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*, (206) 543–4664.

Gonzaga University, Foley Center, East 502 Boone, Spokane, WA 99258–0001. (509) 323–5806. Contact: Connie Scarppelli, *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*.

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*.

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*.

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*.

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

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 [1] wastes managed or generated by the 200 Area ETF on the Hanford Facility in Richland, Washington. The action relates to treated liquid effluents

[1] 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).

produced by the 200 Area ETF, which were first delisted in June 1995. *See* 60 FR 6054, February 1, 1995. EPA's final exclusion modifies this existing delisting by increasing the annual quantity of waste delisted to conform to the expected full treatment capacity of the 200 Area ETF and by expanding the list of hazardous waste numbers and F039 constituents for which 200 Area ETF treated effluent is delisted. Changes relating to waste numbers for which 200 Area ETF treated effluent is excluded include expanding the list of constituents associated with hazardous waste number F039 (multisource leachate), from the current F001 to F005 constituents to all constituents for which F039 waste is listed,[2] adding certain wastewater forms of U- and P-listed wastes, and certain additional F-listed waste numbers. These additional U-, P- and F-listed waste numbers are those whose chemical constituents are included in the list of hazardous constituents for which F039 was listed (see 40 CFR part 261, appendix VII). This latter addition is intended to accommodate possible management of U-, P- and F-listed wastewaters from spill cleanup or decontamination associated with management of these wastes at the Central Waste Complex (CWC) or other storage facilities. These spill cleanup wastes include exactly the same constituents that will eventually contribute to F039 when the source wastes are land disposed, so today's analysis of expanding the 200 Area ETF treated effluent to include F039 applies equally to the wastewater forms of the same chemical constituents in their U-, P- and F-listed waste forms.

The effect of these changes is to allow the 200 Area ETF to fulfill an expanded role in supporting Hanford Facility cleanup actions beyond those activities considered in the 1995 delisting rulemaking. In particular, these changes will allow the 200 Area ETF to treat mixed wastewaters from a number of additional sources beyond 242–A Evaporator process condensate (PC) upon which the original delisting was based.

B. Why Is EPA Finalizing the Proposed Exclusion?

We believe that the petitioned waste should be conditionally delisted because the waste, when managed in accordance with today's final conditions, do not meet the criteria for which the wastes originally were listed and the waste do not contain other constituents or factors that could cause the waste stream to be a hazardous waste or warrant retaining the waste as a hazardous waste. Our final decision to delist the petitioned waste is based on information submitted by Energy, including the description of the wastewaters managed by the ETF and their original generating sources, the ETF treatment processes, and the analytical data characterizing performance of the 200 Area ETF.

In reviewing this petition, we considered the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See 42 U.S.C. 6921(f), and 40 CFR 260.22. These factors include: (1) Whether the waste are considered acutely toxic; (2) the toxicity of the constituents; (3) the concentration of the constituents in the waste; (4) the tendency of the hazardous constituents to migrate and to bio-accumulate; (5) persistence of the constituents in the environment once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) variability of the waste. We also evaluated the petitioned waste against the listing criteria at 40 CFR 261.11(a)(1), (2) and (3) and factors required by 40 CFR 260.22(a)(2). EPA finds the petitioned wastes do not meet the listing criteria and determined that none of the factors listed above warrant retaining the petitioned wastes as hazardous.

C. What Are the Limits of This Exclusion?

This exclusion applies to certain 200 Area ETF treated effluents identified in today's final rule, provided the conditions contained herein are satisfied.

D. When Is the Final Rule Effective?

The effective date of today's action is September 2, 2005. RCRA Section 3010(b)(1), 42 U.S.C. 6930(b)(1), allows rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance with the new regulatory requirements. In the proposed rule preamble, EPA noted that the rule, if finalized, would reduce existing regulatory requirements, so that a six-month period was not necessary for Energy to come into compliance. EPA further noted that, if finalized, the proposal would be effective immediately upon final publication, and that a later date would impose unnecessary hardship and expense on the petitioner.

