List of Subjects in 40 CFR Part 170

Administrative Practice and Procedures, Occupational Safety and Health, Pesticides and Pests.

Dated: December 16, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 94–32116 Filed 12–28–94; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Parts 261, 266, and 268

[SW–FRL–5127–2]

RIN 2050–AE15

Standards for the Management and Use of Slag Residues Derived From HTMR Treatment of K061, K062, and F006 Wastes

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is proposing to allow materials resulting from the treatment of certain hazardous wastes to be used as a product in road construction and as an anti-skid/deicing material on road surfaces. These materials are residues ("slags") generated from the treatment of pollution control dusts resulting from scrap metal recycling (electric arc furnace dust). The Agency evaluated the potential risks that might arise from the use of these "slags" and determined that these uses do not present a significant risk. This action would reclassify these treated materials as nonhazardous and allow these uses, but only if the toxic metals in the waste are reduced to safe levels by treatment.

The Agency is proposing this action to clarify two seemingly inconsistent parts of the regulations governing residual materials generated from the treatment of hazardous wastes. This rule clarifies what uses of the treatment residues are allowed, and specifies what conditions must be met for these materials to be used in this manner. Furthermore, this action partially fulfills a settlement agreement entered into by the Agency with the Natural Resources Defense Council (NRDC) and the Hazardous Waste Treatment Council (HWTC) to resolve the apparent inconsistency in the regulations.

The Agency believes these proposed actions will promote recycling and resource recovery in two ways. This action will directly encourage the recovery of metals from the hazardous electric arc furnace dust and other metal wastes by allowing the "slag" residuals to be used in a beneficial and environmentally sound way. Furthermore, this proposed rule will encourage the recycling of scrap metal by helping to reduce the costs that result from the treatment and disposal of the electric arc furnace dust. The Agency believes that this rule would satisfy the goals of resource recovery, while also ensuring protection of human health and the environment.

DATES: EPA will accept public comments on this proposed rule until February 13, 1995. Comments postmarked after this date will be marked "late" and may not be considered.

ADDRESSES: The public must send an original and two copies of their comments to EPA RCRA Docket Number F–94–SRTP–FFFFF room 2616 (Mail Code 5305), 401 M Street S.W., Washington, DC 20460. The docket is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, except on Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327 A maximum of 100 pages may be copied at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 412–9810. For specific questions concerning this notice, contact Narendra Chaudhari, Office of Solid Waste (Mail Code 5304), U.S. Environmental Protection Agency 401 M Street, S.W., Washington, DC 20460, (202) 260–4787

SUPPLEMENTARY INFORMATION:

I. Background

A. Existing Regulations for Hazardous Wastes Used in a Manner Constituting Disposal

Currently, hazardous wastes that are used in a manner constituting disposal (applied to or placed on land), including waste-derived products that are produced in whole or in part from hazardous wastes and used in a manner constituting disposal, are not subject to hazardous waste disposal regulations provided the products produced meet two conditions. First, the hazardous wastes must undergo a chemical reaction in the course of becoming products so as to be inseparable by physical means (see § 266.20(b)). A second condition for exemption is that the waste-derived products must meet best demonstrated available technology (BDAT) treatment standards under the land disposal restrictions program for every prohibited hazardous waste that they contain before they are placed on land (see § 266.20(b)).

The exemption in § 266.20 is used for slag residues (slags) generated from the treatment of hazardous waste K061 (and, to a limited extent, K062 and F006) using high temperature metal recovery (HTMR) processes. Section 266.20 is applicable because the majority of this slag is used in highway construction materials (e.g., as road subbase), and a limited amount is also used by directly applying it to road surfaces (i.e., top grade and as an anti-skid or deicing agent). (See 56 FR 15020, April 12, 1991.)

On August 19, 1991 and August 18, 1992 (see 56 FR 41164 and 57 FR 37194), EPA finalized "generic exclusions" for nonwastewater slag residues generated from the HTMR treatment of several metal-bearing hazardous wastes (K061, K062, and F006). These HTMR slag residues are excluded from the hazardous waste regulations provided they meet designated concentration levels (generic exclusion levels) for 13 metals, are disposed of in Subtitle D units, and exhibit no characteristics of hazardous waste (see § 261.3(c)(2)(ii)(C)). The generic exclusion levels for the metals were based on the use of the EPA Composite Model for Landfills (EPACML), which predicts the potential for groundwater contamination from wastes that are placed in a landfill. EPA limited the generic exclusion to resrdues disposed of in a Subtitle D unit because, at that time, the Agency could not properly evaluate concerns over potential releases to other media resulting from uses of the HTMR slag as product, especially as an anti-skid material on road surfaces (see 56 FR 41164, August 19,1991).

As EPA noted in the final rule for the initial generic exclusion for K061 residues (see 56 FR 41164, August 19, 1991), the use of HTMR residues as anti-skid material was not prohibited, provided the residue meets the exemption conditions given in § 266.20. EPA also noted in the same notice that it would further evaluate the uses of K061 HTMR residues that constitute disposal, and would consider amendments to § 266.20 for HTMR slags that might require further controls on such uses.

B. Summary of Petition and Settlement Agreement

The Natural Resources Defense Council (NRDC) and the Hazardous Waste Treatment Council (HWTC) filed a petition for review challenging EPA's

decision not to apply "generic exclusion levels"—levels at which K061 slags are deemed nonhazardous—to K061 slags used as waste-derived "products" and applied to or placed on land. The generic exclusion levels established for some metals in the K061 HTMR slags are lower than the BDAT standards that apply to K061. Therefore, while the generic exclusion requires that the nonhazardous K061 slag that meets exclusion levels be disposed of in a Subtitle D unit, K061 HTMR slag that may exhibit metal levels above the exclusion levels (but below BDAT) may be used as a product in a manner constituting disposal under the exemption in § 266.20(b). The petitioners pointed out the seeming anomaly of the slag used in an uncontrolled manner being effectively subject to lesser standards than slag disposed in a controlled landfill.

On August 13, 1993, EPA entered into a settlement agreement with these petitioners which would address their concerns through two separate notice-and-comment rulemakings. EPA agreed to propose the first rule within 6 months of the settlement date (and issue a final rule within 12 months) to either establish generic exclusion levels for "non-encapsulated" uses of K061 slags, or effectively prohibit such uses of K061 slags on the land. EPA also agreed to propose a second rule within 16 months of the settlement date (and issue a final rule within 28 months), to establish generic exclusion levels for encapsulated uses of K061 slags on the land. The agreement specified that the generic exclusion levels for K061 slags will be based on an evaluation of the potential risks to human health and the environment from the use of K061 slags as waste-derived products, taking into account all relevant pathways of exposure.

C. Implementation of Settlement Agreement

This action represents the second proposed rule required under the settlement agreement. EPA has promulgated the first rules required under the settlement agreement. (See 59 FR 8583, February 23, 1994 (proposed) and 59 FR 43496, August 24, 1994 (final)). The final rule will effectively prohibit, beginning on February 24, 1995, anti-skid/deicing uses of HTMR slags derived from K061, K062, and F006, as waste-derived products placed on land. Today's proposal contains EPA's risk-based determinations for all major K061, K062, and F006 HTMR slag uses, including anti-skid/deicing uses, and thus implements the remaining portion of the agreement.

II. Overview of Production, Processing, and Uses

A. Production of HTMR Slags

According to information available to EPA, HTMR slags are by-products of metal recovery operations (which involve recovery of metals from metal-bearing hazardous wastes) produced primarily at two facilities, Horsehead Resource Development Company Inc. (HRD) and International Metal Reclamation Company (Inmetco). HRD is currently the major generator of HTMR slags which are at issue in this proposed rule. In 1992, HRD processed 376,000 tons of electric arc furnace (EAF) dust, which is reportedly 68 percent of the EAF dust generated domestically. From this amount of EAF dust, HRD produced 120,000 tons of zinc calcine, 19,000 tons of lead concentrate, and 237,000 tons of slag (see EPA's Report to Congress on Metal Recovery, Environmental Regulation & Hazardous Waste; EPA 530–R–93–018). Inmetco provided information that it processed a total of 58,100 tons of wastes in 1993, recovering 22,196 tons of metals and producing 15,000 tons of slag (See docket for information submitted by Inmetco at a meeting with EPA on March 10, 1994).

B. Process Description

There are a number of HTMR processes, all of which are multi-step processes. The rotary kiln is the HTMR process primarily used to recover metals from K061, K062, and F006 wastes. The process steps are generally these: (1) wastes are mixed with coal or coke and fluxes to prepare feed materials, (2) high temperature processing is used to reduce metal oxides to their metallic form, 3) volatile metals (primarily cadmium, zinc, and lead) are recovered by collection systems, and 4) residual materials are discharged from the process and cooled to form a slag (see BDAT Background Document for K061). It should be noted that not all metal-bearing hazardous wastes are amenable to recovery by HTMR processes, possibly because their metal content is too low or because of significant quantities of impurities or contaminants that cannot be removed due either to economic or technical limitations. Therefore, metal reclaimers usually set specifications for materials that they will accept for processing (see EPA's Report to Congress on Metal Recovery Environmental Regulation & Hazardous Waste; EPA 530–R–93–018).

C. Properties and Uses of HTMR Slags

According to information provided by the generators on the physical/chemical properties of HTMR slags (see RCRA docket), these slags are highly dense, chemically stable (inert), and highly durable (resistant to breakdown). These are all properties which the generators claim make HTMR slags desirable construction materials.

HTMR slags are primarily used as subbase materials (e.g., in construction of roads, parking lots, and driveways) and as additive ingredients in cement or concrete/asphalt mixtures. Because the subbase is covered by a relatively hard/impermeable material and cement or concrete/asphalt mixtures lock in any additive ingredients, EPA considers these uses of HTMR slags to be "encapsulated" uses. A smaller portion of HTMR slags (believed to be less than 25 percent) are used as anti-skid/deicing materials, as top grade or surfacing materials (e.g., in construction of roads), and for other similar uses. Because anti-skid/deicing materials are dispersed freely on roads (during icy or snowy conditions to provide traction for vehicles) and top grade materials result in uncovered (unpaved) roads, parking lots, driveways, and the like, EPA considers these uses of HTMR slags to be "non-encapsulated" uses.

III. Proposed Standards for the Management and Use of HTMR Slags

EPA is proposing that risk-based generic exclusion levels in § 261.3(c)(2)(ii)(C), in addition to being exclusion standards for disposing HTMR slags derived from hazardous wastes K061, K062, and F006 in a Subtitle D unit, also become exclusion standards for managing these slags and for using these slags as follows: 1) covered subbase materials (e.g., in construction of paved roads, parking lots, and driveways), 2) additive ingredients in cement or concrete/asphalt mixtures, 3) top grade or surfacing materials (e.g., in construction of roads, parking lots, and driveways), and 4) anti-skid/deicing materials.

The Agency is proposing this action for the following reasons. Based on the results of a very conservative risk assessment completed by EPA for the relevant management practices and end-uses of HTMR slags (see Section IV for details), EPA has tentatively determined that the wastepile, transport, road subbase, and landfill waste management scenarios for HTMR-derived slags do not require regulation in order to protect human health and the environment, if these slags meet the generic exclusion levels. In addition, EPA is proposing that use of HTMR slags as additive ingredients in cement or concrete/asphalt mixtures would also not require regulation, if these slags meet the

generic exclusion levels. This is primarily because the cement or concrete/asphalt mixtures would mix with and chemically bind or encapsulate the portion of HTMR slags that are added, and any significant releases of slag constituents into the environment are unlikely. Finally, the risk assessment results, which are based on very conservative release and exposure assumptions, indicated little potential risk for the top grade and anti-skid/deicing end-uses of HTMR slags that meet the generic exclusion levels. Therefore, EPA is also proposing that uses of HTMR slags as top grade and anti-skid/deicing materials would also not require regulation, if these slags meet the generic exclusion levels.

As a consequence of the above proposed changes, EPA is also proposing to amend the existing regulations under § 266.20 that conditionally exempt hazardous waste-derived products used in a manner constituting disposal from RCRA Subtitle C regulation. Specifically the language of § 266.20 would be revised to prohibit the uses of products containing HTMR slags derived from hazardous wastes K061, K062, and F006 when these slags are still hazardous wastes, i.e., contain hazardous constituents at concentrations exceeding the exclusion levels. This prohibition implements RCRA section 3004(g)(5) and 3004(m), which require EPA to prohibit land disposal of hazardous wastes that have not been pre-treated so as to minimize the short-term and long-term threats posed by their land disposal. In addition, EPA is including a cross-reference in the table "Treatment Standards for Hazardous Wastes" in § 268.40 (the Land Disposal Restriction treatment standards) which notes the changes concerning utilization of HTMR slags in §§ 261.3 and 266.20.

As described in section IV.C, the Agency is also taking this opportunity to update the generic exclusion levels to reflect the changes in the drinking water Maximum Contaminant Levels (MCLs) for some of the metals of concern. Therefore, the Agency is proposing to amend the generic exclusion levels for antimony beryllium, and nickel.

EPA requests comments on the proposed changes. EPA also requests comments on the data used in the risk assessment, the methodology and assumptions used in the risk assessment, and other analysis supporting the proposed rule. Further, EPA requests comments on whether the uses of HTMR slags identified in this proposal are the only uses in practice or whether there are other uses practiced or planned. If EPA is alerted to other significant uses, the Agency could use the information to determine whether or not further analysis of those uses would be required.

IV Overview of Risk Assessment Supporting This Proposal

EPA performed a very conservative assessment of the potential risks to human health and the environment from the relevant management practices and uses of K061, K062, and F006 HTMR slags. This section summarizes the methods and results of EPA's risk assessment. A more detailed presentation of the risk assessment and uncertainties involved is provided in a technical background document entitled "Assessment of Potential Risks to Human Health and the Environment. from Management and Uses of HTMR Slags," which is included in the docket for this proposed rulemaking.

A. Methodology of Risk Assessment

EPA's methodology consisted of four primary steps. First, a lifecycle analysis for the HTMR slags was performed, starting from the point of manufacture and ending at the point of disposal, to identify potential contaminant release scenarios (air, ground water, surface water, and soil) associated with slag management, use, and disposal practices. Second, based on the release scenarios, exposure pathways and receptor locations relevant to contaminants in HTMR slags were identified. Third, appropriate release, fate, and transport models were used to compute contaminant concentrations at receptor points for each release and exposure pathway. Finally the media-specific concentrations for air, ground water, surface water, and soil were compared to the appropriate human health and ecological effects reference concentrations to determine the quantitative risks from exposures to contaminants in HTMR slags.

EPA focused on selecting high-end values for use in the models to estimate the individual risk for those persons at the upper end (>90th percentile of the population distribution) of the risk distribution. The Agency chose this very conservative approach in order to identify any pathways or chemicals which would warrant a more in depth risk assessment and characterization. A summary of the data sources and risk assessment methodology for HTMR slags is provided below.

1. Sources of Constituents Data for HTMR Slags

The constituents of concern in HTMR slags were identified in the Land Disposal Restrictions for Electric Arc Furnace Dust (K061) Final Rule (56 FR No. 160, p 41164) and supported by the Best Demonstrated Available Technology (BDAT) Background Document for K061 (US EPA, 1988). Specifically the K061 Final Rule identified fourteen metals requiring BDAT treatment standards for K061, including: antimony arsenic, barium, beryllium, cadmium, chromium, lead, mercury nickel, selenium, silver, thallium, vanadium, and zinc. However for various reasons discussed in the K061 Final Rule, EPA promulgated the standard for vanadium as "reserved.

For the purposes of the risk assessment, total concentrations of constituents of concern in HTMR residuals were based on the EPA-collected data base presented in the BDAT Background Document for K061 (US EPA, 1988). For each constituent of concern, the 95th percentile upper confidence limit of the mean (95th UCLM) was calculated for the total metal concentration (in ppm or, equivalently mg constituent per kg HTMR residual). EPA selected this value to represent a reasonable high-end measure of constituent concentrations in HTMR residuals. Table 1 presents the total concentrations and summary statistics for that data set, including maximum concentration, mean, and the range of concentrations.

For exposure scenarios involving HTMR leachate (e.g., landfilling of HTMR-derived slag), the leachate concentration was assumed to be equal to the maximum levels allowed under the generic exclusion established in the K061 final rule. Table 1 also presents the generic exclusion levels (in mg/L).

TABLE 1 —SUMMARY STATISTICS FOR CONSTITUENT CONCENTRATIONS FOR HTMR RESIDUALS

Constituent	Total constituent concentrations in HTMR residuals from rotary kiln incinerator			Generic exclusion levels for leachate (mg/L)
	Range (ppm)	Mean (ppm)	95% UCLM (ppm)	
Antimony	111–405	195	266	0.10

TABLE 1.—SUMMARY STATISTICS FOR CONSTITUENT CONCENTRATIONS FOR HTMR RESIDUALS—Continued

Constituent	Total constituent concentrations in HTMR residuals from rotary kiln incinerator			Generic exclusion levels for leachate (mg/L)
	Range (ppm)	Mean (ppm)	95% UCLM (ppm)	
Arsenic	75–113	86	98	0.50
Barium	331–467	374	408	7.6
Beryllium	1.7–4	2	3	0.01
Cadmium	<15	<15	<15	0.05
Total Chromium	205–978	612	797	0.33
Lead	365–4270	1926	2863	0.15
Mercury	<0.1	<0.1	<0.1	0.009
Nickel	422–952	588	727	1.0
Selenium	2.5–8.8	5	6	0.16
Silver	32–59	39	46	0.30
Thallium	<0.5–<1.0	<1	<1	0.02
Zinc	4550-27400	14634	22117	70

Note: Concentration of chromium VI was estimated to be 1% of total chromium, based on leaching data for total chromium.

