

US EPA ARCHIVE DOCUMENT

Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section

12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

XII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 4, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.1288 is added to read as follows:

§ 180.1288 Tristyrylphenol ethoxylates; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of poly(oxy-1,2-ethanediyl), α -[2,4,6-tris(1-phenylethyl)phenyl]- ω -hydroxy-, (CAS Reg. No. 70559-25-0) and poly(oxy-1,2-ethanediyl), α -[tris(1-phenylethyl)phenyl]- ω -hydroxy-, (CAS Reg. No. 99734-09-5) on citrus crops, group 10, when used as inert ingredients under the following conditions:

- (a) They are applied post-harvest;
- (b) They are used as inert ingredients in pesticide formulations with azoxystrobin and fludioxonil; and
- (c) They constitute no more than 10.0% of the formulated pesticide product.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R06-RCRA-2008-0756-; FRL-8784-9]

New Mexico: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of New Mexico has applied to the EPA for final authorization to administer the provisions of the Used Oil program under the Resource Conservation and Recovery Act (RCRA). The EPA has determined that the statutes and regulations of the State of New Mexico Used Oil program satisfy all requirements needed to qualify for final authorization, and is authorizing the State's changes through this immediate final action. The EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize New Mexico's changes to its hazardous waste program will take effect. 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 authorize the changes.

DATES: This final authorization will become effective on May 26, 2009 unless the EPA receives adverse written comment by April 24, 2009. If the 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 authorization will not take effect.

ADDRESSES: Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal:*
<http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. *E-mail:* patterson.alima@epa.gov.

3. *Mail:* Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

4. *Hand Delivery or Courier.* Deliver your comments to Alima Patterson,

Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

Instructions: Do not submit information that you consider to be CBI or otherwise protected through *regulations.gov*, or e-mail. The Federal *regulations.gov* Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through *regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. You can view and copy New Mexico's application and associated publicly available materials from 8:30 a.m. to 4 p.m. Monday through Friday at the following locations: New Mexico Environment Department, 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505-6303, phone number (505) 476-6035 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, phone number (214) 665-8533. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Regional Authorization Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, (214) 665-8533, EPA Region 1445 Ross Avenue, Dallas, Texas 75202-2733, and E-mail address patterson.alima@epa.gov.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with,

and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask the EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273, and 279.

B. What Decisions Have We Made in This Rule?

We conclude that New Mexico's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant New Mexico final authorization to operate its hazardous waste program with the changes described in the authorization application. New Mexico has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in New Mexico including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in New Mexico subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. New Mexico has enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions after notice to and consultation with the State.

This action does not impose additional requirements on the

regulated community because the regulations for which New Mexico is being authorized by today's action are already effective under State law, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

The EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens if the EPA Receives Comments That Oppose This Action?

If the EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time. If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw only that part of this rule, but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. For What Has New Mexico Previously Been Authorized?

The State of New Mexico initially received final authorization on January 25, 1985, (50 FR 1515) to implement its base hazardous waste management program. New Mexico received authorization for revisions to its program on February 9, 1990 (55 FR 4604) effective April 10, 1990; March 19, 1990 (55 FR 10076); July 11, 1990 (55 FR 28397) effective July 25, 1990; October 5, 1992 (57 FR 45717) effective December 4, 1992; June 9, 1994 (59 FR 29734) effective August 23, 1994; October 7, 1994 (59 FR 51122) effective December 21, 1994; April 25, 1995 (60 FR 20238) effective July 10, 1995; (61 FR 2450) January 2, 1996; December 23, 1996 (61 FR 67474) effective March 10,

1997 and August 10, 2001 (66 FR 42140) effective October 9, 2001. The authorized New Mexico RCRA program was incorporated by reference to the CFR, effective December 13, 1993 (58 FR 52677); November 18, 1996 (61 FR 49265); July 13, 1998 (63 FR 23221); effective October 27, 2003 and (72 FR 46165) effective October 16, 2007. On August 22, 2008, New Mexico applied for approval of its program revisions for the Used Oil provisions which includes Rule Checklists 104, 107, 112, 122, 122.1, 130, 166, and 166.1 listed in this document in accordance with 40 CFR 271.21.

The NMED petitioned the New Mexico Environmental Improvement Board (EIB) on March 10, 2003 for a hearing to amend the HWMR, 20.4.1 for the EPA Federal rules promulgated through July 1, 2002, including the Used Oil program. The EIB adopted the amendments to Hazardous Waste Management Regulations (HWMR) on August 5, 2003 as permanent rules which included the Used Oil program.