After further reflection and consideration of Energy's comments, EPA continues to believe that a full six month period is not necessary to achieve full compliance with this rule. EPA recognizes, however, that the revised exclusion will contain somewhat different conditions than the original exclusion rule. Even though today's final rule provides relief from RCRA regulatory requirements for significantly more wastes than was previously the case, Energy must still demonstrate compliance with the new conditions of the new exclusion, even for wastes currently being processed in compliance with the existing exclusion. One example of such a condition is preparation of a waste processing strategy. To ensure Energy has adequate opportunity to update its internal procedures and produce documentation required by the new exclusion conditions, EPA is delaying the effective date of the final rule to 30 days after publication.

II. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a generator to EPA or another agency with jurisdiction to exclude, or delist, from the RCRA list of hazardous waste, waste the generator believes should not be considered hazardous under RCRA.

B. What Regulations Allow Wastes To Be Delisted?

Under 40 CFR 260.20 and 260.22, facilities may petition the EPA to remove their wastes from hazardous waste regulation by excluding them from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of Title 40 of the Code of Federal Regulations. 40 CFR 260.22 provides generators the opportunity to petition the Administrator to exclude a waste from a particular generating facility from the hazardous waste lists.

C. What Information Must the Generator Supply for a Delisting Petition?

Petitioners must provide sufficient information to EPA to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe

[2] As noted in the proposed rule, this final rule is not modifying the list of constituents for which F039 multiscource leachate is listed. At the time of the original delisting, DOE–RLS did not expect to manage F039 wastes at the 200 Area ETF from sources other than F001–F005 wastes. Therefore, the original 200 Area ETF delisting excluded only F039 wastes from F001–F005 sources.

that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

D. How Will This Action Affect States?

This final rule is issued under the federal (RCRA) delisting authority found at 40 CFR 260.22. Some states are authorized to administer a delisting program in lieu of the federal program, *i.e.*, to make their own delisting decision. Therefore, this rule does not apply under RCRA in those authorized states. For states not authorized to administer a delisting program in lieu of the federal program (as is the case with the State of Washington as of the date of today's final rule), today's rule will become effective with respect to the federal (RCRA) program. Energy will, however, have to comply with any additional applicable state requirements.

States are allowed to impose regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally-issued exclusion from taking effect in a state. Because a petitioner's waste may be regulated under a dual system, (*i.e.*, both federal and state programs), petitioners are urged to contact state regulatory authorities to determine the current status of their wastes under the state laws.

III. EPA's Evaluation of the Waste Information for 200 Area ETF Treated Effluent

What Waste Did Energy Petition EPA To Delist?

The original delisting action considered treatment of only one waste stream, process condensate from the 242–A Evaporator (242–A Evaporator PC). Since promulgation of the original delisting, the operating mission of the 200 Area ETF has expanded considerably. Currently, the operating capacity of the 200 Area ETF provides treatment of 242–A Evaporator PC, treatment of Hanford Site contaminated groundwater from various pump-and-treat systems, and a variety of other wastewaters generated from waste management and cleanup activities at Hanford.

As discussed in section 3.0 of Energy's November 2001 petition, the mission of the 200 Area ETF is to treat wastewater generated on the Hanford Facility from cleanup activities including multisource leachate from operation of hazardous/mixed waste landfills, and other hazardous wastewaters from a variety of sources including analytical laboratory operations, research and development studies, waste treatment processes, environmental restoration and deactivation projects, and other waste management activities. Based on this change in the 200 Area ETF mission, Energy petitioned EPA to modify the existing delisting applicable to treated liquid effluent from the 200 Area ETF by increasing the effluent volume limit to 210 million liters per year, and to conditionally exclude treated effluents from treatment by the 200 Area ETF of certain liquid Hanford wastes with hazardous waste numbers identified at 40 CFR 261.31 and 261.33 as F001–F005, F039, and all U- and P-listed substances and selected additional F-listed waste numbers whose associated compounds appear in the listing definition of F039. Under the current delisting, the liquid effluent volume is limited to approximately 86 million liters per year, and delisted only for F001–F005 waste numbers and F039 waste constituents from F001 through F005 waste numbers.

The November 2001 delisting petition explains that wastes bearing numbers P029, P030, P098, P106, P120, and U123, as well as other U- and P-listed numbers corresponding to F039 constituents, are currently managed, or may be managed in the future, as part of Hanford cleanup operations. Wastes bearing these waste numbers are intended for future disposal in the mixed waste landfill (Low-Level Burial Grounds (LLBG)). These wastes, therefore, eventually will contribute to generation of F039 multisource leachate from this unit, and are specifically considered in the analysis of F039 constituents in Energy's delisting petition (refer to Appendix B of the November 2001 delisting petition). Energy believes that wastewaters bearing these waste numbers could be generated from activities such as spill cleanup or equipment decontamination, and such wastewaters could be managed best at the 200 Area ETF. Energy's petition did not propose to manage the discarded commercial chemical products in the 200 Area ETF, but only wastewaters from spill cleanup or equipment decontamination.

To ensure that the commercial chemical compounds themselves are not inappropriately managed at the 200 Area ETF, EPA's proposal limited the wastes that could be managed by the 200 Area ETF to only those influent wastewaters bearing less than 1.0 weight percent of any hazardous constituent. These wastewaters would also bear the same U- and P-listed numbers by virtue of the 'derived from' rule discussed in Section I.A of the proposed rule. Because the hazardous constituents from these U- and P-listed wastes are already included in the analysis of 200 Area ETF performance for treatment of F039, EPA is not proposing any separate analysis specific to U- and P-listed numbers. EPA's proposal to include these U- and P-listed waste numbers is intended to include influent wastewaters that might be generated from management of wastes currently stored in CWC, as well as such wastewaters managed elsewhere at Hanford or which may be generated in the future.

As discussed below in section IV, comments from Energy clarified Energy's intent in the November 29, 2001 petition to include a number of other F-listed waste numbers among those considered in the requested exclusion.

IV. Public Comments Received on the Proposed Rule

EPA received comments on the proposed rule from the applicant and from an individual commenter. Individual comments and EPA's response may be found in the response to comments document, which has been included in the docket for this final rulemaking. A summary of key comments and changes, if any, to the proposed rule, appear below.

In addition to changes made in response to public comments, EPA is also making changes to the proposed rule necessary to conform to the Methods Innovation Rule, 70 FR 34538, June 14, 2005. Details of these changes and EPA's rationale for them can also be found in the response to comments document.

A. Department of Energy Comments

Comments from the Department of Energy focused on the proposed regulatory language and explanatory preamble text. One of Energy's comments questioned the addition of a number of conditions in the proposed exclusion which do not appear in the current exclusion, stating that EPA had not provided an explanation for the additional conditions. Energy presented as a basis for its comment statements in the proposed rule generally noting EPA's perspective that the 200 Area ETF is a robust, well-designed and well-operated wastewater treatment unit. While EPA affirms its statements regarding the robust nature of the facility, EPA fundamentally disagrees with Energy's comment. As noted in the

proposal preamble and in EPA's response to comments, a key objective of the revised 200 Area ETF ''upfront'' delisting is to accommodate treatment of a wide range of waste streams not considered in the original exclusion, many of which have not yet been generated or characterized. Since Energy could not reasonably provide detailed characterization of wastes streams that have yet to be generated, EPA proposed a waste acceptance framework based on an engineering evaluation of waste streams. This model provides a degree of confidence that treatment in the 200 Area ETF will meet delisting exclusion limits to the same degree of confidence as if detailed waste stream characterization were available, while avoiding the need to frequently revise the delisting rule itself. As a result, EPA finds that the additional conditions noted in Energy's comments are not only fully justified, but absolutely essential to achieving the degree of flexibility requested by Energy in their delisting petition, given the lack of complete waste characterization information.

Another of Energy's comments provided clarification of Energy's intent to expand the suite of waste numbers covered by the proposed exclusion. Essentially, Energy provided a defensible argument that a number of additional F-listed waste numbers should be addressed by the exclusion. EPA agrees with this comment in part, but is limiting the additional F-listed waste numbers to those with a reasonable nexus to wastes expected to be managed by the 200 Area ETF. See the first paragraph of the regulatory exclusion language finalized today, appearing below in Table 2 in Appendix IX of 40 CFR part 261.

Energy requested relief from the proposed exclusion condition relating to recording of treated effluent conductivity, contending that doing so would be without basis and a burden. EPA disagrees, since both measuring and recording of treated effluent provides important documentation confirming performance of the 200 Area ETF. This measurement also provides a basis, in part, for EPA's decision to relax the verification sampling frequency for treated effluent from every 10th verification tank, as in the original exclusion, to every 15th verification tank. Given the extended interval between full verification sampling, measuring and recording of treated effluent conductivity provide a simple but effective indicator or 200 Area ETF performance with regard to inorganic treatment efficiency. Therefore, EPA is retaining the recording condition as proposed.

Energy requested relief from the condition generally limiting disposal of treated effluent at the State Authorized Land Disposal Site, or SALDS. Energy's comment is based on jurisdictional grounds, and Energy's belief that treated effluent ''is essentially demineralized water.'' As described in Section III.C of the proposed rule preamble, the condition in question is established on the grounds that EPA evaluated the risk of treated effluent only with respect to a groundwater ingestion pathway, consistent with the approach taken by EPA in the original exclusion. The requirement to generally dispose of treated effluent at SALDS is intended to ensure exposure pathways other than groundwater do not occur without EPA analysis of potential risks from such pathways. EPA is retaining this condition as proposed, noting that the proposed and final rules do provide flexibility with respect to disposal practices through Condition 7 of the exclusion rule. Energy also requested deletion of Condition 7, on the basis that no non-radiological considerations warrant the condition, and that Energy is already engaged in various reuse activities using treated effluent. EPA is retaining Condition 7, since it relates directly to the scope of EPA's analysis of treated effluent risks, and since it provides flexibility for exactly the reuse practices noted in the comment.

Energy raised issues concerning reporting of environmental data, including groundwater data, to EPA in Condition (4)(a) of the proposed rule. Energy requested deletion of this condition on the grounds of being vague, and if retained, reconsideration of the requirement to report certain data within a ten-day period. EPA does not agree that the proposed condition is vague—in fact, EPA specifically crafted the condition to be specific in its scope. Although EPA did not propose explicit environmental or groundwater monitoring requirements as a condition of the proposed exclusion, EPA continues to believe that information that may otherwise become available to Energy relating to performance deficiencies of the 200 Area ETF (or any treatment facility subject to a delisting exclusion, for that matter) should be timely made available to EPA for consideration. EPA needs to ensure its ability to timely obtain and consider data that may indicate adverse environmental impacts of activities subject to the exclusion. Therefore, EPA is retaining the environmental data submission condition as defensible and implementable.

Finally, Energy requested modification to condition 4(b) relating to notification to EPA of changes to the 200 Area ETF. EPA accepted this comment in part, and has added clarifying language to more clearly define facility changes subject to this reporting requirement. See condition (4)(b).

Energy also provided a number of comments on preamble language in the proposed rule. In general, EPA notes these comments, and where appropriate, provides a clarifying analysis in the response to comments document to assist in implementing the regulatory exclusion conditions themselves. EPA has also provided an expanded discussion in the response to comments document of the relationship between exclusion conditions and Land Disposal Restriction treatment standards to assist Energy and the public in understanding this nexus, noting that the delisting exclusion rule does not impose nor demonstrate compliance with LDR treatment standards.

B. Individual Commenter

One individual provided a number of detailed comments. A number of these comments applied to Energy's November 29, 2001 petition document, rather than EPA's proposed rule. EPA has noted these comments, but finds that they were appropriately addressed in the proposal itself. One comment, however raised a valid point about a technical issue relating to how inorganic treatment/removal efficiencies were presented in Energy's petition. Energy's petition presented historical data in terms of maximum removal efficiencies. In some cases, data exists for some waste streams indicating removal efficiencies less than the maximum. While EPA does not believe that these differences would require significant change in the exclusion from what EPA proposed, EPA is never the less updating exclusion conditions to better relate removal efficiencies referenced by Condition (1)(a)(i) for purposes of establishing waste treatment strategies to actual or measured performance of the 200 Area ETF. More specifically, EPA is requiring Energy to adopt a more conservative approach to use of existing removal efficiency data that are applied to influent waste streams other than from which they were generated. In addition, EPA is defining more explicit methodology for Energy to update these removal efficiency data as it gains additional processing experience with new influent waste streams. See exclusion conditions 1(a)(ii) and 1(b). EPA expects that this change will not alter actual operations of the 200 Area

ETF, but it will provide a more defensible basis for the engineering demonstrations that Energy must make under terms of the final exclusion.

V. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'', and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that today's final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866, since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as non-hazardous. Therefore, EPA has determined that this final rule is not subject to OMB review.

B. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by OMB. Although this final rule establishes information and record-keeping requirements for Energy, it does not impose those requirements on any other facility or respondents, and therefore is not subject to the provisions of the Paperwork Reduction Act.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business, as codified in the Small Business Administration Regulations at 13 CFR part 121; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The final exclusion will only have the effect of impacting the waste management of waste proposed for conditional delisting at the Hanford facility in the State of Washington. After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Public Law 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why the alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this rule.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), 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 various levels of government.''

This final rule does not have federalism implications. It 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 various levels of government, as specified in Executive Order 13132. This final rule addresses the conditional delisting of waste at the federal Hanford Facility. Thus, Executive Order 13132 does not apply to this rule. Although Section 6 of the Executive Order 13132 does not apply

to this proposed rule, EPA did consult with representatives of State and local governments in developing this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), 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.'' This final rule does not have tribal implications, as specified in Executive Order 13175. The final rule conditionally delists certain wastes at the federal Hanford Facility and does not establish any regulatory policy with tribal implications. Thus, Executive Order 13175 does not apply to this final rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed action present a disproportionate risk to children. The final rule concerns the proposed conditional delisting of certain wastes at the Hanford facility.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

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) because it is not a ''significant regulatory action'' as defined under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides to use ''government-unique'' standards in lieu of available and applicable voluntary consensus standards.

This final rule involves environmental monitoring and measurement, but is not establishing new technical standards for verifying compliance with concentration limits, data quality or test methodology. EPA is not requiring the use of specific, prescribed analytic methods. Therefore, EPA did not explicitly consider the use of any voluntary consensus standards. Rather, the Agency has specifically accommodated use of an alternative method that meets the prescribed performance criteria. Examples of performance criteria are discussed in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication-846, Third Edition, as amended by updates I, II, IIA, IIB and III.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands. Because this final rule addresses the conditional delisting of certain waste streams at the Hanford Facility, with no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

K. 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. Section 804 exempts from section 801 the following types of rules: (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: July 25, 2005.

Julie M. Hagensen,

Acting Regional Administrator, Region 10.

■ For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(4), and 6938.

■ 2. In Table 2, of Appendix IX of Part 261, the existing entry for ''DOE RL, Richland, WA'' is removed and a new entry for ''Department of Energy (Energy)'' is added in alphabetical order to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

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TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
United States Department of Energy (Energy).	Richland, Washington	Treated effluents bearing the waste numbers identified below, from the 200 Area Effluent Treatment Facility (ETF) located at the Hanford Facility, at a maximum generation rate of 210 million liters per year, subject to Conditions 1–7: This conditional exclusion applies to Environmental Protection Agency (EPA) Hazardous Waste Nos. F001, F002, F003, F004, F005, and F039. This exclusion also applies to EPA Hazardous Waste Nos. F006–F012, F019 and F027 provided that the as-generated waste streams bearing these waste numbers prior to treatment in the 200 Area ETF is in the form of dilute wastewater containing a maximum of 1.0 weight percent of any hazardous constituent. In addition, this conditional exclusion applies to all other U- and P-listed waste numbers that meet the following criteria: The U/P listed substance has a treatment standard established for wastewater forms of F039 multi-source leachate under 40 CFR 268.40,''Treatment Standards for Hazardous Wastes''; and the as-generated waste stream prior to treatment in the 200 Area ETF is in the form of dilute wastewater containing a maximum of 1.0 weight percent of any hazardous constituent. This exclusion shall apply at the point of discharge from the 200 Area ETF verification tanks after satisfaction of Conditions 1–7. Conditions: (1) Waste Influent Characterization and Processing Strategy Preparation (a) Prior to treatment of any waste stream in the 200 Area ETF, Energy must: (i) Complete sufficient characterization of the waste stream to demonstrate that the waste stream is within the treatability envelope of 200 Area ETF as specified in Tables C–1 and C–2 of the delisting petition dated November 29, 2001. Results of the waste stream characterization and the treatability evaluation must be in writing and placed in the facility operating record, along with a copy of the November 29, 2001 petition. Waste stream characterization may be carried out in whole or in part using the waste analysis procedures in the Hanford Facility RCRA Permit, WA7 89000 8967; (ii) Prepare a written waste processing strategy specific to the waste stream, based on the ETF process model documented in the November 29, 2001 petition. For waste processing strategies applicable to waste streams for which inorganic envelope data is provided in Table C–2 of the November 29, 2001 petition, Energy shall use envelope data specific to that waste stream, if available. Otherwise, Energy shall use the minimum envelope in Table C–2. (b) Energy may modify the 200 Area ETF treatability envelope specified in Tables C–1 and C–2 of the November 29, 2001 delisting petition to reflect changes in treatment technology or operating practices upon written approval of the Regional Administrator. Requests for modification shall be accompanied by an engineering report detailing the basis for a modified treatment envelope. Data supporting modified envelopes must be based on at least four influent waste stream characterization data points and corresponding treated effluent verification sample data points for wastes managed under a particular waste processing strategy. Treatment efficiencies must be calculated based on a comparison of upper 95 percent confidence level constituent concentrations. Upon written EPA approval of the engineering report, the associated inorganic treatment efficiency data may be used in lieu of those in Tables C–1 and C–2 for purposes of condition (1)(a)(i). (c) Energy shall conduct all 200 Area ETF treatment operations for a particular waste stream according to the written waste processing strategy, as may be modified by Condition 3(b)(i). (d) The following definitions apply: (i) A waste stream is defined as all wastewater received by the 200 Area ETF that meet the 200 Area ETF waste acceptance criteria as defined by the Hanford Facility RCRA Permit, WA7 89000 8967 and are managed under the same 200 Area ETF waste processing strategy. (ii) A waste processing strategy is defined as a specific 200 Area ETF unit operation configuration, primary operating parameters and expected maximum influent total dissolved solids (TDS) and total organic carbon (TOC). Each waste processing strategy shall require monitoring and recording of treated effluent conductivity for purposes of Condition (2)(b)(i)(E), and for monitoring and recording of primary operating parameters as necessary to demonstrate that 200 Area ETF operations are in accordance with the associated waste processing strategy. (iii) Primary operating parameters are defined as ultraviolet oxidation (UV/OX) peroxide addition rate, reverse osmosis reject ratio, and processing flow rate as measured at the 200 Area ETF surge tank outlet. (iv) Key unit operations are defined as filtration, UV/OX, reverse osmosis, ion exchange, and secondary waste treatment. (2) Testing. Energy shall perform verification testing of treated effluents according to Conditions (a), (b), and (c) below.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(a) No later than 45 days after the effective date of this rule, or such other time as may be approved of in advance and in writing by EPA, Energy shall submit to EPA a report proposing required data quality parameters and data acceptance criteria (parameter values) for sampling and analysis which may be conducted pursuant to the requirements of this rule. This report shall explicitly consider verification sampling and analysis for purposes of demonstrating compliance with exclusion limits in Condition 5, as well as any sampling and analysis which may be required pursuant to Conditions (1)(a)(i) and (1)(d)(ii). This report shall contain a detailed justification for the proposed data quality parameters and data acceptance criteria. Following review and approval of this report, the proposed data quality parameters and data acceptance criteria shall become enforceable conditions of this exclusion. Pending EPA approval of this report, Energy may demonstrate compliance with sampling and analysis requirements of this rule through application of methods appearing in EPA Publication SW–846 or equivalent methods. Energy shall maintain a written sampling and analysis plan, including QA/QC requirements and procedures, based upon these enforceable data quality parameters and data acceptance criteria in the facility operating record, and shall conduct all sampling and analysis conducted pursuant to this rule according to this written plan. Records of all sampling and analysis, including quality assurance QA/QC information, shall be placed in the facility operating record. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. (b) Initial verification testing. (i) Verification sampling shall consist of a representative sample of one filled effluent discharge tank, analyzed for all constituents in Condition (5), and for conductivity for purposes of establishing a conductivity baseline with respect to Condition (2)(b)(i)(E). Verification sampling shall be required under each of the following conditions: (A) Any new or modified waste strategy; (B) Influent wastewater total dissolved solids or total organic carbon concentration increases by an order of magnitude or more above values established in the waste processing strategy; (C) Changes in primary operating parameters; (D) Changes in influent flow rate outside a range of 150 to 570 liters per minute; (E) Increase greater than a factor of ten (10) in treated effluent conductivity (conductivity changes indicate changes in dissolved ionic constituents, which in turn are a good indicator of 200 Area ETF treatment efficiency). (F) Any failure of initial verification required by this condition, or subsequent verification required by Condition (2)(c). (ii) Treated effluents shall be managed according to Condition 3. Once Condition (3)(a) is satisfied, subsequent verification testing shall be performed according to Condition (2)(c). (c) Subsequent Verification: Following successful initial verification associated with a specific waste processing strategy, Energy must continue to monitor primary operating parameters, and collect and analyze representative samples from every fifteenth (15th) verification tank filled with 200 Area ETF effluents processed according to the associated waste processing strategy. These representative samples must be analyzed prior to disposal of 200 Area ETF effluents for all constituents in Condition (5). Treated effluent from tanks sampled according to this condition must be managed according to Condition (3). (3) Waste Holding and Handling: Energy must store as hazardous waste all 200 Area ETF effluents subject to verification testing in Condition (2)(b) and (2)(c), that is, until valid analyses demonstrate Condition (5) is satisfied. (a) If the levels of hazardous constituents in the samples of 200 Area ETF effluent are equal to or below the levels set forth in Condition (5), the 200 Area ETF effluents are not listed as hazardous wastes provided they are disposed of in the State Authorized Land Disposal Site (SALDS) (except as provided pursuant to Condition (7)) according to applicable requirements and permits. Subsequent treated effluent batches shall be subject to verification requirements of Condition (2)(c). (b) If hazardous constituent levels in any representative sample collected from a verification tank exceed any of the delisting levels set in Condition (5), Energy must: (i) Review waste characterization data, and review and change accordingly the waste processing strategy as necessary to ensure subsequent batches of treated effluent do not exceed delisting criteria; (ii) Retreat the contents of the failing verification tank; (iii) Perform verification testing on the retreated effluent. If constituent concentrations are at or below delisting levels in Condition (5), the treated effluent are not listed hazardous waste provided they are disposed at SALDS according to applicable requirements and permits (except as provided pursuant to Condition (7)), otherwise repeat the requirements of Condition (3)(b).

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(iv) Perform initial verification sampling according to Condition (2)(b) on the next treated effluent tank once testing required by Condition (3)(b)(iii) demonstrates compliance with delisting requirements. (4) Re-opener Language (a) If, anytime before, during, or after treatment of waste in the 200 Area ETF, Energy possesses or is otherwise made aware of any data (including but not limited to groundwater monitoring data, as well as data concerning the accuracy of site conditions or the validity of assumptions upon which the November 29, 2001 petition was based) relevant to the delisted waste indicating that the treated effluent no longer meets delisting criteria (excluding record keeping and data submissions required by Condition (6)), or that groundwater affected by discharge of the treated effluent exhibits hazardous constituent concentrations above health-based limits, Energy must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (b) Energy shall provide written notification to the Regional Administrator no less than 180 days prior to any planned or proposed substantial modifications to the 200 Area ETF, exclusive of routine maintenance activities, that could affect waste processing strategies or primary operating parameters. This condition shall specifically include, but not be limited to, changes that do or would require Class II or III modification to the Hanford Facility RCRA Permit WA7 89000 8967 (in the case of permittee-initiated modifications) or equivalent modifications in the case of agency-initiated permit modifications operations. Energy may request a modification to the 180-day notification requirement of this condition in the instance of agency-initiated permit modifications for purposes of ensuring coordination with permitting activities. (c) Based on the information described in paragraph (4)(a) or (4)(b) or any other relevant information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action could include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (5) Delisting Levels: All total constituent concentrations in treated effluents managed under this exclusion must be equal to or less than the following levels, expressed as mg/L: Inorganic Constituents Ammonia—6.0 Barium—1.6 Beryllium—4.5×10^{-2} Nickel—4.5×10^{-1} Silver—1.1×10^{-1} Vanadium—1.6×10^{-1} Zinc—6.8 Arsenic—1.5×10^{-2} Cadmium—1.1×10^{-2} Chromium—6.8×10^{-2} Lead—9.0×10^{-2} Mercury—6.8×10^{-3} Selenium—1.1×10^{-1} Fluoride—1.2 Cyanides—4.8×10^{-1} Organic Constituents: Cresol—1.2 2,4,6 Trichlorophenol—3.6×10^{-1} Benzene—6.0×10^{-2} Chrysene—5.6×10^{-1} Hexachlorobenzne—2.0×10^{-3} Hexachlorocyclopentadiene—1.8×10^{-1} Dichloroisopropyl ether [Bis(2-Chloroisopropyl) either]—6.0×10^{-2} Di-n-octylphthalate—4.8×10^{-1} 1-Butanol—2.4 Isophorone—4.2 Diphenylamine—5.6×10^{-1} p-Chloroaniline—1.2×10^{-1} Acetonitrile—1.2 Carbazole—1.8×10^{-1} N-Nitrosodimethylamine—2.0×10^{-2} Pyridine—2.4×10^{-2} Lindane [gamma-BHC]—3.0×10^{-3} Arochlor [total of Arochlors 1016, 1221, 1232, 1242, 1248, 1254, 1260]—5.0×10^{-4} Carbon tetrachloride—1.8×10^{-2} Tetrahydrofuran—5.6×10^{-1} Acetone—2.4

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		Carbon disulfide—2.3 Tributyl phosphate—1.2×10^{-1} (6) Recordkeeping and Data Submittals. (a) Energy shall maintain records of all waste characterization, and waste processing strategies required by Condition (1), and verification sampling data, including QA/QC results, in the facility operating record for a period of no less than three (3) years. However, this period is automatically extended during the course of any unresolved enforcement action regarding the 200 Area ETF or as requested by EPA. (b) No less than thirty (30) days after receipt of verification data indicating a failure to meet delisting criteria of Condition (5), Energy shall notify the Regional Administrator. This notification shall include a summary of waste characterization data for the associated influent, verification data, and any corrective actions taken according to Condition (3)(b)(i). (c) Records required by Condition (6)(a) must be furnished on request by EPA or the State of Washington and made available for inspection. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted: ''Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928). I certify that the information contained in or accompanying this document is true, accurate, and complete. As to the (those) identified section(s) of the document for which I cannot personally verify its (their) truth and accuracy, I certify as the official having supervisory responsibility of the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to Energy, I recognize and agree that this exclusion of waste will be void as if it never had effect to the extent directed by EPA and that the Energy will be liable for Energy's reliance on the void exclusion.'' (7) Treated Effluent Disposal Requirements. Energy may at any time propose alternate reuse practices for treated effluent managed under terms of this exclusion in lieu of disposal at the SALDS. Such proposals must be in writing to the Regional Administrator, and demonstrate that the risks and potential human health or environmental exposures from alternate treated effluent disposal or reuse practices do not warrant retaining the waste as a hazardous waste. Upon written approval by EPA of such a proposal, non-hazardous treated effluents may be managed according to the proposed alternate practices in lieu of the SALDS disposal requirement in paragraph (3)(a). The effect of such approved proposals shall be explicitly limited to approving alternate disposal practices in lieu of the requirements in paragraph (3)(a) to dispose of treated effluent in SALDS.
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[RCRA–2004–0009; FRL–7947–8]

Land Disposal Restrictions: Site-Specific Treatment Variances for Heritage Environmental Services LLC and Chemical Waste Management, Chemical Services, Inc

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is today granting two site-specific treatment standard variances from the Land Disposal Restrictions (LDR) treatment standards to Chemical Waste Management, Chemical Services LLC (CWM), and to Heritage Environmental Services LLC (Heritage), to treat a selenium-bearing hazardous waste from the glass manufacturing industry. This final rule follows a proposed rule and a subsequent request for comment. These facilities intend to treat and dispose of selenium-bearing hazardous waste from Guardian Industries Corp. (Guardian) at their RCRA permitted facilities in Model City, New York and Indianapolis, Indiana, respectively. Based on treatment data on a new proprietary chemical stabilization technology provided by Heritage, EPA is issuing variances so that both facilities may treat the Guardian waste to an alternate treatment standard of 11 mg/L selenium, as measured by the TCLP.

Upon promulgation of this final rule, CWM and Heritage may dispose of the treated waste in permitted RCRA Subtitle C landfills, provided they meet the applicable LDR treatment standards for any other hazardous constituents in the waste. EPA is granting these variances because the chemical properties of the wastes differ significantly from the waste used to establish the current LDR standard for selenium (5.7 mg/L, as measured by the Toxicity Characteristic Leaching Procedure (TCLP)), and the petitions have adequately demonstrated that the waste cannot be treated to meet this treatment standard.

DATES: This final rule is effective August 3, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. RCRA–2004–0009. 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