2. Release, Fate, and Transport Models

To assess the risks from relevant management practices and uses of HTMR slags, EPA used fate and transport models to compute contaminant concentrations at exposure points for each release and exposure scenario. EPA used the appropriate algorithms from the MMSOILS model, a multimedia contaminant fate, transport, and exposure model, to simulate fate and transport of metals in HTMR slags through overland and subsurface transport. The overland transport of metals in HTMR slags incorporated transport to nearby soils and surface water (including dissolved contaminants and contaminants sorbed to slag particles). EPA used the Fugitive Dust Model (FDM) to compute dispersion and transport of particulates in air from ground-based sources. FDM is a computerized air quality model which was specifically designed to calculate air concentrations from fugitive dust sources. The model is based on the Gaussian plume algorithm for computing air concentrations, adapted to incorporate a gradient-transfer deposition algorithm. The MINTEQ metals speciation model was used to estimate soil adsorption coefficients for the metal constituents in HTMR slags whenever possible. The MINTEQ model is an aqueous speciation geochemical model which estimates metal adsorption as a function of Ph, metal concentrations in the dissolved phase, iron oxide content of potential sorbents, organic matter content of potential sorbents, pore water chemistry, and temperature. Further details of the models used are provided in the docket for this proposed rulemaking.

3. Sources of Environmental Releases

EPA identified the potential sources of metals releases from HTMR slags based on known management practices and end-uses of HTMR slags: disposal in landfills, storage in wastepiles, transportation in trucks, use as road construction material underlying pavement (subbase or base material), use as additive ingredient in cement or aggregate in concrete/asphalt mixtures, use as road surface material (top grade), and use as anti- skid/deicing agent on road surfaces. Potential releases under these scenarios are described below.

a. Wastepile—Four practices associated with the generation and management of wastepiles of HTMR slags may result in potential releases to the environment: (1) outdoor storage of an uncovered wastepile, (2) adding HTMR slags to the wastepile, (3) loading/unloading operations associated with transport of the wastepile, and (4) transport of slags from the facility to points of use.

The HTMR slags generated at the manufacturing facility may be stored outside in an uncovered wastepile at the facility until it is transported offsite. Since the wastepiles are uncovered, air releases may occur if particulates from the wastepile become entrained in the atmosphere. The slag particulates also may be eroded from the wastepile as a result of wind and rain. In addition, since the slags could be stored directly on top of the soil (i.e., no liner), release to the ground water may occur if metals from the slags leach as a result of precipitation.

As slags are added to the wastepile, the resulting disturbance may cause particles to become entrained in the atmosphere. Particulate emissions of slag material may also be caused by the loading/unloading operations associated with transport vehicles. Finally, particulate emissions of slag material may result from the transport of the wastepile, assuming that the transport vehicles are not fully covered.

b. Road Subbase—The HTMR slags may be transported from the manufacturing facility to a site for use as a road subbase material. The subbase layer is then covered by a relatively impermeable road surfacing material, typically asphalt. Although there is potential for environmental releases from the subbase material prior to road surfacing and when road surfaces are broken up for repair, such releases are expected to be short- term, temporary events, and any releases would be relatively minor. Therefore, atmospheric and erosion releases were not modeled for the use of HTMR slags as a road subbase material. However, even while the subbase is covered, the metals in the slag could potentially be released during a high water table event. In this circumstance, the water table may become elevated to the extent that it contacts and saturates the road subbase layer. The metals in the slag could leach from the road subbase, pass through the unsaturated soil zone, and discharge into the groundwater.

c. Additives in Cement or Concrete/ Asphalt Mixtures—HTMR slag material may also be used as an ingredient in the production of cement (as a source of iron in cement kilns). Alternatively, the slag may be used as aggregate in the production of concrete or asphalt. In these uses, the cement or concrete/ asphalt mixtures would mix with and chemically bind or encapsulate the portion of HTMR slags that are added. Therefore, there is not likely to be any significant releases from this use by any scenario. There is the possibility, if pieces of cement or concrete/asphalt are ultimately disposed in a landfill, that environmental releases may occur. This

type of scenario was considered under disposal of HTMR slags directly in a landfill; this represents a "worst case" for the concrete/asphalt mixtures because the landfill was assumed to contain the HTMR slags, and not slags mixed with or encapsulated in concrete or asphalt.

d. Top Grade—The HTMR slags may be used as a top grade material, as the surface material for an unpaved road. Atmospheric releases of the slag particulate as a result of vehicular traffic, particulate releases resulting from both wind erosion and surface runoff, and contaminant releases from the top grade layer resulting from leaching processes are all possible release pathways, and were considered in the Agency's assessment.

e. Anti-Skid/Deicing—The HTMR slags can be used as anti- skid/deicing agents on ice and/or snow covered roads. A thin layer of the slag material is spread over the road surface in an effort to provide better traction for vehicle tires. During warm periods in which the snow and ice melt, the metals present in the slag material may leach from an unpaved road through the unsaturated zone and into the surficial aquifer. In addition, the slag material may erode from the site by wind and rain and be deposited on adjacent property. Lastly, slag particulates may become entrained in the atmosphere as a result of vehicle traffic, and may result in atmospheric emissions similar to that of the top grade scenario.

f. Disposal in Landfill—One of the lifecycle phases considered in this analysis involves disposal of slag in a solid waste landfill. The potential leaching of constituents from the slag in the landfill into groundwater was evaluated previously in the rulemaking that established the generic exclusion levels for HTMR slag (see August 18, 1992, 57 FR 37194). Other potential release scenarios from the landfill that were identified include: (1) erosion of particulates from the landfill, and (2) air releases and deposition to nearby soils. Particulates from slag may be eroded from the landfill as a result of the forces of wind and rain. The eroded material may ultimately be deposited onto a nearby residential plot of land or into a nearby surface water body. Particulates entrained in the atmosphere as a result of waste management activities at the landfill may also be transported to off-site receptors.

4. Exposure Pathways

EPA considered various direct and indirect exposure pathways for HTMR slag materials and believes that the potential for risk from most indirect pathways (e.g., food chain pathways) would not be significant. The comparison of risks associated with direct and indirect exposure pathways for metals suggested that the direct pathways typically present higher risks due to the: (1) weak uptake of soil-bound metals in plants, (2) limited ability of metals to bioaccumulate on a whole-body basis (with the exception of mercury· however levels of mercury in HTMR slags, as presented in table 1, are not significant), and (3) tendency of metals to remain bound in the slag matrix in a form that further reduces their bioavailability.

