ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH-FRL-3904-5/EPA/OSW-FR-91-005]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristic

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule with request for comments.

SUMMARY: On March 29, 1990, the Environmental Protection Agency (EPA) promulgated revisions to the toxicity characteristic, one of several characteristics used to identify waste regulated as hazardous under Subtitle C of the Resource Conservation and Recovery Act (RCRA). Since the promulgation of the Toxicity Characteristic (TC), the Agency has received information that the rule's immediate application may cause certain used chlorofluorocarbon (CFC) refrigerants to be subject to hazardous waste regulations because they exhibit the TC. EPA is concerned that subjecting used CFC refrigerants to Subtitle C regulations will promote continued or increased venting, increasing the levels of ozone-depleting substances in the stratosphere. As a result of this new information and to allow time for gathering additional information and giving all relevant facts careful consideration, the Agency is promulgating today's interim final rule to suspend the TC rule for used refrigerants which exhibit the toxicity characteristic and which are recycled. The exemption only applies if the refrigerants are reclaimed for reuse. At the same time, the Agency is seeking public comment on the merits of this suspension.

DATES: *Effective Date:* February 5, 1991. *Comment Date:* Comments must be submitted on or before April 1, 1991.

ADDRESSES: The public must send an original and two copies of their comments to: RCRA Docket Information Center (OS-305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Place the docket number F-91-CFIF-FFFFF on your comments. The EPA RCRA docket is located at: EPA RCRA Docket (room M2427), 401 M Street SW., Washington, DC 20406.

The docket is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. Call (202) 475-9327 for appointments. Copies of docket materials cost $0.15/page.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact the RCRA/Superfund Hotline at (800) 424-9346 toll free, or (703) 920-9810 in the Washington, DC, metropolitan area. For information on specific aspects of this notice, contact Becky Cuthbertson, Regulatory Development Branch, Office of Solid Waste (OS-332), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-8551.

SUPPLEMENTARY INFORMATION:

Outline of Today's Notice

I. Background

A. Refrigeration System Operations

Vapor compression refrigeration systems typically use CFC refrigerants as the working fluid. The most common refrigerants include CFC-11, 12, 114, 502 and HCFC-22. These cycles are closed systems, relying on the ability to continually compress and evaporate the refrigerants to provide the proper heat transfer for cooling.

CFC-11 is typically a liquid at room temperature, but because its boiling point is around 75 °F, it volatilizes easily. An infrequently used refrigerant, CFC-113, also has a high boiling point (117 °F). However, the other more common refrigerants, such as CFC-12 and HCFC-22, have very low boiling points (−21 and −41 degrees F respectively), which cause them to immediately volatilize; therefore, they are not likely to leach from wastes into groundwater in any measurable quantities.

Refrigerants, as the working fluid of a mechanical cooling process, are not deliberately vented or removed from the system, unless the systems are being tested, serviced, maintained, retired, or retrofitted to use new CFC alternatives. In order to service the refrigeration hardware, the closed refrigeration loop must be opened. Because of the rapid volatilization of CFC refrigerants when they are released from the closed refrigerant system, traditional service and maintenance procedures involved venting the refrigerant. However, because of environmental concern regarding ozone depletion, recent international regulations phasing out production of CFCs, (see London Amendments to the Montreal Protocol) and increased price and decreased CFC availability, service technicians are beginning to capture and reuse refrigerant.

B. RCRA Applicability

RCRA regulations apply to materials that are solid wastes (including solids, liquids, semi-solids, and contained gases), as that term is defined in 40 CFR 261.2. Used Refrigerants are considered spent materials, and if reclaimed, are solid wastes under 40 CFR 261.2(c)(3). However, a limited subset of used refrigerant, i.e., those which are used or reused without prior reclamation, are not subject to regulation under the RCRA hazardous waste program (see 40 CFR 261.2(e)(1)(ii)).

On March 29, 1990 (55 FR 11798), EPA promulgated the Toxicity Characteristic to replace the EP toxicity characteristic. (The TC went into effect September 25, 1990.) The Toxicity Characteristic is used to identify solid wastes which are identified as hazardous based on the presence of constituents that may leach from the waste. The TC expanded the range of wastes subject to subtitle C (hazardous waste) controls, because a number of constituents not regulated under the EP toxicity characteristic, which it replaced, were included in the TC.

Two of the new TC constituents may be present in certain used refrigerants (e.g., those containing CFC-11) and are likely to leach from the waste at levels that may cause the used refrigerants to be subject to the federal hazardous waste regulations. The two constituents which are of concern in CFC-11 are carbon tetrachloride, which is present in used CFC-11 refrigerant at levels of 25-115 mg/l, and chloroform, present in used CFC-11 refrigerant at levels of 6-52 mg/l. (The TC regulatory level for

carbon tetrachloride is 0.5 mg/l, and for chloroform, it is 6.0 mg/l.) These contaminants are present in low levels in the manufacturing raw feedstock required to produce CFC–11 and are left over in used CFC–11 and remain as residuals in used CFC–11. Thus when the refrigerant is removed from the refrigeration system, it may contain carbon tetrachloride and/or chloroform at levels that cause it to exhibit the characteristic of toxicity. See the data provided in the August 29, 1990 letter from C.A. McCain of E.I. DuPont de Nemours and Co., to Ms. Lena Nirk of EPA, available for public viewing in the docket for this notice.

For the data on CFC–11 provided in the docket, there is no documentation of the analytical methods or quality control/quality assurance procedures used. We also do not have data on other CFC refrigerants, e.g., CFC–113. EPA solicits comments on whether other data are available that can be used to determine whether used CFC refrigerants are TC hazardous. EPA also solicits comment on whether the suspension should be extended to hydrofluorocarbon (HFC) refrigerants, which are being used as refrigerants (for example, in mobile air conditioning systems); EPA has no data at all on whether HFCs would exhibit any hazardous waste characteristics when removed from refrigeration systems.

C. Previous EPA Actions on Refrigerants

The issue of RCRA applicability to refrigerants being recycled has been discussed previously; see the July 28, 1989 **Federal Register** notice (54 FR 31335) describing the status of recycled refrigerants under the 1989 Federal hazardous waste regulations. Under the regulations in place from 1980 to 1990, recycled refrigerants were unlikely to be Federally regulated as hazardous wastes because they would not have exhibited any of the characteristics of hazardous waste, nor did they fit any of the hazardous waste listing descriptions. However, as discussed above, the TC regulation promulgated on March 29, 1990, which added new constituents to the Toxicity Characteristic, may change the RCRA regulatory status of those recycled refrigerants containing carbon tetrachloride or other Toxicity Characteristic constituents.

No commenters on the original Toxicity Characteristic proposal raised the issue of possible negative impacts on recycling of used refrigerants if they were to become regulated as hazardous wastes. One reason this may have occurred is that at the time of the original TC proposal (June 13, 1986; see 51 FR 21648) most refrigerants were being vented and recycling was not feasible.

EPA has taken a related action under the Clean Air Act by issuing an Advanced Notice of Proposed Rulemaking (ANPRM) on May 1, 1990 (55 FR 18258) to develop a national CFC and halon recycling program. Some commenters on that notice raised concerns about RCRA applicability to recycled refrigerants and described potential disruption of recycling markets if refrigerant is managed as a hazardous waste under RCRA. However, the commenters did not specifically mention the Toxicity Characteristic.

D. Regulations under the Clean Air Act

The recently enacted amendments to the Clean Air Act require EPA, by 1992, to issue regulations regarding the use and disposal of certain CFCs in appliances and industrial process refrigeration units. The regulations must include requirements to maximize recapture and recycling and ensure safe disposal. The amendments, as a general rule, also prohibit venting of certain CFCs to the environment.

The new Clean Air Act authority is the Agency's best available tool to limit CFC emissions. The Clean Air Act authority enables the Agency to regulate the handling, recycling, reuse and disposal of CFCs by refrigerant recyclers, service technicians and equipment owners and manufacturers. When EPA proposes and finalizes a prohibition on venting chlorofluorocarbons under the Clean Air Act, and the prohibition becomes effective, the Agency will reconsider the issue of RCRA applicability to used CFC refrigerants being recycled.

II. Application of Existing Regulatory Framework

A. Definition of Solid Waste

One of the first questions that arises in determining RCRA applicability to refrigeration system maintenance and repair is whether a material is a solid waste. The hazardous waste regulations of RCRA Subtitle C apply to materials that are "solid wastes," which are defined in RCRA section 1004(27) as

> * * * discarded material including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities * * *

Contained gases thus clearly are solid wastes under RCRA, whereas uncontained gases not associated with solid waste management units are outside of RCRA.

As stated in the July 28, 1989 **Federal Register** (54 FR 31336), EPA's regulations classify the used refrigerants as spent materials that are solid wastes when reclaimed. (The refrigerants must be collected as a contained gas under this scenario.) See 40 CFR 261.2(c)(3). If the waste also exhibits a characteristic of a hazardous waste, it is a hazardous waste in addition to being a solid waste. Thus, the equipment servicer who must remove the chlorofluorocarbon refrigerants in order to service the equipment must decide whether to vent them (and thus avoid hazardous waste regulatory requirements) or collect them and possibly be required to manage them as hazardous wastes. EPA is concerned that, if the refrigerants are regulated as hazardous wastes, most servicers will vent the material rather than collect it for recycling.

B. Refrigerant Handlers' RCRA Requirements

This section presents the hazardous waste requirements for handlers of used CFC refrigerants being reclaimed, if those used CFC refrigerants were to be classified as hazardous wastes because they exhibit the Toxicity Characteristic. The requirements described here are suspended by today's action (discussed further in section IV of this notice).

Currently, the owners of refrigeration equipment using CFC refrigerant as the heat transfer fluid are considered hazardous waste generators if the used CFC refrigerant exhibits the characteristic of Toxicity, and if they collect the used CFC refrigerant for reclamation or disposal. In addition, parties who repair or maintain the refrigeration equipment under contract with the equipment owners would be "co-generators" if their actions produced hazardous waste, or caused it to be subject to regulation (see 45 FR 72026, October 30, 1990). Parties co-generating hazardous waste must arrange among themselves who is to take responsibility for managing the hazardous waste, although all parties remain potentially liable for hazardous waste mismanagement.

As of September 25, 1990, generators who generate more than 1000 kg of hazardous waste per month must manage their TC hazardous wastes according to the requirements in 40 CFR parts 261 and 262 and other relevant parts of the hazardous waste regulations. For generators of 100–1000 kg of hazardous waste per month, the effective date for managing TC hazardous wastes according to the hazardous waste requirements is March 29, 1991. (Generators of less than 100 kg

hazardous waste per month are conditionally exempt from hazardous waste management standards.)

In a scenario in which the refrigeration equipment servicer collects the CFC refrigerant and transports it from a large quantity generator's site for recycling, that servicer acts as a transporter (in addition to being a co-generator) and must comply with the requirements in 40 CFR part 263 if the used CFC refrigerant exhibits a hazardous waste characteristic. Transporters may hold hazardous wastes at "transfer facilities" for up to ten days, consistent with activities undertaken in the normal course of transportation, without needing a RCRA storage permit.

As of September 25, 1990, the recycling facility accepting CFC refrigerants that are hazardous wastes from large quantity generators (greater than 1000 kg/month) must meet the definition of a "designated facility," which requires that the facility either has a permit or interim status, or meets certain other conditions as a recycling facility (see 40 CFR 260.10 for the definition of designated facility).

III. Issues Arising From the TC Rule

A. Impacts on Recycling Markets

EPA has received information since promulgation of the TC indicating that certain companies currently recycling CFC refrigerants may stop doing so if they must manage the CFC refrigerants as hazardous wastes. See Items No. 2–7 in the public docket for this notice. These companies and other groups generally cite the cost and complexity of the hazardous waste regulations, along with specific RCRA requirements such as manifesting, and other requirements that may be imposed at the local level as a result of the hazardous waste requirements (i.e., rezoning refrigerant distribution centers as hazardous waste transfer stations), as reasons that recycling will diminish or cease. Although EPA is still evaluating the merits of the arguments presented by the parties submitting this information, EPA is concerned that some of the results suggested may cause serious environmental harm, the nature and significance of which EPA did not explore during the TC rulemaking. EPA is concerned that the increased requirements associated with regulating refrigerants as hazardous wastes will result in increased venting. EPA has not considered the feasibility of administrative options to reduce the impacts on recycling of these materials under current RCRA regulations. Therefore, EPA is suspending application of the rule in order to have time to evaluate these issues.

In order to evaluate these issues, EPA is soliciting public comment on whether handling used CFC refrigerants as a hazardous waste is causing or will cause a decrease in current recycling rates, and whether the decrease (if any) is or will be occurring for the reasons these parties put forward, or for other reasons.

To assess the potential impacts of the hazardous waste regulations on used CFC refrigerant recycling, EPA will consider information on the universe of used CFC refrigerant handlers (numbers of facilities reclaiming, number of facilities that use the CFC–11 and other refrigerants and would be classified as generators if the CFC refrigerants were hazardous wastes, and how many transporters there are currently). Finally, EPA is soliciting comment on whether the concerns can be redressed by phased compliance rather than exemption, and on whether alternative approaches (such as streamlined permitting, or reduced manifesting requirements) could be used to reduce any adverse recycling impact of RCRA regulations.

Under RCRA, there is a requirement to obtain a permit prior to beginning construction of a new hazardous waste management facility (if the facility did not manage hazardous wastes prior to the effective date of regulations for those hazardous wastes—see 40 CFR 270.10(f)). This requirement exists for facilities that intend to treat, store, or dispose of hazardous wastes from generators other than conditionally exempt small quantity generators. (In the case of used CFC refrigerants, if such facilities had begun storing and reclaiming used CFC refrigerants prior to September 25, 1990, and met certain other requirements, they would be able to obtain "interim status" and would have been able to continue storing and reclaiming after September 25. However, it appears that few parties were aware of the TC's potential application to used CFC refrigerants.) EPA believes that this requirement may act as a deterrent to firms contemplating entering the CFC reclamation market after the effective date of the TC rules. EPA notes that the preceding discussion applies only to the facilities actually conducting the reclamation or reprocessing of the refrigerants, and not to all refrigeration equipment owners who have used refrigerants that can be reclaimed.

In addition to potential requirements on reclaimed refrigerants, other factors may be influencing the reclamation/reprocessing firms' decision to enter the CFC refrigerant recycling market. Because of the ease with which equipment servicers can vent, as opposed to collect, used CFC refrigerants, and the low cost and ready availability of refrigerant, recycling has not been common in the past. (Equipment design, including the ability to attach devices to collect the refrigerant, may also influence the equipment servicer's decision.) In order to increase recycling rates, the refrigeration industry must contend with both the need to change the equipment servicers' behavior, and the need to change some equipment design.

However, the recent (July 1989) implementation of Phase I of the Montreal Protocol reduces CFC supplies by over 20%, resulting in price increases. In addition, a tax on chemicals that deplete the ozone layer further increases the price and provides incentives to collect used CFC for recycling; this tax is scheduled to increase yearly.[1] The current price of CFCs are at the margin at which recycling becomes economically feasible. If used refrigerant is regulated as a RCRA hazardous waste, the cost of recycling is likely to increase enough to make recycling economically less attractive. Since venting is not currently prohibited, venting is likely to continue to occur until the economics of recycling improve, or regulations prohibiting the venting go into effect.

