

significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule does 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 (65 FR 67249, November 6, 2000).

This rule 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). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

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 does not involve technical standards; 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. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Section 7 of the Endangered Species Act (16 U.S.C. 1656 *et seq.*), requires Federal agencies, in consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service, to ensure that their actions are unlikely to jeopardize the continued existence of listed species or adversely affect designated critical habitat of such species. EPA has determined that this action has no effect on listed species or critical habitat because there are no listed species in Shields Gulch.

The Congressional Review Act (5 U.S.C 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public

interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of March 13, 2002. 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 the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 131

Environmental protection, Reporting and recordkeeping requirements, Water pollution control.

Dated: March 7, 2002.

Christine Todd Whitman,
Administrator.

For the reasons set out in the preamble title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

§ 131.33 [Amended]

2. Section 131.33 is amended by revising paragraph (b) to read as follows:

§ 131.33 Idaho

* * * * *

(b) *Use designations for surface waters.* In addition to the State adopted use designations, the following water body segments in Idaho are designated for cold water biota: Canyon Creek (PB 121)—below mining impact; South Fork Coeur d'Alene River (PB 140S)—Daisy Gulch to mouth; Blackfoot River (USB 360)—Equalizing Dam to mouth, except for any portion in Indian country; Soda Creek (BB 310)—source to mouth.

* * * * *

[FR Doc. 02-6064 Filed 3-12-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 180

[OPP-30118; FRL-6774-3]

RIN 2070-AB78

Pesticide Tolerance Processing Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule increases fees charged for processing tolerance petitions for pesticides under the Federal Food, Drug, and Cosmetic Act (FFDCA). The revision reflects a 4.94%, 3.81%, and 4.77% increase in locality pay for civilian Federal General Schedule employees working in the Washington, DC and Baltimore, MD metropolitan area in 2000, 2001, and 2002, respectively. Fees have not been adjusted since 1999 in anticipation of the tolerance fee revision rule proposed by EPA, which has not occurred.

DATES: This rule is effective April 12, 2002.

FOR FURTHER INFORMATION CONTACT: *For general information concerning this rule contact:* Ed Setren, Resources Management Staff (7501C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: (703) 305-5927; fax: (703) 305-5060; e-mail address: setren.edward@epa.gov.

For technical information concerning tolerance petitions and individual fees contact: Sonya Brooks, Resources Management Staff (7501C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: (703) 308-6423; fax: (703) 305-5060; e-mail address: brooks.sonya@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Rule Apply to Me?

This rule may directly affect any person who might petition the Agency for new tolerances, hold a pesticide registration with existing tolerances, or anyone who is interested in obtaining or retaining a tolerance in the absence of a registration. This group can include pesticide manufacturers or formulators, companies that manufacture chemicals used in formulating pesticides, importers of food, grower groups, or any person who seeks a tolerance. The vast majority of potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	SIC codes	Examples of potentially affected entities
Chemical industry	325320 115112	0286 0287	Pesticide chemical manufacturers Formulators, chemical manufacturers of inert ingredients

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed above could also be regulated. If available, the four-digit Standard Industrial Classification (SIC) codes or the six-digit North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this rule applies to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in the rule (see Unit IV). If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Additional Information or Copies of this Document or Other Documents?

1. *Electronically.* You may obtain electronic copies of this document and various support documents from the EPA Internet Home Page at <http://www.epa.gov/>. On the Home Page select "Laws and Regulations" "Regulations and Proposed Rules" and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the "Federal Register" listings at <http://www.epa.gov/homepage/fedrgrstr/>.

2. *In person or by phone.* If you have any questions or need additional information about this action, you may contact the technical person identified under **FOR FURTHER INFORMATION CONTACT**. In addition, the official record for this rule, including the public version, has been established under docket control number OPP-30118. A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as CBI, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is (703) 305-5805.

III. What Action is the Agency Taking in this Rule?

With this rule, the Agency is increasing the fees charged for processing tolerance petitions for pesticides under the Federal Food, Drug, and Cosmetic Act (FFDCA). The pay raise in 2000, 2001, and 2002 for Federal General Schedule (GS) employees working in the Washington, DC/Baltimore, MD metropolitan pay area is 4.94%, 3.81%, and 4.77%, respectively. This increase in the fees charged for processing tolerance petitions reflects these recent pay raises.

IV. Why is the Agency Taking this Action?

EPA is charged with the administration of section 408 of FFDCA. Section 408 authorizes the Agency to establish tolerance levels and exemptions from the requirements for tolerances for raw agricultural commodities. Section 408(o) requires the Agency to collect fees that will, in the aggregate, be sufficient to cover the costs of processing petitions for pesticide products. EPA is publishing this action pursuant to 40 CFR 180.33(o).

The current fee schedule for tolerance petitions published in the **Federal Register** of May 26, 1999 (64 FR 28384) (FRL-6056-6), codified at 40 CFR 180.33, and became effective on June 26, 1999. At that time the fees were increased 3.68% in accordance with a provision in the regulation that provides for automatic annual adjustments to the fees based on annual percentage changes in Federal salaries (40 CFR 180.33(o)).

The Federal Employees Pay Comparability Act of 1990 (FEPCA) initiated locality-based comparability pay, known as "locality pay." The intent of the legislation is to make Federal pay more responsive to local labor market conditions by adjusting General Schedule salaries on the basis of a comparison with non-Federal rates on a geographic, locality basis. The processing and review of tolerance petitions is conducted by EPA employees working in the Washington, DC/Baltimore, MD pay area.

The pay raise in 2000, 2001, and 2002 for Federal General Schedule employees working in the Washington, DC/

Baltimore, MD metropolitan pay area is 4.94%, 3.81%, and 4.77%, respectively; therefore, the tolerance petition fees are being increased by 4.94%, 3.81%, and 4.77%, respectively. The entire revised fee schedule is presented in § 180.33 of the regulatory text for the reader's convenience. (All fees have been rounded to the nearest \$25.00.)

V. Why is EPA Issuing this Action as a Final Rule?

EPA is publishing this action as a final rule pursuant to 40 CFR 180.33(o), which reads in part:

(o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale [. . .]. When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the *Federal Register* as a final rule to become effective 30 days or more after publication, as specified in the rule.

VI. What Regulatory Assessment Requirements Apply to this Action?

This final rule amends the fees charged for processing tolerance petitions under FFDCA to reflect automatic adjustments based on the GS pay scale and is issued as a final rule pursuant to 40 CFR 180.33(o). Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB), nor is this final rule subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001).

This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045,

entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

Since the Agency is authorized to make automatic adjustments based on the GS pay scale by issuing a final rule under 40 CFR 180.33(o), and is not required to issue a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

For these same reasons, the Agency has determined that this final rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the 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 final 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.

VII. Must EPA Submit this Action to Congress and the General Accounting Office?

Yes. 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 rule in the **Federal Register**. This 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: March 5, 2002.

Stephen L. Johnson,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

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), (346a) and 371.

2. Section 180.33 is revised to read as follows:

§ 180.33 Fees.

(a) Each petition or request for the establishment of a new tolerance or a tolerance higher than already established, shall be accompanied by a fee of \$77,625, plus \$1,950 for each raw agricultural commodity more than nine on which the establishment of a tolerance is requested, except as

provided in paragraphs (b), (d), and (h) of this section.

(b) Each petition or request for the establishment of a tolerance at a lower numerical level or levels than a tolerance already established for the same pesticide chemical, or for the establishment of a tolerance on additional raw agricultural commodities at the same numerical level as a tolerance already established for the same pesticide chemical, shall be accompanied by a fee of \$17,750 plus \$1,175 for each raw agricultural commodity on which a tolerance is requested.

(c) Each petition or request for an exemption from the requirement of a tolerance or repeal of an exemption shall be accompanied by a fee of \$14,325.

(d) Each petition or request for a temporary tolerance or a temporary exemption from the requirement of a tolerance shall be accompanied by a fee of \$31,000 except as provided in paragraph (e) of this section. A petition or request to renew or extend such temporary tolerance or temporary exemption shall be accompanied by a fee of \$4,400.

(e) A petition or request for a temporary tolerance for a pesticide chemical which has a tolerance for other uses at the same numerical level or a higher numerical level shall be accompanied by a fee of \$15,425, plus \$1,175 for each raw agricultural commodity on which the temporary tolerance is sought.

(f) Each petition or request for repeal of a tolerance shall be accompanied by a fee of \$9,700. Such fee is not required when, in connection with the change sought under this paragraph, a petition or request is filed for the establishment of new tolerances to take the place of those sought to be repealed and a fee is paid as required by paragraph (a) of this section.

(g) If a petition or a request is not accepted for processing because it is technically incomplete, the fee, less \$1,950 for handling and initial review, shall be returned. If a petition is withdrawn by the petitioner after initial processing, but before significant Agency scientific review has begun, the fee, less \$1,950 for handling and initial review, shall be returned. If an unacceptable or withdrawn petition is resubmitted, it shall be accompanied by the fee that would be required if it were being submitted for the first time.

(h) Each petition or request for a crop group tolerance, regardless of the number of raw agricultural commodities involved, shall be accompanied by a fee equal to the fee required by the

analogous category for a single tolerance that is not a crop group tolerance, i.e., paragraphs (a) through (f) of this section, without a charge for each commodity where that would otherwise apply.

(i) Objections under section 408(d)(5) of the Act shall be accompanied by a filing fee of \$3,875.

(j)(1) In the event of a referral of a petition or proposal under this section to an advisory committee, the costs shall be borne by the person who requests the referral of the data to the advisory committee.

(2) Costs of the advisory committee shall include compensation for experts as provided in § 180.11(c) and the expenses of the secretariat, including the costs of duplicating petitions and other related material referred to the committee.

(3) An advance deposit shall be made in the amount of \$38,750 to cover the costs of the advisory committee. Further advance deposits of \$38,750 each shall be made upon request of the Administrator when necessary to prevent arrears in the payment of such costs. Any deposits in excess of actual expenses will be refunded to the depositor.

(k) The person who files a petition for judicial review of an order under section 408(d)(5) or (e) of the Act shall pay the costs of preparing the record on which the order is based unless the person has no financial interest in the petition for judicial review.

(l) No fee under this section will be imposed on the Interregional Research Project Number 4 (IR-4 Program).

(m) The Administrator may waive or refund part or all of any fee imposed by this section if the Administrator determines in his or her sole discretion that such a waiver or refund will promote the public interest or that payment of the fee would work an unreasonable hardship on the person on whom the fee is imposed. A request for waiver or refund of a fee shall be submitted in writing to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division (7505C), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A fee of \$1,950 shall accompany every request for a waiver or refund, except that the fee under this sentence shall not be imposed on any person who has no financial interest in any action requested by such person under paragraphs (a) through (k) of this section. The fee for requesting a waiver or refund shall be refunded if the request is granted.

(n) All deposits and fees required by the regulations in this part shall be paid

by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency. All deposits and fees shall be forwarded to the Environmental Protection Agency, Headquarters Accounting Operations Branch, Office of Pesticide Programs (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. The payments should be specifically labeled "Tolerance Petition Fees" and should be accompanied only by a copy of the letter or petition requesting the tolerance. The actual letter or petition, along with supporting data, shall be forwarded within 30 days of payment to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division (7505C), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A petition will not be accepted for processing until the required fees have been submitted. A petition for which a waiver of fees has been requested will not be accepted for processing until the fee has been waived or, if the waiver has been denied, the proper fee is submitted after notice of denial. A request for waiver or refund will not be accepted after scientific review has begun on a petition.

(o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale. In addition, processing costs and fees will periodically be reviewed and changes will be made to the schedule as necessary. When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the **Federal Register** as a final rule to become effective 30 days or more after publication, as specified in the rule. When changes are made based on periodic reviews, the changes will be subject to public comment.

[FR Doc. 02-5868 Filed 3-12-02; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH-FRL-7157-2]

RIN 2050-AE94

Hazardous Waste Management System; Definition of Solid Waste; Toxicity Characteristic

AGENCY: Environmental Protection Agency.

ACTION: Final Rule; Response to court order vacating regulatory provisions.

SUMMARY: This action responds to two court vacatur of regulations under the

Resource Conservation and Recovery Act (RCRA), first, by deleting regulatory language that classified mineral processing characteristic sludges and by-products being reclaimed as solid wastes under RCRA's hazardous waste management regulations, and secondly, by codifying the decision that the Toxicity Characteristic Leaching Procedure (TCLP) may not be used for determining whether manufactured gas plant (MGP) waste is hazardous under RCRA. The Environmental Protection Agency (EPA) initially took action on these matters as part of the Phase IV Land Disposal Restrictions (LDR) on May 26, 1998. Today's revisions carry out vacatur orders by the United States Court of Appeals for the District of Columbia Circuit in *Association of Battery Recyclers v. EPA (ABR)*. In addition, we are announcing that we plan to propose a separate rule to revise the definition of solid waste.

EFFECTIVE DATE: This rule is effective on March 13, 2002.

ADDRESSES: Supporting materials to this final rule are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F-2001-TCVF-FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, we recommend that the public make an appointment by calling (703) 603-9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost \$0.15/page. The docket index and some supporting materials are available electronically. See the beginning of the Supplementary Information section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline at (800) 424-9346 or TDD (800) 553-7672 (hearing impaired). In the Washington, D.C., metropolitan area, call (703) 920-9810 or TDD (703) 412-3323. For information on definition of solid waste aspects of the rule, contact Ms. Ingrid Rosencrantz, Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460. [e-mail address and telephone number: rosencrantz.ingrid@epa.gov (703-308-8285).] For information on the manufactured gas plant wastes and the TCLP, contact Mr. Greg Helms, Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW.,