§ 180.153 [Amended]

■ 2. Section 180.153 is amended by removing the entries for cattle, meat (fat basis) and cattle, meat byproducts (fat basis) from the table in paragraph (a)(1).

§ 180.204 [Amended]

■ 3. Section 180.204 is amended by removing the entries for cattle, fat; cattle, meat; goat, fat; goat, meat; hog, fat; hog, meat; horse, fat; horse, meat; poultry, fat; poultry, meat; sheep, fat; and sheep, meat; from the table in paragraph (a), and by also removing from the table in paragraph (a) the ''(N)'' designation from any entry where it appears.

§ 180.220 [Amended]

■ 4. Section 180.220 is amended by removing the entries for egg; hog, fat; hog, meat byproducts; hog, meat; poultry, fat; poultry, meat byproducts; and poultry, meat from the table in paragraph (a)(1).

§ 180.254 [Amended]

■ 5. Section 180.254 is amended by removing the entries for cattle, fat (of which no more than 0.02 ppm is carbamates); cattle, meat (of which no more than 0.02 ppm is carbamates); cattle, meat byproducts (of which no more than 0.02 ppm is carbamates); goat, fat (of which no more than 0.02 ppm is carbamates); goat, meat (of which no more than 0.02 ppm is carbamates); goat, meat byproducts (of which no more than 0.02 ppm is carbamates); hog, fat (of which no more than 0.02 ppm is carbamates); hog, meat (of which no more than 0.02 ppm is carbamates); hog, meat byproducts (of which no more than 0.02 ppm is carbamates); horse, fat (of which no more than 0.02 ppm is carbamates); horse, meat (of which no more than 0.02 ppm is carbamates); horse, meat byproducts (of which no more than 0.02 ppm is carbamates); sheep, fat (of which no more than 0.02 ppm is carbamates); sheep, meat (of which no more than 0.02 ppm is carbamates); and sheep, meat byproducts (of which no more than 0.02 ppm is carbamates) from the table in paragraph (a).

§ 180.269 [Amended]

■ 6. Section 180.269 is amended by removing the entries for cattle, fat; cattle, meat byproducts; cattle, meat; goat, fat; goat, meat byproducts; goat, meat; hog, fat; hog, meat byproducts; hog, meat; horse, fat; horse, meat byproducts; horse, meat; milk; sheep, fat; sheep, meat byproducts; and sheep, meat from the table in paragraph (a).

■ 7. Section 180.311 is revised to read as follows:

§ 180.311 Cacodylic acid; tolerances for residues.

(a) *General.* Tolerances are established for residues of the defoliant cacodylic acid (dimethylarsinic acid), expressed as As2O3, in or on the following raw agricultural commodity as follows:

Commodity	Parts per million
Cotton, undelinted seed	2.8

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.368 [Amended]

■ 8. Section 180.368 is amended by removing the entries for hog, fat; hog, kidney; hog, liver; hog, meat; and hog, meat byproducts, except kidney and liver from the table in paragraph (a)(1).

§ 180.371 [Amended]

■ 9. Section 180.371 is amended by removing the entries for hog, fat; hog, liver; hog, meat byproducts, except liver; hog, meat; poultry, fat; poultry, liver; poultry, meat byproducts, except liver; and poultry, meat from the table in paragraph (a).

■ 10. Section 180.383 is amended by revising the table in paragraph (a) to read as follows:

§ 180.383 Sodium salt of acifluorfen; tolerances for residues.

(a) * * *

Commodity	Parts per million
Peanut	0.1
Rice, grain	0.1
Rice, straw	0.1
Soybean	0.1
Strawberry	0.05

* * * * *

■ 11. Section 180.421 is amended by revising the table in paragraph (a)(1) to read as follows:

§ 180.421 Fenarimol; tolerances for residues.

(a) * * * (1) * * *

Commodity	Parts per million
Apple	0.1
Apple, dry pomace	2.0
Apple, wet pomace	2.0
Cattle, fat	0.1
Cattle, kidney	0.1
Cattle, meat	0.01
Cattle, meat byproducts, except kidney	0.05
Goat, fat	0.1
Goat, kidney	0.1
Goat, meat	0.01
Goat, meat byproducts, except kidney	0.05
Horse, fat	0.1
Horse, kidney	0.1
Horse, meat	0.01
Horse, meat byproducts, except kidney	0.05
Pear	0.1
Pecan	0.1
Sheep, fat	0.1
Sheep, kidney	0.1
Sheep, meat	0.01
Sheep, meat byproducts, except kidney	0.05

* * * * *

§ 180.434 [Amended]

■ 12. Section 180.434 is amended by removing the entries for egg; poultry, fat; poultry, kidney; poultry, liver; poultry, meat byproducts, except kidney and liver; and poultry, meat; from the table in paragraph (a).

[FR Doc. 04–2956 Filed 2–10–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[RCRA–2003–0025; FRL–7620–2]

Land Disposal Restrictions: Site-Specific Treatment Variances for Heritage Environmental Services LLC and Chemical Waste Management Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is today granting three site-specific treatment variances from the Land Disposal Restrictions (LDR) treatment standards for selenium-bearing hazardous wastes generated by the glass manufacturing industry. EPA is granting these variances because the chemical properties of the wastes differ significantly from those from the waste used to establish the current LDR standard for selenium (5.7 mg/L, as measured by the Toxicity Characteristic Leaching Procedure (TCLP)), and the petitions have adequately demonstrated that the wastes cannot be treated to meet this treatment standard.

In the first action, EPA is granting a variance to Heritage Environmental Services LLC (Heritage) to stabilize a selenium-bearing hazardous waste generated by Guardian Industries Corp. (Guardian) at their RCRA permitted facility in Indianapolis, Indiana. With

promulgation of this final rule, Heritage may treat the Guardian waste to an alternate treatment standard of 39.4 mg/L, as measured by the TCLP. Heritage may dispose of the treated waste in a RCRA Subtitle C landfill, provided they meet the applicable LDR treatment standards for the other hazardous constituents in the waste.

In the second and third actions, EPA is permanently establishing two site-specific variances from the Land Disposal Restrictions treatment standards for Chemical Waste Management Inc. (CWM), at their Kettleman Hills facility in Kettleman City, California, for two selenium-bearing hazardous wastes. EPA previously granted treatment variances to these wastes on a temporary basis. CWM will continue to be required to treat these two specific wastes to alternative treatment standards of 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. 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.

DATES: This final rule is effective on March 29, 2004 without further notice, unless EPA receives adverse comment by March 12, 2004. 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: Comments may be submitted by mail to: EPA Docket Center—OSWER Docket, Environmental Protection Agency, Mailcode: 5305 T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. RCRA–2003–0025. Comments may also be submitted electronically, or through hand delivery/courier. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703 412–9810 or TDD 703 412–3323. For more detailed information on specific aspects of this rulemaking, contact Juan Parra at (703) 308–0478 or *parra.juan@epa.gov,* Office of Solid Waste (MC 5302 W), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., 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 comments because, to our knowledge, no new treatment options have become available to treat these high concentration selenium wastes more effectively, and in the case of the two selenium-bearing hazardous wastes treated by CWM, we are making permanent a variance that is already in effect, and which has already been the subject of notice and opportunity for comment. Having said this, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that could serve as a proposal to grant these variances to Heritage and CWM if significant adverse comments are filed. See the **SUPPLEMENTARY INFORMATION** section on how to submit comments.

This direct final rule will be effective on March 29, 2004 without further notice unless we receive adverse comment on the proposed rule by March 12, 2004. If we receive adverse comment on the direct final rule, we will withdraw the direct final action and the treatment variance for Heritage and restore the terms and conditions of the three year site-specific selenium treatment variance to CWM. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this direct final rule must do so at this time.

A. How Can I Get Copies of This Variance Proposal ?

1. Docket. EPA has established an official public docket for this action under Docket ID No. RCRA–2003–0025. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the OSWER Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0272. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

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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 DC Circuit in *Hazardous Waste Treatment Council* v. *EPA,* 886 F.2d 355 (DC Cir. 1989).

The Agency recognizes that there may be wastes that cannot be treated to levels specified in the regulations because an individual waste can be substantially more difficult to treat than those wastes the Agency evaluated in establishing the treatment standard. 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?

The current treatment standard for wastes exhibiting the toxicity characteristic for selenium is based upon the performance of stabilization treatment technology. When the Agency developed these treatment standards for selenium, EPA believed that wastes containing high concentrations of selenium were rarely generated and land disposed (62 FR 26041, May 12, 1997). The Agency also stated that it believed that, for most waste containing high concentrations of selenium, recovery of the selenium was feasible using recovery technologies currently employed by copper smelters and copper refining operations (Id.). The Agency further stated that it did not have any performance data for selenium recovery, but available information indicated that recovery of elemental selenium out of certain types of scrap material and other types of waste was practiced in the United States.