Therefore, EPA evaluated four direct exposure pathways that were identified as being relevant based on the presence of metal contaminants in HTMR slags and the uses of the material. The four direct exposure pathways of concern are:

air pathway· emission and dispersion of respirable particulates (<10 microns in size);

groundwater pathway· release of contaminants to subsurface soils and subsequent leaching into groundwater;

surface water pathway· overland transport (via runoff and soil erosion) of contaminants to surface water; and

soil pathway· overland transport of contaminants via soil erosion to offsite residential soils.

In addition to these direct exposure pathways, EPA identified one indirect exposure pathway with respect to potential release scenarios, i.e., release of nonrespirable particulates (30 microns in size) followed by deposition to soil.

EPA did not model each of these four pathways for every source of HTMR slags. The exposure pathways evaluated by EPA for each exposure source/scenario are summarized in matrix form in Table 2. Only those pathways relevant to a given source scenario were modeled for that scenario. For example, as noted previously, direct air pathways for the road subbase scenario were not evaluated because the subbase is essentially a covered source that is not subject to wind erosion, overland transport, or air dispersion. Similarly EPA did not explicitly include HTMR slags contained in cement or concrete/asphalt mixtures for any of the exposure scenarios of concern.

TABLE 2.—EXPOSURE PATHWAYS EVALUATED FOR SOURCES/SCENARIOS ASSOCIATED WITH THE USE OR DISPOSAL OF HTMR SLAG

Exposure pathway	Exposure source/scenario				
	Wastepile	Top grade and anti-skid	Slag landfill	Subbase	Transportation
Ground Water Ingestion	X	X	X	X	
Surface Water	X	X	X		
Soil Ingestion	X	X	X		
Air Deposition to Soil and Ingestion	X	X	X		
Particulate Inhalation	X	X	X		X

[1] Evaluated previously (see 57 FR 37194; August 18, 1992)

5. Evaluation Criteria

EPA used human health and ecological (aquatic) effects criteria to evaluate levels of hazardous constituents in various media.

a. Human Health—The human health reference values for the constituents of concern includes carcinogenic slope factors (CSFs), reference doses (RfDs), and reference concentrations (RfCs). The CSFs, a measure of carcinogenic potency were used for both the inhalation and ingestion routes of exposure. The RfD is an estimate of the daily intake of a substance, within an order of magnitude, to which the adult human population (including sensitive subgroups) may be exposed without any adverse noncarcinogenic effects. The RfC is the analog to the RfD for inhalation exposure, although the RfC units are typically converted to concentration (mg/m^3), using default exposure assumptions for breathing rate

and body weight. Virtually all the reference values (i.e., CSFs, RfDs, and RfCs) were obtained from the Integrated Risk Information System (IRIS), EPA's primary source for verified human health reference values. Reference values were also identified in the Health Effects Assessment Summary Tables (HEAST). When no verified RfC values were available, the RfC values were extrapolated from RfDs, assuming that a 70 kg adult inhales 20 m^3 of air per day. Based on the human health reference values, the Agency calculated the reference concentrations in Table 3 for soil, drinking water, and air. The table includes Maximum Contaminant Levels (MCLs) for drinking water, when available. The human health reference values, and the methods used to calculate the reference concentrations, are summarized in the docket for today's rule. Two constituents of concern, thallium and lead, did not have reference values for ingestion or inhalation in either IRIS or HEAST. The reference value (i.e., RfD) for thallium was estimated from the lowest reference value of the thallium salts (e.g., thallium sulfate, thallium nitrate). A reference value for lead is not available at this time since Agency consensus has not been reached on how an RfD or RfC should be calculated for lead. However, EPA has established regulatory and recommended levels for lead in the various media, and these are included in Table 3.

b. Ecological (Aquatic) Receptors—A comparison of chemical concentrations in surface water to their aquatic benchmarks was used to determine if any given constituent would pose a threat to aquatic organisms. Those chemicals whose surface water concentrations exceeded their aquatic water quality criteria would be identified as constituents of concern. The National Ambient Water Quality Criteria (NAWQC) were selected as the ecological reference concentrations for the protection of aquatic organisms (e.g., fish and daphnids). Since NAWQC were not available for all constituents, alternate criteria or advisory values were identified in the open literature. A complete description of the methods used to estimate the advisory NAWQC may be found in *Toxicological Benchmarks for Screening of Potential Contaminants of Concern for Effects on Aquatic Biota on the Oak Ridge Reservation, Oak Ridge, Tennessee* (Suter et al., 1992). Table 3 provides the NAWQC and advisory NAWQC for aquatic organisms for each of the constituents of concern.

6. Characterization of Risk

The modeling results for the groundwater, surface water, soil, and air pathways were compared to the reference concentrations for the different media to assess the potential risk to human health and aquatic receptors. The resulting risk ratios (i.e., media concentration divided by reference concentration) were then evaluated to determine whether any of the metals of concern in HTMR slag would pose significant risks to humans or aquatic receptors for any of the exposure scenarios evaluated.

TABLE 3.—REFERENCE CONCENTRATIONS FOR SOIL, WATER, AND AIR FOR THE HTMR CONSTITUENTS OF CONCERN

Constituent	Reference Soil Concentration (mg/kg)[1]	Reference Drinking Water Concentrations[2] (mg/L)	Reference Air Concentrations[3] (ug/m^3)	Reference Surface Water Concentrations[4] (mg/
Antimony	3.2E+01	0.006	1.4E+00	0.018
Arsenic	9.7E–01	0.05	5.7E–04	0.190
Barium	5.6E+03	2	5.0E–01	0.109
Beryllium	4.0E+02	0.004	1.0E–03	0.00061
Cadmium	8.0E+01	0.005	1.4E–03	0.0011
Chromium III	8.0E+04	0.1	3.5E+03	0.210
Chromium VI	4.0E+02	0.1	2.0E–04	0.011
Lead	4.0E+02	0.015	1.5E–01	0.0032
Mercury	2.4E+01	0.002	3.0E–01	0.000012
Nickel	1.6E+03	0.1	7.0E+01	0.160
Selenium	4.0E+02	0.05	1.8E+01	0.035
Silver	4.0E+02	0.18	1.8E+01	0.00039
Thallium	6.4E+00	0.002	2.8E–01	0.0025
Zinc	2.4E+04	10	1.1E+03	0.110

[1] RfDs and CSFs were used to calculate reference soil values, except for lead; the value for lead is a recommended screening level for lead in soil for residential land use which is contained in the Agency's interim soil lead guidance (this guidance suggests use of this screening level to identify sites that do not require further study, and not as a clean up goal).

[2] Reference values for drinking water are MCLs, when available; the values for thallium and zinc are based on RfDs, and the value for lead is the action level.

[3] Air reference values are based on CSFs or RfCs, when available; other values extrapolated from oral RfDs, except for lead, which is based on 10% of the existing National Ambient Air Quality Standard.

[4] Reference values are National Ambient water Quality Criteria (NAWQC) for aquatic toxicity, except for antimony, barium, beryllium, silver, and thallium, which are based on advisory NAWQC (see Section IV.A.5.b.)

B. Results of Risk Assessment

The results from EPA's very conservative risk assessment for the relevant management practices and uses of HTMR slags indicate that constituents of concern in HTMR slags pose little or no risk to human health or the environment. Based on this assessment, no significant risks were found for storage, transport, disposal, and encapsulated uses of HTMR slags (use as subbase, as an ingredient in cement or concrete/asphalt) that meet the generic exclusion levels. The non-encapsulated uses of HTMR slags (top grade and anti-skid uses) that meet the generic exclusion levels showed the potential for some excess risk (i.e., risk above $1x10^{-6}$). The risk analysis indicates that direct inhalation exposure to arsenic from non-encapsulated uses may present an excess risk of cancer of $2.9x10^{-6}$ In other words, a maximum of approximately 3 additional cases of cancer would be predicted per million people exposed to the arsenic in the slag used in this manner. The results also suggest that areal deposition of arsenic from these non-encapsulated uses and subsequent ingestion of contaminated

soil may also present a comparable excess risk of cancer ($2.7x10^{-6}$). None of the other metals evaluated posed any significant increase in risk for these uses.

These risks (from non-encapsulated uses) are at the low end of EPA's risk range of $1x10^{-4}$ to $1x10^{-6}$. Furthermore, for this assessment, EPA selected very conservative values for use in fate and transport models and for exposure scenarios. If the risk assessment had used a central tendency value (instead of a high-end value) for one of the high-end exposure assumptions, then the calculated risks from these uses would drop below the $1x10^{-6}$ level. For example, had the Agency used a 9 year exposure period for an individual exposed instead of the 30 year exposure period used in this risk calculation, the risk from non-encapsulated uses would have dropped to $8.7x10^{-7}$ cancer risk. This risk level is below the typical level of concern used by the Agency.

. Changes to the Generic Exclusion evels

The generic exclusion levels romulgated for HTMR slags derived om K061, K062, and F006 were based n the health-based levels and MCLs in ffect when the rule was put into place. ince then, the drinking water standards .e., MCLs) for some constituents have hanged somewhat (see July 17 1992, 7 FR 231776). Therefore, the Agency is king this opportunity to propose to pdate the exclusion levels to reflect ese changes. The original exclusion evels were calculated by multiplying e MCLs by a dilution-attenuation ctor of 10 (see August 18, 1992, 57 FR 7194). This factor is based on the PACML model (see July 18, 1991, 56 R 32993 for a description of the model sed). Using this same factor, the new CLs for antimony (0.006 mg/L) and eryllium (0.004 mg/L) would result in ew generic exclusion levels of 0.06 mg/ and 0.04 mg/L for antimony and eryllium, respectively. Therefore, the gency is proposing to replace the xisting exclusion levels in 261.3(c)(2)(ii)(C) for antimony and eryllium with these values as part of oday's rule. The Agency promulgated n MCL for nickel in 1992. That egulatory standard was challenged by a oalition of industry groups in a lawsuit led in September, 1992. See *Nickel evelopment Institute et al.* v. *EPA*, No. 2–1407 1410, 1416 (D.C. Cir.). For the ast two years, the Agency has been nvolved in discussions with these ndustry parties in an effort to resolve is litigation. Because of the ncertainties that currently surround e outcome of this litigation over the nickel MCL, EPA believes it is appropriate to consider alternative criteria to establish the generic exclusion level for nickel. EPA considered using the health-based level for nickel (0.7 mg/L) which is derived from the existing RFD for nickel of 0.02 mg/kg/day (see IRIS). Based on the calculations described in the above paragraph, this would result in a generic exclusion level of 7 mg/L for nickel. The existing BDAT treatment standard for nickel contained in the slags derived from HTMR processing of K061, K062, and F006 wastes is 5 mg/L. Between these two alternative criteria, EPA believes that it is appropriate to use the lower (more conservative) BDAT standard at this time. Therefore, EPA is proposing to replace the existing exclusion level in § 261.3(c)(2)(ii)(C) for nickel with the nickel BDAT treatment standard of 5 mg/L.

V Conclusions

Based on the results of the risk assessment, EPA is proposing that HTMR slags that meet the generic exclusion levels in § 261.3(c)(2)(ii)(C) will be classified as nonhazardous waste, and also allowed to be managed or used as described in this proposal.

Furthermore, the Agency is also proposing to amend § 266.20 so that all uses constituting disposal of hazardous HTMR slag (i.e., HTMR slag that does not meet the generic exclusion levels) are no longer exempt from RCRA Subtitle C regulation. Because it is highly unlikely that users of hazardous HTMR slag will choose to meet the stringent requirements of Subtitle C, this change would effectively prohibit all uses of slags that do not meet the generic exclusion levels. As a consequence of the proposed changes to the generic exclusion in §261.3(c)(2)(ii)(C), HTMR slags that are used as described in this proposal would not be affected by the changes in § 266.20, because the HTMR slags used in these ways would not be hazardous waste (provided the slags meet the generic exclusion levels and all of the other requirements specified in § 261.3(c)(2)(ii)(C)).

Finally as described in section IV.C above, the Agency is also proposing to update the generic exclusion levels for changes in MCLs for antimony, beryllium, and nickel.

VI. Effective Date

The Agency is proposing that this rule be effective six months after the date of publication of the final rule. (See RCRA section 3010(a)). The Agency believes that this would provide sufficient time for affected parties to comply with the proposed changes.

