

revisions listed in paragraphs (c)(172)(i)(B) and (C) of this section.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL-7217-4]

Land Disposal Restrictions: Site-Specific Treatment Variance to Chemical Waste Management, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA or Agency) is today taking direct final action by granting a site-specific treatment variance from the Land Disposal Restrictions (LDR) treatment standards for two selenium-bearing hazardous wastes. EPA first granted a variance for these two waste streams three years ago. We are now taking action to extend the variance because: the chemical properties of these two wastes continue to differ significantly from the waste used to establish the current LDR standard for selenium (5.7 mg/L, as measured by the TCLP); and Chemical Waste Management, Inc. (CWM) has adequately demonstrated that the two wastes cannot be treated with current technologies to meet this treatment standard.

CWM will stabilize these two specific wastes at their Kettleman City, California facility to meet the following alternative treatment standards: 51 mg/L, as measured by the TCLP, for the Owens-Brockway waste and 25 mg/L, as measured by the TCLP, for the St. Gobain (formerly Ball Foster) waste. After treatment to these alternative selenium standards, CWM may dispose of the treated wastes in a RCRA Subtitle C landfill provided they meet the applicable LDR treatment standards for the other hazardous constituents in the wastes. We are granting this variance for three years.

DATES: This rule is effective on July 12, 2002, without further notice, unless EPA receives adverse comment on the direct final rule by June 27, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: The official record for this rulemaking is identified as Docket Number F-2002-CWVF-FFFFF and is

located in the RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. The RIC is open from 9 am to 4 pm Monday through Friday, excluding federal holidays. To review docket materials, we recommend that you make an appointment by calling 703-603-9230. You may copy up to 100 pages from any regulatory document at no charge. Additional copies cost \$0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center at 1-800-424-9346 or TDD 1-800-553-7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703-412-9810 or TDD 703-412-3323 (hearing impaired). The RCRA Call Center is open Monday-Friday, 9 am to 4 pm, Eastern Standard Time. For more information on specific aspects of this direct final rule, contact Josh Lewis at 703-308-7877, lewis.josh@epa.gov, or write him at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without prior proposal because we view it as a noncontroversial action. We anticipate no significant adverse comment because of the site-specific nature of this action and because we are merely extending a variance that is already in effect, and which has already been the subject of notice and opportunity for comment. In the three years since we granted the original variance, no new treatment options have become available to treat these two waste streams more effectively. Having said this, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to grant this variance if significant adverse comments are filed. See the proposed rule for information on submitting comments.

This direct final rule will be effective on July 12, 2002, without further notice unless we receive adverse comment by June 27, 2002. If we receive significant adverse comment, we will publish a timely withdrawal in the **Federal Register** indicating that this direct final rule action is being withdrawn due to adverse comment on the proposed rule. We will then address all public comments, as appropriate, based on the proposed rule. Any parties interested in commenting on this treatment variance must do so at this time.

Availability of Rule on Internet

Please follow these instructions to access the rule: From the World Wide Web (WWW), type <http://www.epa.gov/epaoswer/hazwaste/ldr>.

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I. Background

A. What Is the Basis for LDR Treatment Variances?

Under section 3004(m) of the Resource Conservation and Recovery Act (RCRA), EPA is required to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." EPA interprets this language to authorize treatment standards based on the performance of best demonstrated available technology (BDAT). This interpretation was upheld by the D.C. Circuit in *Hazardous Waste Treatment Council vs. EPA*, 886 F. 2d 355 (D.C. Cir. 1989).

The Agency recognizes that there may be wastes that cannot be treated to levels specified in the regulations (see 40 CFR 268.40) because an individual waste matrix or concentration can be

substantially more difficult to treat than those wastes the Agency evaluated in establishing the treatment standard (51 FR 40576, November 7, 1986). For such wastes, EPA has a process by which a generator or treater may seek a treatment variance. See 40 CFR 268.44. If granted, the terms of the variance establish an alternative treatment standard for the particular waste at issue.

B. What Is the Basis of the Current Selenium Treatment Standard?

In the so-called Third Third rule (55 FR 22521, June 1, 1990), we used performance data from the stabilization of a selenium D010 mineral processing waste, which we determined to be the most difficult to treat selenium waste, to set the national treatment standard for selenium. This waste contained up to 700 ppm total selenium and 3.74 mg/L selenium in the TCLP leachate. The resulting post-treatment selenium TCLP levels were between 1.80 and 0.154 mg/L, which led to our establishment of a national treatment standard of 5.7 mg/L for D010 selenium nonwastewaters. At that time, EPA also had information indicating that wastes containing high concentrations of selenium are rarely generated and land disposed and, therefore, concluded that the standard of 5.7 mg/L was achievable.

In the Phase IV final rule, the Agency determined that a treatment standard of 5.7 mg/L, as measured by the TCLP, continued to be appropriate for D010 nonwastewaters (63 FR 28556, May 26, 1998). The Agency also changed the universal treatment standard (UTS) for selenium nonwastewaters from 0.16 mg/L to 5.7 mg/L. In the preamble to the Phase IV final rule, we noted that we received comments from one company, Chemical Waste Management (CWM), indicating that they were attempting to stabilize selenium wastes with concentrations much higher than those EPA was examining to establish the national selenium standard. In response, we indicated that for these high-level selenium waste streams, we would propose a site-specific treatment variance.

II. Basis for Today's Determination

A. What Is the History of This Variance?

As we just mentioned, in the preamble to the Phase IV rule we said we would propose a site-specific treatment variance for high selenium waste streams. We proposed this treatment variance on October 23, 1998 (63 FR 56886) and subsequently finalized it in a May 26, 1999 **Federal Register** notice (64 FR 28387). The variance was for a three-year period

from the date of signature (i.e., May 11, 1999) and it covered two specific waste streams: An electrostatic precipitator dust from Owens Brockway; and a dry scrubber solid from Ball Foster (now St. Gobain). Both waste streams contain relatively high leachable selenium concentrations. As we mentioned in the original treatment variance, CWM presented data showing that selenium TCLP concentrations in the untreated wastes are one to three orders of magnitude higher than the untreated mineral processing wastes that EPA used to develop the current D010 selenium treatment standard.¹ The data also showed that neither treated waste stream can reliably meet the numerical standard of 5.7 mg/L, as measured by the TCLP, even though CWM shows that they were using the treatment technology on which EPA based the selenium treatment standard.²

In the May 26, 1999 **Federal Register** notice, we established the following alternative treatment standards for selenium: 51 mg/L TCLP for Owens Brockway; and 25 mg/L TCLP for Ball Foster (now St. Gobain). We also included a requirement that CWM submit to EPA an annual report containing any analytical data from studies using alternative treatment technologies, data showing the stabilization recipes they are using to meet the alternative treatment standards, and the untreated and treated selenium concentrations in these wastes.

On June 8, 2000 and May 7, 2001, CWM submitted, respectively, the first and second annual reports to the Agency.³ On March 25, 2002, CWM submitted a letter to EPA requesting a continuation of the treatment variance for another three-year period. In the letter, CWM states that because both wastes continue to have elevated levels of leachable selenium, they are unable to achieve the selenium treatment standard consistently. CWM also asserts that they are unaware of any additional reagents that would be more effective in the treatment process.

¹ Selenium concentrations in the untreated Owens Brockway wastes were between 465 and 1024 mg/L, as measured by the TCLP, while the selenium concentration in the Ball-Foster waste was 59.8 mg/L, as measured by the TCLP.

² CWM submitted stabilization data from each facility using combinations of the following stabilization reagents: ferrous sulfate, calcium polysulfide, ferric chloride, sodium bisulfate, portland cement, and cement kiln dust. For more detailed information about the original petition, see the docket supporting this rulemaking (docket number F-2002-CWVF-FFFFF).

³ All three CWM's annual reports are in the docket supporting today's rulemaking.

B. What Criteria Govern a Treatment Variance?

Under 40 CFR 268.44 (h), EPA allows facilities to apply for a site-specific variance when a waste generated under conditions specific to only one site cannot be treated to the specified level(s). In such cases, the generator or treatment facility may apply to the Administrator, or EPA's delegated representative, for a site-specific variance from a treatment standard.

In 40 CFR 268.44 (h)(1) and (2), EPA describes the two main cases in which we will grant a treatment variance. The case described in 40 CFR 268.44 (h)(1) is applicable to this treatment variance, which addresses process wastes that are generated on a routine basis by two glass manufacturing companies. Basically, EPA must determine if the petitioner has adequately shown that, "It is not physically possible to treat the waste to the level specified in the treatment standard * * * because the physical or the chemical properties of the waste differ significantly from the waste analyzed in developing the treatment standard. * * *"

C. What Is the Basis for EPA's Approval of CWM's Request for an Alternative D010 Treatment Standard?

After careful review of the original treatment variance and of the data that CWM has submitted since we granted the original treatment variance, we conclude that CWM has adequately demonstrated that the wastes continue to satisfy the requirements for a treatment variance under 40 CFR 268.44 (h)(1).

The two glass manufacturing waste streams continue to differ significantly in chemical composition from the waste used to generate the original selenium treatment standard. Selenium TCLP concentrations in the untreated wastes continue to be one to three orders of magnitude higher than the concentrations in the waste used in developing the treatment standard for D010 hazardous wastes. Furthermore, CWM continues to use stabilization as the treatment technology, which is consistent with EPA's determination of BDAT, and the process is well-designed and operated.⁴

As we mentioned in the preamble to the original treatment variance, treatment of these two wastes is especially difficult because of the presence of other metals (i.e., arsenic, cadmium, chromium, and lead) above their respective characteristic levels. It

⁴ See the docket supporting today's rule for more detailed information on CWM's standard practices for land disposal restricted waste.

is difficult, if not impossible, to optimize treatment for selenium when other metals are being treated because the selenium solubility curve differs from that of most other metals.⁵

Therefore, EPA is today granting an extension to the site-specific treatment variance from the D010 treatment standards for the two waste streams in question since the wastes cannot be physically treated to the level specified in the regulations. Today's alternative treatment standards will provide sufficient latitude for CWM to treat the other metals present in the wastes to LDR treatment standards and, by raising the selenium treatment standard, will avoid the difficulty posed by the different metal solubility curves.

D. What Are the Terms and Conditions of the Variance?

This variance applies to the following two waste streams that are generated during glass manufacturing operations: electrostatic precipitator dust from Owens Brockway Glass Container Company; and dry scrubber solid from St. Gobain (formerly Ball Foster).

1. Determination of the Treatment Standard for the Owens Brockway Waste

When we originally set the alternative treatment standard for the Owens Brockway waste, we determined the most effective stabilization recipe consisted of 0.7 parts iron sulfate combined with 2.0 parts cement, resulting in a reagent to waste ratio of 2.7 to 1. This recipe achieved final selenium TCLP values of 36.8, 34.08, and 43.7 mg/L.⁶ We then used the BDAT methodology⁷ to calculate an alternative D010 standard of 51 mg/L, as measured by the TCLP.

In the approximately three years the treatment variance has been in effect, CWM has treated 26 batches of the Owens Brockway waste. Untreated selenium TCLP values ranged from 26.5–649 mg/L, with an average value of about 265 mg/L. Treated TCLP values range from non-detect to 32.6 mg/L, with an average value of about 12.5

⁵ Selenium's minimum solubility is at a neutral to mildly acidic pH (6.5–7.5) while other characteristic metals have a minimum solubility in the alkaline pH range (8–12) (see 62 FR 26045).

⁶ The treatment extract had a pH ranging from 10.5–11.9, which encompasses the maximum solubility (and, therefore, leaching potential) of selenium. This, in turn, suggests that use of the TCLP in this particular case adequately reflects a worst-case disposal scenario. (This is unlike the situation in *Columbia Falls Aluminum Co. v. EPA*, 139 F.3d 914, in which the TCLP testing did not reflect the post-treatment conditions).

⁷ BDAT Background Document for Quality Assurance/Quality Control Procedures and Methodology, October 23, 1991.

mg/L. Because the TCLP values in the untreated and treated wastes are comparable to the levels in the wastes we used to set the original alternative treatment standard of 51 mg/L, we determined that a TCLP value of 51 mg/L continues to be the appropriate alternative treatment standard for this waste.

2. Determination of the Treatment Standard for the St. Gobain Waste

When we originally set the alternative selenium treatment standard for the Ball-Foster waste, we determined the most effective stabilization recipes have reagent to waste ratios of 1.8, 2.2, 2.3, 2.4, and 2.7. Selenium concentrations in the treated wastes were 11.6, 7.47, 8.22, 15.6, and 4.82 mg/L, as measured by the TCLP.⁸ Using these five data points, we calculated an alternative treatment D010 standard of 25 mg/L, as measured by the TCLP.

In the approximately three years the treatment variance has been in place, CWM has treated seven batches of the Owens Brockway waste. Untreated selenium TCLP values ranged from 33.5–43.9 mg/L, with an average value of about 38.9 mg/L. Treated TCLP values range from 1.6 to 14.6 mg/L, with an average value of about 8.7 mg/L. Because the TCLP values in the untreated and treated wastes are comparable to the levels in the wastes we used to set the original alternative treatment standard of 25 mg/L, we determined that a TCLP value of 25 mg/L continues to be the appropriate alternative treatment standard for this waste.

3. Specifics Applicable to Both Waste Streams

After treatment to these alternative selenium standards, CWM may dispose of the treated wastes in a RCRA Subtitle C landfill⁹ provided CWM complies with any other applicable treatment standards associated with these wastes, including other applicable Federal, State, or local requirements as specified in the facility's waste analysis plan. We are granting this variance for three years for reasons discussed in section IV below.

⁸ The treatment extract pH ranged from 11.9–12.0, which again suggested that the use of the TCLP adequately reflected the worst case disposal scenario. Furthermore, these treatment recipes were all consistent with the reagent to waste ratios used to establish the existing selenium standard of 5.7 mg/L, as measured by the TCLP.

⁹ Note that disposal in a Subtitle C landfill is required because the treated wastes are still characteristic for selenium (i.e., the wastes have TCLP values above the toxicity characteristic level for selenium of 1.0 mg/L).

4. Summary

In summary, after evaluating the data from the three years that the treatment variance has been in place, we have determined that the conditions that were present when we originally granted this treatment variance still exist: the two glass manufacturers continue to produce these high selenium waste streams; the untreated and treated selenium concentrations continue to be one to three orders of magnitude higher than the wastes we used to set the original selenium treatment standard; and alternative treatment options have not been established to more effectively treat these wastes.

We also note that although the alternative selenium standards for these two wastes are relatively high, this treatment variance is a technically necessary compromise. As noted above and in the May 12, 1997 **Federal Register** (62 FR 26045), treatment cannot be optimized for both acid and base-soluble metals due to their different solubility curves. Because all of the other toxic metals (i.e., arsenic, cadmium, chromium, and lead) are being immobilized to meet their respective universal treatment standards, we consider, under the circumstances, that threats are being minimized if the alternative selenium treatment standards are met, as required by 3004 (m).

Furthermore, not only are all of the other toxic metals meeting their respective UTS standards, but the alternative selenium treatment standards essentially require CWM to use a well-designed and well-operated treatment system that is consistent, particularly in terms of the selection of reagents and reagent to waste ratios, with the technical basis for the current selenium treatment standard.

III. Reasons for Imposing Another Three-Year Limitation

We are granting this treatment variance for another three-year period. Again, we believe the conditions that led us to set the original three-year limit still exist. To be more specific, because selenium is a non-renewable resource, and because the wastes in question contain high selenium concentrations, one potential avenue that we want to continue to explore is whether the selenium component could be recycled in an environmentally sound manner instead of being stabilized and landfilled.¹⁰ Over the next three years,

¹⁰ In 2001, Hydromet Environmental Recovery Ltd. opened the first plant in the U.S. that recovers

we also intend to work with the two glass manufacturers to better understand the processes that generate these waste streams and to explore whether opportunities exist to reduce the amount of selenium that ultimately is disposed.

For the three-year period, we expect CWM to update us annually on the alternative treatment technologies they are investigating and to submit any analytical data from studies using these alternative technologies. We ask that CWM's submission also include information showing which stabilization recipe they are using to meet the alternative treatment standards, the selenium concentrations in untreated wastes, and the analytical results from these treated wastes. We intend to use this information to determine, among other things, if there are any reductions in the amount of selenium that ultimately is disposed and if the alternative treatment standards for selenium are appropriate as a more permanent standard for these wastes.

At the end of the three-year period, today's alternative treatment standards expire. Thus, if the two glass manufacturers continue to generate these wastes with commensurate selenium levels, and if CWM has not found a new treatment technology to treat the two wastes to the national treatment level for D010 selenium wastes (or if the Agency has not adopted more permanent alternative treatment standards for these two wastes), then CWM and/or the generators of the two waste streams will have to re-open discussions with EPA about the most appropriate course of action for future management of these waste streams.

IV. Administrative Requirements

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a 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.

Because this rule does not create any new regulatory requirements, it is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This treatment variance does not create any new regulatory requirements. Rather, it establishes alternative treatment standards for two specific wastes that replace standards already in effect, and it only applies to the CWM facility in Kettleman City, California. Therefore, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost benefit

analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. If a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Administrator publishes with the final rule an explanation why that alternative was not adopted. The provisions of section 205 do not apply when they are inconsistent with applicable law.

EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of \$100 million or more in the aggregate to either State, local, or tribal governments or the private sector in one year. The rule would not impose any Federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. States, tribes, and local governments would have no compliance costs under this rule. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding \$100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act. Thus, today's rule is not subject to the requirements of sections 202, 204 and 205 of UMRA.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule will not significantly or uniquely affect small governments. This rule will not impose any requirements on small entities. This treatment variance does not create any new regulatory requirements. Rather, it establishes alternative treatment standards for two specific wastes that replace standards already in effect. Today's rule is not, therefore, subject to

selenium from waste materials. The plant processes selenium materials from the copper refining and photocopy industries. These materials contain 25% or greater selenium.

the requirements of section 203 of UMRA.

D. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

“Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

Today’s rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The subject wastes will comply with all other treatment standards and be disposed of in RCRA Subtitle C landfills. Therefore, we have identified no risks that may disproportionately affect children.

E. Environmental Justice Executive Order 12898

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency’s goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental impacts as a result of EPA’s policies, programs, and activities, and that all people live in clean and sustainable communities. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA’s Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

Today’s variance applies to two D010 waste streams that will be treated by Chemical Waste Management, Inc. at

their Kettleman City, California facility and disposed of in a RCRA Subtitle C landfill, ensuring protection to human health and the environment. Therefore, the Agency does not believe that today’s rule will result in any disproportionately negative impacts on minority or low-income communities relative to affluent or non-minority communities.

F. Paperwork Reduction Act

This variance only changes the treatment standards applicable to two D010 waste streams at the Chemical Waste Management, Inc. facility in Kettleman City, California. It does not change in any way the paperwork requirements already applicable to these wastes. Therefore, this rule is not affected by the requirements of the Paperwork Reduction Act.

G. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 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.

This action does not involve technical standards based on new methodologies. Therefore, EPA did not consider the use of any voluntary consensus standards.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and

responsibilities between the Federal government and Indian tribes.”

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This treatment variance does not create any new regulatory requirements. Rather, it establishes alternative treatment standards for two specific wastes that replace standards already in effect. Thus, Executive Order 13175 does not apply to this rule.

I. Executive Order 13132 (Federalism)

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” are defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of governments.”

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This treatment variance does not create any new regulatory requirements. Rather, it establishes alternative treatment standards for two specific wastes that replace standards already in effect. Thus, Executive Order 13132 does not apply to this rule.

J. Executive Order 13211 (Energy Effects)

This rule is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

K. Congressional Review Act

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**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as

defined by 5 U.S.C. 804(2). This rule will be effective July 12, 2002.

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

Dated: May 13, 2002.
Michael H. Shapiro,
Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out 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.

2. In § 268.44, the table in paragraph (o) is amended by: a. Removing the entry for "Ball Foster Glass Container Corp, El Monte, CA";

b. Adding in alphabetical order a new entry for "St. Gobain Containers, El Monte, CA"; and

c. Revising footnote 7.

The revision and addition read as follows:

§ 268.44 Variance from a treatment standard.

* * * * *

(o) * * *

TABLE—WASTES EXCLUDED FROM THE TREATMENT STANDARDS UNDER § 268.40

Facility name ⁽¹⁾ and address	Waste code	See also	Regulated hazardous constituent	Wastewaters		Nonwastewaters	
				Concentration (mg/L)	Notes	Concentration (mg/kg)	Notes
* St. Gobain Containers, El Monte, CA ⁽⁶⁾ ⁽⁷⁾ .	* D010	* Standards under § 268.40.	* Selenium	* NA	* NA	* 25	* NA

⁽¹⁾ A facility may certify compliance with these treatment standards according to provisions in 40 CFR 268.7.

⁽⁶⁾ Alternative D010 selenium standard only applies to dry scrubber solid from glass manufacturing wastes.

⁽⁷⁾ D010 wastes generated by these two facilities are subject to the following conditions: (a) the wastes must be treated by Chemical Waste Management, Inc. at their Kettleman Hills facility in Kettleman City, California; and (b) this treatment variance will be valid until July 12, 2005.
Note: NA means Not Applicable.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA 02-494]

FCC Registration Number Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On August 31, 2001 the Commission released final rules amending its rules to require persons and entities doing business with the Commission to obtain a unique identifying number called the FCC Registration Number (FRN) and to supply it when doing business with the Commission. The Commission is revising those rules to correct nonsubstantive errors.

DATES: Effective May 28, 2002.

FOR FURTHER INFORMATION CONTACT: Laurence H. Schecker, Office of General Counsel (202) 418-1720.

SUPPLEMENTARY INFORMATION: This order adopted February 29, 2000 revises 47 CFR 1.8002 and 1.8004 to make nonsubstantive, editorial revisions. The Commission's rules are amended as set forth:

Ordering Clause

According, pursuant to § 0.231(b) of the Commission's rules, 47 CFR 0.231(b), that sections 1.8002(b)(1), 1.8004(c), and 1.8004(d) of the Commission's rules, 47 CFR 1.8002(b)(1), 1.8004(c), and 1.8004(d), are AMENDED as set forth in the rule changes.

List of Subjects in 47 CFR Part 1

Practice and procedure.
 Federal Communication Commission.
Marlene H. Dortch,
Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications

Commission amends 47 CFR Part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

§ 1.8002 [Amended].

2. In § 1.8002(b)(1), remove the words "THE CORES" and add in their place the words "the CORES".

3. Revise § 1,8004(c) and (d) to read as follows:

§ 1.8004 Penalty for Failure to Provide the FRN.

* * * * *

(c) Where the Commission has not established a filing deadline for an application, a missing or invalid FRN on such an application may be corrected and the application resubmitted. Except as provided in paragraph (d) of this section or in other Commission rules, the date that the resubmitted application is received by the