of used oil that is removed from electrical transformers and turbines and filtered by the transporter or at a transfer facility prior to being returned to the same use are not subject to the processor or re-refiner requirements in subpart F. In accordance with Sec. 279.10(e), once the used oil has been reclaimed to the point where it is ready for reuse without further processing, it is not subject to regulation as used oil.

(B) Separating used oil from wastewater to make wastewater acceptable for discharge or reuse. Today's rule clarifies that oil/water separation activities designed to make wastewater acceptable for discharge or reuse are not subject to the used oil processor standards. Facilities often use oil/water separators to remove oil (which may contain used oil) from oil/water mixtures collected from the facility's storm sewer, process sewer, sumps and other wastewater containment areas. These separation systems use chemical and physical methods to break the oil/water emulsion and recover oil from the wastewater in order to make the wastewater or storm water acceptable for discharge or reuse in compliance with local, state and federal regulations.

This type of pretreatment of wastewater containing oil is designed primarily to ensure that the wastewater meets established limits for water discharge to streams and POTWs, and not to produce used oil derived products or to make used oil more amenable for the production of used oil derived products. This type of oil/water separation activity is therefore not subject to the used oil processor standards as clarified under today's rule. It should be noted, however, that any used oil recovered from separator units would be subject to the used oil generator standards. It is also important to note that this provision applies only to used oil that is generated on-site. The provision would apply, for example, to simple oil water separation activities conducted (for purposes of wastewater discharge) by a used oil processor on wastewater which has been generated by that processor. However, persons who perform oil/water separation activities on oily wastewater received from off-site would be considered used oil processors.

(C) Using oil mist collectors to remove droplets of used oil from in-plant air to make plant air suitable for continued recirculation. As clarified under today's rule, the act of removing used oil from ambient air in the workplace is not subject to the used oil processor standards. At manufacturing facilities, droplets of used oil from machining operations are often dispersed into in-plant air. Oil mist collectors physically remove the small droplets of oil present in the ambient air. This activity is not subject to the used oil processing standards because it is intended primarily to make plant air suitable for continued recirculation and not to produce products from used oil or to make it more amenable for the production of used oil derived products. However, the oil removed from oil mist collectors is subject to the used oil generator standards.

(D) Removing used oil from materials containing or otherwise contaminated with used oil in order to remove excessive oil. Under Sec. 279.10(c) of the used oil standards, materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material are not used oil except when burned for energy recovery. Today's rule clarifies that the Agency does not consider the removal of used oil from materials containing or contaminated with used oil in order to remove excess oil in accordance with Sec. 279.10(c) to be used oil processing. The production of used oil derived products is clearly not the primary reason for removing used oil from materials containing or contaminated with used oil. Instead, the activity is conducted primarily to clean the materials (e.g., machine tools, scrap metal, etc.) prior to reuse, recycling, or disposal and is therefore not subject to the used oil processing standards as clarified by today's rule. However, in removing the used oil from the materials, the owner or operator becomes a used oil generator subject to the Subpart C used oil generator standards.

(E) Filtering, separating, or otherwise reconditioning used oil before burning it in a space heater. Under Sec. 279.23 of the used oil standards, used oil may be burned in a used oil-fired space heater under specified conditions, and provided that the space heater burns only used oil that the owner or operator generates and/or used oil obtained from household DIY oil changers. Prior to burning, the used oil must often be filtered to remove impurities. Today's rule clarifies that filtering of used oil for the purpose of removing contaminants prior to burning the used oil in a space heater is not considered processing of used oil.

EPA provided a regulatory exemption from the used oil burning standards for generators who burn used oil in on-site space heaters (in accordance with Sec. 279.23) because the Agency believes that burning of small amounts of used oil in space heaters poses insignificant risks due to the small volume of used oil burned (see 50 FR 49194, Nov. 29, 1985). The Agency believes that, because of the small volumes of used oil involved, filtering, separating, or otherwise reconditioning used oil that is generated on-site prior to burning it in a space heater would also not pose significant risk. Therefore, although the purpose of the filtering activity in this case is to make the used oil more amenable for burning, because of the small amounts of used oil being filtered for this purpose, the Agency does not believe that imposition of the used oil processor standards is warranted. EPA is therefore adding a regulatory clarification (Sec. 279.20(b)(2)(ii)(F)) that the used oil processor standards do not apply to filtering of used oil prior to burning it in a space heater, provided that the used oil is generated on-site or obtained from households or "do-it-yourself" oil changes.

F. Section 279.41--Restrictions on transporters who are not also processors or re-refiners and changes to the definition of transfer facility.

