n-96-01
III-A-33

1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs (703–557–1192) at the above address.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 2E2668 to EPA on behalf of the IR–4 Technical Committee and the Agricultural Experiment Station of California.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the insecticide chlorpyrifos (*O,O*-diethyl-*O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate) and its metabolite 3,5,6-trichloro-2-pyridinol in or on the raw agricultural commodity figs at 0.1 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance were a 2-year rat feeding study with a red blood cell (RBC) cholinesterase (ChE) no-observed-effect level (NOEL) of 0.1 milligram (mg)/kilogram (kg)/day, a systemic NOEL of 3.0 mg/kg/day (highest dose tested) and no observed oncogenicity; a 2-year dog feeding study with an RBC ChE NOEL of 0.1 mg/kg/day and a systemic NOEL of 3.0 mg/kg/day (highest dose tested); a 2-year mouse oncogenicity study with no observed oncogenicity at 15 ppm (highest dose tested); a 3-generation rat reproduction study with a NOEL for reproductive effects at 1.0 mg/kg/day (highest dose tested); an acute delayed neurotoxicity (hen) study which was negative for neurotoxic potential at 100 mg/kg; and a mouse teratogenicity study with no observed teratogenic effects up to 25 mg/kg./day (highest dose tested).

The acceptable daily intake (ADI), based on the 2-year rat feeding study (RBC ChE NOEL of 0.1 mg/kg/day) and using a 10-fold safety factor, is calculated to be 0.01 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.6 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5 kg daily diet is calculated to be 0.4766 mg/day; the current action will increase the TMRC by 0.00005 mg/day (0.01 percent). Published tolerances utilize 79.77 percent of the ADI; the current action will utilize less than 0.01 percent.

The nature of the residues is adequately understood and an adequate analytical method, gas-liquid chromatography, is available for enforcement purposes. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency and the fact that currently established tolerances for meat and milk are adequate to cover any residues in the event cull figs are used as animal feed, the tolerance established by amending 40 CFR 180.342 would protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, "[PP 2E2668/P260]". All written comments filed in response to this petition will be available in the Emergency Response Section, Registration Division, at the address given above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: November 23, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.342 be amended by adding and alphabetically inserting the raw agricultural commodity figs to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Figs	0.1
* * * * *	

[FR Doc. 82-32803 Filed 11-30-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 201

[FRL 2053-2]

Noise Emission Standards for Transportation Equipment; Interstate Rail Carriers

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of proposed standards.

SUMMARY: As a result of a lawsuit brought by the Association of American Railroads (AAR), the United States Court of Appeals for the District of Columbia Circuit directed the U.S. Environmental Protection Agency to promulgate additional noise emission standards covering railroad facilities and equipment. EPA promulgated several standards in response to the Court's order. The parties to the case filed an agreement to dismiss on November 12, 1981, stating their belief that standards promulgated to date satisfied the Court's order. The Court dismissed the case on November 24, 1981. This notice, therefore, withdraws the Agency's proposed railyard property line and refrigerator car noise emission standards.

FOR FURTHER INFORMATION CONTACT: Louise Clersch, (202) 382–2935.

SUPPLEMENTARY INFORMATION: As required by Section 17 of the Noise Control Act of 1972 (42 U.S.C. 4916), the Environmental Protection Agency (EPA) promulgated a regulation (41 FR 2184) setting noise emission standards for railroad locomotives and railcars

ated by interstate rail carriers on December 31, 1975. At the same time, the Agency announced that it would not promulgate additional standards for railyard facilities and equipment, since these sources could be controlled most effectively through State and local regulation.

The Association of American Railroads (AAR) brought suit to require EPA publish further noise standards for railroads. The Court ruled in favor of the AAR and directed the Administrator of EPA to promulgate additional noise emission standards covering railroad "facilities and equipment." *Association of American Railroads v. Costle*, 562 F. 2d 1310 (D.C. Cir. 1977).

On April 17, 1979 the Agency published (44 FR 22960) proposed additional standards which included a railyard property line noise standard, as well as standards for three noise sources within railyards: retarders, refrigeration cars, and car coupling operations.

On January 4, 1980, the Agency published (42 FR 1252) final noise emission standards for locomotive load cell test stands, switcher locomotives, retarders and car coupling operations. On September 30, 1980, the Agency published (45 FR 64076) a Notice of the Availability of New Data and Advance Notice of Intent relevant to the outstanding proposal. The AAR submitted extensive comments in response to this notice which, among other things, asserted that standards already promulgated by EPA constituted complete and effective compliance with the requirements of Section 17 of the Noise Control Act, and that additional standards were not necessary. The Agency initiated discussions with the AAR and with the State of Illinois, which had intervened in the lawsuit on behalf of EPA. These discussions led to an agreement among the parties that the noise emission standards already promulgated by EPA, including those promulgated in response to the Court's order, satisfied the Court's order. The standards promulgated to date cover the major sources of noise from railroad equipment which in turn generate a larger proportion of the noise emissions from rail facilities. Since those standards addressed the major sources of noise from railroad operations, and since the cumulative effect of regulating equipment used within railyards is also to regulate, to a significant degree, noise emissions from rail facilities, it was agreed by the AAR, the State of Illinois and EPA that it is unnecessary for EPA to establish further property line facility emission standards. This agreement and a joint motion to dismiss the lawsuit were submitted to the Court, which dismissed the case on November 24, 1981.

In view of the foregoing, EPA concludes that it has satisfied its statutory requirements, under Section 17 of the Noise Control Act of 1972, to promulgate noise standards for railroad equipment and facilities, and that the proposed standards are unnecessary. Accordingly, this notice withdraws the proposed property line and refrigerator car noise emission standards.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not a major regulation because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because this action withdraws, rather than promulgates a regulation, there is no cost of compliance (with a regulation). Therefore, adverse effects on production, marketing or commerce due to the withdrawal are unlikely.

For the same reasons, under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, I hereby certify that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 201

Noise control, Railroads.

(Sec. 17 of the Noise Control Act of 1972 (42 U.S.C. 4916))

Dated: November 22, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82-32601 Filed 11-30-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 204 and 205

[W-FRL 2147-1]

Proposed Withdrawal of Products From the Agency's Reports Identifying Major Noise Sources and Withdrawal of Proposed Rules

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Administrator of the Environmental Protection Agency proposes to withdraw certain products from the Agency's reports identifying major noise sources ([40 FR 23105], [42 FR 2525], [42 FR 6722]), issued under authority of section 5(b)(1) of the Noise Control Act of 1972 (42 U.S.C. 4904(b)(1)). These products are: Truck transport refrigeration units, power lawn mowers, pavement breakers, rock drills, wheel and crawler tractors and buses. The Administrator also proposes to withdraw proposed regulations for wheel and crawler tractors (42 FR 35804), and Buses (42 FR 45775), issued under the authority of section 6(a)(1) of the Act.

Based on consideration of Federal budgetary constraints, Agency regulatory priorities, national economic conditions, and other factors discussed below, it is the present judgment of the Administrator that it is inappropriate at this time to proceed with Federal regulations for these products.

DATES: The Administrator will consider public comments on this intended action which are submitted before 4:30 p.m., January 3, 1983.

ADDRESS: Written comments should be submitted to: Director, Standards and Regulations Division (ANR-490), Office of Noise Control Programs, Attention: ONAC Docket No. 01-82, U.S. Environmental Protection Agency, Washington, D.C. 20460.

Persons wishing to review the information upon which the proposed action is based may do so at the Environmental Protection Agency's Central Docket Section, West Tower, Gallery 1, 401 M Street, SW., Washington, D.C. 20460, Docket No. ONAC 01-82, between the hours of 8:00 a.m. and 4:00 p.m. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Louise Giersch, (202) 382-2935.

SUPPLEMENTARY INFORMATION: The Noise Control Act of 1972, 42 U.S.C. 4901 *et seq.*, states "that while primary responsibility for control of noise rests with State and local government, Federal action is essential to deal with major noise sources in commerce, control of which requires national uniformity of treatment." The Act further directs that "the Administrator shall, after consultation with appropriate Federal agencies, compile and publish a report or series of reports (1) identifying products (or classes of products) which in his judgment are major sources of noise, and (2) giving information on techniques for control of noise from such products, including available data on the technology, costs and alternative methods of noise control." The Congress identified and listed in section 6(a)(1)(C) for the Administrator's consideration, construction equipment, transportation equipment, engines and motors, and electrical or electronic equipment as principal classes of noise sources for Federal regulation.

The most dramatic reduction in overall environmental noise would be effected by simultaneously reducing the noise level of all major noise producing products. From the outset of the noise

...owever, practical ... Agency resources ... that regulatory priorities ...ssed. Based on preliminary ...alysis by the Agency, construction equipment and transportation equipment were judged to be the most prominent sources of noise affecting the public and thus were selected as the initial categories for Agency regulatory actions.

On June 21, 1974, the Administrator published the first in a series of reports pursuant to section 5(b)(1) of the Act, formally identifying medium- and heavy-duty trucks and portable air compressors as major sources of noise within their respective categories (39 FR 22297). The notice also listed a number of other products as possible candidates for future identification.

A subsequent report published on May 28, 1975 (40 FR 23105) formally identified as additional major sources of noise: Motorcycles, buses, wheel and crawler tractors, truck transport refrigeration units (TTRU's) and truck-mounted solid waste compactors (TMSWC's). TTRU's and TMSWC's are special auxiliary equipment for trucks and were, in part, identified to complement and assure maximum effectiveness of a medium and heavy truck noise emission regulation.

A third report published on January 12, 1977 (42 FR 2525), identified power lawn mowers. Pavement breakers and rock drills were identified as major noise sources in a fourth report published on February 3, 1977 (42 FR 6722).

Final noise emission regulations were promulgated for Portable Air Compressors (41 FR 2162) on January 14, 1976, for Medium- and Heavy-Duty Trucks (41 FR 15538) on April 13, 1976, for Truck-Mounted Solid Waste Compactors (44 FR 56524) on October 1, 1979 and for Motorcycles and Motorcycle Exhaust Systems (45 FR 66604) on December 31, 1980.

Proposed regulations were published for Wheel and Crawler Tractors (42 FR 35604) on July 11, 1977, and for Buses (42 FR 45775) on September 12, 1977.

Proposed regulations have not been published for power lawn mowers, pavement breakers and rock drills, or truck transport refrigeration units.

The actions proposed here are to revise the Agency's reports identifying major noise sources ((40 FR 23105), (42 FR 2525), (42 FR 6722)), issued under authority of Section 5(b)(1) of the Noise Control Act of 1972 (42 U.S.C. 4904(b)(1), by withdrawing certain products from those reports. These actions do not affect the final regulations listed above, or those for various railroad noise sources promulgated under Section 17 of the Act and those for Interstate Motor Carriers promulgated under Section 18 of the Act.

The principal authority for the proposed withdrawals rests in Section 5(b) and (c) of the Act. These provisions give the Administrator broad discretion both to publish reports identifying products which "in his judgment are major sources of noise," and to review and, as appropriate, revise those identification reports. Had the products in question not already been identified as major noise sources, the Administrator would now have the discretion to identify and subsequently regulate the products over a period of time, based on consideration of Federal budgetary constraints, Agency regulatory priorities, and national economic conditions. When the Agency initially published the reports that identified these products as major noise sources the state of the above factors supported the actions. However, with the passage of time these conditions have changed, and are no longer supportive of these major noise source identifications.

In response to the President's directive, the Administrator has re-evaluated EPA's objectives and priorities regarding the products discussed above, giving careful consideration to existing Federal budgetary constraints and the attendant effects on these activities. Further, although the Noise Control Act does not require the consideration of costs of potential regulations when products are identified as major sources of noise, the Act does direct the Administrator to take into consideration, among other factors, the cost of compliance in the establishment of regulations for products which have been identified. Accordingly, the Administrator has concluded that economic considerations are relevant in deciding whether to proceed at this time with these regulatory actions.

Among the changed circumstances supporting this action are national economic concerns. In the mid 1970's, when the original preregulatory studies were undertaken for these products, the general economic outlook was good as was the economic well-being of those industries that would potentially be affected by any resulting noise regulations. The Agency's decisions to develop regulations were based on the assumption that these economic conditions would continue and, in particular, that strong consumer demand would alleviate most adverse cost and economic impacts from any resulting noise regulations. However, these early assumptions are not consistent with the national economic conditions that have evolved over the past several years. This is particularly true for the two industries, motor vehicle and construction equipment, that would be most affected by the promulgation of regulations for the above listed products. Current economic indicators show that motor vehicle and replacement parts activities declined approximately 20 percent during the 1979–1980 time frame. Construction starts, which have a direct influence on the construction equipment market, decreased by approximately 24 percent during the same period.

On the basis of these considerations the administrator proposes to remove buses, wheel and crawler tractors, power lawn mowers, truck transport refrigeration units, pavement breakers and rock drills from the Agency's reports of major noise sources. In addition, the Administrator proposes to withdraw the proposed rules that were previously published for buses and wheel and crawler tractors. The Administrator may, at a later time, choose to review these products in light of other environmental priorities, available Agency resources, the effectiveness of State and local noise control programs and the voluntary product noise reduction efforts of industry. Where appropriate, the Administrator may consider restoration of a product to the agency's report(s) of major noise sources by publishing a further revision of the report(s), or new reports.

Such a step does not mean that these products will be automatically freed from all noise control regulation. Under the Noise Control Act, Federal regulations preempt all State new product regulations that are not identical to the Federal regulations. Accordingly, one effect of identifying products federally, which is a necessary prelude to Federal regulation, is to call into question State efforts to regulate these same products. Discouraging State efforts is not consistent with Congressional directions subsequent to enactment of the Noise Control Act in 1972. The Quiet Communities Act of 1978, amending the Noise Control Act, initiated an extensive effort to support State and local noise control programs. These amendments and their legislative history indicate Congress' intent to deemphasize federal regulatory efforts in favor of State and local controls. *See, e.g.*, S. Rep. No. 95-875, 95th Cong., 2d Sess. 3 (1978).

Since enactment of the Act and the 1978 amendments, significant strides in noise control program development and capabilities have been made at the State and local levels. This is illustrated by the steady growth of State and local government noise control programs and ordinances. As of June 30, 1981, there were 272 cities with populations over 25,000 that had active noise control programs. "Active" programs are defined as those with ordinances having quantitative noise limits, the commitment of personnel and budget, and an active enforcement program. Many more communities have quantitative or nuisance type ordinances, which give them the legal capability to enforce noise control if

...d do so. In 1981, 24 States ...ning legislation for noise ...trol and a number of others had programs operating under general authorization, e.g., in health departments, though not specifically mandated.

In addition, EPA has worked with these governments to establish a new approach as an alternative to regulations, known as the Buy Quiet Program. Rather than requiring manufacturers to reduce noise levels of products consistent with technological and economic feasibility, manufacturers are motivated to reduce these levels through competitive market forces. Currently, the market for quiet products is being organized through State and local agencies and some utilities, but could be expanded to the private sector market. Over 100 State and local units of government are currently participating.

Finally, a number of voluntary industry noise control efforts are underway and others planned pertaining to both product labeling and technological improvements. Continuing progress is being made on the part of industry via voluntary noise control programs. Before restoring products to the reports identifying major noise sources, it may be relevant to examine the extent to which State, local, and industry efforts have reduced adverse exposure from these products.

List of Subjects

40 CFR Part 204

Construction industry, Noise control, Reporting and recordkeeping requirements.

40 CFR Part 205

Labeling, Motor vehicles, Noise control Reporting and recordkeeping requirements.

Miscellaneous: Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not a major regulation as it proposes to withdraw proposed regulatory actions, and because:

(1) It will not have an annual adverse effect on the economy of $100 million or more;

(2) It will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(3) It will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, I hereby certify that this action will not have a significant adverse economic impact on a substantial number of small entities. This action should not cause significant economic impacts, as it only proposes not to proceed with regulatory action at this time, and imposes no new regulatory requirements.

This proposed action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

(Secs. 5 and 6 of the Noise Control Act of 1972, 42 U.S.C. 4904 and 4905)

Dated: November 22, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82-32797 Filed 11-30-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 205

[N-FRL 2053-3]

Noise Emission Standards for Transportation Equipment; Additional Testing Requirement for Motorcycles and Motorcycle Exhaust Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed amendment.

SUMMARY: This notice withdraws a proposed amendment concerning the testing requirements for the noise emission regulation for motorcycles and motorcycle exhaust systems. The proposed amendment would have required manufacturers to remove all "easily removable" components from their motorcycle exhaust systems before conducting the required noise measurements to show compliance with 40 CFR Part 205, Subparts D and E. The intent of the proposed test procedure was to strengthen the existing anti-tampering provisions of the motorcycle noise emission regulation. The Agency finds that there is insufficient in-use tampering data to substantiate a need, at this time, for this added test requirement, and that the existing anti-tampering provisions provide adequate protection against in-use exhaust modifications.

FOR FURTHER INFORMATION CONTACT: Louise Giersch (202) 382-2935.

SUPPLEMENTARY INFORMATION: On December 31, 1980, EPA promulgated a regulation (45 FR 86694) that set limits on the noise emitted by motorcycles and motorcycle exhaust systems manufactured after January 1, 1983. At the same time the Agency also published a notice of a proposed amendment to the noise testing requirements of these regulations (45 FR 86732). The amendment would have required motorcycle and motorcycle exhaust system manufacturers to remove all easily removable components of an exhaust system before conducting noise measurements requisite for compliance. The Agency believed that a segment of the motorcycling public would modify the exhaust systems of their motorcycles with the specific intention of increasing noise levels. The proposed test amendment was intended to encourage manufacturers to build tamper-proof exhaust systems that did not have easily removable noise suppression components.

The benefits to public health and welfare anticipated from the motorcycle noise emission regulations are dependent, in large part, on motorcycle exhaust systems' retaining their noise suppression qualities. Reductions in their noise suppression effectiveness generally occur through degradation of noise attenuating components or intentional removal of these key components. The motorcycle and exhaust system regulations specify not-to-exceed noise levels which must be met for a specific period of time. Anti-tampering provisions make it illegal for users to remove or render inoperative any device or element of a design incorporated into a new motorcycle for noise control except for purposes of maintenance, repair, or replacement. The proposed amendment was intended to strengthen these existing anti-tampering provisions.

Information received by the Agency, from motorcycle manufacturers, dealer distributors, trade associations, and State and local governments, during comment periods attendant to the promulgated motorcycle noise emission regulations and the proposed amendment, confirmed the Agency's belief that tampering can be a principal factor in the eventual effectiveness of these regulations.

Because the motorcycle regulations do not become effective until January 1, 1983, the extent and severity of user tampering cannot be accurately ascertained at this time. There is currently no indication that the anti-tampering provisions of the existing motorcycle regulations will be inadequate without this amendment. Given that the proposed test amendment would likely impose additional manufacturing and testing costs which may not be necessary if the existing anti-tampering requirements are effective, promulgation of the test amendment at this time would be premature. Additionally, there is the potential for a possible technical conflict with State, local and Federal (U.S. Forest Service) requirements for the maintenance and cleaning of exhaust system spark arrestors.

In view of present anti-tampering provisions and the possibility of imposing unnecessary cost and economic burdens on both

...ers and users, EPA is ...ing the proposed test ... After the effective date of ... motorcycle regulations, should the ... receive evidence that existing ... provisions are ... EPA may then reconsider ... for additional Federal ... action.

...

... Executive Order 12291 EPA ... whether a regulation is ... and therefore subject to the ... of a Regulatory Impact ... Based on Office of ... and Budget criteria, this ... action is not considered ...

... not have an annual adverse ... the economy of $100 million or ...

... not cause a major increase ... prices for consumers, ... industries, Federal, State, or ... government agencies, or ... regions; and

... not cause significant ... effects on competition, ... investment, productivity, ... or on the ability of United ... based enterprises to compete ... based enterprises in ... export markets.

... of the proposed ... will eliminate potential ... costs.

... reasons, under the ... of the Regulatory Flexibility ... 601, *et seq.*, I hereby certify ... action will not have a ... adverse impact on a ... number of small entities.

... was submitted to the ... Management and Budget ... review as required by ... Order 12291.

... and 13 of the Noise Control Act ... U.S.C. 4905, 4909, 4912))

... November 22, 1982.

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...

...

... CFR Part 205

...

... Emission Standards; Truck-... Solid Waste Compactors

... Environmental Protection ...

... Notice of intent.

... Notice is hereby given that ... Administrator of the Environmental ... Agency proposes to rescind the noise emission regulation for Truck-Mounted Solid Waste Compactors (40 CFR Part 205, Subpart F) issued under the authority of Section 6(a)(1) of the Noise Control Act of 1972 (42 U.S.C. 4904(b)(1)).

This action is being taken pursuant to Section 6(c)(1) of the Noise Control Act, which requires that the Administrator consider costs of compliance among other factors in promulgating noise regulations for new products. The Administrator believes that rescission of the regulation at this time is appropriate in the light of the significant (and unanticipated) costs that the regulation would impose on the compactor manufacturing industry, prevailing conditions of the national economy in general, and the manufacturing industry in particular, and the President's policy to reduce the burdens of Federal regulations. In proposing to rescind this regulation, the Administrator has given full consideration to the ability of State and local governments to effectively control the noise of this product and to substantially mitigate the environmental effects on rescinding these regulations.

DATES: The Administrator will consider all comments on this intended action which are submitted before 4:30 p.m., March 1, 1983.

ADDRESS: Written comments should be submitted to: Assistant Administrator, Office of Air, Noise, and Radiation (ANR 443) Attention: ONAC Docket 02–82: Compactors, U.S. Environmental Protection Agency, Washington, D.C. 20460.

Persons wishing to review the information upon which this proposed action is based may do so at the Environmental Protection Agency's Central Docket Section, West Tower, Gallery 1, 401 M Street, S.W., Washington, D.C. 20460, Docket Number 02–82—Truck-Mounted Solid Waste Compactors, between the hours of 8:00 a.m. and 4:00 p.m. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rose, Office of Air, Noise and Radiation (ANR 443), U.S. Environmental Protection Agency, Washington, D.C. 20460, Tel: (202) 426–2485.

SUPPLEMENTARY INFORMATION:

Regulatory History

In accordance with Section 5(b)(1) of the Noise Control Act of 1972, the Administrator of the Environmental Protection Agency, on May 28, 1975 (40 FR 23105) identified Truck-Mounted Solid Waste Compactors (TMSWC), more commonly referred to as "garbage trucks" or "compactors," as a major source of noise. This identification was made, in part, on the basis that, as special auxiliary equipment for trucks, the regulation of compactors would complement the existing Federal noise emission regulation for medium and heavy trucks (40 CFR Part 205, Subpart B).

Furthermore, in keeping with Section 2(a)(3) of the Act, an additional consideration in the Agency's identification was the anticipated need to establish a single, national uniform standard for newly-manufactured compactors that would free manufacturers from potential trade and economic burdens resulting from a multiplicity of conflicting State and local new-product noise regulations.

Under the authority of Section 6(a)(1) of the Act, the Administrator published, on August 26, 1977, a Notice of Proposed Rulemaking that specified "not-to-exceed" noise emission levels for newly manufactured compactor vehicles (42 FR 43226). In conjunction with the proposed rule, the Agency solicited public participation, established a public comment period from August 26 through November 26, 1977, and held two public hearing: one in New York City on October 18, 1977 and the other in Salt Lake City of October 20, 1977. The Agency published a Notice of Final Rulemaking on October 1, 1979 (44 FR 56524).

In late 1980, several compactor manufacturers informed the Agency that the regulation placed testing and reporting requirements upon them that, in their opinion, were excessively burdensome and costly. To explore these claims, the Agency held three open meetings with chassis and compactor manufacturers and other interested parties between February and March 1981. The results of these discussions indicated that many manufacturers were compelled to test a much higher percentage of their products than was originally anticipated by EPA because their compactor bodies were mounted on truck chassis provided to them by their customers. Thus, with little or no control over the chassis selection and without advance knowledge of the detailed chassis specifications; particularly noise data, many compactor manufacturers considered it necessary to test each vehicle to ensure compliance with the regulation.

Based on these meetings, as well as information obtained through practical experience with this regulation by several compactor manufacturers and by EPA's enforcement personnel, the

Agency agreed that alternative testing and compliance provisions could and should be developed. Accordingly, on February 12, 1981, the Administrator issued a Notice of Reconsideration (46 FR 12975) that suspended all enforcement of the regulation until EPA could reassess the testing and reporting requirements.

Considerations for Rescission

Since promulgation of the compactor regulation, a number of developments have occurred, including: (a) The economic position of the TMSWC industry has weakened substantially since promulgation of the regulation, unit sales having declined nearly 25 percent between 1979 and 1981; (b) discussions with the industry have revealed that many compactor manufacturers regard each combination of compactor body and truck chassis as unique which results in significantly higher testing costs than were originally anticipated by the Agency; (c) a major portion of the TMSWC industry had indicated that it no longer desires the protection of national uniformity of treatment provided by the preemption provisions of the Act; and (d) bills to amend the Noise Control Act have passed both the House and Senate and would explicitly remove the Agency's authority to regulate this product.

Discussion

The legislative history of the Noise Control Act indicates that a principal objective of Congress in its passage was to establish a mechanism through the Federal regulatory process and the preemption provisions of the Act to assure national uniform standards for major sources of noise that are distributed in interstate commerce. The *supporting reasoning was that a* proliferation of diverse State and local noise standards could disrupt the economic efficiences of mass production *and result in technical barriers to trade* by requiring manufacturers to design and build a number of different models to meet differing State and local *standards. A single national standard* would promote production-line *efficiencies.*

In support of this "uniform" approach, the National Solid Wastes Mgt. Assn. (NSWMA) and two major manufacturers of compactor bodies testified at the New York City public hearings in September 1977 that they favored a Federal regulation that provided a national uniform standard (although they did not agree with all provisions of the proposed regulation). However, since promulgation of the regulation, the industry, through its trade association, has reversed its position and now expresses opposition to the regulation and the preemption it affords over State and local rules. During recent open meetings, industry representatives stated that industry and customer practices lead to a diversity of configurations, and the uniformity of configuration that most effectively exploits the inherent advantages of mass-production techniques does not appear to be a major factor in their industry; consequently, the industry now sees no economic benefit in a regulation that establishes a national uniform standard.

Section 6(c)(1) of the Noise Control Act directs the Administrator to take into consideration, among other factors, the costs of compliance in the establishment of regulations for products which have been identified as major sources of noise. Accordingly, the Administrator has concluded that economic considerations are relevant in deciding to rescind the noise emission regulation for truck-mounted solid waste compactors.

Studies by the Agency in the 1975–1977 time period estimated that the potential list price increases in compactor bodies and necessary components related to compliance with the regulation ranged from 12.8 to 25.8 percent, depending on compactor type and size. In terms of the composite vehicle, i.e., truck chassis, compactor body and associated components, it was estimated that the potential increases in list price could range from 6.4 to 12.8 percent, with an average for the composite (truck chassis and compactor body) vehicle of about 10.3 percent. EPA originally estimated the equivalent annual cost of this regulation to be $33 million. First year capital costs to vehicle purchasers due to increased prices were estimated to be $42 million with first year increases in operating and maintenance costs estimated at approximately $10 million (in 1981 dollars).

Analysis also indicated potential costs to compactor body manufacturers of an estimated $6 million annually for engineering and testing. This latter estimate was based on the premise that manufacturers would design their quieting features using an economically efficient approach utilizing quieter truck chassis conforming to Federal noise standards that became effective January 1, 1978. Further, EPA anticipated that compliance testing would be carried out on a "configuration" basis; i.e., only the worst-case chassis-body combination would be tested. Subsequent to promulgation of the rule, the Agency learned that to minimize their potential liability under the enforcement provisions of the regulation, many compactor manufacturers chose to regard each configuration and combination of compactor body and truck chassis as unique, thereby requiring an individual abatement design and test effort for each configuration.

In light of the above, the wide diversity of vehicles produced by the industry could more realistically be characterized as "custom-manufacturing" rather than "mass-production." Therefore, the costs of design and testing compactors for conformance with a national standard would be substantially more costly than initially estimated by the Agency, possibly totalling as much as $15 million per year.

In the mid-1970's, when the preregulatory analysis for compactors was undertaken, the general economic outlook was good as was the economic well-being of the compactor manufacturing industry. The Agency's decision to promulgate a noise emission regulation for compactors was based on the premise that these conditions would continue and, in particular, that strong consumer demand would alleviate most adverse cost and economic impacts from the regulation. The Agency originally anticipated that the increased costs of production resulting from this regulation would be passed on to the vehicle purchaser and eventually to the user of solid waste collection services. Thus, within the context of the healthy economic environment that existed in the 1975 to 1979 time frame, it was concluded that the direct economic effect on manufacturers would be slight. However, these early assumptions are not consistent with the economic conditions which have evolved over the past several years. The industry has claimed that recent reductions in sales (nearly 25 percent over the last two years), coupled with inflationary price increases for supplies and labor, have forced manufacturers to absorb a significant portion of any cost increases in order to remain competitive. Present market conditions have imposed on them a burden that further exacerbates their already weakened economic condition. This appears to be particularly true for the smaller manufacturers, who may lack the

financial strength to withstand the potential increased economic burden this regulation imposes. NSWMA has recently claimed that the regulation will impose first year compliance costs of approximately $50 million and will seriously impact industry revenues by significantly reducing compactor sales.

Based on these factors, EPA has concluded that the costs of compliance with this regulation are excessive. However, as developed in the next section, State and local regulation can substantially mitigate the environmental effects of rescinding these regulations.

Environmental Considerations

Analysis of health and welfare effects by the Agency has led to the estimate that by 1991, the regulation could reduce the number of persons exposed to adverse levels of noise from compactors from just under 20 million persons to about 6 million. This represents a reduction in adverse noise impact of approximately 70 percent.

In proposing this rescission, the Administrator has taken into consideration the nature of compactor noise impacts and the substantial growth in local noise control programs and ordinances since this product was identified as a major noise source for Federal regulation. For the most part, noise impacts from compactors are highly localized, occurring primarily along local roads and streets. Approximately 50 percent of the compactors in use are under the direct control of State and local governments through government waste collection services, and much of the private waste collection sector is subject to controls on routing, hours of operation, and number of trucks in operation.

The Administrator believes that, absent the industry's need for uniform national noise control standards, the control of compactor noise by State and local governments has the potential to mitigate any adverse environmental impacts that might result from rescission of the TMSWC noise emission regulation. Since enactment of the Noise Control Act of 1972, and the Quiet Communities Act of 1978 (amending the 1972 Act), State and local governments have made significant strides in noise control program development and capabilities. This is illustrated by the steady growth of State and local government noise control programs and ordinances. As of June 30, 1981, there were 272 cities with populations of 25,000 or more, that had "active" noise control programs. "Active" programs are defined as those with ordinances having quantitative noise level (decibel) limits, the commitment of personnel and budget, and an active enforcement program. Many more communities have qualitative or nuisance type ordinances, which give them the legal capability to enforce noise control if they choose to do so. In 1981, 24 States had enabling legislation for noise control and a number of others had programs operating under general authorization, e.g., in health departments, though not specifically mandated.

In addition to a State and local capacity to regulate the use of noisy products, EPA has worked with these governments to establish a new approach as a new alternative to regulations, known as the Buy Quiet Program. Rather than requiring manufacturers to reduce noise levels of products consistent with technological and economic feasibility, manufacturers are motivated to reduce those levels through competitive market forces. Currently, the market for quiet products is being organized through State and local agencies and some utilities, but could be easily expanded to the private sector market. Over 100 State and local units of government are currently participating in the Buy Quiet Program.

List of Subjects in 40 CFR Part 205

Labeling, Motor vehicles, Noise control, Reporting and recordkeeping requirements.

Conclusions

On the basis of the foregoing considerations, it is the Administrator's present judgment that the Federal Noise Emission Regulation for Truck-Mounted Solid Waste Compactors (40 CFR Part 205, Subpart F) should be rescinded.

This action is expected to save societal resources estimated at $33 million in equivalent annual costs, and enable the compactor manufacturing industry to avoid an estimated $15 million annually in engineering and testing costs. Further, the Administrator believes that it is within the ability of State and local governments to control the noise of these products; and thereby substantially mitigate any adverse environmental effects that might result from the rescission of this regulation.

Miscellaneous

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not a major regulation as it proposes to rescind a regulation, and because:

(1) It will not have an annual adverse effect on the economy of $100 million or more;

(2) It will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(3) It will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For the same reasons, under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., I hereby certify that this action will not have a significant economic impact on a substantial number of small entities.

The Administrator believes this proposed action is significant and thus merits public comment prior to a final decision. Therefore, the Administrator has established a 30-day public comment period.

This proposed action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

(Sec. 6, Noise Control Act of 1972, 42 U.S.C. 4905.)

Dated: November 22, 1982.

Anne M. Gorsuch,

Administrator.

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BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 447

Medicare and Medicaid Programs; Prospective Reimbursement for Rural Health Clinic Services

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

ACTION: Proposed rule.

SUMMARY: These proposed regulations would provide a prospective payment method for Medicare and Medicaid reimbursement of independent rural health clinics (RHCs). Currently, both programs pay RHCs on an interim rate basis during each cost reporting period, and adjust their payments retroactively to reflect actual costs. Under the proposed regulations, payments will be made based on charges determined at the beginning of the reporting period, and there will be no year-end adjustment. These regulations are needed to replace existing interim regulations on payment of RHCs, and

are intended to provide RHCs with increased incentives to be more efficient and cost-effective in their operations.

This proposal replaces our proposed rule published on September 10, 1980 (45 FR 59734). As a result of comments, public hearings, and further analysis on that document, we have developed a new proposed rule that implements prospective reimbursement for RHC services through a simpler and more effective method.

DATE: To assure consideration, comments should be received by January 31, 1983.

ADDRESS: Address comments in writing to: Administrator, Health Care Financing Administration, Department of Health and Human Services, P.O. Box 17073, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

In commenting, please refer to BPP-167-P. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately three weeks after publication, in Room 309-G of the Department's office at 200 Independence Ave. SW., Washington, D.C. 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

FOR FURTHER INFORMATION CONTACT: Bernard Truffer, 301-597-1369.

SUPPLEMENTARY INFORMATION:

I. Background

A. Development of Program

Congress enacted the Rural Health Clinic (RHC) Services Act (Pub. L. 95-210, December 13, 1977) to address two major problems: The lack of access to primary medical care in rural communities, and the financial plight of rural facilities providing this care. In response to these problems, the Rural Health Clinic Services Act added RHC services as a new benefit under Part B of Medicare, and as a mandatory benefit of certain State Medicaid plans. The benefit included payment for physician services and for medical services provided by nurse practitioners and physician assistants in a rural health clinic. As of January 1982, 434 RHCs were participating in the program, three hundred and thirty-five of these clinics (77.5 percent) concentrated in only 15 States.

In FY 1983, we estimate that RHCs will receive about $8.65 million in Medicare and Medicaid payments, divided approximately equally between the two programs. On the average, a clinic receives approximately $19,000 from both programs combined. In relation to the amount of total benefit payments, Medicare administrative costs for the RHC program are high—approximately 30 percent of benefits. This is substantially higher than the proportion of similar costs for the rest of the Medicare program.

B. Current Payment Method

The Medicare reimbursement regulations for RHC services are contained in 42 CFR Part 405, Subpart X, and the Medicaid reimbursement regulations are located at 42 CFR 447.371.

Both Medicare and Medicaid reimburse RHCs that are a part of a provider of services (hospital, skilled nursing facility, or home health agency) on a reasonable cost basis, with a year-end cost settlement, according to reimbursement principles applicable to that provider under the regulations in 42 CFR Part 405, Subpart D. Currently, only about 5.4 percent (23 of 434 clinics as of January 1982) of all RHCs are provider-based.

Medicare currently reimburses independent (non-provider based) RHCs retrospectively also, based on the clinics' reasonable cost incurred in furnishing RHC services to Medicare beneficiaries, under principles specifically applicable to the clinics. Medicare regional intermediaries make interim payments to clinics based on an all-inclusive rate for each visit by a Medicare beneficiary.

For each clinic, the intermediary sets an interim rate of payment at the beginning of each reporting period, based on the clinic's estimated costs and estimated number of patient visits for the period. The intermediary pays the clinic 80 percent of the all-inclusive rate for each Medicare covered visit, if the patient has fully incurred the Medicare Part B deductible amount ($75 per year). At the end of each reporting period, the clinic must report to the intermediary its actual costs and the total number of visits for RHC services it actually furnished during the period. Based on this information, the intermediary calculates the amount due by multiplying the clinic's average cost per visit by the number of beneficiary visits, and subtracting the incurred deductible amounts. The intermediary compares the resulting amount with the interim payments made during the reporting period, and reconciles any underpayments or overpayments.

Medicaid reimburses independent RHCs for RHC services under a similar method. States that pay for RHC services use interim rates established by Medicare intermediaries subject to adjustment at the end of the reporting period based on actual costs and visits. However, Medicaid pays 100 percent of the all-inclusive rate (subject to State-imposed copayment requirements, if applicable).

The all-inclusive rate is subject to tests of reasonableness, developed by HCFA or the intermediary in accordance with 42 CFR 405.2428, and applied to both Medicare and Medicaid payments. The tests include screening guidelines intended to identify situations where costs will not be allowed without acceptable justification by the clinic, and limits on the amount of payment.

C. Basis and Purpose for Revising the Payment Method

Section 1833(a)(3) of the Social Security Act (added by Pub. L. 95-210) gives broad authority for the development of a payment method for RHCs under Medicare. Public Law 95-210 also added section 1902(a)(13)(F) to the Social Security Act (changed to section 1902(a)(13)(B) by the Omnibus Budget Reconciliation Act of 1981), relating Medicaid payment for RHC services to that under Medicare.

When the original RHC reimbursement regulations were developed under this statutory authority, there was little information available on the number, costs, or accounting capabilities of the clinics. We therefore decided to use a retrospective payment method based on established principles of reasonable cost. Through its end-of-year reconciliation, this method allowed us to adjust for excesses or deficiencies in setting the rate for interim payments. In this way, we avoided placing clinics at risk during their first years of dealing with Medicare and Medicaid. However, we also recognized that it had long-term disadvantages, and we announced in the preamble to the regulations (43 FR 8259; March 1, 1978) that we intended to replace retrospective cost reimbursement with a prospective reimbursement methodology.

D. Previous Notice of Proposed Rulemaking

On September 10, 1980, we published a Notice of Proposed Rulemaking (NPRM) regarding RHC reimbursement (45 FR 59734). The two major issues that were addressed in the development of