B. Impacts on an Orderly CFC Phaseout and Transition to CFC Substitutes

The Agency is concerned that if recycling is not practiced due to the increased costs of recycling that results from handling the used CFC refrigerants as RCRA hazardous wastes, industry may begin using other, more environmentally costly practices. These practices could include premature retirement of CFC-using equipment or retrofitting that equipment to work with alternatives. A premature retrofit to an alternative that has not yet been completely evaluated may result in the wrong refrigerant choice, leading to negative environmental impacts. The Agency is currently evaluating the toxicity, global warming potential, energy efficiency, safety, flammability, ozone depletion and materials compatibility of various alternative refrigerants. Many of the results will not be available until 1991–1994, and thus, information is not currently available to completely identify alternatives which

[1] EPA analysis indicates that the cost of recycling is approximately $2 per weighted kilogram of CFC (see the Advance Notice of Proposed Rulemaking dated May 1, 1990, 55 FR 18259).

satisfy all environmental, health, and safety concerns. For instance, a premature selection of an alternative that is less energy efficient would result in increases in carbon dioxide and other air pollutants which may cause increases in global warming.

Recycling CFCs provides the opportunity for industry to postpone or even avoid entirely the need to retire prematurely or retrofit equipment. The Agency estimates that a recycling program in the major air conditioning and refrigeration sectors, fully implemented by the early 1990's, could result in a net saving of over 159,000 metric tons of CFCs by the year 2000. Complying with RCRA regulations may increase venting of CFC refrigerants, and thus increase the cost of the Agency's CFC phaseout regulations. The Agency discussed the potential for increasing the costs of a recycling program if there are delays in its implementation in an advance notice of proposed rulemaking published on May 1, 1990 (55 FR 18256).

C. Environmental Concerns

In the ANPRM of May 1, 1990 (55 FR 18256), the Agency described the human health and environmental risks of CFCs. An EPA analysis shows that chlorine levels will continue to increase from current levels of 3.0 to about 4.0 parts per billion (ppb) despite a phaseout in production of controlled substances by the year 2000. The Antarctic ozone hole was discovered at chlorine levels of approximately 2.5 ppb; natural chlorine levels are .7 ppb. Earlier reductions in CFCs before 2000 would reduce the environmental risks (described below) even as chlorine levels continue to increase over the next decade.

The largest environmental impact from emissions of CFCs comes from the chlorine's ability to deplete the ozone layer, and thereby increasing the amount of ultraviolet radiation reaching the earth's surface. EPA believes that an increase in UV radiation will result in increased deaths from skin cancer, increased incidence of cataracts, reduction in the function of the body's immune system, and damage to crops. CFCs are also suspected greenhouse gases.

Recycling provides an opportunity to delay or reduce the increase in chlorine levels. Indeed, estimates based on preliminary EPA analysis of a proposed recycling program indicate that one-third of all CFCs could be recycled by the turn of the century. Recycling may reduce the peak rate of chlorine loading to the stratosphere.

The Agency is currently investigating the impact that recycled CFCs may have on the ozone layer. Since these chemicals are difficult to destroy, it is likely that they will be eventually released although at a later point in time.[2] EPA is investigating the impact of their eventual release on peak chlorine concentrations. Recent scientific evidence suggests that a reduction of the peak chlorine concentrations may more than proportionally reduce ozone depletion.[3] It is likely that delayed or reduced release of CFCs due to recycling over the next 30 to 40 years will lower the peak of chlorine concentration.

The Agency is promulgating today's interim final rule with the belief that this action will encourage used refrigerant recycling. EPA is interested in hearing from commenters who have evidence on the effect of this exemption. EPA is also interested in evidence of harmful environmental or health effects other than those discussed in this rulemaking. Because EPA is attempting to balance the potential environmental harm caused by disruption to emerging refrigerant recycling markets against the potential environmental harm caused by removing this wastestream from RCRA subtitle C regulatory control, EPA is asking for commenters to provide any available information to aid in evaluating the human health and environmental effects of these actions.

D. Time Considerations

Of paramount concern to the Agency is mitigating the potential for significant adverse health and environmental impacts, as discussed above, while investigating these issues further. Under the Clean Air Act amendments, a prohibition on venting must become effective by July 1, 1992. Thus because of the potential seriousness of the risks posed by CFC refrigerant venting, EPA believes that immediate action to temporarily postpone the RCRA regulation of these materials pending further investigation is warranted to mitigate the potential health and environmental effects. EPA is exercising its authority under the good cause exemptions in sections 553(b)(3) and 553(d)(3) of the Administrative Procedure Act to immediately suspend the requirements imposed as a result of the TC for CFC refrigerants being recycled. EPA believes that, without the immediate suspension, recycling of CFC refrigerants may decrease substantially, with potentially serious impacts on stratospheric ozone levels that are contrary to the public's best interest.

IV. Suspension of TC Requirements

A. Eligible Refrigerants

The refrigerants that are eligible for this exemption are those chlorofluorocarbons that are recycled and that were used as the heat transfer fluid in a refrigeration cycle in totally enclosed heat transfer equipment. These chlorofluorocarbons include CFC–11, CFC–113, and the other chlorofluorocarbon refrigerants, including HCFCs. Examples of the equipment in which these chlorofluorocarbons may be used include mobile air conditioning systems (e.g., those used in mass transit vehicles), mobile refrigeration (refrigerated trucks and rail cars), and commercial and industrial air conditioning and refrigeration systems. The requirements imposed by the TC are suspended for such refrigerants by today's interim final action. The spent CFCs that are being reclaimed will not be regulated as a Federal hazardous waste as a result of today's action (unless a future determination to do so is made). Thus, the hazardous waste regulatory requirements for generators, transporters, and recyclers of used chlorofluorocarbons that are being reclaimed (discussed in section II.B. of this notice) are suspended, effective February 5, 1991.

B. Rationale for Suspension

As a result of the new information provided in this notice, and to allow adequate time to collect additional data and give careful consideration to all the relevant issues and regulatory options, the Agency is today promulgating an interim final rule that suspends the TC rule for handlers of used CFC refrigerants being recycled. The suspension will allow time for individuals to submit comments on the various issues raised in this proposal, and it will allow the Agency time to consider all information concerning these operations. Had the Agency been aware of this issue during the comment period on the TC proposal, the Agency would have carefully considered the impacts and consequences of the TC and determined the appropriate action at that time. Faced with new information concerning the potential adverse environmental impacts caused by the TC, EPA weighed the benefits of

[2] The Agency is assessing the possibility that such chemicals could either be destroyed or transformed into other chemicals at a later date, thus diminishing their eventual impact on the ozone layer.

[3] U.S. Environmental Protection Agency. "Analysis of Environmental Implications of the Future Growth in Demand for Partially Halogenated Chlorinated Compounds", EPA 400/190001, January 1990.

the rule as applied to CFC refrigerants against the potential public health consequences of applying the rule to CFC refrigerants in the interim while EPA considers the new information. In this case, due to the environmental and health consequences from ozone depletion, EPA believes that the public interest may be better served by suspending the rule to evaluate the consequences. EPA solicits public comment on its decision to suspend the TC regulation for used CFC refrigerants being reclaimed.

V. State Authorization

A. Applicability of Rules in Authorized States

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

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law. In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

B. Effect on State Authorizations

EPA considers this rule to be part of the TC rule, and thus also a HSWA rule. As a result, EPA will implement the provisions of today's rule in authorized States until their programs are modified to adopt the final toxicity characteristic and the modification is approved by EPA. Implementation of today's rule beyond the date of a State's receiving final authorization for the toxicity characteristic depends upon actions taken by the State, as discussed below. EPA will implement the provisions of today's rule in unauthorized States.

Today's rule suspends the requirements imposed in the final Toxicity Characteristic regulation (see 55 FR 11798, March 29, 1990) for certain CFC refrigerants being recycled. The Toxicity Characteristic was promulgated pursuant to a HSWA provision and must be adopted by States which intend to retain final authorization. However, today's rule provides for a standard which is narrower in scope than would be imposed in the final Toxicity Characteristic for certain CFC refrigerants which may fail the characteristic and are recycled. In order to promote recycling operations, today's rule provides that these wastes would not be hazardous wastes under the Federal regulations, and States would not be required to mandate their management as such in order to retain their RCRA authorization. However, Section 3009 of RCRA provides that States may impose requirements that are broader in scope or more stringent than those imposed under Federal regulations. States, whether using RCRA authorities (e.g., authorities under State law where States have received final authorization to implement the toxicity characteristic provisions in lieu of their implementation by EPA), or other State authorities under other statutes, may impose hazardous waste requirements on such operations, or may require other more stringent conditions upon management of these wastes.

VI. Additional Information

A. Executive Order 12291—Regulatory Impacts

Under Executive Order 12291, EPA must determine whether a regulation is "major," and therefore subject to the requirement of a Regulatory Impact Analysis. The overall effect of today's rule would be to suspend requirements imposed by the final Toxicity Characteristic rule for certain CFC refrigerant recycling operations. There are no sampling or analysis requirements in today's rule. The net effect of this rule is to extend cost savings to certain segments of the potentially regulated community. Consequently, no regulatory impact analysis is required.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a General Notice of Rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the Agency certifies that the rule will not have a significant impact on a substantial number of small entities.

The suspension of the Toxicity Characteristic requirements for certain limited CFC recycling activities in this rule is deregulatory in nature and thus will only provide beneficial opportunities for entities that may be affected by the rule. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

C. Paperwork Reduction Act

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

VII. References

Copies of the following documents are available for viewing only in the OSW docket room:

1. August 29, 1990 letter from C.A. McCain of E.I. du Pont de Nemours & Company to Lena Nirk of EPA.

2. September 24, 1990 letter from Kevin J. Fay of the Alliance for Responsible CFC Policy to Sylvia Lowrance of EPA.

3. September 24, 1990 letter from Gerald Hapka of du Pont to Steve Cochran of EPA.

4. September 4, 1990 letter from Lorraine Segala-Long of Omega Recovery Services to Steve Seidel and Jean Lupinacci of EPA.

5. September 4, 1990 letter from William Chaisson of the Air Conditioning Contractors of America to Sylvia Lowrance of EPA.

6. September 24, 1990 letter from James Patrick Leonard of National Refrigerants to Sylvia Lowrance of EPA.

7. September 24, 1990 letter from James Patrick Leonard of United Refrigeration Inc. to Sylvia Lowrance of EPA.

8. Properties—du Pont Freon® Refrigerants (August 1986).

9. Scientific Assessment of Stratospheric Ozone: 1989 (July 14, 1989).

10. Status of Used Refrigerants under 40 CFR 261.2—Memorandum to the Docket from Michael Petruska, Acting Chief, Waste Characterization Branch (October 18, 1990).

11. October 12, 1990 letter from Harold J. See of C.F.C. Inc. to EPA's Asbestos and Small Business Ombudsman.

12. September 7, 1990 information from du Pont on Used CFC Refrigerants.

13. U.S. Environmental Protection Agency. "Analysis of Environmental Implications of the Future Growth in Demand for Partially Halogenated Chlorinated Compounds." EPA 400/190001, January, 1990.

List of Subjects in 40 CFR Part 261

Administrative practice and procedure, Air pollution control, Hazardous materials transportation, Hazardous substances, Hazardous waste, Natural resources, Penalties, Recycling, Waste treatment and disposal.

Dated: February 5, 1991.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, title 40, chapter 1 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

2. Section 261.4 is amended by adding paragraph (b)(12) to read as follows:

§ 261.4 Exclusions.

* * * * *

(b) * * *

(12) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

* * * * *

[FR Doc. 91-3449 Filed 2-12-91; 8:45 am]

BILLING CODE 6560-50