

significance, 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). 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 tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCFA, such as the tolerance in this final rule, do not require the issuance of 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 section 408(n)(4) of FFDCFA. For these same reasons, the Agency has determined that this 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 rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 21, 2004.

James Jones,
Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.569 is amended by redesignating paragraph (a) as paragraph (a)(2), by removing the entries for grape and kiwifruit from the table in newly designated paragraph (a)(2), and by adding new paragraph (a)(1) to read as follows:

§ 180.569 Forchlorfenuron; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the plant growth regulator forchlorfenuron; *N*-(2-chloro-4-pyridinyl)-*N'*phenyl urea in or on the following commodities:

Commodity	Parts per million
Grape	0.03
Grape, raisin	0.06
Kiwifruit	0.04

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-7821-8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Final rule; Notice of deletion of the Love Canal Superfund site from the National Priorities List.

SUMMARY: The United States Environmental Protection Agency (EPA) Region II Office announces the deletion of the Love Canal Superfund site (Love Canal site) from the National Priorities List (NPL). The Love Canal site is located in the City of Niagara Falls, Niagara County, New York. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended.

EPA and the State of New York, through the Department of Environmental Conservation (NYSDEC), have determined that all appropriate response actions have been

implemented at the Love Canal site and that no further response actions, other than operation, maintenance, and monitoring, are required. In addition, EPA and NYSDEC have determined that the remedial action taken at the Love Canal site is protective of public health and the environment and that the operation, monitoring, and maintenance of such remedial action will confirm that it continues to be protective of public health and the environment.

Even though the Love Canal site will be deleted from the NPL, these ongoing monitoring activities will ensure NYSDEC and EPA involvement during the annual monitoring of the Love Canal site conditions, as well as the annual review of existing institutional controls.

DATES: *Effective*, September 30, 2004.

FOR FURTHER INFORMATION CONTACT:

Damian J. Duda, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, New York 10007–1866, (212) 637–4269.

SUPPLEMENTARY INFORMATION: To be deleted from the NPL is: the Love Canal Superfund site, City of Niagara Falls, Niagara County, New York. A Notice of Intent to Delete for the Love Canal site was published in the **Federal Register** on March 17, 2004. The closing date for comments on the Notice of Intent to Delete was April 16, 2004.

EPA received comments, including the two major comments discussed below, on the proposed deletion and addressed these comments in a Responsiveness Summary. Several commenters expressed concern that the wastes that were originally disposed of in the Love Canal landfill have not been removed. The containment, leachate collection, and treatment and monitoring remedy at the Site was selected consistent with the requirements of the Federal Superfund law. Excavation and removal of hazardous materials from landfills can potentially create more contaminant exposure to human health and the environment than a containment remedy. Moreover the large volumes of contaminated soils from an excavated landfill must be treated and redispersed at other secure hazardous waste facilities, requiring either utilization of limited existing landfill capacity or the creation of new landfills to accommodate the excavated waste from old landfills. The excavated landfill requires filling with clean backfill materials and still must be subject to engineering controls due to residual contamination that could not practicably be removed. For these reasons, EPA developed a presumptive

remedy for large landfills consisting of containment through capping and leachate collection and treatment. The Love Canal site remedy is a permanent remedy that is consistent with the requirements of the Superfund law. Several commenters were also concerned that the deletion of the Love Canal site from the NPL would imply that EPA will not have any further involvement at the Love Canal site and that, if there were to be a need for further Superfund response at the Love Canal site, such a response could not be provided since the Love Canal site would no longer be on the NPL. EPA confirmed in the Responsiveness Summary that its responsibility for the Love Canal site does not cease after the deletion from the NPL.

The NCP (40 CFR 300.425 (e)) states that a site that is deleted from the NPL is eligible for further fund-financed remedial actions should future conditions warrant such action. A Superfund site can be deleted from the NPL when one of the following criteria, as identified in the NCP (40 CFR 300.425(e)), is met. These criteria are as follows: (1) Responsible or other parties have implemented all appropriate response actions required; (2) all appropriate Fund-financed response under CERCLA has been implemented and no further response action by responsible parties is appropriate; or, (3) the remedial investigation has shown that the release poses no significant threat to human health or the environment, and therefore, taking remedial measures is not appropriate. In the case of the Love Canal site, the first two criteria have been met. The third criterion is not applicable, since remedial measures were taken.

All of the comments received and EPA's responses are contained in the Responsiveness Summary, a copy of which is available at the EPA Public Information Office, Niagara Falls, New York at (716) 285–8842. The Responsiveness Summary is also available in the Administrative Record File, located in the EPA Regional Office.

As part of EPA's policy for Superfund sites where the remedy will result in substances remaining on-site above health-based levels that would allow for unrestricted use or unlimited exposure, EPA conducts five-year reviews to confirm that the remedy continues to adequately protect human health and the environment. In the case of the Love Canal site, the institutional controls in place do not allow for unrestricted use or unlimited exposure. In September 2003, EPA issued the first five-year review report for the Love Canal site operations. NYSDEC provided technical

oversight for the preparation of EPA's five-year review report and concurred with EPA's findings that the containment and barrier drain system were working properly. EPA concludes that the Site does not pose a significant threat to public health or the environment.

EPA identifies sites that appear to present a significant risk to public health or the environment, and it maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, any site or portion thereof deleted from the NPL remains eligible for remedial actions in the unlikely event that conditions at the site warrant such action in the future. Deletion of a site from the NPL does not affect potentially responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution controls, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 23, 2004.

Jane M. Kenny,

Regional Administrator—Region II.

■ For the reasons set out in the preamble, Part 300, Chapter I of Title 40 of the Code of Federal Regulations, is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9675; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR., 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B [Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by removing the site for “Love Canal, Niagara Falls, New York.” [FR Doc. 04–21806 Filed 9–29–04; 8:45 am]

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DEPARTMENT OF THE INTERIOR

43 CFR Part 2

RIN 1090–AA61

Revision of the Freedom of Information Act Regulations and Implementation of the Electronic Freedom of Information Act Amendments of 1996

AGENCY: Department of the Interior.