

US EPA ARCHIVE DOCUMENT

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 148, 261, 266, 268, 271, and 302**

[FRL-6172-3]

RIN 2050-AD88

**Technical Amendments to Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Petroleum Refining Process Wastes; Land Disposal Restrictions for Newly Identified Wastes; And CERCLA Hazardous Substances Designation and Reportable Quantities; Correction of Effective Date Under Congressional Review Act (CRA)****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule; correction of effective date under CRA.

**SUMMARY:** On August 6, 1998, (63 FR 42110), EPA published in the **Federal Register** a final rule concerning the listing of hazardous wastes from petroleum refining under the Resource Conservation and Recovery Act, Reportable Quantity adjustments, promoting recycling of oil-bearing residuals, and applying universal treatment standards to petroleum wastes. The rule established an effective date of August 6, 1998, for certain deregulatory amendments and February 8, 1999, for other amendments. This document corrects the August 6, 1998, effective date of the rule to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801, 808.

**EFFECTIVE DATE:** The August 6, 1998, rule (63 FR 42110), is effective February 8, 1999, except for the amendments to §§ 261.3(c)(2)(ii)(B), 261.4(a), 261.6(a)(3)(iv)(C), and 266.100(b)(3) and the removal of § 261.6(a)(3)(v) which are effective December 8, 1998.

**FOR FURTHER INFORMATION CONTACT:** Ross Elliott (703) 308-8748.

**SUPPLEMENTARY INFORMATION:****A. Background**

Section 801 of the CRA states a rule cannot take effect until the agency issuing the rule submits a rule report, which includes a copy of the rule, a statement as to whether the rule is a "major rule," and the rule's proposed effective date, to each House of Congress and to the Comptroller General of the United States, head of the General Accounting Office (GAO). If the Administrator of the Office of

Information and Regulatory Affairs at the Office of Management and Budget (OMB) determines that a rule is "major" under section 804(2), section 801(a)(3) further provides that the rule cannot take effect until the later of 60 days after the rule is published in the **Federal Register** or the rule is submitted to Congress and GAO. Non-major rules can be effective at any time after they are submitted to Congress and GAO. Under section 808(2), major rules can take effect sooner than 60 days if the agency makes a "good cause" finding.

EPA issued the August 6, 1998, final rule under a schedule established in a consent decree. OMB completed review of the rule under Executive Order 12866 on June 29, 1998, and the EPA Administrator signed the rule on that day to meet the consent decree deadline. As of the completion of OMB review on June 29, EPA had found no basis in the rulemaking record that would suggest the rule should be considered "major" under the CRA, nor had OMB notified EPA at the conclusion of Executive Order 12866 review of any determination that the rule was major. Accordingly, the final rule stated "[t]his action is not a major rule as defined by 5 U.S.C. 804(2)." (63 FR 42182) On July 17, 1998, EPA sent the rule to the Speaker of the House, the President of the Senate, and the General Accounting Office, in accordance with the CRA, indicating that it was not a major rule. On July 22, 1998, EPA sent the rule to the Office of the Federal Register (OFR), which published it in the **Federal Register** on August 6, 1998.

OMB wrote EPA on July 24, 1998, after EPA had submitted the rule to OFR, that OMB had determined the rule is "major." OMB based its determination on new information submitted by a company in mid-June, almost a year after the close of the public comment period, while the rule was being reviewed by OMB under Executive Order 12866, shortly before the signature date required by the consent decree. After discussing this matter further with OMB, EPA concluded that, because OMB made its determination before the final rule was published in the **Federal Register**, EPA must resubmit the final rule under the CRA as a major rule and revise the effective dates accordingly. EPA must do this because the July submission to Congress and GAO did not identify the rule as "major."

Specific portions of the August 6, 1998, final rule were made effective February 8, 1999. Those portions are not affected by today's action. However, the rule had several deregulatory provisions that were made effective August 6, 1998,

the day of publication. These provisions were amendments to 40 CFR

261.3(c)(2)(ii)(B), 261.4(a), 261.6(a)(3)(iv)(C), and 266.100(b)(3) and the removal of 40 CFR 261.6(a)(3)(v). (In the course of reviewing the August 6th **Federal Register** notice to prepare today's action, EPA found a typographical error in the **EFFECTIVE DATES** section of that notice. The final rule amended 40 CFR 266.100(b)(3); however, the **EFFECTIVE DATES** section erroneously referred to it as "261.100(b)(3)." Section 261.100(b)(3) does not exist and was not addressed in the August 6th rule. EPA intended to make the amendment to section 266.100(b)(3) effective along with the other deregulatory amendments. Accordingly, EPA has amended the citation in the **EFFECTIVE DATES** section of today's notice to correct that error.) Although the rule was promulgated on August 6, because OMB determined the rule is "major," under section 801 of SBREFA those deregulatory portions of the rule did not take effect on August 6. EPA cannot make those provisions effective until the later of 60 days after publication of today's document in the **Federal Register** or today's document is submitted to Congress and GAO. To prevent further delay in the effective date for the deregulatory amendments, in today's notice EPA is making a good cause finding under 808(2) of CRA (see below). Accordingly, today's action amending the effective dates is effective upon today's publication, before completion of the 60-day period. Both the August 6th rule and today's action already have been submitted to both Houses of Congress and the GAO. Today's action changes the August 6th effective date of the final rule to December 8, 1998 to be consistent with the CRA. Through today's action EPA also is amending the August 6th rule preamble by stating that the August 6th final rule is a "major" rule under the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the August 6 rule to be consistent with the requirements of the CRA as a matter of law and has no discretion in this matter.

Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements, relieves restrictions, and affected parties have known of the underlying rule since August 6, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

The delay in the effective date of the deregulatory provisions (amendments to 40 CFR 261.3(c)(2)(ii)(B), 261.4(a), 261.6(a)(3)(iv)(C), and 266.100(b)(3) and the removal of 40 CFR 261.6(a)(3)(v)) of the August 6, 1998, final rule was caused by OMB's designation of the rule as "major" after EPA had signed the rule and sent it to OFR for publication and EPA's resulting need to resubmit the rule under the CRA. Thus, EPA does not believe that affected persons who acted in good faith relying upon the August 6th effective date stated in the **Federal Register** should be penalized if they were complying with the rule as promulgated from August 6 until today. (This includes persons who may have properly interpreted the amendment to 40 CFR 266.100(b)(3) to be in effect in spite of the typographical error in the **EFFECTIVE DATES** section of the August 6th rule discussed above.) However, since the amendments to 40 CFR 261.3(c)(2)(ii)(B), 261.4(a), 261.6(a)(3)(iv)(C), and 266.100(b)(3) and the removal of 40 CFR 261.6(a)(3)(v) now are not in effect, and will not be in effect until December 8, 1998, affected persons must comply with the existing rules until these provisions take effect on December 8, 1998.

## II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), establish any technical standards subject to the section 12(d) of the National Technology Transfer and Advancement Act, require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or with officials of Indian tribal governments as specified by Executive Orders 12875 and 13084 (63 FR 27655, May 19, 1998), involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994), or involve

special consideration of children's health and safety risks under Executive Order 13045 (62 FR 19885, April 23, 1997). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders, as applicable, for the August 6th rule is discussed in the August 6, 1998, **Federal Register** notice.

OMB's designation of the August 6th final rule as "major" for purposes of the CRA does not change EPA's analysis of the rule for purposes of other statutes and Executive Orders as described in the August 6th **Federal Register**. The cost information considered by OMB was submitted by a company long after the comment period had closed, while the rule was being reviewed by OMB. The information concerns the cost of leachate management that may result from the August 6th rule and is unverified and unsubstantiated. To address the late information, EPA published a proposed rule, notice of data availability, and request for comment in the same August 6th **Federal Register** asking, among other things, for comment on the information (63 FR 42190). In that notice EPA stated "EPA received this information very late in the rulemaking process" and pointed out that "the information is not even part of the administrative record for the final rule." Although EPA is bound by OMB's determination that the August 6th final rule is "major" for CRA purposes, EPA has no basis to judge whether the recently-submitted cost information is accurate. Thus, EPA has not changed its cost estimates presented in the final rule. As noted in the August 6th proposed rule and notice of data availability, EPA is soliciting comment on this information and may decide temporarily to defer from regulation the leachate in question. Refer to that **Federal Register** notice for more information.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on October 9, 1998. Even though today's action amends the effective date of a "major rule," today's rule is not a "major rule" as defined in 5 U.S.C. 804(2) separate from the August 6 rule.

Today's final rule only amends the effective date of the August 6 rule; it does not amend any substantive requirements contained in that rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date. Pursuant to section 7006 of the Resource Conservation and Recovery Act, challenges to this amendment must be brought by January 7, 1999.

Dated: September 30, 1998.

**Carol M. Browner,**

*Administrator.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP-300726; FRL-6032-5]  
RIN 2070-AB78

### Paraquat; Extension of Tolerance for Emergency Exemptions

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

**ACTION:** Final rule.

**SUMMARY:** This rule extends a time-limited tolerance for residues of the herbicide/desiccant/defoliant paraquat (1,1'-dimethyl-4,4'-bipyridinium-ion) derived from application of either the bis(methyl sulfate) or the dichloride salt (both calculated as the cation) in or on dry peas at 0.3 part per million (ppm) for an additional one and one-half-year period, to May 15, 2000. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on dry peas. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

**DATES:** This regulation becomes effective October 9, 1998. Objections and requests for hearings must be received by EPA, on or before December 8, 1998.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number [OPP-300726], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees