

Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final 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) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). 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.*, 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).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCa, 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.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCa. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not 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).

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).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report 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 16, 2008.

Lois Rossi,

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.

■ 2. Section 180.436 is amended by revising the tolerance for alfalfa, hay and alphabetically adding the commodity alfalfa, forage to the table in paragraph (a)(1) to read as follows:

§ 180.436 Cyfluthrin; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
* * *	* *
Alfalfa, forage	5.0
Alfalfa, hay	13
* * *	* *

* * * * *
[FR Doc. E8-17062 Filed 7-29-08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2007-0214; FRL-8373-2]

Pyraclostrobin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of pyraclostrobin and its desmethoxy metabolite in or on the following commodities: Borage, seed; castor oil plant, seed; chinese tallowtree, seed; crambe, seed; cuphea, seed; echium, seed; euphorbia, seed; evening primrose, seed; flax, seed; gold of pleasure, seed; hare's ear mustard, seed; jojoba, seed; lesquerella, seed; lunaria, seed; meadowfoam, seed; milkweed, seed; mustard, seed; niger seed, seed; oil radish, seed; poppy, seed; rapeseed, seed; rose hip, seed; safflower, seed; sesame, seed; stokes aster, seed; sweet rocket, seed; tallowwood, seed; tea oil plant, seed; and vernonia, seed. It also increases the existing tolerance for residues of pyraclostrobin and its desmethoxy metabolite in or on sunflower. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 30, 2008. Objections and requests for hearings must be received on or before September 29, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2007-0214. To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the [regulations.gov](http://www.regulations.gov) website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in [regulations.gov](http://www.regulations.gov). Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT:

Tony Kish, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9443; e-mail address: kish.tony@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 those engaged in the following activities:

- 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 to provide 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?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at <http://www.regulations.gov>, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr>. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot

e-CFR site at <http://www.gpoaccess.gov/ecfr>.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2007-0214 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 as required by 40 CFR part 178 on or before September 29, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA-HQ-OPP-2007-0214, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

II. Petition for Tolerance

In the **Federal Register** of June 13, 2008 (73 FR 33814) (FRL-8367-3), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6F7105) by BASF Corporation, 26 Davis Dr., Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.582 be amended by establishing tolerances for combined residues of the fungicide pyraclostrobin; carbamic acid, [2-[[[1-(4-

chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester and its desmethoxy metabolite; (methyl-N-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]carbamate, expressed as parent compound, in or on borage; castor oil plant; chinese tallowtree; crambe; cuphea; echium; euphorbia; evening primrose; flax seed; gold of pleasure; hare's ear mustard; jojoba; lesquerella; lunaria; meadowfoam; milkweed; mustard seed; niger seed; oil radish; poppy seed; rapeseed; rose hip; safflower; sesame; stokes aster; sunflower; sweet rocket; tallowwood; tea oil plant; and vernonia; each at 0.45 parts per million (ppm). That notice referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available to the public in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

No changes were made to the proposed tolerance levels; however, EPA modified the proposed commodity terms slightly (e.g., changing "borage" to "borage, seed", "cuphea" to "cuphea, seed", etc.) to conform to current nomenclature recommendations.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for

tolerances for combined residues of pyraclostrobin and its desmethoxy metabolite on borage, seed; castor oil plant, seed; chinese tallowtree, seed; crambe, seed; cuphea, seed; echium, seed; euphorbia, seed; evening primrose, seed; flax, seed; gold of pleasure, seed; hare's ear mustard, seed; jojoba, seed; lesquerella, seed; lunaria, seed; meadowfoam, seed; milkweed, seed; mustard, seed; niger seed, seed; oil radish, seed; poppy, seed; rapeseed, seed; rose hip, seed; safflower, seed; sesame, seed; stokes aster, seed; sunflower, seed; sweet rocket, seed; tallowwood, seed; tea oil plant, seed; and vernonia, seed; each at 0.45 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

On March 24, 2008 the Agency published a Final Rule (73 FR 15425, FRL-8355-4) establishing tolerances for residues of pyraclostrobin and its desmethoxy metabolite in or on avocado at 0.6 ppm; barley, grain at 1.4 ppm; canistel at 0.6 ppm; mango at 0.6 ppm; oat, grain at 1.2 ppm; oat, hay at 18 ppm; oat, straw at 15 ppm; papaya at 0.6 ppm; sapodilla at 0.6 ppm; sapote, black at 0.6 ppm; sapote, mamey at 0.6 ppm; and star apple at 0.6 ppm. When the Agency conducted the risk assessments in support of this tolerance action it assumed that pyraclostrobin residues would be present on all of the oilseed commodities requested in this petition as well as on all foods covered by the proposed and established tolerances. Residues on oilseeds were included because there was a pending petition for pyraclostrobin tolerances on oilseed commodities at the time. The decision to establish tolerances on oilseed commodities was deferred until now because the original notice of filing of this petition contained errors requiring revision and re-publication in the **Federal Register**. Since the oilseed commodities were included in the previous risk assessments, establishing the oilseed commodity tolerances will not change the most recent estimated aggregate risks resulting from use of pyraclostrobin, as discussed in the March 24, 2008 **Federal Register**. Refer to the March 24, 2008 **Federal Register** document, available at <http://www.regulations.gov>, for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon those risk assessments and the findings made in the **Federal Register** document in support of this action.

Based on the risk assessments discussed in the final rule published in the **Federal Register** of March 24, 2008 (73 FR 15425, FRL-8355-4), EPA

concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to pyraclostrobin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods (an Liquid chromatography/mass/spectrometry (LC/MS/MS) method (BASF Method D9808), and an high performance liquid chromatography/ultraviolet (HPLC/UV) method (BASF Method D9904)) are available to enforce the tolerance expression. The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: residuemethods@epa.gov.

B. International Residue Limits

No CODEX, Canadian or Mexican maximum residue limits (MRLs) have been established for residues of pyraclostrobin on the oilseed commodities associated with this petition.

V. Conclusion

Therefore, tolerances are established for combined residues of pyraclostrobin carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester and its desmethoxy metabolite; methyl-N-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenylcarbamate, expressed as parent compound, in or on borage, seed; castor oil plant, seed; chinese tallowtree, seed; crambe, seed; cuphea, seed; echium, seed; euphorbia, seed; evening primrose, seed; flax, seed; gold of pleasure, seed; hare's ear mustard, seed; jojoba, seed; lesquerella, seed; lunaria, seed; meadowfoam, seed; milkweed, seed; mustard, seed; niger seed, seed; oil radish, seed; poppy, seed; rapeseed, seed; rose hip, seed; safflower, seed; sesame, seed; stokes aster, seed; sweet rocket, seed; tallowwood, seed; tea oil plant, seed; and vernonia, seed; each at 0.45 ppm. The existing tolerance for combined residues of pyraclostrobin and its desmethoxy metabolite on sunflower at 0.3 ppm is revised to read "sunflower, seed" at 0.45 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive

Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final 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) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). 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.*, 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).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, 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.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not 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).

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).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report 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 10, 2008.

Lois Rossi,

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.

■ 2. Section 180.582 is amended by revising the entry for sunflower to read sunflower, seed, and alphabetically adding the following commodities to the table in paragraph (a)(1) to read as follows:

§ 180.582 Pyraclostrobin; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
* * * * *	
Borage, seed	0.45
* * * * *	
Castor oil plant, seed	0.45
Chinese tallowtree, seed	0.45
* * * * *	
Crambe, seed	0.45
Cuphea, seed	0.45
Echium, seed	0.45
Euphorbia, seed	0.45
Evening primrose, seed	0.45
Flax, seed	0.45
* * * * *	
Gold of pleasure, seed	0.45
* * * * *	
Hare’s ear mustard, seed	0.45
* * * * *	
Jojoba, seed	0.45
Lesquerella, seed	0.45
Lunaria, seed	0.45
* * * * *	
Meadowfoam, seed	0.45
Milkweed, seed	0.45
Mustard, seed	0.45
Niger seed, seed	0.45
* * * * *	
Oil radish, seed	0.45
* * * * *	
Poppy, seed	0.45
* * * * *	
Rapeseed, seed	0.45
Rose hip, seed	0.45
* * * * *	
Safflower, seed	0.45
* * * * *	
Sesame, seed	0.45
* * * * *	
Stokes aster, seed	0.45
* * * * *	
Sunflower, seed	0.45
Sweet rocket, seed	0.45
Tallowwood, seed	0.45
Tea oil plant, seed	0.45
* * * * *	
Vernonia, seed	0.45
* * * * *	

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[FR Doc. E8-17480 Filed 7-29-08; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 271**

[EPA-RO3-RCRA-2008-0256; FRI-8698-9]

Virginia: Final Authorization of State Hazardous Waste Management Program Revision**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: Virginia applied to EPA for final authorization of revisions to its hazardous waste program under Resource Conservation and Recovery Act (RCRA). EPA has reached a final determination that these changes to the Virginia hazardous waste program satisfy all requirements necessary for final authorization. Thus, with respect to these revisions, EPA is granting final authorization to the Commonwealth to operate its program subject to the limitations on its authority retained by EPA in accordance with RCRA.

DATES: Final authorization for the revisions to Virginia's hazardous waste management program shall be effective on July 30, 2008.

FOR FURTHER INFORMATION CONTACT:

E-mail: Thomas UyBarreta, uybarreta.thomas@epa.gov; Mail: Thomas UyBarreta, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029; Phone: 215-814-2953.

A. Why Are Revisions to State Programs Necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program is revised, States must revise their programs and ask EPA to authorize the revisions. Revisions to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revise their programs because of revisions to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

On October 10, 2007, Virginia submitted to EPA a complete program

revision application, in accordance with 40 CFR 271.21, seeking authorization of additional changes to its program. On April 3, 2008, EPA published both an immediate final rule (73 FR 18172-18176) granting Virginia final authorization for these revisions to its federally-authorized hazardous waste program, along with a companion proposed rule announcing EPA's proposal to grant such final authorization (73 FR 18229-18230). EPA announced in both notices that the immediate final rule and the proposed rule were subject to a thirty-day public comment period. The public comment period ended on May 5, 2008. Further, EPA stated in both notices that if it received adverse comments on its intent to authorize Virginia's program revisions that it would (1) withdraw the immediate final rule; (2) proceed with the proposed rule as the basis for the receipt and evaluation of such comments, and (3) subsequently publish a final determination responding to such comments and announce its final decision whether or not to authorize Virginia's program revisions. EPA did receive a written comment during the public comment period and on June 3, 2008, published a notice withdrawing the immediate final rule (73 FR 31634). Today's action responds to the comments EPA received and publishes EPA's final determination granting Virginia final authorization of its program revisions. Further background on EPA's immediate final rule and its tentative determination to grant authorization to Virginia for its program revisions appears in the aforementioned **Federal Register** notices. The issues raised by the commenter are summarized and responded to as follows.

B. What Were the Comments and Responses to EPA's Proposal?

EPA received two comments from an individual opposing EPA's proposal to authorize revisions to Virginia's hazardous waste regulations. The commenter opposed authorization of the regulations that adopted the rules that were promulgated under non-HSWA authority, including the RCRA Burden Reduction Initiative (Revision Checklist 213).¹ The commenter argued that, through RCRA, Congress has barred EPA and authorized states from promulgating regulations that are less stringent than the regulations that were first

¹ The commenter incorrectly stated that the entire RCRA Burden Reduction Initiative was promulgated pursuant to non-HSWA authority. In fact, the RCRA Burden Reduction Initiative was promulgated pursuant to both HSWA and non-HSWA statutory authority.

promulgated under the authority of RCRA. Specifically, the commenter stated that 42 U.S.C. 6929 would prevent EPA from amending 40 CFR 268.7(b)(6) to eliminate the requirement to submit notifications and certifications to EPA; this amendment, argued the commenter, prohibits states from requiring that the State be provided with copies of hazardous waste manifests, and such prohibition is not allowed by 42 U.S.C. 6929. For the reasons set forth below, we do not agree with the commenter.

EPA promulgated all of the rules included in Virginia's revision pursuant to the authority granted to EPA by Congress under RCRA. Those rules, including the RCRA Burden Reduction Initiative Rule, were finalized after full consideration of any and all comments submitted in a timely manner. By adopting the rules promulgated by EPA, Virginia revised its hazardous waste program to be equivalent to and consistent with the federal program. Pursuant to 42 U.S.C. 6926(b), EPA has the authority to authorize state programs that are equivalent to and consistent with the federal program. Additionally, as is explained in more detail in the RCRA Burden Reduction Initiative Final Rule (71 FR 16862), EPA's amendment of 40 CFR 268.7(b)(6) does not prohibit any state from requiring that the state be provided with copies of hazardous waste manifests. States are not required to adopt and seek authorization for federal requirements that are equivalent to, or less stringent than, the state's currently authorized regulations (*see* 71 FR at 16899). Specifically, although several states had commented positively regarding the amendment to 40 CFR 268.7(b)(6), EPA explained that any state "may choose to be more stringent than the federal program, and choose to retain these notifications." (71 FR at 16889)

The commenter also stated that some of the Revision Checklists for the nine RCRA clusters for which Virginia is seeking authorization "erroneously suggest that the Attorney General may not need to conduct a detailed review of the proposed rules against state statute for authority prior to final authorization." As a result, the commenter expressed concern "that there may not have been an in-depth Attorney General review as required" by 40 CFR 271.7. EPA responds to this comment as follows.

Pursuant to 40 CFR 271.21(b)(1), in order to revise its program, a state must submit "such * * * documents as EPA determines to be necessary under the circumstances." These documents may include a modified Attorney General's