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 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. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: September 13, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

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

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.567 is amended by alphabetically adding commodities to the table in paragraph (a)(2) to read as follows:

§ 180.567 Zoxamide;tolerance for residues.

(a) * * *

(2)* * *

Commodity	Parts per million
Cucurbit vegetable group	1.0
* * * * *	
Tomato	2.0

* * * * *

[FR Doc. 01–23640 Filed 9–25–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7065–7]

California: Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final determination on application of California for Final Authorization of Revisions to State Hazardous Waste Management Program.

SUMMARY: California has applied for final authorization of certain revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed California's application and has reached a final determination that the revisions to California's hazardous waste program satisfy all of the requirements necessary to qualify for final authorization. Thus, with respect to these revisions, EPA is granting final authorization to the State to operate its program subject to the limitations on its authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984.

EFFECTIVE DATE: Final authorization for the revisions to California's hazardous waste management program shall be effective at 1 p.m. on September 26, 2001.

FOR FURTHER INFORMATION CONTACT: Rebecca Smith, WST–3, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco 94105–3901, (415) 744–2152.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA Section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

California initially received final authorization on July 23, 1992, effective August 1, 1992 (57 FR 32726), to implement the RCRA hazardous waste management program. This ''base program authorization'' authorized California's RCRA program based on California statutory and regulatory provisions enacted and adopted prior to December 20, 1991, the date of California's authorization application. On January 31, 2000, California submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21.

B. What Were the Comments and Responses to EPA's Proposal?

On June 20, 2001, EPA published a tentative determination announcing its intent to grant California final authorization for the revisions to its base program. Further background on the tentative decision to grant authorization appears at Vol. 66, No. 119, June 20, 2001 at pages 33037–33046.

Along with the tentative determination, EPA announced the availability of the application for public comment. EPA received four sets of written comments during the public comment period. One of the four commenters submitted relatively lengthy comments regarding EPA's tentative determination (22 pages total). The other three commenters submitted relatively brief comments (1–2 pages total, each), which generally endorsed the comments submitted by the first commenter. The first commenter also submitted an 8 page supplement to its comments well after the close of the public comment period. These comments were received by EPA on September 4, 2001, although the public comment period closed on July 20, 2001. The significant issues raised by the commenters and EPA's responses are summarized below. EPA has included a response to the supplemental comments as well, (*see* Response to Comment #3, below).

Comment #1: The commenters asserted that California's exclusion of secondary lead smelter furnaces from the boilers and industrial furnaces (BIFs) conditional exemption found in the Federal regulation at 40 CFR 266.100(d) (formerly 266.100(c)) is neither consistent with nor equivalent to the provisions of the Federal program. They further stated that excluding industrial furnaces from the conditional exemption afforded under the Federal BIF program and regulating such units as miscellaneous units under California's program is inconsistent with RCRA's goals. The commenters maintained that California failed to provide a rational basis for departing from the Federal-regulatory scheme in which air emissions from certain industrial furnaces are regulated under the Clean Air Act in lieu of RCRA and that California's exclusion of secondary lead smelters from the conditional exemption of Title 22 California Code of Regulations 66266.100(c) may lead to duplicative and inconsistent regulation of secondary lead smelters.

Response to Comment #1: States may be authorized to administer a hazardous waste program unless EPA determines that: (1) The state program is not equivalent to the Federal RCRA program; (2) the state program is not consistent with the Federal or state programs applicable in other states; or (3) the state program does not provide adequate enforcement of compliance with RCRA. RCRA Section 3006(b), 42 U.S.C. 6926(b).

EPA's regulations provide specific factors to consider in determining whether a state program is consistent with the Federal program and other authorized state programs. 40 CFR 271.4. In general, a state program may be deemed inconsistent if it unreasonably restricts the free movement of hazardous waste across state borders, if it has no basis in human health or environmental protection and acts as a prohibition on the treatment, storage or disposal of hazardous waste, or if the state's manifest system does not meet the requirements of 40 CFR Part 271. 40 CFR 271.4(a)–(c).

Although state programs must be consistent with the Federal program and other authorized state programs, RCRA expressly allows state and local governments to adopt requirements that are more stringent than the Federal RCRA requirements. RCRA Section 3009, 42 U.S.C. 6929. EPA has also indicated that states are free to operate programs ''with a greater scope of coverage'' than the Federal program but that ''the additional coverage is not part of the Federally approved program.'' 40 CFR 271.1(i)(2). In determining whether a state program that differs from the Federal program is broader in scope than the Federal program, as opposed to being more stringent, EPA will generally consider: (1) whether the imposition of the state requirement increases the size of the regulated community beyond that of the Federal program; and (2) whether the state's requirement has a direct counterpart in the Federal regulatory program. *See, e.g.,* OSWER Directive No. 9541.1984(04), Determining Whether State Hazardous Waste Management Requirements are Broader in Scope or More Stringent than the Federal RCRA Program, May 21, 1984.

In June of 1997, California submitted its application for authorization of changes to its program relating to the burning of hazardous waste in BIFs. Title 22 of the California Code of Regulations (C.C.R.) at Sections 66266.100(c) and (f) tracked the Federal analogous provisions at 40 CFR 266.100(d) and (g), respectively. The Federal provisions conditionally exclude certain BIFs from regulation under RCRA. However, the State also added the following language to both 22 C.C.R. Sections 66266.100(c) and (f): ''Additionally, industrial furnaces exempted by this subsection are subject to regulation as miscellaneous units.'' California also amended its definition of the term ''miscellaneous unit'' at 22 C.C.R. Section 66260.10 to conform that definition to the language it had added to 22 C.C.R. Sections 66266.100(c) and (f).

In June of 1997, the language in 22 C.C.R. Sections 66260.10, 66266.100(c) and 66266.100(f) that differs from the Federal regulatory language was included in California's regulations on an emergency basis only. These provisions were not finally adopted on a permanent basis by the State until May of 1998. Neither the checklists nor the Attorney General's statement, which were submitted with California's application for authorization of revisions to its BIF program, identified the differences between the State and Federal regulatory language. EPA has now confirmed with the State that the inclusion of the different language in the regulations submitted with California's BIF revisions application was an unintentional oversight.

However, even if California had sought authorization of the language in the provisions at 22 C.C.R. Sections 66260.10, 66266.100(c) and 66266.100(f) that differs from the Federal language, EPA has determined that the State's language increases the size of the universe of units which are required to have permits as miscellaneous units. Thus, these provisions make the State's permit program broader in scope than the Federal program in this respect. Since EPA does not authorize state requirements which are broader in scope than the Federal RCRA program, the language in these provisions that is different from the Federal program is not and will not be included in California's authorized hazardous waste program.

For the purposes of today's rule, it is not necessary for EPA to opine on whether or not the subject State provisions are preempted by RCRA. Since EPA has determined that these provisions are broader in scope than the Federal program, EPA is not authorizing these provisions. Thus, the question of whether or not the State's regulation of the Federally conditionally exempt units is or is not consistent with RCRA or its policies is not relevant in the context of this decision to authorize certain other revisions to California's RCRA program. However, EPA does not regard California's statutory requirements that resource recovery facilities obtain hazardous waste facilities permits as fundamentally inconsistent with RCRA or its policies (*see* California Health and Safety Code Sections 25200 and 25201). Regulation of emissions (or other releases) from hazardous waste recycling units is not inherently inconsistent with RCRA provisions or purposes. *See, e.g.,* RCRA Section 3004 (q), commanding regulation of air emissions from some classes of hazardous waste recyclers. This lends further support to EPA's determination that the regulation by the State of conditionally exempt BIFs as miscellaneous units—albeit broader in scope than the Federal program—does not warrant a decision not to authorize the other California provisions which are being authorized today.

Comment #2: The commenters asked EPA to ensure that it is reviewing the most recent version of the California BIF and miscellaneous unit regulations in assessing whether authorization should be granted to the State.

Response to Comment #2: In reviewing California's application regarding revisions to its BIF program, EPA did not look to the most recent State provisions in effect at the time EPA promulgated its tentative decision to authorize those revisions. Rather, EPA looked to the requirements in effect on a non-emergency basis in the State as of the date that portion of California's application was submitted. In this case, EPA looked to the non-emergency regulations in effect as of June of 1997.

In reviewing these requirements, EPA ensured that the State's requirements

continued to be in effect, but EPA is not authorizing any revisions or amendments to California's BIF requirements which may have gone into effect after the date of the submittal of the BIF portion of the application for authorization. Nor is EPA authorizing any BIF requirements which existed on an emergency basis only in June of 1997, even if such requirements were adopted at a later date on a permanent basis.

Comment #3: One of the commenters asserted that California's regulations at 22 C.C.R. Sections 66261.24(a)(2)(A)(i) and (B)(i), which regulate as characteristic, toxic wastes certain inorganic and organic substances as persistent, bioaccumulative and toxic, are neither consistent with nor equivalent to the Federal program. The commenter argued that these provisions should not be authorized.

Response to Comment #3: The regulations to which these comments are aimed were submitted as part of California's base program authorization application in December of 1991. As explained above, states are free to operate programs ''with a greater scope of coverage'' than the Federal program but ''the additional coverage is not part of the Federally approved program.'' 40 CFR 271.1(i)(2). Additionally, in determining whether a state program that differs from the Federal program is broader in scope than the Federal program, EPA will consider: (1) Whether the imposition of the state requirement increases the size of the regulated community beyond that of the Federal program; and (2) whether the state's requirement has a direct counterpart in the Federal regulatory program. *See, e.g.,* OSWER Directive No. 9541.1984(04), Determining Whether State Hazardous Waste Management Requirements are Broader in Scope or More Stringent than the Federal RCRA Program, May 21, 1984.

Since 22 C.C.R. Sections 66261.24(a)(2)(A)(i) and (B)(i) do not have any direct Federal counterparts, and increase the size of the universe of regulated hazardous wastes, EPA, in making its base program authorization decision for the State of California's hazardous waste program, determined that these provisions were broader in scope than the Federal program. Thus, these provisions were not included in the scope of the authorized base program. The revisions to the base program, which are the subject of today's rule, do not affect that determination.

Since EPA has not authorized the provisions which are the subject of this comment, the question of whether or not the State's regulation of such wastes is or is not consistent with RCRA or its policies is not relevant in the context of this decision to authorize certain other revisions to California's RCRA program. Even so, EPA does not regard California's regulation of these wastes as non-RCRA hazardous waste as fundamentally inconsistent with RCRA or its policies.

C. What Decisions Have We Made in This Rule?

EPA has made the final determination that California's application for authorization of the subject revisions meets all of the statutory and regulatory requirements established by RCRA. Therefore, with respect to the revisions, we are granting California final authorization to operate its hazardous waste program as described in the revisions authorization application. California will continue to have responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized states before such states are authorized for the requirements. Thus, for revisions to the Federal program for which California has not yet sought authorization, EPA will continue to implement those HSWA requirements and prohibitions in California, including issuing permits, until the State is granted authorization to do so.

D. What Is the Effect of Today's Action?

A facility in California subject to RCRA must comply with the authorized State requirements in lieu of the corresponding Federal requirements in order to comply with RCRA. Additionally, such persons must comply with any applicable Federally-issued requirements, such as, for example, HSWA regulations issued by EPA for which the State has not received authorization, and RCRA requirements that are not supplanted by authorized state-issued requirements. California continues to have enforcement responsibilities under its State law to pursue violations of its hazardous waste management program. EPA continues to have independent authority under RCRA Sections 3007, 3008, 3013, and 7003, which include, among others, the authority to:

- Do inspections, and require monitoring, tests, analyses or reports,
- Enforce RCRA requirements (including State-issued statutes and regulations that are authorized by EPA and any applicable Federally-issued statutes and regulations) and suspend or revoke permits, and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action approving the subject revisions does not impose additional requirements on the regulated community because the regulations for which California is being authorized are already effective under State law and are not changed by the act of authorization.

