

requirement under section 408(d) of the 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 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 under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is

defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the 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.

#### XI. 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: March 23, 2004.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention 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 180.1150 is amended by revising paragraph (a) to read as follows:

#### § 180.1150 6-Benzyladenine; exemption from the requirement of a tolerance.

(a) The biochemical plant regulator 6-benzyladenine (6-BA) is exempt from the requirement of a tolerance in or on apple at an application rate of ≤182 grams of active ingredient per acre per season, and in or on pistachio at an application rate of ≤60 grams of active ingredient per acre per season.

(b) \* \* \*

[FR Doc. 04-7475 Filed 4-1-04; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 257

[FRL-7642-8]

#### Delaware and Maryland: Adequacy of State Solid Waste Landfill Permit Programs Under RCRA Subtitle D

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

**ACTION:** Immediate final rule.

**SUMMARY:** Under section 4005(c)(1)(C) of the Resource Conservation and Recovery Act (RCRA), EPA can approve state permit programs for solid waste disposal facilities that receive hazardous waste from conditionally exempt small quantity generators (CESQGs). A CESQG is a generator that generates less than 100 kilograms of hazardous waste per month. CESQGs are subject to minimal recordkeeping and reporting requirements under RCRA, but must satisfy three basic regulatory requirements to remain exempt from the full scope of hazardous waste regulations that apply to other

generators: identification of hazardous wastes, compliance with storage quantity limits, and compliance with applicable hazardous waste treatment and disposal regulations. Federal regulations specify that CESQG hazardous waste must be disposed of in one of several ways, including either: a hazardous waste facility subject to RCRA Subtitle C, or a state licensed or permitted municipal solid waste landfill (MSWLF) subject to regulations, or a state licensed or permitted non-municipal, non-hazardous waste disposal unit subject to regulations. This action approves Maryland's regulations which require that CESQG hazardous waste must be disposed of in hazardous waste landfills, if disposed in Maryland, or in one of the three ways mentioned above, if disposed outside of Maryland. EPA is also approving Delaware's regulations which require that CESQG hazardous waste can only be disposed in hazardous waste landfills.

EPA is publishing this rule to approve applicable regulations in Delaware and Maryland without prior proposal because we believe this action is not controversial, and we do not expect comments that oppose it. Unless we receive written comments which oppose this approval during the comment period, the decision to approve the subject regulations in Delaware and Maryland will take effect as scheduled. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to approve the subject regulations for Delaware and Maryland. If EPA receives relevant adverse written comment concerning the adequacy of only one of the States' programs, EPA's withdrawal of the immediate final rule will only apply to that State's program. The approval of the other State's program will take effect as scheduled in this action.

**DATES:** This immediate final rule will become effective on June 1, 2004, unless EPA receives relevant adverse written comment by May 3, 2004. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this rule, or parts of this rule, will not take effect.

**ADDRESSES:** Send written comments to Mr. Mike Giuranna, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029. Comments may also be submitted electronically to:

[giuranna.mike@epa.gov](mailto:giuranna.mike@epa.gov), or by facsimile at (215) 814-3163. Comments in electronic format should identify this specific notice. Documents pertaining to this regulatory docket can be viewed and copied during regular business hours at the EPA Region III office located at the address noted above.

**FOR FURTHER INFORMATION CONTACT:** For information on accessing documents or supporting materials related to this rule or for information on specific aspects of this rule, contact Mike Giuranna, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029, phone (215) 814-3298, or by e-mail at [giuranna.mike@epa.gov](mailto:giuranna.mike@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

Under 40 CFR 261.5, Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators, which was promulgated on March 24, 1986 (51 FR 10174), CESQG hazardous waste could only be disposed of in an EPA or State regulated hazardous, municipal, industrial or miscellaneous waste landfill. At that time, EPA had only promulgated rules for hazardous waste landfills and MSWLFs, not for industrial or miscellaneous waste landfills which accepted CESQG waste. On July 1, 1996 (61 FR 34252-34278), EPA promulgated criteria under its solid waste program at 40 CFR part 257, subpart B, for industrial waste and other non-municipal, non-hazardous waste landfills which accept CESQG hazardous waste. In the same notice, EPA also revised its hazardous waste program regulations at 40 CFR 261.5(f)(3) and 261.5(g)(3) to allow the disposal of CESQG hazardous waste in non-municipal, non-hazardous waste landfills which meet the requirements of 40 CFR part 257, subpart B, as well as in hazardous waste landfills or MSWLFs which meet appropriate Federal regulations. Today's immediate final rule approves provisions in Delaware's regulations which prevent CESQG waste from being disposed of in any type of landfill other than a hazardous waste landfill and Maryland's regulations which only permit the disposal of CESQG waste in Maryland in hazardous waste landfills, and, in other States, also in MSWLFs which meet appropriate Federal regulations and non-hazardous, non-municipal landfills which comply with 40 CFR part 257, subpart B.

The States of Delaware and Maryland have "EPA-authorized" hazardous waste permit programs under RCRA

Subtitle C (40 CFR parts 271, 124, 264 and 270). These States have regulations in place providing that CESQG hazardous waste may be lawfully managed in a RCRA Subtitle C hazardous waste facility. With the exception of State-approved hazardous waste collection activities, Delaware prohibits the disposal of CESQG waste at any type of landfill other than a permitted hazardous waste facility. Maryland only permits the disposal of CESQG waste in hazardous waste landfills (HWLFs) if disposed of in Maryland, and HWLFs, municipal solid waste landfills or non-municipal, non-hazardous waste disposal units which comply with the requirements of 40 CFR part 257, subpart B if the CESQG waste is disposed outside of Maryland. These programs in Delaware and Maryland satisfy the EPA requirements for the safe management of CESQG wastes. Therefore, pursuant to 40 CFR part 257, subpart B, EPA has determined that Delaware's and Maryland's regulations are adequate for EPA approval because they prohibit the disposal of CESQG wastes in landfills that do not meet relevant Federal requirements.

##### **B. Decision**

After reviewing the relevant regulations for the States of Delaware (listed in Delaware's Regulations for Hazardous Waste at § 261.5(f)(3)(i)-(iii) and 261.5(g)(3)(i)-(iii)), and Maryland (Title 26, Subtitle 13, Chapter 2 of the Code of Maryland Regulations at 26.13.02.05 D(2)), and finding that they are equivalent to or more stringent than the Federal regulations at 40 CFR 261.5(f)(3) and (g)(3), EPA is granting Delaware and Maryland a final determination of adequacy for their regulations pursuant to RCRA section 4005(c)(1)(C).

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

This rule only approves State solid waste requirements pursuant to RCRA section 4005 and imposes no requirements other than those imposed by State law (see **SUPPLEMENTARY INFORMATION**, above). Therefore, this rule complies with applicable executive orders and statutory provisions as follows. 1. Executive Order 12866: Regulatory Planning Review—The Office of Management and Budget has exempted this rule from its review under Executive Order 12866. 2. Paperwork Reduction Act—This rule does not impose an information collection burden under the Paperwork Reduction Act. 3. Regulatory Flexibility Act—After considering the economic impacts of today's rule on small entities

under the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities. 4. Unfunded Mandates Reform Act—Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Act. 5. Executive Order 13132: Federalism—Executive Order 13132 does not apply to this rule because it will not have federalism implications (*i.e.*, 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). 6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments—Executive Order 13175 does not apply to this rule because it will not have tribal implications (*i.e.*, substantial direct effects on one or more Indian tribes, 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). 7. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks—This rule is not subject to Executive Order 13045 because it is not economically significant and it is not based on health or safety risks. 8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use—This rule is not subject to Executive Order 13211 because it is not a significant regulatory action as defined in Executive Order 12866. 9. National Technology Transfer Advancement Act—EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus, section 12(d) of the National Technology Transfer and Advancement Act does not apply to this rule. 10. Congressional Review Act—EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. This action is not a

“major rule” as defined by 5 U.S.C. 804(2). This action will be effective June 1, 2004.

#### List of Subjects in 40 CFR Part 257

Environmental protection, Waste treatment and disposal.

**Authority:** This document is issued under the authority of sections 2002 and 4005 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912 and 6945.

Dated: January 8, 2004.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

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**BILLING CODE 6560-50-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 64

[Docket No. FEMA-7829]

#### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

**EFFECTIVE DATES:** The effective date of each community's suspension is the third date (“Susp.”) listed in the third column of the following tables.

**ADDRESSES:** If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

**FOR FURTHER INFORMATION CONTACT:** Mike Grimm, Mitigation Division, 500 C Street SW.; Room 412, Washington, DC 20472, (202) 646-2878.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not

otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer