before October 1, 1993 and by providing that the reinstated regulations could not be ''terminated or withdrawn'' until revisions took effect. However, to ensure that EPA could not postpone the issue of revisions indefinitely, Congress also established a deadline of October 1, 1994 for the promulgation of revisions to the mixture and derived-from rules. Congress made this deadline enforceable under RCRA's citizen suit provision.

On October 30, 1992 EPA published two notices, one removing the sunset provision, and the other withdrawing the May 1992 proposal. See 57 FR 49278, 49280. EPA had received many comments criticizing the May 1992 proposal. The criticisms were due, in a large part, to the very short schedule imposed on the regulation development process itself. Commenters also feared that the proposal would result in a ''patchwork'' of differing State programs because some states might not adopt the revisions. This fear was based on the belief that States would react in a negative manner to the proposal and refuse to incorporate it into their programs. Finally, many commenters also argued that the risk assessment used to support the proposed exemption levels failed to provide adequate protection of human health and the environment because it evaluated only the risks of human consumption of contaminated groundwater ignoring other pathways that could pose greater risks. Based on these concerns, and based on the Agency's desire to work through the individual elements of the proposal more carefully, the proposal was withdrawn.

Meanwhile, a group of waste generating industries challenged the March 1992 action that reinstated the mixture and derived-from rules without change. *Mobil Oil Corp*. v. *EPA,* 35 F.3d 579 (D.C. Cir. 1994). EPA argued that the 1992 appropriations act made the challenge moot because it prevented both EPA and the courts from terminating or withdrawing the interim rules before EPA revised them, even if EPA failed to meet the statutory deadline for the revisions. In September, 1994 the D.C. Circuit issued an opinion that dismissed the challenges as moot under the rationale that the Agency had offered.

In early October 1994 several groups of waste generating and waste managing industries filed citizen suits to enforce the October 1 deadline for revising the mixture and derived-from rules. The U.S. District Court for the District of Columbia Circuit entered a consent decree resolving the consolidated cases on May 3, 1993. *Environmental Technology Council* v. *Browner,* C.A. No. 94–2119 (TFH) (D.D.C. 1994) Under this decree the Administrator must sign a proposal to amend the mixture and derived-from rules by November 13, 1995 and a notice of final rulemaking by December 15, 1996. The decree also specifies that the deadlines in the 1992 appropriations act do not apply to any rule revising the separate regulations that establish jurisdiction over media contaminated with hazardous wastes.

c. Federal Advisory Committees Act (FACA) and Outreach

After the withdrawal of the HWIR proposal, the Agency initiated a series of public meetings with invited representatives from industry, environmental groups, hazardous waste treaters, and States. These meetings focused on three major issues: —RCRA regulation of low hazard wastes with a particular interest in addressing issues raised regarding the mixture and derived-from rules; concerns that full RCRA requirements for contaminated media may unnecessarily impede clean-ups; and need to regulate additional high-risk wastes outside the scope of the current listings and characteristics.

A strong and successful effort was made to encourage all the interested parties to participate in the public meetings. EPA forged a solid partnership with the States (both ASTSWMO and Environmental Commissioners under the National Governors Association) and the state representatives worked closely with EPA as co-regulators in our analyses of options.

In July of 1993, EPA chartered this group as an advisory committee under the Federal Advisory Committee Act (Pub. L. 92–463)(58 FR 36200).

The committee rather quickly formed two sub-committees to allow separate discussion of the low risk waste problem associated with the mixture and derived-from rules and the rules for managing contaminated media and other wastes during remediation.

By September of 1994 the low risk waste group had made significant progress in identifying options for creating exemptions for low risk wastes. Despite significant investment of time and effort, however, the group was unable to reach consensus on many key issues.

With the statutory deadline for revisions to the mixture and derived-from rules approaching, EPA requested that group to present a final report in late September of 1994. EPA and representatives from several state environmental agencies then took up the task of selecting options for creating an exit rule, crafting regulatory language, and developing necessary supporting materials. The FACA subcommittee's final report was taken into consideration during the development of today's proposal.

2. Contained-In Policy

The Agency also has interpreted its regulatory definition of hazardous waste to extend to mixtures of hazardous wastes and environmental media (such as contaminated soil and groundwater).[2] See 40 CFR 261.3(c)(1) and (d)(2). Media that are contaminated with listed or characteristically hazardous waste must be managed as hazardous wastes until they no longer contain such wastes. To date, the Agency has not issued any general rules as to when, or at what levels, environmental media contaminated with hazardous wastes are no longer considered to ''contain'' those hazardous wastes. Media that contain hazardous wastes with constituent concentrations below the levels proposed today will be eligible for exemption under the procedures proposed today. In addition, in a separate rulemaking, the Agency plans to propose additional rules reducing regulation of contaminated media during remediation activities.

C. Overview of Expected Impacts of the Exit Rule

1. Listed Wastes

The purpose of this rule is to exempt from hazardous waste regulation those solid wastes currently designated as hazardous waste even though they contain constituent concentrations at levels that pose very low risk to human health and the environment. While facilities generating such wastes can petition for delisting by rulemaking under the provisions of 40 CFR § 260.20 and 260.22, EPA believes that the detailed waste-stream specific review required under delisting is not necessary for the low risk wastes that are identified by today's proposal. The alternative, generic exit rule proposed today will be faster and less resource-intensive for both the Agency and the regulated community. By providing an opportunity for a more self-implementing exemption, the Agency intends to create incentives for effective and innovative waste minimization and waste treatment and to reduce unnecessary demand for Subtitle C disposal capacity, without

[2] EPA's ''contained in'' policy was upheld as a reasonable interpretation of 40 CFR 261.3(c)(1) and (d)(2) by the D.C. Circuit in *Chemical Waste Management, Inc* v. *U.S. EPA*, No. 869 F.2d 1526 (D.C. Cir. 1989).