does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

In addition, since these tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 19, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.509 is amending paragraph (b) by alphabetically adding the following entries to the table to read as follows:

§ 180.509 HOE-107892 (mefenpyrdiethyl; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/Revocation Date
Barley, bran	0.4	2/1/00
Barley, flour	0.1	2/1/00
Barley, grain	0.05	2/1/00
Barley, hay	0.5	2/1/00
Barley, pearled	1.0	2/1/00
Barley, straw	0.1	2/1/00
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[FR Doc. 98–24150 Filed 9–8–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL–6155–7]

Characteristic Slags Generated From Thermal Recovery of Lead by Secondary Lead Smelters; Land Disposal Restrictions; Final Rule; Extension of Compliance Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of compliance date of final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing an extension of the compliance date until November 26, 1998 for a limited portion of the Phase IV Final Rule, published on May 26, 1998 (63 FR 28556), which, in part, amended the Land Disposal Restriction (LDR) treatment standards for metal-bearing hazardous wastes exhibiting the toxicity characteristic. EPA is extending the date for treatment standards only for secondary lead slags exhibiting the toxicity characteristic for one or more metals that are generated from thermal recovery of lead-bearing wastes (principally batteries). The Agency is taking this action because there appear to be short-term logistical difficulties resulting in a temporary shortage of available treatment capacity for these particular wastes. In the interim, the slags affected by this extension remain subject to the treatment standards for toxicity characteristic metals promulgated in the Third Third Final Rule (55 FR 22520; June 1, 1990) and codified at 40 CFR 268.40.

EFFECTIVE DATE: August 28, 1998.

ADDRESSES: The public docket for this document extending the effective date is available for public inspection at EPA's RCRA Information Center, located at Crystal Gateway, First Floor, 1235 Jefferson Davis Highway, Arlington, Virginia. The regulatory docket contains a number of background materials pertinent to this action. To obtain a list of these items, contact the RCRA Docket at (703) 603–9230 and request the list of references in EPA Docket #F–98-LABS-FFFFF.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424–9346 (toll free) or (703) 920–9810 in the Washington, DC metropolitan area. For information on this notice contact Elaine Eby, Anita Cummings or Katrin Kral (5302W), Office of Solid Waste, 401 M Street, SW, Washington DC 20460. Elaine Eby may be reached at (703) 308–8449; Anita Cummings may be reached at (703) 308–8303; and Katrin Kral may be reached at (703) 308–6120.

SUPPLEMENTARY INFORMATION:

Availability of Rule on Internet

This notice is available on the internet, at:

www: http://www.epa.gov/oswer/hazwaste/ldrmetal/facts.htm

FTP: ftp.epa/gov

Login: anonymous
Password: your Internet address

Table of Contents

I. Background

On May 26, 1998, the Agency promulgated the Land Disposal Restrictions (''LDR'') Phase IV Final Rule. This rule revises universal treatment standards (''UTS'') for 12 metal hazardous constituents. The Phase IV Final Rule also requires toxicity characteristic (''TC'') metal wastes—those wastes exhibiting the characteristic levels set out in 261.24, as measured using the Toxicity Characteristic Leaching Procedure (''TCLP'')—to meet the UTS levels for those metal constituents prior to land disposal. In addition, the LDR rules require that underlying hazardous constituents (''UHCs'')—hazardous constituents that are present below characteristic levels but still present at levels higher than those necessary to minimize threats posed by land disposal (see 40 CFR 268.2 (i) (defining ''underlying hazardous constituent'')—present in TC metal wastes must also meet UTS levels before land disposal. Because the Agency found that there was ample stabilization capacity available to treat these metal-bearing wastes, this rule took effect 90 days from the date of promulgation, i.e., August 24, 1998, which date corresponded generally to the time needed to make logistical arrangements for treatment of wastes that were affected by Phase IV (see 63 FR at 285624–25, May 26,1998).

Prior to Phase IV, TC metal wastes were only subject to treatment standards if the wastes exceeded the characteristic level for the various hazardous metals, as established in the Third Third Final Rule (55 FR 22520, June 1, 1990). There was also no requirement to treat these wastes for underlying hazardous constituents. The Phase IV rule amends most of the standards for metals to make them more stringent, and also requires treatment of UHCs in all TC metal wastes. For example, of most relevance here, the treatment standard for lead nonwastewaters exhibiting the Toxicity Characteristic is now 0.75 mg/L (measured by the TCLP), rather than 5.0 mg/L (measured by either the TCLP or the predecessor Extraction Procedure). Further, all UHCs in characteristic lead wastes have to be treated to meet the standards for hazardous constituents set out in Section 268.48. The rule thus assures that threats posed by land disposal of these wastes will be minimized as required by RCRA section 3004 (m). See *Chemical Waste Management* v. *EPA*, 976 F. 2d 2, 16, 27, 32 (D.C. Cir. 1992) (holding first that treatment to characteristic levels was insufficient to minimize threats within the meaning of RCRA section 3004 (m), particularly when further increments of treatment are demonstrated and available, and second that treatment of underlying hazardous constituents was required (*id.* at 16–18)).

The secondary lead industry consists of lead smelters that recover lead metal from secondary materials, primarily spent lead acid batteries. Secondary lead smelters generate slag as a by-product of this process. Secondary lead slags sometime exhibit the toxicity characteristic for lead, and occasionally for other metals as well. These slags, however, may also be nonhazardous. Today's action applies only to secondary lead slags that exhibit the toxicity characteristic for one or more RCRA metals and are therefore characteristically hazardous. See 63 FR at 28566 (May 26, 1998) (secondary lead slags which do not exhibit a characteristic are not subject to further LDR treatment requirements).

II. Today's Action

EPA is today amending the compliance date of the prohibition and treatment standards for slags from secondary lead smelting until November 26, 1998 (i.e., three months from the original effective date). Although EPA believes that the treatment standards for these slags are achievable through stabilization or other means and that there is an ample amount of treatment capacity for these slags, there are certain short-term logistical difficulties in utilizing this capacity resulting in a short-term unavailability of treatment capacity.

Secondary lead slag is generated in the form of large solid blocks of material. Before the slag can be successfully stabilized to meet the amended treatment standards, it must be crushed, a process necessitating use of specialized equipment. One commercial treater presently has such equipment on-site, but most commercial stabilization facilities do not. However, a number of secondary lead plants operate their own on-site crushing equipment. Overall there is enough available crushing equipment to provide sufficient pretreatment capacity for the secondary lead slag. Once the slags are crushed, there should be ample capacity to stabilize the crushed material, either at off-site commercial treatment facilities or on-site.

Based on these facts, EPA reiterates its finding that there is an adequate amount of treatment capacity available to treat secondary lead slag, within the meaning of RCRA section 3004(h)(2). Notwithstanding the fact that this capacity is divided between different entities (i.e. crushing equipment at one locale, stabilization capacity at another), capacity still exists and must be utilized. The whole premise of the Land Disposal Restrictions program is that existing treatment capacity is to be used in lieu of land disposal of untreated hazardous wastes. See 130 Cong. Rec. S9178 (daily ed. July 25, 1984) (statement of Sen. Chafee); see also S. Rep. No. 198, 98th Cong. 1st Sess. 18 (1984). Thus, EPA emphasizes that it does not (and will not) accept any argument that treatment is unavailable because generators refuse to perform pretreatment necessary to facilitate treatment to meet LDR levels.

However, EPA recognizes in this particular case that the physically separate pretreatment and treatment operations result in a situation where additional time is needed to arrange for logistical coordination and shipping. Prospective customers typically send waste samples to commercial treaters, who then develop a stabilization recipe for the waste, a process normally taking several weeks. This process has not yet begun for several reasons. There apparently was some confusion regarding the physical form of the waste to be treated, the result being that at least some treatment facilities believed they would need to treat uncrushed material, resulting in not-fully-informed refusals to accept the waste for treatment. As a result, some limited additional time is needed for commercial treaters to receive crushed samples, develop treatment recipes for that sample, enter into necessary contractual relationships with the generators of secondary lead slag, and finalize other logistical coordination necessities, such as shipping.

In addition, the secondary lead industry is not currently prepared to ship pulverized slag to commercial treaters. Although the crushed slag can readily be shipped by rail car (among other means), it will still take the industry some time to make alternative transport arrangements (contracting to

use a different type of rolling stock, etc.). The Agency estimates that an additional 90 days is needed to resolve these logistical obstacles. Accordingly, the Agency is extending the compliance date of the prohibition and treatment standards for secondary lead slags exhibiting the toxicity characteristic for one or more metals until November 26, 1998. During this time, the slags will remain subject to the existing LDR treatment standards promulgated in the Third Third Final Rule (55 FR at 22690, June 1, 1990), which standards are codified in the present section 268.40, and will also be subject to any other applicable, ancillary LDR requirements (e.g. tracking and recordkeeping requirements in § 268.7).

Two other points regarding this extension should be noted. First, today's limited extension of the compliance date of the land disposal prohibition and treatment standards affects only the date of compliance. It does not mandate a particular means of compliance. Thus, secondary lead smelters are not obligated to have their characteristic slags treated commercially if there is another means of compliance available. Many secondary lead plants operate their own stabilization equipment, and these on-site stabilization processes may be optimized to achieve the amended treatment standards adopted in the Phase IV final rule (63 FR at 28565). Secondary lead plants remain free to treat their own slags (or to adopt some other means of compliance not requiring shipment of pulverized slag to commercial treatment facilities), provided of course that the waste complies with LDR treatment standards before it is land disposed.

Second, the secondary lead industry has questioned whether the amended UTS for lead nonwastewaters (.75 mg/l in a TCLP extract) is achievable for secondary lead blast furnace slags and has raised this as an issue in a petition for judicial review of the Phase IV Final Rule. EPA believes the standard is achievable, based on the information in the administrative record for the rule. However, today's action briefly delaying the Phase IV compliance date also provides an opportunity to develop further treatment data on this particular waste. Based on reasonable assurances from industry representatives, the Agency expects secondary lead facilities to be forthcoming in providing proper samples (i..e., of the crushed slag) to treaters for the verification testing described earlier, and to allow this information to be utilized (with suitable safeguards for business confidentiality) in confirming (or calling into question) the achievability of the Phase IV metal treatment standards with respect to secondary lead slags. If certain slags cannot be treated to meet the UTS lead nonwastewater of 0.75 mg/L, a treatment variance may be sought under the criteria of § 268.44(h) (i.e., physical or chemical properties of the waste differ significantly from wastes analyzed in developing treatment standard).

III. Legal Authority and Rationale for Immediate Effective Date

This document extending the LDR prohibition date for secondary lead smelting slags is being issued without notice and opportunity for general public comment. Under the Administrative Procedure Act (APA), 5 U.S.C. 553 (b) (B), an agency may forego notice and comment in promulgating a rule when the agency for good cause finds (and incorporates the finding and a brief statement of the reasons for that finding into the rule) that notice and public comment procedures are impracticable, unnecessary, or contrary to the public interest. For the reasons set forth below, EPA finds good cause to conclude that notice and comment would be unnecessary and contrary to the public interest, and therefore is not required.

First, many secondary lead plants are currently in a position of being unable to comply with the existing rule because they are not meeting the treatment standards with their own stabilization processes and have not been able to finalize arrangements with commercial treaters (as explained earlier). An immediate delay of the rule's compliance date for this particular waste is needed to provide further time to make the administrative arrangements necessary for the treatment capacity to become available (again as explained earlier).

EPA believes that this short-term emergency arose even though both the generating and commercial treatment industries acted in good faith in preparing to comply with the standards, so that this is not an artificially manipulated situation created in the hope of delaying the rule's compliance date. (Now that the necessary pretreatment steps are identified and understood, however, EPA will not consider a further extension based on generators' need for more time in making arrangements with commercial treatment facilities.)

Second, EPA has been involved in detailed discussions with both the generating and commercial treatment industries, so that there has been direct notice about the possibility of today's extension to the entities most directly affected by today's action.

EPA therefore concludes that notice and comment would be unnecessary and contrary to the public interest in these special circumstances. For these reasons, EPA believes that there is good cause to issue this extension of the compliance date immediately and without prior notice and comment.

IV. Analysis Under Executive Order 12866, Executive Order 12875, the Paperwork Reduction Act, National Technology Transfer and Advancement Act of 1995, Executive Order 13045, and Executive Order 13084: Consultation and Coordination With Indian Tribal Governments; Congressional Review Directory Act

This action extends the compliance date for treatment standards established in the recently promulgated LDR Phase IV Rule for secondary lead slags that exhibit the toxicity characteristic for metals. Since the rule simply extends the rule's compliance date it imposes no new costs and does not raise novel policy issues. EPA therefore does not consider it to be a ''significant regulatory action'' for the purposes of Executive Order 12866, and it therefore is not subject to executive review under that Order. For the same reason, today's rule also does not impose obligations on State, local or tribal governments for the purposes of Executive Order 12875.

Furthermore, this action is not subject to the Regulatory Flexibility Act (RFA) since this rule is exempt from notice and comment rulemaking requirements for good cause, as explained in Section III. The Administrator is, therefore, not required to certify under the RFA regarding the significance of any economic impact on small entities. However, because today's action simply extends the rule's compliance date for 90 days for one type of waste and does not impose any new costs, the Agency believes that the rule will not have a significant economic impact on a substantial number of small entities.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable

voluntary consensus standards. There are no voluntary consensus technical standards directly applicable to treatment of secondary lead slags that exhibit the toxicity characteristic for metals. Therefore, EPA did not consider the use of any voluntary standards in today's action.

Today's action is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because this limited extension of the Phase IV compliance date for one waste is not an economically significant rule, and it is not expected to create any environmental health risks or safety risks that may disproportionately affect children. In that regard, the Agency notes that secondary lead slags will continue to be subject to the currently-existing LDR treatment standards during this ninety day period.

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. Today's extension of the Phase IV compliance date for one waste will not impose any new information collection requirements and therefore EPA has met all Paperwork Reduction Act obligations.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities. Today's action simply delays the compliance date of Phase IV for one waste for ninety days, and does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and thus is promulgating this document as a final rule. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Land disposal restrictions.

Dated: August 28, 1998.

Carol M. Browner,

Administrator.

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

PART 268—LAND DISPOSAL RESTRICTIONS

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

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

Subpart D—Treatment Standards

2. Section 268.34 is amended by redesignating paragraphs (b) through (e) as paragraphs (c) through (f) and by adding a new paragraph (b) to read as follows:

§ 268.34 Waste specific prohibitions—toxicity characteristic metal wastes.

* * * * *

(b) Effective November 26, 1998, the following waste is prohibited from land disposal: Slag from secondary lead smelting which exhibits the Toxicity Characteristic due to the presence of one or more metals.

* * * * *

[FR Doc. 98–24045 Filed 9–8–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50628B; FRL–6020–7]

RIN 2070–AB27

Certain Chemical Substances; Removal of Significant New Use Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is removing significant new use rules (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for twelve chemical substances which were the subject of premanufacture notice (PMNs). EPA initially published the SNURs using direct final rulemaking procedures. EPA received a notice of intent to submit adverse comments on this rule. Therefore, the Agency is removing these rules, as required under the expedited SNUR rulemaking process (40 CFR part 721, subpart D). In a separate notice of proposed rulemaking in today's **Federal Register**, EPA is proposing a SNUR for these substances with a 30-day comment period.

EFFECTIVE DATE: This action is effective on September 9, 1998.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–531, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

I. Background

In the **Federal Register** of January 22, 1998 (63 FR 3393) (FRL–5720–3), EPA issued several direct final SNURs, including SNURs for the twelve chemical substances which are the subject of this document. As described in § 721.160, EPA is removing the