The Agency used performance data from the stabilization of a selenium characteristically hazardous mineral processing waste (waste code D010) to set the national treatment standard for selenium, which we determined at that time to be the most difficult to treat selenium waste. This untreated waste contained up to 700 ppm total selenium and 3.74 mg/L selenium in the TCLP leachate. The resulting post-treatment levels of selenium in the TCLP leachate were between 0.154 mg/L and 1.80, which led to our establishment of a national treatment standard of 5.7 mg/L for D010 selenium non-wastewaters. This D010 mineral processing waste also contained toxic metals (*i.e.*, arsenic, cadmium, and lead) above characteristic levels. The treatment technology used to establish the selenium levels also resulted in meeting the LDR treatment standards for these non-selenium metals. The reagent to waste ratios varied from 1.3 to 2.7 (62 FR 26041, May 12, 1997).

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 non-wastewaters (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.

C. Previously Approved Variances for Selenium Waste

When EPA established the treatment standards for metal wastes and mineral processing wastes (63 FR 28555, May 26, 1998), we noted that we received comments from one company, Chemical Waste Management Inc. (CWM), indicating that it was attempting to stabilize selenium-bearing wastes with concentrations much higher than those EPA had examined when it established the national treatment standard for wastes exhibiting the toxicity characteristic for selenium. In response, we indicated that for two high-level selenium waste streams, we would propose two site-specific treatment variances, which we granted on May 26, 1999 (63 FR 56886). EPA granted this variance for three years, and required CWM to conduct studies on approaches to further reduce the leachability of such treated wastes. EPA also required CWM to investigate alternative treatment technologies that might provide more effective treatment and remove the need for a treatment variance. EPA required CWM to report annually on these investigations and to provide any analytical data from the treatment studies.[1] The annual reports include stabilization recipes being utilized to meet the alternative treatment standards, the selenium concentrations in the untreated wastes and the analytical results from leach testing of the treated wastes. On May 28, 2002 (67 FR 36849), EPA renewed this variance for another three year term, and continued to require CWM to report on its treatability studies and to investigate whether more effective treatment is available.

D. Reasons for Lack of U.S. Secondary Selenium Recovery Capacity

Primary selenium[2] is a co-product in the mining of copper ores. The principal markets for selenium are in electronics (30%), glass manufacturing (20%), pigments (19%), metallurgical additives (14%) and agricultural/biological applications (6%).[3] In glass manufacturing, selenium is used to color container glass and other soda-lime silica glasses and to reduce solar heat transmission in architectural plate and automotive glass.

Because selenium is a non-renewable resource, and because the wastes in question contain high selenium concentrations, EPA's preference would be to recover the selenium in an environmentally sound manner over stabilization and land disposal. However, there was no recorded domestic production of secondary selenium in 2002.[4] All potential selenium recovery technologies being considered have remained pilot projects and none of them have been shown to be economically viable. These factors suggest that development of an environmentally protective secondary selenium recovery system in the U.S. is not reasonably expected in the near future. That leaves stabilization as the best available treatment technology.

II. Basis for Heritage Variance Petition

Under 40 CFR 268.44(h), facilities can apply for a site-specific variance in cases where a waste that is generated under conditions specific to only one site cannot be treated to the specified levels. In such cases, the generator or treatment facility may apply to the Administrator, or to EPA's delegated

[1] All four of CWM's annual reports are in the docket supporting today's rulemaking.

[2] ''Selenium is found in 75 different mineral species; however, pure selenium does not exist as an ore. For this reason, primary selenium is recovered from anode slimes generated in the electrolytic refining of copper.'' U.S. EPA (F–96–PH4A–S0001): Identification and Description of Mineral Processing Sectors and Waste Streams.

[3] ''Canadian Mineral Yearbook'' 1995.

[4] ''Selenium'' U.S. Geological Survey—Minerals Yearbook—2003.

representative, for a site-specific variance from a treatment standard. The applicant for a site-specific variance must demonstrate that, because the physical or chemical properties of the waste differ significantly from the waste analyzed in developing the treatment standard, the waste cannot be treated to the specified levels or by the specified methods. There are other grounds for obtaining treatment variances, but this is the only provision relevant to this action.

On May 14, 2003, Heritage Environmental Services submitted their petition for a treatment variance to EPA. All information and data used in the development of this treatment variance can be found in the RCRA docket (RCRA–2003–0025) for this rulemaking.

A. Waste Characteristics

Guardian Industries Corp., in Jefferson Hills, Pennsylvania, is a specialty glass manufacturing facility. Emissions from its glass furnace are first subject to lime injection, and subsequently captured in an electrostatic precipitator. Lime is added to remove sulphur compounds and selenium from the glass furnace gases. Heritage stabilizes the selenium-bearing waste from Guardian at their RCRA permitted facility in Indianapolis, Indiana.

The Guardian waste is a dry powder with a bulk density of about 0.4 g/cm^3, and contains no free liquids or organic constituents. The calcium content is high, approximately 30%, since the waste contains lime injected to the furnace exhaust. Concentrations of total selenium in the untreated waste vary between 10,000 ppm and 70,000 ppm (1%–7%). The dust is a D010 characteristic waste because the selenium concentration exceeds 1.0 mg/L, as measured by the TCLP. The rate of variation in the amount of waste is related to the demand, and ranges from 20–50 tons/month.

The land disposal restrictions found in 40 CFR 268.40(e) require characteristic wastes to meet the universal treatment standards (UTS) in 40 CFR 286.48 for all underlying hazardous constituents (UHCs) before the waste can be land disposed. Analytical data on the raw Guardian waste indicate that the only underlying hazardous constituent present is chromium; occasionally the dust is a D007 waste because the chromium exceeds the hazardous waste characteristic level of 5 mg/L, as measured by the TCLP. The universal treatment standard for chromium is 0.6 mg/L, as measured by the TCLP. As an underlying hazardous constituent, chromium must be treated to below the 0.6 mg/L universal treatment standard for the waste to be properly land disposed (45 FR 74889; November 12, 1980 and 52 FR 25942; July 9, 1987).

B. Chemical Properties and Treatability Information on Heritage's Selenium Wastes

Selenium emissions from the Guardian glass furnace are captured by a lime scrubber. Lime treatment is used to remove sulphur compounds and selenium from the glass furnace gases. An approach to immobilize the selenium in the Guardian waste and to reduce its exposure to leaching agents is to stabilize it with cement. With this technology option, the waste is solidified into a solid of high compressive strength, thereby incorporating the hazardous components of the electrostatic precipitator dust into a solid matrix. The solid matrix substantially lowers the surface area potentially exposed to leaching from that of untreated dust. As a result, the solidified waste should have a lower leaching potential after the waste is disposed in a hazardous waste landfill.

As mentioned earlier, analytical data on the raw Guardian waste indicate that the only underlying hazardous constituent present is chromium. Heritage conducted treatability studies demonstrating that the addition of Portland cement alone is not sufficient to reduce the chromium levels to below the 0.6 mg/L treatment standard. To further treat the chromium in the waste, the hexavalent chromium ion must be reduced to the trivalent state so that precipitation can occur. Heritage used ferric sulfate for this purpose.

Heritage conducted approximately 200 preliminary rounds of testing using different stabilization recipes. Heritage then conducted additional tests using the stabilization recipes used by Chemical Waste Management (see Section III). Collectively, the TCLP tests on treated Guardian waste samples indicate a significant reduction in leachability. This reduction, however, is not enough to meet the LDR treatment standard of 5.7 mg/L, as measured by the TCLP.

EPA has determined, in analyzing the data from the preliminary tests, that the most effective stabilization recipe for this waste consists of 0.35 parts ferrous sulfate combined with 1.0 part cement and 1.0 part cement kiln dust, resulting in a reagent to waste ratio of 2.35 to 1. Water is also added to make a thick paste, that upon curing, solidifies the treated waste into a hard cementitious material.

Table I shows the results of leaching, as measured by the TCLP, of Guardian's waste treated using the optimized stabilization recipe. Heritage stabilized the samples with reagent to waste ratios of 2.35 to 1. Reagents included cement, cement kiln dust, and iron sulfate. Treated selenium TCLP concentrations for the five samples ranged from 28.4 mg/L to 35.6 mg/L.

TABLE I.—SUMMARY OF GUARDIAN SELENIUM WASTE

Guardian sample No.	Total selenium content estimate (%)	Untreated Se waste TCLP (mg/L)	Treated Se waste TCLP (mg/L)
1183982	6.7% (67,000 ppm)	70	30.4
1183983	5.8% (58,000 ppm)	72	35.6
1184103	6.0% (60,000 ppm)	66	25.6
1184104	7.2% (72,000 ppm)	120	26.7
1184340	6.3% (63,000 ppm)	68	28.4

C. Alternative Treatment Standard for Heritage To Treat the Guardian Selenium Waste

The glass manufacturing waste from Guardian is significantly different in chemical composition from the waste used in establishing the original selenium treatment standard. Data from Heritage demonstrate that wastes containing high concentrations of selenium are not easily treated using the BDAT technology of stabilization. As previously acknowledged and discussed by the Agency in a past rulemaking (*see* 62 FR 26041), it can be technically challenging to treat wastes containing selenium and other metals, *e.g.*, cadmium, lead or chromium, because of their different chemical properties and solubility curves.

In the Phase IV rule, the Agency did not generally use stabilization data with reagent to waste ratios greater than 1.[5] However, in the case for selenium, the existing treatment standard, as discussed earlier, was calculated from data with reagent to waste ratios ranging from 1.8 to 2.7.

Using the BDAT methodology [6], the Agency has calculated an alternative treatment standard of 39.4 mg/L, as measured by the TCLP, based on five data points (25.6, 26.7, 28.4, 30.4, and 35.6 from table I) that were the result of stabilization treatment using a reagent to waste ratio of 2.35 for the waste generated by Guardian Industries Corp. The treatment recipe is consistent with the reagent to waste ratios used to establish the existing treatment standard of 5.7 mg/L, as measured by the TCLP, and the treatment data from CWM's annual selenium reports (the CWM variance treatment standards are discussed in Section III of this notice).

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

After careful review of the data and petition submitted by Heritage, we conclude that Heritage has adequately demonstrated that the wastes satisfy the requirements for a treatment variance under 40 CFR 268.44(h)(1). Heritage has demonstrated that Guardian's glass manufacturing waste differs significantly in chemical composition from the waste used to establish the original selenium treatment standard. Selenium TCLP concentrations in the untreated waste are one to two orders of magnitude higher than TCLP concentrations in the waste used to develop the treatment standard for D010 hazardous wastes. Furthermore, Heritage is using stabilization as the treatment technology, which is consistent with EPA's determination that stabilization is the best available treatment technology for this waste, and the process is well-designed and operated.

An added benefit of stabilizing the Guardian waste with cement is that the hazardous components of the electrostatic precipitator dust are put into a solid matrix. The solid matrix substantially lowers the surface area potentially exposed to leaching from that of very fine untreated dust. The TCLP results show that, even when the solid is ground to less 9.5 mm, the solidified waste should reduce leaching potential after the waste is disposed in a hazardous waste landfill.

Before determining that stabilization was the best treatment technology option for the Guardian waste, Heritage explored the feasibility of selenium recovery technologies. Heritage established a pilot project to evaluate the extraction of selenium from raw waste at one of their facilities using hydrometallurgical recovery methods. Results from the pilot tests are not yet complete, but preliminary indications are that the amounts of by-product wastes generated during the recovery process exceed the amount of raw waste processed. In addition, the reactions are difficult to control, chemical consumption is very high, and a product of reasonable quality has not yet been achieved. Therefore, the technology does not appear to be economically viable.

Heritage has also looked into techniques for modifying Guardian's production processes to change the chemical composition of this selenium-bearing hazardous waste as it is generated. If workable, the selenium content of the waste would remain high, but the selenium would be in a different chemical form that might simplify its recovery or reuse. One of the concerns is that full-scale modifications in its production processes could cause greater selenium and SO_2 air emissions.

Finally, EPA has reviewed CWM's selenium variance annual reports on the stabilization recipes being utilized to meet the alternative treatment standards and has determined that stabilization of selenium with cement and cement kiln dust, in addition to adding ferrous sulfate as a reagent for chromium, is the best demonstrated available technology for the Guardian waste.

Therefore, EPA is today granting a site-specific treatment variance from the D010 treatment standards for the Guardian waste stream in question. Today's alternative treatment standard will provide sufficient latitude for Heritage to treat the other metal present in the waste to LDR treatment standards and, by raising the selenium treatment standard, will avoid the difficulty posed by the different metal solubility curves. EPA is amending 40 CFR 268.44 to note that Heritage Environmental Services, LLC would be subject to a selenium treatment standard of 39.4 mg/L, as measured by the TCLP.

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

Since this rule approves a variance from a numerical treatment standard, Heritage may vary the reagent recipe it uses to best meet the alternative numerical standard. The Agency notes that, to avoid questions of impermissible dilution, Heritage will need to keep the reagent to waste ratios within acceptable bounds. No specific ratios are being established in today's rule because the Agency does not desire to prevent further optimization of the treatment process. However, the Agency recommends that Heritage use a reagent to waste ratio of 2.35 to 1 as an upper limit. This is the ratio used by the Agency in establishing today's alternative treatment standard.

The treated waste, provided it meets the applicable LDR treatment standard for the other hazardous constituent in the waste,[7] will be disposed in a RCRA Subtitle C landfill.

III. Basis for Permanently Establishing Chemical Waste Management's Selenium Variances

Also in today's notice, EPA is establishing two permanent site-specific treatment variances from the LDR treatment standards for two selenium-bearing hazardous wastes treated by Chemical Waste Management (CWM). The Agency previously granted treatment variances to CWM for these wastes on a temporary basis. These variances apply to two waste streams: Electrostatic precipitator dust generated during glass manufacturing operations at Owens Brockway Glass Container Company, and dry scrubber solid from glass manufacturing wastes at St.

[5] ''Final Draft Site Visit Report for the August 20–21 Site Visit to Rollins Environmental's Highway 36 Commercial Waste Treatment Facility Located in Deer Trail, Colorado,'' November 21, 1996, and the economic analysis supporting the Phase IV final rule.

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

[7] Note that disposal in a Subtitle C landfill is required because the treated waste is still characteristic for selenium (*i.e.*, the waste has TCLP values above the toxicity characteristic level for selenium of 1.0 mg/L).

Gobain (formerly Ball-Foster Glass Container Corporation).

Specifically, on October 23, 1998, EPA proposed to grant site-specific treatment variances for two high-level selenium waste streams to be stabilized by CWM at their Kettleman City, California facility (63 FR 56886). The temporary variances were granted to CWM on May 26, 1999 (64 FR 28387) for a three year period and required CWM to conduct studies on approaches to reduce the leachability of the treated wastes. EPA also required CWM to report on alternative treatment technologies being investigated and provide any analytical data from these studies. On May 28, 2002 (67 FR 36849), EPA renewed these variances for a consecutive three year term with the same conditions to investigate treatment technologies and to report on the effectiveness of their ongoing treatment. These variances expire on May 28, 2005.

A. History of CWM Variances

CWM has applied to the Agency for treatment variances for two companies. In these petitions and in subsequently reported data, CWM has shown 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 [8]. The data also show that neither treated waste stream could reliably meet the numerical treatment standard of 5.7 mg/L, as measured by the TCLP, even though CWM had shown that it is using the BDAT treatment technology (properly designed and operated) on which EPA based the selenium treatment standard.

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 these petitions, see the proposed rule (63 FR 56886, October 23, 1998), the docket supporting the proposed rule (docket number F–98–CWMP–FFFFF), and this direct final rule (docket number RCRA–2003–0025).

As part of CWM's current site-specific treatment variances, EPA required CWM to report on alternative treatment technologies being investigated and provide any analytical data from these studies [9]. These annual reports include stabilization recipes being used to meet the alternative treatment standards, the selenium concentrations in untreated wastes, and the analytical results from these wastes. EPA has reviewed the stabilization recipes being utilized to meet the alternative treatment standards and has determined that stabilization of selenium with cement and cement kiln dust, in addition to adding ferrous sulfate as a reagent for the other toxic metals, is the best demonstrated available technology for these selenium-bearing hazardous wastes.

B. What Is the Basis for Establishing Permanently CWM's Alternative D010 Treatment Standards?

After careful review of the data in CWM's selenium variance annual reports, we conclude that CWM has continued to adequately demonstrate that the wastes satisfy the requirements for a treatment variance under 40 CFR 268.44(h)(1). CWM has demonstrated that the two glass manufacturing waste streams differ significantly in chemical composition from the waste used to establish the original treatment standard. Selenium TCLP concentrations in the untreated wastes are one to three orders of magnitude higher than those in the waste used to develop the treatment standard for D010 hazardous wastes. Furthermore, CWM is using stabilization as the treatment technology, which is consistent with EPA's determination of BDAT, and the process is well-designed and operated.

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 is difficult to optimize treatment for selenium when other metals are being treated because the selenium solubility curve differs from that of most other metals.

In light of the information presented by CWM to the Agency, and EPA's inability to find selenium recovery capability in the US, EPA is changing the status of CWM's treatment variances from temporary to permanent. In addition, consistent with the Heritage treatment variance discussed in Section II of today's notice, EPA is not requiring annual reporting on selenium recovery and treatment technologies.

Therefore, EPA is today permanently establishing two site-specific treatment variances from the D010 treatment standards for the two waste streams in question. We are making this change to the CWM selenium treatment variances in this direct final rule without prior proposal. We view this action as noncontroversial since we did not receive any significant adverse comments when we renewed these variances in 2002.

C. What Are the Terms and Conditions of the Variances?

Upon promulgation of this final rule, CWM will continue to treat these two specific wastes to alternate treatment standards of 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. Gobian (formerly Ball-Foster) waste. CWM will continue to 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. Finally, CWM will no longer be required to submit annual reports on selenium treatment and recovery technologies.

IV. Technical Correction to the Table in Paragraph (O) in 268.44

The table in paragraph (o) under 40 CFR 268.44 (July 1, 2003 version) with the title: Wastes Excluded From the Treatment Standards Under § 268.40, includes a list of facilities that are excluded from the treatment standards under § 268.40 and are subject to treatment variances for specific hazardous constituents. The table includes the following footnote: (5)—Alternative D010 selenium standard only applies to dry scrubber solid from glass manufacturing wastes.

The Agency is revising footnote 6 as follows: ''(6)—Alternative D010 selenium standard only applies to electrostatic precipitator dust generated during glass manufacturing operations.'' This footnote was inadvertently changed when EPA extended the site-specific variance for CWM in May, 2002 (67 FR 36849). This technical correction restores the original text that identifies the source of the selenium-bearing hazardous waste. The selenium-bearing hazardous waste at each facility is generated by emissions from their glass furnaces that are captured in electrostatic precipitators. We are revising the table in paragraph (o) to reflect this change.

V. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore

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

[9] All four of CWM's annual reports are in the docket supporting today's rulemaking.

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. Paperwork Reduction Act

This rule contains no new information collection requirements. The variance only changes the treatment standard applicable to a D010 waste stream at the Heritage Environmental Services, LLC facility in Indianapolis, Indiana, and establishes permanently the treatment standards set for two D10 wastes at the Chemical Waste Management Inc. facility in Kettleman City, California. These actions do not change in any way the paperwork requirements already applicable to these wastes. Therefore, this rule is not subject to the Paperwork Reduction Act.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a 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 effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

This treatment variance does not create any new regulatory requirements. Rather, they establish alternative treatment standards for three specific wastes, and it applies to two facilities; Heritage Environmental Services, LLC facility in Indianapolis, Indiana and Chemical Waste Management Inc. 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.

D. 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. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. 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 the 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.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector, and it does not impose any Federal mandate on State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995. This rule also does not create new regulatory requirements; rather, it merely establishes alternative treatment standards for specific wastes that replace standards already in effect. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order: 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'' is 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 government.''

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. The rule will not impose substantial costs on states and localities. The rule does not impose any enforceable duties on these entities, therefore, Executive Order 13132 does not apply to this rule.

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

Under Executive Order 13175, 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13175 requires EPA to 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 13175 requires EPA to develop an effective process permitting elected officials 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 rule does not significantly or uniquely affect these communities of Indian tribal governments. The rule does not impose any mandate on tribal governments or impose any duties on these entities. This rule issues a variance from the LDR treatment standards for specific characteristic selenium wastes. Accordingly, the requirements of section 3(b) of Executive Order 13175 do not apply to this rule.

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

Executive Order 13045, entitled ''Protection of Children From Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that EPA determines is (1) ''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. EPA interprets the Executive Order 13045 as encompassing only those regulatory actions that are risk based or health based, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not involve decisions regarding environmental health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. 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.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

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 a D010 waste stream at the Heritage Environmental Services, LLC facility in Indianapolis, Indiana and two D10 wastes at the Chemical Waste Management Inc. facility in Kettleman City, California. These selenium wastes will be disposed of in RCRA Subtitle C landfills, 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.

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. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability, applying only to a specific waste type at two facilities under particular circumstances.

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 March 29, 2004.

List of Subjects in 40 CFR Part 268

Environmental Protection, Hazardous waste, Variance.

Dated: February 4, 2004.

Marianne Lamont Horinko,

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. Section 268.44, the table in paragraph (o) is amended by:
■ a. Adding in alphabetical order the entry for ''Guardian Industries Corp., Jefferson Hills, PA''
■ b. Adding footnote number 11.
■ c. Revising footnotes 6 and 7.
■ d. Revising the entry for Owens Brockway Glass Container Company, Vernon, CA.
■ e. Revising the entry for St. Gobian Containers, El Monte, CA.

The revisions and additions 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/L)	Notes
*	*	*	*	*		*	*
Guardian Industries Corp., Jefferson Hills, PA [6 11].	D010	Standards under § 268.40.	Selenium	NA	NA	39.4 mg/L TCLP	NA.
Owens Brockway Glass Container Company, Vernon CA [6 7].	D010	Standards under § 268.40.	Selenium	NA	NA	51 mg/L TCLP	NA.
St. Gobain Containers, El Monte, CA [5 7].	D010	Standards under § 268.40.	Selenium	NA	NA	25 mg/L TCLP	NA.
*	*	*	*	*		*	*

Note: NA means Not Applicable.

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

* * * * * * *

[5] Alternative DO10 selenium standard only applies to dry scrubber solid from glass manufacturing wastes.

[6] Alternative D010 selenium standard only applies to electrostatic precipitator dust generated during glass manufacturing operations.

[7] D010 wastes generated by these two facilities must be treated by Chemical Waste Management, Inc. at their Kettleman Hills facility in Kettleman City, California.

* * * * * * *

[11] D010 wastes generated by this facility must be treated by Heritage Environmental Services, LLC. at their treatment facility in Indianapolis, Indiana.

[FR Doc. 04–2821 Filed 2–10–04; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 12

[USCG–2003–14500]

RIN 1625–AA81

Validation of Merchant Mariners' Vital Information and Issuance of Coast Guard Merchant Mariner's Document (MMDs); Correction

AGENCY: Coast Guard, DHS.

ACTION: Interim rule; correction.

SUMMARY: On January 6, 2004, the Coast Guard published an interim rule in the **Federal Register** implementing regulations for the validation of Merchant Mariner's vital information and issuance of Coast Guard Merchant Mariner's Documents (MMDs). This notice contains a correction to that rule.

DATE: Effective on February 11, 2004.

FOR FURTHER INFORMATION CONTACT: Commander Dave Dolloff, Project Manager, National Maritime Center (NMC), Coast Guard, telephone 202–493–1021.

SUPPLEMENTARY INFORMATION: The Coast Guard published an interim rule in the **Federal Register** of January 6, 2004, (69 FR 526) concerning Merchant Mariners Documents. An essential paragraph was inadvertently omitted from the ''Background and Purpose'' section. The omitted paragraph is needed to further clarify the Coast Guard's intentions governing the validation of merchant mariners' vital information and issuance of Merchant Mariner's Documents. This correction adds that paragraph.

In interim rule FR Doc. 03–32318, published January 6, 2004, (69 FR 526) make the following correction. On page 528, in the first column, following the paragraph ending in the word ''appeal,'' add the following paragraph:

The Department of Homeland Security (DHS), under the authority of the Aviation and Transportation Security Act and the Maritime Transportation Security Act of 2002, is developing a program that can be used to control access to secure areas in vessels, facilities, and ports. This program includes a system-wide transportation worker identification card which is currently under development. DHS is developing this program through the Transportation Security Administration (TSA), the Coast Guard, and other Federal agencies, including others within DHS.

The Coast Guard will work with TSA to ensure that the regulations for obtaining Merchant Mariner Documents are consistent with this initiative to minimize future impacts on mariners.

Dated: January 30, 2004.

T.H. Gilmour,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 04–2992 Filed 2–10–04; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 16

[USCG–2003–16414]

RIN 1625–AA80

Chemical Testing

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising its chemical drug testing regulations to conform with the Department of Transportation's (DOT) final rule concerning Drug and Alcohol Management Information System Reporting published in the **Federal Register** on July 25, 2003. The DOT rule consolidated the 21 different Management Information System (MIS) forms into one single-page form for use by all DOT agencies and the Coast Guard. This conforming amendment