VII. State Authority

A. Applicability of Rule 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 (HSWA) of 1984, 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), 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 Authorization

EPA views today's proposed rule as a HSWA regulation. The proposed rule can be viewed as part of the process of establishing land disposal prohibitions and treatment standards for K061, K062, and F006 hazardous wastes. (See 56 FR 41175). The ultimate goal of the land disposal prohibition provisions is to establish standards which minimize short-term and long-term threats to human health and the environment posed by hazardous waste land disposal. (See RCRA section 3004(m)(l)). In addition, EPA must ensure that land disposal of hazardous wastes K061, K062, and F006 are ultimately protective. (See RCRA § 3004(g)(5)). The

proposed exclusion levels would implement these provisions by assuring that these types of land disposal are ultimately protective and establish levels at which pretreatment minimizes the threats to human health and the environment posed by these types of land disposal.

Today's proposed rule will result in more stringent Federal standards under § 266.20, since it prohibits uses of hazardous HTMR slags. Section 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modifications to EPA for approval.

Authorized States are only required to modify their programs when EPA promulgates Federal regulations that are more stringent or broader in scope than the existing Federal regulations. 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. This is a result of section 3009 of RCRA, which allows States to impose regulations in addition to those in the Federal program. EPA has determined that the proposed changes to the generic exclusion are less stringent or reduce the scope of the Federal program. Therefore, authorized States are not required to modify their programs to adopt regulations that are equivalent or substantially equivalent.

States with authorized RCRA programs may already have requirements similar to those in today's proposed rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modifications are approved. Of course, States with existing standards could continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

VIII. Regulatory Impact

A. Executive Order 12866

Under Executive Order 12866 (see 58 FR 51735, October 4, 1993), EPA 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 recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it raises novel policy issues in terms of defining when products used in a manner constituting disposal should be regulated. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., whenever an Agency is required to issue 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 any impact on any small entities.

This proposed rule will not have any impact on any small entities, since the regulated community will continue to have readily available options for using and managing HTMR slags. Therefore, pursuant to section 605(b) of the Regulatory Flexibility Act, the Administrator certifies 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

The Agency has determined that there are no additional reporting, notification, or recordkeeping provisions associated with this proposed rule. Such provisions, were they included, would be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects

40 CFR Part 261

Environmental protection; Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 266

Energy Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

Dated: December 16, 1994.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR Chapter I 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 261.3 paragraphs (c)(2)(ii)(C)(*1*) and (c)(2)(ii)(C)(*2*) are revised as follows:

§ 261.3 Definition of hazardous waste.

(c)

(2)

(ii)

(C)(*1*) Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062, and F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in paragraphs (6), (7), and (13) of the definition for "Industrial furnace" in 40 CFR 260.10)—provided that these residues meet the generic exclusion levels identified in the tables in this paragraph for all constituents, and exhibit no characteristics of hazardous waste and are disposed in Subtitle D units, or used as covered subbase materials (e.g., in construction of paved roads, parking lots, and driveways) or as additive ingredients in cement or concrete/asphalt mixtures, or as top-grade (e.g., surfacing material for roads, parking lots, and driveways), or as anti-skid/deicing materials. Testing

requirements must be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues must be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

Constituent	Maximum for any single composite sample-TCLP (mg/l)
Generic exclusion level for K061 and K062 nonwastewater HTMR residues	
Antimony	0.06
Arsenic	0.50
Barium	7.6
Beryllium	0.04
Cadmium	0.05
Chromium (total)	0.33
Lead	0.15
Mercury	0.009
Nickel	5.
Selenium	0.16
Silver	0.30
Thallium	0.02
Zinc	70
Generic exclusion level for F006 nonwastewater HTMR residues.	
Antimony	0.06
Arsenic	0.50
Barium	7.6
Beryllium	0.04
Cadmium	0.05
Chromium (total)	0.33
Cyanide (total) (mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	5
Selenium	0.16
Silver	0.30
Thallium	0.02
Zinc	70

(2) A one-time notification and certification must be placed in the facility's files and sent to the EPA region or authorized state for K061, K062, or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to Subtitle D units, or used as described in paragraph (c)(2)(ii)(C)(1). The notification and certification that is placed in the generators or treaters files must be updated if the process or operation generating the waste changes and/or if the subtitle D unit receiving the waste changes. However, the generator or treater need only notify the EPA region or an authorized state on an annual basis if such changes occur. Such notification and certification should be sent to the EPA region or authorized state by the end of the calendar year, but no later than December 31. The notification must include the following information: The name and address of the subtitle D unit receiving the waste shipments; the EPA Hazardous Waste Number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification must be signed by an authorized representative and must state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

*

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

3. The authority citation for part 266 continues to read as follows:

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

Subpart C—Recyclable Materials Used in a Manner Constituting Disposal

4. Section 266.20 is amended by revising paragraph (c) to read as follows:

§ 266.20 Applicability.

* *

(c) Slags generated from high temperature metals recovery (HTMR) processing of hazardous waste K061, K062, and F006, that are used in a manner constituting disposal are not covered by the exemption in paragraph (b) of this section and remain subject to regulation. However, these slags are not hazardous wastes if they meet the concentration levels as specified in § 261.3(c)(2)(ii)(C) and are used or disposed of as specified in § 261.3(c)(2)(ii)(C).

PART 268—LAND DISPOSAL RESTRICTIONS

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

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

6. Table "Treatment Standards for Hazardous Wastes" in § 268.40 is amended by adding a footnote "8" at the end of the table and in the second column in the table, "Waste Description and Treatment/Regulatory Subcategory" for waste codes F006, K061, and K062 to read as follows:

§ 268.40 Applicability of treatment standards.

[8] See also restrictions on use of slags in § 261.3(c)(2)(ii)(C) and § 266.20(c).

[FR Doc: 94-31617 Filed 12-28-94; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Chapter IV

[BPD-822-N]

Medicare Program; Hospice Wage Index

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of Establishment of a Negotiated Rulemaking Advisory Committee.

SUMMARY: The Health Care Financing Administration announces the establishment of the Negotiated Rulemaking Advisory Committee on the Medicare Hospice Wage Index. The Committee will negotiate the wage index used to adjust payment rates for hospice care under the Medicare program to reflect local differences in area wage levels. A new wage index is needed because the index currently used is based on 1981 wage and employment data.

FOR FURTHER INFORMATION CONTACT: Janice Flaherty, (410) 966-4637

SUPPLEMENTARY INFORMATION: Under the authority of the Negotiated Rulemaking Act of 1990 (Pub. Law 101-648, 5 U.S.C. 581-590), the Secretary of the Department of Health and Human Services has established the Negotiated Rulemaking Advisory Committee on the Medicare Hospice Wage Index. The Committee will provide advice and make recommendations with respect to the content of a proposed rule on the wage index used to adjust payment rates for hospice care under the Medicare program to reflect local differences in area wage levels. The Committee consists of representatives of interests that are likely to be significantly affected by the proposed rule.

Hospice care was included as a Medicare benefit in the Tax Equity and Fiscal Responsibility Act of 1982, and implemented effective November 1, 1983. The statutory authority for payment of hospice care under

Medicare is contained in section 1814(i) of the Social Security Act.

On October 14, 1994, we published a notice of intent in which we requested public comment on use of the negotiated rulemaking process to develop a wage index for hospice care (59 FR 52129). As a result, we received 8 public comments. The commenters supported our decision to establish a negotiating committee and utilize the negotiated rulemaking process for this purpose.

All Committee meetings are open to the public. The dates, locations, and agendas for the meetings will be announced in the **Federal Register** in accordance with the requirements of the Federal Advisory Committee Act and 45 CFR 11.4(c)(3).

(Section 9(a) of Public Law 92-463 (5 U.S.C. App 2, section 9(a)); 45 C.F.R. Part 11)

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program)

Dated: December 21, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 94-32069 Filed 12-28-94; 8:45 am]

BILLING CODE 4120-01-P

---

42 CFR Chapter IV

[BPD-823-N]

Medicare Program; Hospice Wage Index

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act (FACA), this notice announces a meeting of the Negotiated Rulemaking Advisory Committee on the Medicare Hospice Wage Index. The meeting is open to the public.

DATES: The meeting is scheduled for January 17-18, 1995, from 9 a.m. until 5 p.m. e.s.t.

ADDRESSES: The meeting will be held at the Comfort Inn, 6921 Baltimore-Annapolis Blvd., Baltimore, MD 21225.

FOR FURTHER INFORMATION CONTACT: Janice Flaherty, (410) 966-4637

SUPPLEMENTARY INFORMATION: Under the authority of the Negotiated Rulemaking Act of 1990 (Pub. Law 101-648, 5 U.S.C. 581-590), the Secretary of the Department of Health and Human Services has established the Negotiated Rulemaking Advisory Committee on the Medicare Hospice Wage Index. The Committee will make recommendations with respect to the content of a proposed rule on the wage index used to adjust payment rates for hospice care under the Medicare program to reflect local differences in area wage levels. The Committee consists of representatives of interests that are likely to be significantly affected by the proposed rule.

A meeting of the Committee will be held on January 17-18, 1995. The following topics will be discussed:

- Presentation of information on possible sources of wage and employment data including discussion of the wage indexes currently applied elsewhere in the Medicare program.

Implementation options.

Individuals or organizations who wish to make oral presentations may do so. However, the number of presentations may be limited by the time available. Individuals may also submit written statements for the Committee's consideration. For information on how to do this, please contact the committee facilitator, Judy Ballard at (202) 690-7419.

(Section 10(a) of Public Law 92-463 (5 U.S.C. App. 2, section 10(a)); 45 C.F.R. Part 11)

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program)

Dated: December 21, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 94-32068 Filed 12-28-94; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 432

RIN 1006-AA34

Fish and Wildlife Service

50 CFR Chapter I

Central Valley Project—Purposes, Uses, and Allocation of Water Supplies

AGENCY: Department of the Interior, Bureau of Reclamation and Fish and Wildlife Service.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Bureau of Reclamation (Reclamation) and the Fish and Wildlife Service (Service) have initiated the preparation of proposed rules and regulations concerning implementation of certain provisions of the Central Valley Project Improvement Act (CVPIA). The CVPIA applies to the Central Valley Project (CVP), California, and to the use and allocation of CVP water. Comments are invited at this time on what the substantive content of proposed rules and regulations should be.

DATES: The deadline for receiving written comments is February 1, 1995.

ADDRESSES: Written comments should be sent to Gary Sackett, Attention: MP-400, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Ron Brockman at (916) 979-2323 or Gary Sackett at (916) 979-2317

SUPPLEMENTARY INFORMATION: The CVPIA (Title XXXIV of P.L. 102-575, 106 Stat. 4706) provides for a number of changes in the purposes and operation of the CVP and in the use and allocation of CVP water. Subsection 3408(a) of the CVPIA authorizes the Secretary of the Interior to promulgate "* such regulations as may be necessary to implement the intent, purposes and provisions *" of the CVPIA. Reclamation and the Service have been authorized by the Secretary to act on his behalf in this regard.

The Service and Reclamation published a notice in the **Federal Register**, 59 FR 39316, Aug. 2, 1994, which stated that they had tentatively concluded that the following provisions of the CVPIA should be considered for rulemaking:

Subsection	Title
3404(c)	Renewal of Long-Term Contracts.
3405(a)	Transfer of CVP Water.
3405(d)	Water Pricing.
3405(e)	Water Conservation Standards.
3406(b)(2)	800,000 Acre-Feet for Fish, Wildlife, and Habitat Restoration.
3406(b)(22) ...	Incentives to Flood Fields for Waterfowl Habitat.
3407(a)-(d) ...	Restoration Fund.
3408(c)-(d) ...	Exchanges, Storage, Conveyance, and Banking.
3408(h)	Land Retirement.
3408(i)	Cost Sharing of Water Conservation Projects.

This notice also announced public meetings, and invited written comment, on the questions of: (1) whether these are appropriate provisions of the CVPIA to address through rulemaking, and (2) whether there are other provisions of the CVPIA that should be addressed.

The public comments received have suggested that, in addition to the above identified provisions of the CVPIA, rules and regulations should be considered for the following seven subsections: