



DEPARTMENT OF ENERGY

10 CFR Part 955

RIN 1903-AA12

Elemental Mercury Management and Storage Fees

AGENCY: Office of Environmental Management, U.S. Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is removing the regulatory provisions established by the final rule Elemental Mercury Management and Storage Fees that was published in the Federal Register on December 23, 2019. On September 5, 2020, the U.S. District Court for the District of Columbia issued an order that vacated and remanded the rule to DOE for reconsideration. This action amends the Code of Federal Regulations to reflect the Court's order.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. However, the Court's order had legal effect immediately upon its issuance on September 5, 2020.

FOR FURTHER INFORMATION CONTACT: Timothy Herald, U.S. Department of Energy, Office of Environmental Management, Room B126, 19901 Germantown Road, Germantown, MD 20874; (240) 243-8753 or timothy.herald@em.doe.gov.

SUPPLEMENTARY INFORMATION:

Section 5(a)(1) of the Mercury Export Ban Act (MEBA), as amended, 42 U.S.C. 6939f(a)(1), provides that the Secretary of Energy shall designate a facility or facilities of DOE for the purpose of long-term management and storage of elemental mercury generated within the United States. MEBA section 5(b)(1), 42 U.S.C. 6939f(b)(1), further provides that DOE shall assess and collect a fee at the time of delivery for providing such management and storage, based on the pro rata cost of long-term management and storage of elemental mercury delivered to the facility.

On December 6, 2019, DOE published its Record of Decision (ROD) identifying a portion of two buildings at a Texas facility leased by DOE and owned by Waste Control Specialists, LLC (WCS facility) as its designated facility under MEBA section 5(a). (84 FR 66890). In accordance with MEBA section 5(b), on December 23, 2019, DOE issued a final rule that established the fee for the management and storage of elemental mercury at the designated facility. (84 FR 70402). The rule, which became effective on January 22, 2020, added 10 CFR part 955 titled “Fee for Long-Term Management and Storage of Elemental Mercury Under the Mercury Export Ban Act of 2008, as Amended.”

On January 17, 2020, Nevada Gold Mines, LLC (NGM) filed suit against DOE in the U.S. District Court for the District of Columbia seeking to vacate both the final rule and the ROD. *Nevada Gold Mines, LLC v. Dan Brouillette, et al*, Case No. 1:20-cv-00141-RJL (D.D.C. 2020). On August 21, 2020, NGM and DOE executed a settlement agreement in which DOE agreed to move the district court to vacate and remand the fee rule. On September 5, 2020, the district court granted DOE’s motion to vacate the fee rule and ordered the rule vacated and remanded to DOE for reconsideration. Consistent with the agreement, DOE subsequently issued an amended ROD withdrawing the designation of the WCS facility. In this final rule, DOE removes 10 CFR part 955 to reflect the district court’s order.

This final rule is not subject to the requirement to provide prior notice and an opportunity for public comment under 5 U.S.C. 553(b) and (c) because it falls under the good cause exception at 5 U.S.C. 553(b)(3)(B). The good cause exception is satisfied when notice and comment is “impracticable, unnecessary, or contrary to the public interest.” *Id.* This final rule is an administrative step that implements the district court's order vacating the December 2019 rule. Notice and comment are unnecessary for implementation of the court’s vacatur and would be impracticable and contrary to the public interest in light of DOE’s need to implement the now-effective final judgment. Additionally, because this final rule implements a court order already in effect, DOE has good cause to waive the 30-day effective date. *See* 5 U.S.C. 553(d)(3).

Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 955

Elemental Mercury, Hazardous Waste Treatment, Storage, and Disposal, and Reporting and Recordkeeping Requirements.

Signing Authority

This document of the Department of Energy was signed on April 23, 2024, by David M. Turk, Deputy Secretary of Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the Federal Register.

Signed in Washington, DC, on April 24, 2024.

Treena V. Garrett
Federal Register Liaison Officer,
U.S. Department of Energy

PART 955—[REMOVED AND RESERVED]

For the reasons stated in the preamble, and under the authority of 42 U.S.C. 6939f(b), DOE removes and reserves 10 CFR part 955.

[FR Doc. 2024-09134 Filed: 4/26/2024 8:45 am; Publication Date: 4/29/2024]