Thus, 20.4.1 NMAC provides equivalent and no less stringent authority than the adoption of Federal RCRA Subtitle C program in effect through July 1, 2002. This is the version that is referred to in the Attorney General's Statement and Certification

for submitted with this program revision. The 20 NMAC 4.1 became effective on October 1, 2003. New Mexico Statutes Annotated (NMAC) 1978 Sections 74-4-4A(1) and 74-4-4F (2002) provides New Mexico with authority to adopt Federal regulations by reference with exceptions to federal rules that are not delegated to the State of New Mexico. Since the latest authorization the scope, structure, coverage, and processes have not materially changed. The Used Oil program has been adopted within the Hazardous Waste Management Program, New Mexico does now have the statutory authority for criminal penalties as required by EPA for program authorization. Therefore, we are authorizing the State of New Mexico for the Used Oil regulations in this **Federal Register** document.

New Mexico, through the HWMR, has incorporated by reference the following federal RCRA regulations as amended through July 1, 2002: 40 CFR parts 260-270, 40 CFR Part 270; 40 CFR Part 273; and 40 CFR Part 279 with the exception of 40 CFR 260.1(b)(6), 260.20, 260.22, 260.30, 260.31, 260.32, 260.33, 263.20(e), 264.1(f), 264.149, 264.150, 264.301(l), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f), 264.1080(g), 265.1(c)(4), 265.149, 265.150,

265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), 265.1080(g); 268.5, 268.6, 268.42(b), 268.44(a) through (g). New Mexico has incorporated by reference 40 CFR Part 124, §§ 124.31, 124.32, and 124.33 with exception to 40 CFR parts 124.1 and 124.2. Also, it has adopted regulations at 20.4.1.901 NMAC, Permitting Procedures, that are equivalent to and no less stringent than the procedures of 40 CFR part 124 and required by 40 CFR Part 271.14.

G. What Changes Are We Authorizing With Today's Action?

On August 22, 2008, New Mexico submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that New Mexico's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant the State of New Mexico Final authorization for the following changes: The State of New Mexico's program revisions consist of regulations which specifically govern Checklists 112, 122, 122.1, 130, 166, and 166.1 are documented in this **Federal Register** document.

Description of federal requirement (include checklist #, if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
1. Recycled Used Oil Management Standards. (Checklist 112).	57 FR 41566-41626 September 10, 1992	New Mexico Statute Annotated (NMSA) 1978, Sections 74-4-4A(1) and 74-4-4F (2002). Hazardous Waste Regulations (HWMR), New Mexico Environmental Improvement Board, 20 NMAC, 20.4.1. 100, 20.4.1.200, 20.4.1.700 and 20.4.1.1002, as adopted August 5, 2003, effective October 1, 2003.
2. Recycled Used Oil Management Standards; Technical Amendments and Corrections 1. (Checklist 122).	58 FR 26420-26426 May 3, 1993	New Mexico Statute Annotated (NMSA) 1978, Sections 74-4-4A(1) and 74-4-4F (2002). Hazardous Waste Regulations (HWMR), New Mexico Environmental Improvement Board, 20 NMAC, 20.4.1. 200, 20.4.1.500, 20.4.1.600, and 20.4.1.1002 as adopted August 5, 2003, effective October 1, 2003.
3. Recycled Used Oil Management Standards; Technical Amendments and Corrections II. (Checklist 130).	59 FR 10550-10560 March 4, 1994	New Mexico Statute Annotated (NMSA) 1978, Sections 74-4-4A(1) and 74-4-4F (2002). Hazardous Waste Regulations (HWMR), New Mexico Environmental Improvement Board, 20 NMAC, 20.4.1. 1002, as adopted August 5, 2003, effective October 1, 2003.
4. Recycled Used Oil Management Standards; Technical Correction and Clarification. (Checklist 166 & 166.1).	63 FR 24963-24969 May 6, 1998; as amended July 14, 1998, at 63 FR 37780-37782.	New Mexico Statute Annotated (NMSA) 1978, Sections 74-4-4A(1) and 74-4-4F (2002). Hazardous Waste Regulations (HWMR), New Mexico Environmental Improvement Board, 20 NMAC, 20.4.1.200 and 20.4.1.1002, adopted August 5, 2003, effective October 1, 2003.

H. Where Are the Revised State Rules Different From the Federal Rules?

In this authorization of the State of New Mexico's program revisions for the Used Oil provisions, there are no provisions that are more stringent or broader in scope.

I. Who Handles Permits After the Authorization Takes Effect?

New Mexico will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. We will not issue any more new permits or new portions of permits for the provisions listed in the Table in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which New Mexico is not yet authorized.

J. What Is Codification and Is the EPA Codifying New Mexico's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart T for this authorization of New Mexico's program changes until a later date. In this authorization application the EPA is not codifying the rules documented in this **Federal Register** notice.

K. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes preexisting 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 Reform Act of 1995 (Pub. L. 104-4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action 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 the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. 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)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). 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 report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document 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 in the **Federal Register**. A major rule cannot take effect until 60 days after it is published 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 May 26, 2009.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: March 5, 2009.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. E9-6677 Filed 3-24-09; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA-2008-0020; Internal Agency Docket No. FEMA-8067]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

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 scheduled for suspension 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