

Dated: March 21, 2007.

L.L. Hereth,

*Rear Admiral, United States Coast Guard
Commander, Fifth Coast Guard District.*

[FR Doc. E7-6146 Filed 4-5-07; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R01-OAR-2007-0136; A-1-FRL-8295-5]

Approval and Promulgation of State Plans for Designated Pollutants and Facilities; Rhode Island; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the Sections 111(d) and 129 negative declaration submitted by the State of Rhode Island. This negative declaration adequately certifies that there are no existing "other solid waste incineration" (OSWI) units located within the boundaries of the State of Rhode Island.

DATES: Written comments must be received on or before May 7, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2007-0136 by one of the following methods:

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

2. *E-mail:* cohen.ian@epa.gov.

3. *Fax:* (617) 918-0655.

4. *Mail:* "EPA-R01-OAR-2007-0136", Dan Brown, Chief, Air Permits, Toxics, and Indoor Air Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAP), Boston, MA 02114-2023.

5. Hand Delivery or Courier. Deliver your comments to: Dan Brown, Chief, Air Permits, Toxics, and Indoor Air Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAP), Boston, MA 02114-2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 p.m. to 4:30 p.m., excluding legal holidays.

Please see the direct final rule which is located in the Rules Section of this

Federal Register for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Ian D. Cohen, Air Permits, Toxics, and Indoor Air Programs, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street (CAP), Boston, MA 02114-2023, telephone number (617) 918-1655, fax number (617) 918-0655, e-mail cohen.ian@epa.gov.

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the negative declaration for OSWI units in Rhode Island as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: March 27, 2007.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. E7-6461 Filed 4-5-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2006-0175; FRL-8119-8]

Pesticides; Food Packaging Treated with a Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would exempt from the definitions of "pesticide chemical" and "pesticide chemical residue" under FFDCA section 201(q),

food packaging (e.g. paper and paperboard, coatings, adhesives, and polymers) that is treated with a pesticide as defined in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) section 2(u). As a result, such ingredients in food packaging treated with a pesticide would be exempt from regulation under FFDCA section 408 as pesticide chemical residues. Further, a food that bears or contains such ingredients would not be subject to enforcement by the Food and Drug Administration (FDA) under section 402(a)(2) (B) of the FFDCA since the ingredients would no longer be pesticide chemical residues. Instead, such ingredients would be subject to regulation by the FDA as food additives under FFDCA section 409. FDA generally regulates such food additives in food packaging as food contact substances under FFDCA, section 409(h). This proposed rule would expand the scope of the provision in 40 CFR 180.4 which currently applies only to food packaging impregnated with an insect repellent - one type of pesticide. This proposed rule, as with the rule it would amend, only applies to the food packaging materials themselves; it would not otherwise limit EPA's FFDCA jurisdiction over pesticides or limit FDA's jurisdiction over substances subject to FDA regulation as food additives. EPA, in consultation with FDA, and FDA believe this rule would eliminate the duplicative FFDCA jurisdiction and economize federal government resources while continuing to protect human health and the environment. Even after this rule is finalized, under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), EPA would continue to regulate the food packaging as an inert ingredient of the pesticide product and regulate the pesticide active ingredient in the treated food packaging under both FIFRA and the FFDCA. The text of this proposed rule is identical to a direct final rule EPA issued on December 6, 2006. EPA received several comments opposing that direct final rule and therefore withdrew the rule on January 25, 2007, consistent with EPA policy. EPA is now issuing the rule as a proposal for public comment.

DATES: Comments must be received on or before April 23, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2007-0175, by one of the following methods:

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

• *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA-HQ-OPP-2007-0175. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The Federal www.regulations.gov website is an "anonymous access" system, which means 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 EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, 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 EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, 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.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the

electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Mari L. Duggard, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-0028; fax number: (703) 308-7026; e-mail address: duggard.mari@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a manufacturer or wholesaler of sanitary food packaging products or are a pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Pesticide manufacturing (NAICS code 32532).
- Food packaging manufacturers (NAICS code 32222).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR § 180.4. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2007-0175. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S.

Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date, and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA has received applications for the registration of pesticides under FIFRA that, as proposed, will be applied to food packaging materials. These pesticides are generally intended to function as alternatives to more costly and more toxic applications of insecticides in food storage and retail establishments. The regulatory framework for this use of pesticides raises a number of complex jurisdictional issues for EPA and FDA.¹ Because the treated packaging materials will be sold to food distributors for the purpose of controlling pest infestations, as well as for packaging food, the

¹ This proposed rule would not include within its scope substances which may be regulated as pesticides under FIFRA that are used to prevent, destroy, repel or mitigate microorganisms when such substances are included for such use in or are applied for such use on food packaging (without regard to whether the substances are intended to have an ongoing effect on any portion of the packaging) (see FFDCA section 201(q)(1)(B)(ii) which excludes such substances from the definition of "pesticide chemical"). Because such substances are already excluded from the definition of pesticide chemical residue, it is unnecessary to address these substances in this proposed rule.

pesticide-treated food packaging materials will be subject to the pesticide product registration requirements of section 3 of FIFRA. Under FIFRA, the components of pesticides are either active ingredients or inert ingredients. Active ingredients are those which, among other things, will “prevent, destroy, repel or mitigate any pest.” (FIFRA section 2(a)) Inert ingredients are ingredients “which [are] not active.” (FIFRA section 2(m)). Thus, the components of food packaging (paperboards, coatings, etc.) become inert ingredients of a pesticide product under FIFRA whenever the food packaging is treated with a pesticide active ingredient and is distributed or sold with the purpose of controlling pests.² Such inert ingredients are not used for a pesticidal purpose in the production, storage, processing, or transportation of food. However, as inert ingredients, these components of food packaging are also subject to regulation as “pesticide chemical residues” under FFDCa section 408.

Under section 408 of the FFDCa, any pesticide chemical residue in or on food is deemed unsafe, unless EPA has established a tolerance or tolerance exemption that covers the pesticide chemical residue. This is true even though FDA may have previously issued regulations under section 409 of FFDCa permitting the use of these materials in food packaging that has not been treated with a pesticide. As a result, the same food packaging materials would be subject to regulation under FFDCa by both Agencies. EPA is proposing today to give FDA sole jurisdiction under section 409 FFDCa over the packaging components of food packaging materials that have been treated with a pesticide by excepting these materials from the definition of “pesticide chemical” and “pesticide chemical residue.” Given FDA’s expertise and experience in regulating the components of food packaging, EPA and FDA believe this rule will eliminate the duplicative

² It is important to understand that this proposed rule would only apply to a very small subset of food packaging materials: pesticide-treated food packaging that is distributed or sold with the purpose of controlling pests. Food packaging that is not distributed or sold to control pests is not a pesticide and is not subject to this rule. For example, packaged products that are simply treated with pesticides by food distributors, retailers or homeowners solely to control pests on site do not themselves become pesticides simply as a result of such applications. Rather, the product itself must be distributed with the purpose of providing pest control to become a pesticide. The treated packaging materials addressed in this proposed rule are those that are sold for the express purpose of providing ongoing protection from pests that may contaminate the products made with the treated packaging.

FFDCa jurisdiction and economize Federal government resources while continuing to protect human health and the environment without additional regulatory oversight by EPA.

In 1998, EPA consciously limited the exception at 40 CFR 180.4 to food packaging materials impregnated with an insect repellent, since at the time of promulgation EPA had only received an application for a pesticide product containing an insect repellent. EPA has now received applications for other treated food packaging products that contain active ingredients that are not insect repellents and will not be applied through impregnation of the materials. EPA and FDA believe it is appropriate to extend the 1998 rule to give FDA sole jurisdiction under the FFDCa over the inert ingredients in such food packaging products without regard to the application technique and mode of action of the active ingredients in such products. Again, this proposed rule would not affect EPA’s jurisdiction under section 408 over ingredients other than the packaging materials in such products (including the pesticide active ingredient), nor does it affect EPA’s jurisdiction under FIFRA to regulate such products.

On December 6, 2006, EPA published a direct final rule (71 FR 70667) to expand the coverage of 40 CFR 180.4 as discussed in the preceding paragraph. Because EPA received several comments opposing promulgation of that rule, EPA withdrew the rule on January 25, 2007 and is today issuing this proposal for public comment prior to developing any final rule. The regulatory text of the withdrawn direct final rule and today’s proposal are identical: both provide that the components of food packaging material (e.g. paper and paperboard, coatings, adhesives, and polymers) that have been treated with a pesticide are excepted from the definition of pesticide chemical and pesticide chemical residue under section 201(q) of the FFDCa. Again, as explained in detail above, this proposal, like the direct final rule it replaces, only excepts packaging material from EPA regulation under the FFDCa – these materials will continue to be regulated by the FDA under section 409. Further, the rule does not modify the existing regulatory regime under the FFDCa for pesticidally active ingredients in food packaging nor does it affect EPA regulation of pesticide products under FIFRA. However, the comments EPA received on the direct final rule all appeared to oppose the rule principally because the commenters were concerned about the inclusion of pesticides in food packaging and did not

believe EPA should either be permitting or relinquishing any authority to regulate that activity. It appears, therefore, that the commenters either misunderstood the nature of the amendment to § 180.4 or chose to submit comments to EPA on matters not specifically addressed by the direct final rule – or by today’s proposed rule. In any case, nothing in the withdrawn direct final rule or in today’s proposal relieves EPA of the obligation to regulate pesticides in food packaging, nor does today’s action serve to approve the use of any pesticides in food packaging. Accordingly, these comments are not relevant to the action EPA is today proposing to take.

EPA previously provided for a 30-day comment on the withdrawn direct final rule. As noted, the text of this proposed rule is identical to the withdrawn direct final rule. Because interested persons have already had an opportunity to comment on this matter through the direct final rule, EPA is providing only for an additional 15-day comment period on this proposed rule.

B. What is the Agency’s Authority for Taking this Action?

Section 201(q)(3) of FFDCa, as amended by the Food Quality Protection Act (FQPA), allows the Administrator, under specified conditions, to except certain substances from the definition of “pesticide chemical” or “pesticide chemical residue” if—

(A) its occurrence as a residue on or in a raw agricultural commodity or processed food is attributable primarily to natural causes or human activities not involving the use of any substance for a pesticidal purpose in the production, storage, processing, or transportation of any raw agricultural commodity or processed food; and

(B) the Administrator, after consultation with the Secretary, determines that the substance more appropriately should be regulated under one or more provisions of this Act other than sections 402(a)(2)(B) and 408.

With today’s proposal, EPA would except from the definition of “pesticide chemical” substances that are inert ingredients in food packaging treated with a pesticide, when such ingredients are the components of the food packaging (e.g. paper and paperboard, coatings, adhesives and polymers).

As previously explained, this proposed rule would not affect EPA’s regulation of such substances as inert ingredients under FIFRA. EPA would continue to exercise jurisdiction under FIFRA over these substances when they are used as inert ingredients in food packaging that is intended to produce a pesticidal effect. The materials that

make up food packaging treated with a pesticide may serve one of two purposes: (1) To control pests, or (2) to be one of the materials that make up the container for food. As a result of this proposed rule, EPA would continue to regulate the materials that control pests and FDA will regulate the substances that make up the food packaging material. Consistent with EPA's pesticide registration regulations, EPA will not issue a registration under FIFRA for pesticide products containing food packaging inert ingredients if the presence of these ingredients in or on food is not authorized or permitted by FFDCa and the implementing regulations.

EPA, in consultation with FDA, believes that section 201(q)(3) is applicable to inert ingredients in pesticide treated food packaging materials that are the components of the food packaging (paperboard, coatings, etc). When such inert ingredients are the components of the food packaging itself, EPA believes the occurrence of these substances as residues in or on food would be appropriately excepted from the definition of "pesticide chemical" or "pesticide chemical residue" because such substances are not attributable primarily to the use of the substances for a pesticidal purpose in the production, storage, processing or transportation of food. Rather, the presence of such substances as residues in food is primarily attributable to their use for purposes of packaging food. For this reason, and because of FDA's considerable experience in regulating such substances found in food packaging, EPA and FDA believe it is appropriate for FDA to regulate these inert ingredients under section 409 of FFDCa.

As noted, this proposed regulation would except from the definition of "pesticide chemical" and "pesticide chemical residue" any inert ingredient that is a component of food packaging material treated with a pesticide. EPA, in consultation with FDA, believes the identity of the pesticide in or on the packaging material is not relevant to a determination under section 201(q)(3) regarding whether it is appropriate to except an inert ingredient from the definition of "pesticide chemical" or "pesticide chemical residue." As noted above, that determination turns only on whether: (1) the occurrence of the residues of the substance in or on food is attributable primarily to the use of substances for a pesticidal purpose in the production, storage, processing or transportation of food; and (2) whether it is more appropriate to regulate such substances under another provision of

FFDCa other than sections 402(a)(2)(B) and 408. Thus, EPA has determined that inert ingredients that are the components of the food packaging material in pesticide treated food packaging are more appropriately regulated by FDA under FFDCa. This proposed rule would therefore amend 40 CFR 180.4 to extend the exception contained therein to any food packaging materials treated with a pesticide.

III. Statutory and Executive Order Reviews

As an exception, this action does not impose any regulatory obligations. Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), it has been determined that this proposed rule is not "significant" and is not subject to OMB review. This proposed 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). This proposed rule has no federalism or tribal implications, because it will not have substantial direct effects on States or Indian tribes, on the relationship between the Federal Government and the States or Indian tribes, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes, as specified in Executive Orders 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and 13175 entitled *Consultation and Coordination with Indian Tribal Governments*, (65 FR 67249, November 6, 2000). Nor does this rule raise issues that require 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 require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This proposed rule is also not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use. In addition, this action does not involve any standards that would require Agency consideration pursuant to section 12(d) of the National Technology Transfer and

Advancement Act (NTTAA) (Public Law 104-113)

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agency hereby certifies that this proposed regulatory action will not have a significant economic impact on a substantial number of small entities, because this regulatory action is an exemption and imposes no regulatory obligations. EPA will provide this information to the Small Business Administration's office of Advocacy upon request.

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 26, 2007.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be 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), and 371.

2. Section 180.4 is amended by revising paragraph (a) to read as follows.

§ 180.4 Exceptions.

* * * * *

(a) Inert ingredients in food packaging treated with a pesticide, when such inert ingredients are the components of the food packaging material (e.g. paper and paperboard, coatings, adhesives, and polymers).

* * * * *

[FR Doc. E7-6349 Filed 4-5-07; 8:45 am]

BILLING CODE 6560-50-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 070326070-7070-01; I.D. 032107A]

RIN 0648-AV47

Pacific Halibut Fisheries; Guided Sport Charter Vessel Fishery for Halibut

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.