

take place. Following written notification by EPA, DOE may replace testing Condition (1)(A) with (1)(B). DOE must fulfill all other requirements in Condition (1), as appropriate.

To ensure consistent and efficient treatment, the Agency is requiring DOE to operate the ETF in accordance with the operating conditions established under Condition (1). However, the proposed exclusion allows DOE some flexibility in modifying the operating conditions to optimize its treatment process, if DOE can demonstrate the effectiveness of the modified operating conditions through new initial verification testing under Condition (1)(A).

(5) *Data Submittals*: At least two weeks prior to system start-up, DOE must notify, in writing, the Chief of the Waste Identification Branch (see address below) when the Effluent Treatment Process will be on-line and waste treatment will begin. The data obtained through Condition (1)(A) must be submitted to the Branch Chief, Waste Identification Branch, OSW (Mail Code 5304), U.S. EPA, 401 M Street, S.W., Washington, DC 20460 within the time period specified. Records of operating conditions and analytical data from Condition (1) must be compiled, summarized, and maintained on site for a minimum of three years. These records and data must be furnished upon request by EPA or the State of Washington and made available for inspection. Failure to submit the required data within the specified time period or to maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. 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 USC 1001 and 42 USC 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 this document for which I cannot personally verify its (their) truth and accuracy, I certify as the official having supervisory responsibility for 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 DOE, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the DOE will be liable for any actions taken in contravention of its RCRA and CERCLA obligations premised upon DOE's reliance on the void exclusion.

If made final, the proposed exclusion will apply only to the wastes and waste volume (a maximum of 19 million gallons or 95,000 cubic yards generated annually) covered by the original demonstration. DOE would require a new exclusion if either its wastes or treatment processes are significantly altered beyond the changes in operating conditions described in Condition (4), such that an adverse change in waste composition (e.g., if levels of hazardous constituents increased significantly) or increase in waste volume occurred. Accordingly, DOE would need to file a new petition for the altered waste. DOE must treat waste generated in excess of 95,000 cubic yards per year or from changed processes as hazardous until a new exclusion is granted.

Although management of the wastes covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

IV. Effective Date

This rule, if finalized, will become effective immediately upon such finalization. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this exclusion should be effective

immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final promulgation, under the Administrative Procedure Act, 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. This proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding wastes generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its wastes as non-hazardous. There is no additional impact due to today's rule. Therefore, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the Agency certifies that the rule will not have any impact on any small entities.

This rule, if promulgated, will not have any adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96-511, 44 USC 3501 *et seq.*) and