EPA cannot delegate the Federal requirements at 40 CFR part 262, subparts E and H. Although California has adopted these requirements verbatim from the Federal regulations in Title 22 of the California Code of Regulations, Sections 66260–66262, EPA will continue to implement those requirements.

E. What Rules Are We Authorizing With Today's Action?

California initially received final authorization on July 23, 1992, effective August 1, 1992 (57 FR 32726), to implement the RCRA hazardous waste management program. This ''base program authorization'' authorized California's RCRA program based on California statutory and regulatory provisions in effect as of December of 1990. On January 31, 2000, California submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21.

California has applied for many of the Federal changes to the RCRA program since it was authorized for the base program. The earliest of these Federal changes goes back to 1989. However, there are several changes to the Federal program which have been made since California's base program was authorized for which California has not yet applied for authorization. The major areas of changes for which California has not yet applied for authorization are: the used oil regulations; consolidated liability requirements; military munitions; phases three and four of the land disposal restrictions; and universal waste.

Since authorization of California's base program in 1992, California has submitted numerous packages to EPA relating to its efforts to seek authorization for updates to its program based on revisions to the Federal program. EPA has published a series of

checklists to aid California and the other states in such efforts, (*see* EPA's RCRA State Authorization web page at www.epa.gov/epaoswer/hazwaste/state/index.htm). Each checklist generally reflects changes made to the Federal regulations pursuant to a particular **Federal Register** notice. California's submittals have been grouped into general categories (*e.g.,* Air Emissions Standards, Boilers and Industrial Furnaces, etc.). Each submittal may have reflected changes based on one or more **Federal Register** notices and would have thus referenced one or more corresponding checklists.

What follows is a summary, for each general category identified by California in its submittals, of the specific subjects of changes to the Federal program for that category. Although the changes to the Federal program are identified in the summary, California did not necessarily make revisions to its program as a result of each Federal revision noted. For example, certain revisions to the Federal program may have resulted in less stringent regulation than that which previously existed. Since states may maintain programs which are more stringent than the Federal program, states have the option whether or not to adopt such revisions.

1. Changes California Identified as Relating to Air Emissions Standards

We are granting California final authorization for all revisions that it has made to its program due to certain changes to the Federal program in the following areas: Organic air emission standards for process vents and equipment leaks; and organic air emissions standards for tanks, surface impoundments and containers.

2. Changes California Identified as Relating to the Toxicity Characteristic

We are granting California final authorization for all revisions that it has made to its program due to certain changes to the Federal program in the following areas: Interim status standards for down-gradient ground-water monitoring well locations; hydrocarbon recovery operations; chlorofluorocarbon refrigerants; the mining waste exclusion; the recycled coke by-product exclusion; the toxicity characteristic leaching procedure; the mixture and derived-from rules; the removal of strontium sulfide from the list of hazardous wastes; the adoption of an administrative stay for K069 listing (emission control dust/sludge from secondary lead smelting); the adoption of certain technical corrections to the 1990 toxicity characteristic rule; the listing of chlorinated toluene production waste (K149, K150, K151); the standards for treating liquids in landfills; the references which specify testing requirements and monitoring activities; the listing of hazardous constituents from the use of chlorophenolic formulations in wood surface protection; the reference relating to wood surface protection; the listing of beryllium powder (P015); and provisions to be met for excluding as a hazardous waste certain wastewaters from the production of carbamates and carbamoyl oximes (K157).

3. Changes California Identified as Relating to Corrective Action Management

We are granting California final authorization for all revisions that it has made to its program due to certain changes to the Federal program in the following areas: Corrective action management units and temporary units.

These changes include final authorization of California for the February 16, 1993 Corrective Action Management Unit (CAMU) rule. Since California is now authorized for the rule, the State will be eligible for interim authorization-by-rule for the proposed amendments to the CAMU rule, which also proposed the interim authorization-by-rule process (*see* August 22, 2000, 65 FR 51080, 51115). California will also be eligible for conditional authorization if that alternative is chosen by EPA in the final CAMU amendments rule.

4. Changes California Identified as Relating to Boilers and Industrial Furnaces

We are granting California final authorization for all revisions that it has made to its program due to certain changes to the Federal program in the following areas: Burning of hazardous waste in boilers and industrial furnaces; an administrative stay for coke ovens; the recycled coke by-products exclusion; certain coke by-products listings; guidelines for air quality modeling and screening for boilers and industrial furnaces burning hazardous waste; the adoption of an administrative stay and interim standards for Bevill residues; and certain technical amendments to record keeping instructions.

5. Changes California Identified as Relating to Wood and Sludge

We are granting California final authorization for all revisions that it has made to its program due to certain changes to the Federal program in the following areas: Wood preserving listings; and petroleum refinery primary and secondary oil/water/solids separation sludge listings.

We also find that California did not need to adopt a Federal administrative stay for the requirement that existing drip pads be impermeable because the stay expired on October 30, 1992.

6. Changes California Identified as Relating to Liners and Leak Detection

We are granting California final authorization for all revisions that it has made to its program due to certain changes to the Federal program in the following area: Liners and leak detection systems for hazardous waste land disposal units.

7. Changes California Identified as Relating to Recyclable Materials Used in a Manner Constituting Disposal

We are granting California final authorization for all revisions that it has made to its program due to certain changes to the Federal program in the following area: The removal of the conditional exemption for certain slag residues.

8. Changes California Identified as Relating to Recovered Oil

We are granting California final authorization for all revisions that it has made to its program due to certain changes to the Federal program in the following area: The recovered oil exclusion.

9. Changes California Identified as Relating to Delay of Closure

We are granting California final authorization for all revisions that it has made to its program due to certain changes to the Federal program in the following area: The delay of closure period for hazardous waste management facilities.

10. Changes California Identified as Relating to Public Participation

We are granting California final authorization for all revisions that it has made to its program due to certain changes to the Federal program in the following area: Expanded public participation.

11. Changes California Identified as Relating to Used Oil Filters

We are granting California final authorization for all revisions that it has made to its program due to certain changes to the Federal program in the following area: The used oil filter exclusion.

12. Changes California Identified as Relating to Land Disposal Restrictions (LDR)

We are granting California final authorization for all revisions that it has made to its program due to certain changes to the Federal program in the following areas: LDR third scheduled wastes; electric arc furnace dust (K061); LDRs for newly listed wastes and hazardous debris; LDRs for ignitable and corrosive characteristic wastes whose treatment standards were vacated; case-by-case capacity variances for hazardous debris; case-by-case capacity variances for lead-bearing hazardous materials; case-by-case capacity variances for hazardous soil; and universal treatment standards and treatment standards for organic characteristic wastes and newly listed wastes.

13. Changes California Identified as Relating to Exports

We are granting California final authorization for all revisions that it has made to its program due to certain changes to the Federal program in the following area: The identification of the U.S. EPA office to which the notification of export activities and annual export reports must be sent. California has also adopted the Federal regulations implementing a graduated system of procedural and substantive controls for hazardous wastes as they move across national borders within the Organization for Economic Cooperation and Development (OECD) for recovery. The requirements for regulating exports, Subparts E and H of 40 CFR Part 262, will be administered by the U.S. EPA instead of California because the exercise of foreign relations and international commerce powers is delegated to the Federal government under the Constitution. California has adopted these export rules into Title 22 California Code of Regulations for the convenience of the regulated community.

14. Miscellaneous Changes

We are granting California final authorization for all revisions that it has made to its program due to certain changes to the Federal program which removed certain legally obsolete rules.

EPA published a table in its notice of its tentative decision to authorize the foregoing revisions to California's hazardous waste management program, which shows the Federal and analogous State provisions involved in this decision and the relevant corresponding checklists. *See* 66 FR 33037, at pages 33039–33044 (June 20, 2001).

F. Where Are the State Rules Different From the Federal Rules?

State requirements that go beyond the scope of the Federal program are not part of the authorized program and EPA cannot enforce them. Although persons must comply with these requirements in accordance with California law, they are not RCRA requirements. EPA considers that the following State requirements, which pertain to the revisions involved in this decision, go beyond the scope of the Federal program.

The following analysis differs in some ways from the areas which California identified as being broader in scope than the Federal program in its application.

1. The definition of ''remediation waste'' at 22 C.C.R. Section 66260.10 is broader in scope than the Federal definition at 40 CFR 260.10 only to the extent California's definition includes hazardous substances which are neither ''hazardous wastes'' nor ''solid wastes.''

2. 22 C.C.R. Section 66264.552(e)(4)(A)(2) is broader in scope than 40 CFR 264.552(e)(4)(i)(B) only to the extent the California provision controls the escape of ''hazardous substances'' which are not ''hazardous waste,'' ''hazardous constituents,'' ''leachate,'' ''contaminated runoff'' or ''hazardous waste decomposition products.''

3. California's program is broader in scope than the Federal program to the extent it regulates spent wood preserving solutions that have been used and are reclaimed and reused for their original intended purpose and wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood. These materials are excluded from the Federal definition of solid waste by virtue of 40 CFR 261.4(a)(9)(i) and (ii), respectively.

4. HSC Section 25144(c) is broader in scope than 40 CFR 261.4(a)(12) since the California provision exempts oil recovery process units and associated storage units from regulation, rather than exempting recovered oil from the definition of solid waste, which is what the Federal provision does. Thus, the State program is broader in scope than the Federal program to the extent California regulates recovered oil not contained in such recovery process units or associated storage units.

5. HSC Section 25143.2(c)(1) was broader in scope than was former section 40 CFR 261.6(a)(3)(vi) (renumbered as 261.6(a)(3)(v) in 1995 [60 FR 25492] [1]), which exempted from regulation petroleum coke produced from petroleum refinery hazardous waste containing oil produced by the same person who generated the waste unless the resulting coke product was characteristically hazardous. HSC Section 25143.2(c)(1), which was part of the authorized program, was not amended to conform to the changes made to 40 CFR 261.6(a)(3)(vi) in 1994. At that time, the Federal exemption was expanded to include petroleum coke produced *by the same person* who generated the petroleum hazardous waste containing oil, rather than being limited to petroleum coke produced *at the same facility* at which such wastes were generated. The State's exemption retains the ''at the same facility'' language and, to this extent, is broader than the Federal requirement.[2]

6. California does not have the Federal exclusion found at 40 CFR 261.4(b)(13), which excludes from the definition of hazardous waste non-terne plated used oil filters that are not mixed with hazardous wastes if those filters are gravity hot drained in accordance with specified procedures. To the extent California regulates such oil filters, its program is broader in scope than the Federal program.

7. California has not adopted the Federal exclusion found at 40 CFR 261.4(a)(10). This provision excludes from the definition of solid waste K060, K070, K087, K141, K142, K143, K145, K147, K148, and those coke by-product residues that are hazardous only because they exhibit the toxicity characteristic when, subsequent to generation, these wastes are recycled by being returned to coke ovens, to the tar recovery process as a feedstock to produce coal tar or mixed with coal tar. The Federal exclusion is conditioned on there being no land disposal of the waste from the point of generation to the point of recycling. Thus, the absence of this exemption makes the California program broader than the Federal program in this respect.

8. California has not adopted the Federal provision at 40 CFR 266.100(b)(3), which exempts from regulation the burning of wastes produced by conditionally exempt small quantity generators (*see also* 40 CFR 261.5). Thus, California's program is broader in scope than the Federal program in this respect.

9. California has not adopted the Federal provision at 40 CFR

[1] 40 CFR 261.6(a)(3)(v) was superceded by 261.4(a)(12) in 1998 (63 FR 42110).

[2] The 1998 revision to 261.4(a)(12) changed the Federal requirement again to limit the exemption to materials which are inserted into the same petroleum refinery where they are generated or sent directly to another petroleum refinery. Thus the State's exemption remains narrower than the Federal exemption in this respect.

266.100(b)(4), which excludes from regulation coke ovens if the only hazardous waste burned is K087, decanter tank tar sludge from coking operations. The Federal provision was a necessary corollary to EPA's removal of the coke and coal tar exemption (formerly 40 CFR 261.6(a)(3)(vii)) due to the reclassification of coke and coal tar as products under 40 CFR 261.4(a)(10) in 1991. California had not adopted the exemption as part of the base program, nor did it adopt the 1991 exemption at 40 CFR 261.4(a)(10). Thus, the California program is broader in scope than the Federal program to the extent California regulates coke ovens that solely burn K087.

10. The California provision at 22 C.C.R. Section 66266.100(b)(3) excludes from regulation in BIFs those materials which are exempted from regulation at 22 C.C.R. Section 66261.4. This provision tracks the Federal provision at 40 CFR 266.100(b)(3), which excludes from regulation in BIFs those materials which are exempted from regulation at 40 CFR 261.4. The Federal provision at 40 CFR 261.4 includes more exemptions than the State provision at 22 C.C.R. Section 66266.4 and, therefore, California's BIF program is broader in scope than the Federal program in this respect.

11. 40 CFR 261.4(a)(11) excludes from the definition of solid waste, non-wastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units provided it is shipped in drums (if shipped) and is not land disposed before recovery. California has not adopted this exclusion and its program is thus broader in scope than the Federal program in this respect.

12. California's program is broader in scope than the Federal program with respect to the regulation of secondary materials that are recycled back into secondary production processes from which they were generated. 40 CFR 261.2(e)(1)(iii) exempts such materials, so long as the materials are managed such that there is no placement on the land. HSC 25143.2(b)(3), as restricted by HSC Sections 25143.2(e) and 25143.9, which is the State's analogue to 40 CFR 261.2(e)(1)(iii), excludes only recyclable materials that are returned to a primary process.

13. The language contained in the provisions of 22 C.C.R. Sections 66260.10, 66266.100(c) and 66266.100(f), which is discussed in the response to comments in Section B of this preamble, above, make certain units that are conditionally exempt from the Federal and State BIF regulations regulated as miscellaneous units under California regulations. To this extent, 22 C.C.R. Sections 66260.10, 66266.100(c) and 66266.100(f) are broader in scope than the Federal program and the corresponding Federal regulations at 40 CFR Sections 260.10, 266.100(d) [3] and 266.100(g).[4]

G. Who Handles Permits After This Authorization Takes Effect?

California will issue permits for all the provisions for which it is authorized and will administer the permits it issues. All permits issued by EPA prior to California being authorized for these revisions will continue in force until the effective date of the State's issuance or denial of a State RCRA permit, or the permit otherwise expires or is revoked. California will administer any RCRA hazardous waste permits or portions of permits which EPA issued prior to the effective date of this authorization until such time as California has issued a corresponding State permit. EPA will not issue any more new permits or new portions of permits for provisions for which California is authorized after the effective date of this authorization. EPA will retain responsibility to issue permits for HSWA requirements for which California is not yet authorized.

H. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in California?

California is not authorized to carry out its hazardous waste program in Indian country within the State. A map of Indian Country in California can be found on the world wide web at *www.epa.gov/region09/cross_pr/indian/maps.html.* A list of Indian Tribes in California can be found on the web at *www.doi.gov/bureau-indian-affairs;* it is complete except for two newly listed tribes, Graton and Lower Lake Rancherias. Therefore, this action has no effect on the Indian country so described, including Graton and Lower Lake Rancherias. EPA will continue to implement and administer the RCRA program in Indian country within the State.

I. What Is Codification and Is EPA Codifying California's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by referencing the authorized State rules in 40 CFR part 272. EPA is reserving the amendment of 40 CFR part 272, subpart F for codification of California's program at a later date.

J. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. Furthermore, 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. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action does not have tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000). It does not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175. This action 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 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action does not include environmental justice related issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994).

[3] Formerly, 40 CFR 266.100(c).

[4] Formerly, 40 CFR 266.100(f).

Under RCRA 3006(b), EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the Executive Order. This action will not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 document 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 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 action will be effective September 26, 2001.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and record keeping requirements.

Authority: This proposed action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 12, 2001.

Mike Schulz,

Acting Deputy Regional Administrator, Region 9.

[FR Doc. 01–24066 Filed 9–25–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 00–96; FCC 01–249]

Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration of certain aspects of the *Report and Order* (FCC 00–417) previously issued in this proceeding. The *Report and Order*, a summary of which is published in the **Federal Register** at 66 FR 7410 (January 23, 2001), implemented section 338 of the Communications Act of 1934, as amended by the Satellite Home Viewer Improvement Act of 1999 (''SHVIA''). Specifically, the *Report and Order* implemented regulations regarding the carriage of local television stations in markets where satellite carriers offer local television service to their subscribers. As described, the Commission, in the *Order on Reconsideration*, denies the petitions and, on its own motion, clarifies and, where necessary, amends some of the requirements set forth in the *Report and Order* and the satellite broadcast signal carriage rule, 47 CFR 76.66.

DATES: Effective October 26, 2001.

FOR FURTHER INFORMATION CONTACT: Eloise Gore or Ben Bartolome, Cable Services Bureau, (202) 418–7200, TTY (202) 418–7172, or via Internet at *egore@fcc.gov* or *bbartolo@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Order on Reconsideration*, FCC 01–249, in CS Docket No. 00–96, adopted on September 4, 2001, and released on September 5, 2001. The full text of this *Order on Reconsideration* is available for public inspection and copying during normal business hours at the FCC Reference Information Center, Portals II, Room CY–A257, 445 12th Street, SW., Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *qualexint@aol.com*. The full text may also be reviewed and downloaded from the FCC Cable Services Bureau's website at *http://www.fcc.gov/csb/*. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

Synopsis of the Order on Reconsideration

I. Introduction

1. The *Order on Reconsideration* addresses eight distinct issues raised in two petitions for reconsideration of the Commission's *Report and Order* in *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues; Retransmission Consent Issues*, which implements section 338 of the Communications Act of 1934 (the ''Act''), as amended by the Satellite Home Viewer Improvement Act of 1999 (''SHVIA''). The *Report and Order* adopted broadcast signal carriage requirements for satellite carriers in order to implement section 338 of the Act. Section 338 requires satellite carriers, by January 1, 2002, to carry upon request all local television broadcast stations' signals in local markets in which the satellite carriers carry at least one television broadcast station signal pursuant to the statutory copyright license, subject to the other carriage provisions contained in the Act. As noted in the *Report and Order*, this transition period is intended to provide the satellite industry with time to begin providing local television signals into local markets, otherwise known as ''local-into-local'' satellite service. The Commission's carriage rules in many respects mirror the broadcast signal carriage rules applicable to cable operators, but with key distinctions made in recognition of the statutory and practical constraints that result from differences in satellite and cable technologies.

2. DIRECTV, Inc. (''DIRECTV'') and the Association of Local Television Stations, Inc. (''ALTV'') separately filed petitions for reconsideration of the *Report and Order*, raising different issues. Several parties separately filed oppositions or comments in response to DIRECTV's petition: ALTV; National Association of Broadcasters (''NAB''); Network Affiliated Stations Alliance (''NASA''); Paxson Communications