

economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticides named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis. 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 FFDCA. 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.

#### VI. 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: July 25, 2005.

**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.

#### § 180.153 [Amended]

■ 2. In § 180.153 is amended by removing the entries for coffee bean and dandelion, leaves from the table under paragraph (a)(1).

#### § 180.169 [Amended]

■ 3. In § 180.169 is amended by removing the entries for bean, forage; bean, hay; and flax, straw from the table under paragraph (a)(1) and the entry for

pineapple bran from the table under paragraph (a)(4).

#### § 180.183 [Amended]

■ 4. In § 180.183 is amended by removing the entry for hop, dried cones from the table under paragraph (a).

#### § 180.249 [Amended]

■ 5. In § 180.249 is amended by removing the entries for peanut, forage; peanut, hay; soybean, forage; and soybean, hay from the table under the paragraph.

#### § 180.380 [Amended]

■ 6. In § 180.380 is amended by removing the entries for onion, dry bulb and raspberry from the table under paragraph (a).

#### § 180.409 [Amended]

■ 7. In § 180.409 is amended by removing the entry for kiwifruit from the table under paragraph (a)(1), removing paragraph (a)(2) and redesignating paragraph (a)(1) as (a).

[FR Doc. 05-15335 Filed 8-2-05; 8:45 am]

BILLING CODE 6560-50-S

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP-2005-0068; FRL-7728-5]

### Inert ingredients; Revocation of Pesticide Tolerance Exemptions for Three CFC Chemicals

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is revoking exemptions from the requirement of a tolerance for three inert ingredients (dichlorodifluoromethane, dichlorotetrafluoroethane, and trichlorofluoromethane) because these substances no longer have active Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) pesticide product registrations and/or because their use in pesticide products sold in the United States (U.S.) has been prohibited under the Clean Air Act (CAA) for over a decade due to EPA's ban on the sale or distribution, or offer for sale or distribution in interstate commerce of certain nonessential products that contain or are manufactured with ozone depleting compounds. The regulatory actions in this document contribute toward the Agency's tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality

Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. The regulatory actions in this document pertain to the revocation of five tolerance exemptions of which five count as tolerance reassessments toward the August, 2006 review deadline.

**DATES:** This regulation is effective August 3, 2005. Objections and requests for hearings must be received on or before October 3, 2005.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP-2005-0068. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Karen Angulo, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 306-0404; e-mail address: [angulo.karen@epa.gov](mailto:angulo.karen@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

### **I. General Information**

#### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide

for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### *B. How Can I Access Electronic Copies of this Document and Other Related Information?*

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>.

### **II. Background**

#### *A. What Action is the Agency Taking?*

In the **Federal Register** of April 27, 2005 (70 FR 21713) (FRL-7709-1), EPA issued a proposed rule to revoke five tolerance exemptions for residues of dichlorodifluoromethane, dichlorotetrafluoroethane, and trichlorofluoromethane because those substances are either no longer contained in pesticide products and/or because their use in pesticide products sold in the U.S. has been prohibited for over a decade due to EPA's ban on the sale or distribution, or offer for sale or distribution in interstate commerce of certain nonessential products that contain or are manufactured with ozone depleting compounds. EPA believes this rationale also extends to ingredients whose use in pesticide products is prohibited as a result of EPA's 1994 ban, under the CAA, on certain non-essential aerosol and pressurized products containing ozone depleting compounds (see 40 CFR part 82, subpart C). Also the proposal of April 27, 2005 (70 FR 21713) provided a 60-day comment period that invited public comment for consideration and for support of tolerance exemption retention under the FFDCA standards.

In this final rule, EPA is revoking five tolerance exemptions for residues of dichlorodifluoromethane, dichlorotetrafluoroethane, and trichlorofluoromethane because these specific tolerance exemptions correspond to uses no longer current or registered under FIFRA in the United

States. The tolerance exemptions revoked by this final rule are no longer necessary to cover residues of the relevant pesticide chemicals in or on domestically treated commodities or commodities treated outside but imported into the United States. It is EPA's general practice to revoke those tolerances and tolerance exemptions for residues of pesticide chemicals on crop uses for which there are no active registrations under FIFRA, unless any person commenting on the proposal indicates a need for the tolerance or tolerance exemption to cover residues in or on imported commodities or domestic commodities legally treated.

EPA has historically been concerned that retention of tolerances and tolerance exemptions that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances and tolerance exemptions for residues of pesticide chemicals for which there are no active registrations or uses under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

Generally, EPA will proceed with the revocation of these tolerances and tolerance exemptions on the grounds discussed in Unit II.A. if one of the following conditions applies:

1. Prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances or tolerance exemptions on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

2. EPA independently verifies that the tolerance or tolerance exemption is no longer needed.

3. The tolerance or tolerance exemption is not supported by data that demonstrate that the tolerance or tolerance exemption meets the requirements under FQPA.

EPA received one comment on the proposal to revoke these tolerance exemptions, and the commenter supported this revocation action.

Therefore, for the reasons stated herein and in the proposed rule, EPA is revoking the exemptions from the requirement of a tolerance in 40 CFR 180.910 for residues of dichlorodifluoromethane, dichlorotetrafluoroethane, and trichlorofluoromethane, and in 40 CFR 180.930 for residues of dichlorodifluoromethane and trichlorofluoromethane.

### *B. What is the Agency's Authority for Taking this Action?*

This final rule is issued pursuant to section 408(d) of FFDCA (21 U.S.C. 346a(d)). Section 408 of FFDCA authorizes the establishment of tolerances, exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or tolerance exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under section 402(a) of the FFDCA. If food containing pesticide residues is found to be adulterated, the food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342 (a)).

EPA's general practice is to revoke tolerances and tolerance exemptions for residues of pesticide chemicals on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances and tolerance exemptions that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances and tolerance exemptions even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as "import tolerances," are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances and tolerance exemptions for unregistered pesticide chemicals in order to prevent potential misuse.

### *C. When Do These Actions Become Effective?*

These actions become effective on the date of publication of this final rule in the **Federal Register**. Any commodities listed in the regulatory text of this document that are treated with the pesticide chemicals subject to this final rule, and that are in the channels of trade following the tolerance exemption revocations, shall be subject to FFDCA section 408(1)(5), as established by the FQPA. Under this section, any residues of these pesticide chemicals in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that: (1) The residue is present as the result of an application or

use of the pesticide chemical at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under an exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide chemical was applied to such food.

### **III. Are There Any International Trade Issues Raised by this Final Action?**

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision Documents (REDs). The EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL-6559-3). This guidance will be made available to interested persons. Electronic copies are available on the internet at <http://www.epa.gov/>. On the Home Page select "Laws and Regulations," then select "Regulations and Proposed Rules" and then look up the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

### **IV. Objections and Hearing Requests**

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate

adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

### *A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP-2005-0068 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 3, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564-6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV.A.1., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your

copies, identified by docket ID number OPP-2005-0068, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

#### *B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

#### **V. Statutory and Executive Order Reviews**

In this final rule, EPA revokes specific tolerance exemptions established under FFDCA section 408. EPA establishes tolerances under FFDCA section 408(e), and also modifies and revokes specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of 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 as required by 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 other 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 104-13, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of exemptions from tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticide chemicals listed in this rule, the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticide chemicals named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis. 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 FFDCA. 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.

#### **VI. 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: July 27, 2005.

**Donald R. Stubbs,**

*Acting Director, Registration Division, 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.

##### § 180.910 [Amended]

■ 2. Section 180.910 is amended by removing the following exemptions and any associated Limits and Uses from the table: Dichlorodifluoromethane, Dichlorotetrafluoroethane, and Trichlorofluoromethane.

##### § 180.930 [Amended]

■ 3. Section 180.930 is amended by removing the following exemptions and any associated Limits and Uses from the table: Dichlorodifluoromethane and Trichlorofluoromethane.

[FR Doc. 05-15334 Filed 8-2-05; 8:45 am]

**BILLING CODE 6560-50-S**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 261

[SW-FRL-7946-8]

#### Hazardous Waste Management System; Final Exclusion for Identification and Listing Hazardous Waste

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency is finalizing its proposed action to grant a petition submitted by the United States Department of Energy, Richland Operations Office (Energy) to exclude (or 'delist') from regulation as listed hazardous waste certain mixed waste ('petitioned waste') following treatment at the 200 Area Effluent Treatment Site (200 Area ETF) on the Hanford Facility, Richland, Washington. This action conditionally grants the exclusion based on an evaluation of

waste stream-specific and treatment process information provided by Energy. Wastes meeting the conditions of this exclusion are exempt from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) of 1976 as amended. In finalizing this action, EPA has concluded that Energy's petitioned waste does not meet any of the criteria under which the wastes were originally listed, and that there is no reasonable basis to believe other factors exist which could cause the waste to be hazardous.

**DATES:** This final rule is effective on September 2, 2005.

**ADDRESSES:** The RCRA regulatory docket for this final rule is maintained by EPA, Region 10. You may examine docket materials at the EPA Region 10 library, 1200 6th Avenue, Seattle, WA 98101, (206) 553-1289, during the hours from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Copies of key docket documents are available for review at the following Hanford Site Public Information Repository locations: University of Washington, Suzzallo Library, Government Publications Division, Box 352900, Seattle, WA 98195-2900. (206) 543-4664. Contact: Eleanor Chase, [echase@u.washington.edu](mailto:echase@u.washington.edu), (206) 543-4664.

Gonzaga University, Foley Center, East 502 Boone, Spokane, WA 99258-0001. (509) 323-5806. Contact: Connie Scarppelli, [carter@its.gonzaga.edu](mailto:carter@its.gonzaga.edu).  
Portland State University, Branford Price Millar Library, 934 SW Harrison, Portland, OR 97207-1151. (503) 725-3690. Contact: Michael Bowman, [bowman@lib.pdx.edu](mailto:bowman@lib.pdx.edu).  
U.S. DOE Public Reading Room, Washington State University-TC, CIC Room 101L, 2770 University Drive, Richland, WA 99352. (509) 372-7443. Contact: Janice Parthree, [reading\\_room@pnl.gov](mailto:reading_room@pnl.gov).

Copies of material in the regulatory docket can be obtained by contacting the Hanford Site Administrative Record via mail, phone, fax, or e-mail:

Address: Hanford Site Administrative Record, PO Box 1000, MSIN H6-08, 2440 Stevens Center Place, Richland, WA 99352. (509) 376-2530. E-mail: [Debra\\_A\\_Debbie\\_Isom@rl.gov](mailto:Debra_A_Debbie_Isom@rl.gov).

The docket contains the petition, and all information used by EPA to evaluate the petition including public comments received by EPA and comment responses.

**FOR FURTHER INFORMATION CONTACT:** For information concerning this document,

contact Dave Bartus, Office of Air, Waste and Toxics (OAWT), EPA, Region 10, 1200 6th Avenue, MS AWT-127, Seattle, WA 98101, telephone (206) 553-2804, or via e-mail at [bartus.dave@epa.gov](mailto:bartus.dave@epa.gov).

**SUPPLEMENTARY INFORMATION:** The information in this section is organized as follows:

- I. Overview Information
  - A. What Rule is EPA Finalizing?
  - B. Why is EPA Finalizing the Proposed Exclusion?
  - C. What Are the Limits of This Exclusion?
  - D. When Is the Final Rule Effective?
- II. Background
  - A. What is a Delisting Petition?
  - B. What Regulations Allow Wastes to be Delisted?
  - C. What Information Must the Generator Supply for a Delisting Petition?
  - D. How Will This Action Affect States?
- III. EPA's Evaluation of the Waste Information for 200 Area ETF Treated Effluent
  - What waste did Energy petition EPA to delist?
- IV. Public Comments Received on the Proposed Rule
  - A. Department of Energy Comments
  - B. Individual Commenter
- V. Statutory and Executive Order Reviews
  - A. Executive Order 12866
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
  - H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act
  - J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
  - K. Congressional Review Act

#### I. Overview Information

##### A. What Rule Is EPA Finalizing?

After evaluating Energy's petition and supplemental information provided by Energy, EPA proposed on July 15, 2004 (69 FR 42395), to exclude the petitioned mixed<sup>1</sup> wastes managed or generated by the 200 Area ETF on the Hanford Facility in Richland, Washington. The action relates to treated liquid effluents

<sup>1</sup> Mixed waste is defined as waste that contains both hazardous waste subject to the requirements of Resource Conservation and Recovery Act (RCRA) of 1976 as amended, and source, special nuclear, or by-product material subject to the requirements of the Atomic Energy Act (AEA) (see 42 United States Code (U.S.C.) 6903 (41), added by the Federal Facility Compliance Act (FFCA) of 1992).