Today's rule amends Sec. 279.41 to provide that transporters of used oil that is removed from oil-bearing transformers and turbines and filtered by a transporter or at a transfer facility before being returned to its original use are not subject to the used oil processor and re-refiner requirements. As previously discussed, during routine maintenance of oil-bearing transformers and turbines (or similar equipment), the oil in the electrical equipment is removed so that repairs/ maintenance can be performed. In some cases, the used oil is removed from the transformers or turbines in the field and then transported separately in a tanker truck (subject to the used oil transporter standards) to a central location where it is filtered and put back into electrical equipment. As discussed above, under today's rule the filtering of the used oil would not be considered used oil processing provided that the filtered oil is reused in the same or similar manner. And, in these cases (i.e., where the used oil is removed from the equipment and transported to a separate location for filtering), the location at which the oil is filtered would be considered a transfer facility provided that the used oil is stored for more than 24 hours and less than 35 days. If, as sometimes occurs, the used oil is filtered within 24 hours of being stored at the central location (i.e., during transport) the only applicable standards would be the part 279 standards for used oil transporters (i.e., the Sec. 279.45 requirements for used oil storage at transfer facilities would not apply).

Section 279.41(c) of today's rule provides conforming changes to the used oil transportation standards to allow transporters or transfer facilities to filter the used oil without being subject to the used oil processor standards. It should be clearly noted, however, that if the used oil is stored at a site for more than 35 days, greater environmental concerns may be present, so the site would no longer be considered a transfer facility and the processor standards would apply.

In addition, this rule expands the definition of transfer facility to allow used oil to be held at a location (i.e., a transfer facility) temporarily prior to activities that are exempt from or performed pursuant to the part 279 standards as a result of today's rulemaking. Under today's revised definition, used oil can be held at a transfer facility for more than 24 hours but less than 35 days prior to an activity and performed pursuant to Sec. 279.20(b)(2). As a result of this change, a site where used oil that has been drained from oil-bearing transformers and turbines is held for more than 24 hours and less than 35 days prior to being filtered for reuse would be considered a transfer facility.

G. Section 279.46--Tracking Today's rule revises the Sec. 279.46 tracking requirements as they apply to rail transporters. Under amended Sec. 279.46, a signature is not required on records of acceptance or records of delivery of used oil shipments that are exchanged between rail transporters. The Agency is making this change in response to comments submitted by the

railroad industry regarding the impracticability of requiring signed receipts when used oil is transferred from one rail transporter to another. EPA is aware that rail cars are typically transferred from one railroad company to another without the face-to-face contact that occurs in, for example, the motor carrier industry. The Agency also recognizes that, unlike non-rail transporters, railroads rely on sophisticated electronic tracking and information systems for recording rail-to-rail transfer of cargo. Given these unique circumstances, and in light of the fact that 40 CFR 263.20(f) regulations for hazardous waste transporters do not include signature requirements for intermediate rail carriers, EPA agrees that the signature requirements are unduly burdensome and unnecessary when applied to intermediate used oil rail transporters. EPA is therefore revising the used oil regulations to eliminate the Sec. 279.46 signature requirements between intermediate rail carriers.

H. Corrections to the Regulatory Language

1. Requirements for Enforcement Authority

The Agency published a correction notice on May 3, 1993, which amended several sections of the part 279 used oil management standards that were originally promulgated on September 10, 1992. In the May 3, 1993, correction notice, EPA incorrectly amended regulatory Sec. 271.16, that addressed the requirements for States to have adequate criminal enforcement authority for hazardous waste. EPA amended the regulation to include enforcement authority for used oil handlers that manage used oil incorrectly, but EPA inadvertently deleted from Sec. 271.16 enforcement authority for the improper management of hazardous waste. Therefore, today's rule corrects this section to include enforcement authority for the improper management of both hazardous waste and used oil.

2. Rebuttable Presumption

The final used oil regulations published on September 10, 1992, allow persons to rebut the presumption that used oil containing more than 1,000 ppm total halogens is a hazardous waste by using an analytical method from SW-846, Third Edition, to show that the used oil does not contain hazardous waste. In the regulations, the Agency provided information on the cost of SW-846, Edition III and how to obtain it. However, the Agency misquoted the cost of the document. The actual cost was \$319.00 rather than \$110.00 as quoted throughout the September 10, 1992, regulations. To avoid having to amend the regulations as a result of future changes in the cost of the document, the Agency is deleting reference to the cost of SW-846, Edition III from the used oil regulations.

3. Characteristic Hazardous Waste

Today's rule revises Sec. 279.10(b)(2)(iii) by deleting reference to the listing status (under part 261, subpart D) of a hazardous waste that is mixed with used oil. This change is necessary to correct a contradiction in the regulations regarding applicability of the used oil management standards to mixtures of used oil and hazardous waste that is listed in subpart D solely because it exhibits one or more of the characteristics of hazardous waste identified in subpart C. In technical corrections to the used oil management standards published on May 3, 1993, (57 FR 26420), EPA amended Sec. 279.10(b)(2) to correct an error in the September 10, 1992, standards regarding how these mixtures are regulated. At that time, conforming changes should have been, but were not made to Sec. 279.10(b)(2)(iii). As amended by today's rule, Sec. 279.10(b)(2)(iii) correctly provides that mixtures of used oil and hazardous waste that solely exhibits one or more hazardous waste characteristic and mixtures of used oil and hazardous waste that is listed in subpart D solely because it exhibits one or more subpart C hazardous characteristics are regulated as used oil if the mixture is of used oil and a waste which is hazardous solely because it exhibits the characteristic of ignitability and the resultant mixture does not exhibit the characteristic of ignitability.

IV. State Authorization

As explained in the preamble to the May 3, 1993, Technical Correction to the September 10, 1992, rule, EPA is treating the majority of the final used oil management standards in the same manner as "non-HSWA" Subtitle C requirements. The used oil management standards became effective on March 8, 1993, only in those States and Territories that do not have RCRA base program authorization and on Indian lands. States are required to revise their Subtitle C base programs to adopt the new used oil requirements (including those promulgated in today's rule) by July 1, 1994, or by July 1, 1995, if a statutory change is necessary. See 58 FR 26420 and 57 FR 41605.

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). Except for the amendments made to Sec. 279.20(b), the standards promulgated today are less stringent than or reduce the scope of the existing Federal requirements. The amendments made to Sec. 279.20(b) merely provide clarification of the existing used oil regulations and are therefore not considered to be less stringent than the current Federal program. Therefore, with the exception of the provisions added at Sec. 279.20(b)(2)(i), authorized States would not be required to modify their programs to adopt requirements equivalent to or substantially equivalent to the provision listed above.

V. 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 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 a 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 recipient 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."

OMB has exempted this regulatory action from E.O. 12866 review.

VI. Paperwork Reduction Act

The reporting and recordkeeping requirements of part 279 have been approved by OMB and generally assigned the control number 2050-0124 (See 58 FR 34374 (June 25, 1993)), which remains in effect. As today's rule does not impose any new such requirements, a separate information collection request was not prepared.

VII. Regulatory Flexibility Act

Today's rule does not impose any new regulatory requirements, and indeed, decreases the costs of compliance for a number of facilities. I therefore certify that today's rule will not have a significant impact or a substantial number of small entities.

VIII. Administrative Procedures Act

Today's rule takes final action on EPA's 1985 and 1991 proposals to exempt used oil inserted into primary refining processes from the used oil management standards. EPA did not address these issues in its September 10, 1992, final rule, and therefore those proposals remained outstanding until today's rule. Since these issues were fully addressed in those proposals, further public comment on today's rule is unnecessary. The other changes being made in today's rule either correct errors or clarify the language contained in the September 10, 1992 rule. No comment is necessary on these provisions.

List of Subjects

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians--lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 279

Petroleum, Recycling, Reporting and recordkeeping requirements, Used oil.

Dated: February 25, 1994.

Carol M. Browner,
Administrator.

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

PART 271--REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

2. Section 271.16 is amended by revising paragraph (a)(3)(ii) to read as follows:

Sec. 271.16 Requirements for enforcement authority.

(a) * * *

(3) * * *

(ii) Criminal remedies shall be obtainable against any person who knowingly transports any hazardous waste to an unpermitted facility; who treats, stores, or disposes of hazardous waste without a permit; who knowingly transports, treats, stores, disposes, recycles, causes to be transported, or otherwise handles any used oil regulated by EPA under section 3014 of RCRA that is not listed or identified as a hazardous waste under the state's hazardous

waste program in violation of standards or regulations for management of such used oil; or who makes any false statement, or representation in any application, label, manifest, record, report, permit or other document filed, maintained, or used for purposes of program compliance (including compliance with any standards or regulations for used oil regulated by EPA under section 3014 of RCRA that is not listed or identified as hazardous waste). Criminal fines shall be recoverable in at least the amount of \$10,000 per day for each violation, and imprisonment for at least six months shall be available.

* * * * *

PART 279--STANDARDS FOR THE MANAGEMENT OF USED OIL

3. 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(c) of CERCLA (42 U.S.C. 9601(37) and 9614(c)).

4. In Sec. 279.1 the definition of "Petroleum refining facility" is added in alphabetical order and the definition of "Used oil transfer facility" is revised to read as follows:

Sec. 279.1 Definitions.

* * * * *

Petroleum refining facility means an establishment primarily engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, and lubricants, through fractionation, straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking or other processes (i.e., facilities classified as SIC 2911).

* * * * *

Used oil transfer facility means any transportation related facility including loading docks, parking areas, storage areas and other areas where shipments of used oil are held for more than 24 hours and not longer than 35 days during the normal course of transportation or prior to an activity performed pursuant to Sec. 279.20(b)(2). Transfer facilities that store used oil for more than 35 days are subject to regulation under subpart F of this part.

Sec. 279.10 [Amended]

5. Section 279.10(b)(1)(ii) is amended by removing the phrase "for the cost of \$110.00."

6. Section 279.10 is amended by revising paragraphs (b)(2)(iii) and (g) to read as follows:

Sec. 279.10 Applicability.

* * * * *

(b) * * *

(2) * * *

(iii) Regulation as used oil under this part, if the mixture is of used oil and a waste which is hazardous solely because it exhibits the characteristic of ignitability (e.g., ignitable-only mineral spirits), provided that the resultant mixture does not exhibit the characteristic of ignitability under Sec. 261.21 of this chapter.

* * * * *

(g) Used oil introduced into crude oil pipelines or a petroleum refining facility. (1) Used oil mixed with crude oil or natural gas liquids (e.g., in a production separator or crude oil stock tank) for insertion into a crude oil pipeline is exempt from the requirements of this part. The used oil is subject to the requirements of this part prior to the mixing of used oil with crude oil or natural gas liquids.

(2) Mixtures of used oil and crude oil or natural gas liquids containing less than 1% used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking are exempt from the requirements of this part.

(3) Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of this part provided that the used oil constitutes less than 1% of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this part.

(4) Except as provided in paragraph (g)(5) of this section, used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of this part only if the used oil meets the specification of Sec. 279.11. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this part.

(5) Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as part of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of this part. This exemption does not extend to used oil which is intentionally introduced into a hydrocarbon recovery system (e.g., by pouring collected used oil into the waste water treatment system).

(6) Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of this part.

* * * * *

7. Section 279.20 is amended by revising paragraph (b)(2) to read as follows:

Sec. 279.20 Applicability.

* * * * *

(b) * * *

(2) (i) Except as provided in paragraph (b)(2)(ii) of this section, generators who process or re-refine used oil must also comply with subpart F of this part.

(ii) Generators who perform the following activities are not processors provided that the used oil is generated on-site and is not being sent off-site to a burner of on- or off-specification used oil fuel.

(A) Filtering, cleaning, or otherwise reconditioning used oil before returning it for reuse by the generator;

(B) Separating used oil from wastewater generated on-site to make the wastewater acceptable for discharge or reuse pursuant to section 402 or section 307(b) of the Clean Water Act or other applicable Federal or state regulations governing the management or discharge of wastewaters;

(C) Using oil mist collectors to remove small droplets of used oil from in-plant air to make plant air suitable for continued recirculation;

(D) Draining or otherwise removing used oil from materials containing or otherwise contaminated with used oil in order to remove excessive oil to the extent possible pursuant to Sec. 279.10(c); or

(E) Filtering, separating or otherwise reconditioning used oil before burning it in a space heater pursuant to Sec. 279.23.

* * * * *

8. Section 279.41 is amended by adding paragraph (c) to read as follows:

Sec. 279.41 Restrictions on transporters who are not also processors or re-refiners.

* * * * *

(c) Transporters of used oil that is removed from oil bearing electrical transformers and turbines and filtered by the transporter or at a transfer facility prior to being returned to its original use are not subject to the processor/re-refiner requirements in subpart F of this part.

Sec. 279.44 [Amended]

9. Section 279.44(c) introductory text is amended by removing the phrase ``for the cost of \$110.00."

10. Section 279.46 is amended by revising paragraphs (a)(5) and (b)(5) to read as follows:

Sec. 279.46 Tracking.

* * * * *

(a) * * *

(5) (i) Except as provided in paragraph (a)(5)(ii) of this section, the signature, dated upon receipt of the used oil, of a representative of the generator, transporter, or processor/re-refiner who provided the used oil for transport.

(ii) Intermediate rail transporters are not required to sign the record of acceptance.

(b) * * *

(5) (i) Except as provided in paragraph (b)(5)(ii) of this section, the signature, dated upon receipt of the used oil, of a representative of the receiving facility or transporter.

(ii) Intermediate rail transporters are not required to sign the record of delivery.

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Sec. 279.53 [Amended]

11. Section 279.53(c) introductory text is amended by removing the phrase ``for the cost of \$110.00."

Sec. 279.63 [Amended]

12. Section 279.63(c) is amended by removing the phrase ``for the cost of \$110.00."

[FR Doc. 94-4818 Filed 3-3-94; 8:45 am]
BILLING CODE 6560-50-P

Footnote:

¹ A used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulations. For example, generators include all persons and businesses who produce used oil through commercial or industrial operations and vehicle services, including government agencies, and/or persons and businesses who collect used oil from households and ``do-it-yourself" oil changes.

NOTES