

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).

VII. 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, Aliphatic alkyl quaternaries, Food-contact sanitizers, Pesticides and pests, Quaternary ammonium compounds, Reporting and recordkeeping requirements.

Dated: June 10, 2008.

Frank Sanders,

Director, Antimicrobials 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 180.940 is amended by alphabetically adding an entry to the table in paragraph (a) to read as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

* * * * *
(a) * * *

Pesticide Chemical	CAS Reg. No.	Limits
* * Quaternary ammonium compounds, didecyl dimethyl ammonium carbonate/didecyl dimethyl ammonium bicarbonate	* * 148788-55-0/148812-654-1	* * * When ready for use, the end-use concentration of these specific ammonium compounds is not to exceed 240 ppm of active quaternary ammonium compound.
* *	* *	* *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 266

[FRL-8687-6]

RIN 2090-AA15

US Filter Recovery Services, Inc., Under Project XL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is withdrawing a final rule published on May 22, 2001 which modified the regulations under the Resource, Conservation and Recovery Act (RCRA) to enable the implementation of the US Filter Recovery Services, Inc. (USFRS) project that was developed under EPA’s Project eXcellence in Leadership (Project XL) program. Project XL was a national pilot program that allowed state and local governments, businesses and federal facilities to work with EPA to develop more cost-effective ways of achieving environmental and public health

protection. In exchange, EPA provided regulatory, policy or procedural flexibilities to conduct the pilot experiments.

DATES: The final rule is effective August 1, 2008.

FOR FURTHER INFORMATION CONTACT: Sandra Panetta, Mail Code 1870T, U.S. Environmental Protection Agency, Office of Policy, Economics and Innovation, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Ms. Panetta’s telephone number is (202) 566-2184 and her e-mail address is *panetta.sandra@epa.gov*. Further information on today’s action may also be obtained on the Internet at *http://*

www.epa.gov/projectxl/usfilter/index.htm.

SUPPLEMENTARY INFORMATION: EPA is withdrawing the final rule which published on May 22, 2001 (66 FR 28066) in response to USFRS's decision not to go forward with the XL project and the Minnesota Pollution Control Agency's (MPCA) decision not to promulgate an enabling revision to USFRS's permit. EPA provided USFRS with the regulatory flexibility to carry out a pilot project involving the use, storage and collection of ion exchange canisters for interested and approved USFRS customers under Project XL. The final rule was to remain in effect until 5 years from the date that MPCA revised USFRS's permit incorporating the changes required by the rule. Following the publication of the final rule, USFRS changed ownership. The new owners have chosen not to go forward with the XL project and therefore the project terminated by default under the change of ownership clause in the site-specific rule. MPCA did not initiate the required changes to USFRS's permit.

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, the 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 is withdrawing a rule that can no longer be implemented. The company changed ownership and the project terminated by default because the new owners did not wish to continue the project. The rule no longer applies to the company and removal of the rule has no legal effect. Notice and public procedure would serve no useful purpose and is thus unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* because it is

withdrawing a rule that was not implemented and does not impose any new requirements.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

Today's final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because it withdraws a rule that applied to only one facility and does not impose any new requirements. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute [see **SUPPLEMENTARY INFORMATION** section], it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules

with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. (**Note:** The term "enforceable duty" does not include duties and conditions in voluntary federal contracts for goods and services.) Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute [see **SUPPLEMENTARY INFORMATION** section], it is not subject to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4).

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), 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 does not have federalism implications. It 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. This rule withdraws a rule that was specific to one facility. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), 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.” This final rule does not have tribal implications, as specified in Executive Order 13175. This final rule withdraws a rule that was not implemented. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: “Protection of Children From Environmental Health Risks and Safety Risks”

(62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211 (Energy Effects)

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.

I. National Technology Transfer Advancement Act

As noted in the proposed rule, 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) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rule applies to one facility and withdraws a rule that was not implemented.

K. The 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. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today’s action under section 801 because it is a rule of particular applicability and does not impose any new requirements.

List of Subjects

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 266

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: June 26, 2008.

Stephen L. Johnson,
Administrator.

■ For the reasons set forth in the preamble, parts 261 and 266 of chapter I of title 40 of the Code of Federal Regulations are amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

■ 2. Section 261.6 is amended by revising paragraph (a)(2) introductory text and removing paragraph (a)(2)(v) to read as follows:

§ 261.6 Requirements for recyclable materials.

(a) * * *

(2) The following recyclable materials are not subject to the requirements of this section but are regulated under subparts C through N of part 266 of this chapter and all applicable provisions in parts 270 and 124 of this chapter:

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

■ 3. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 6905, 6906, 6912, 6921, 6922, 6924–6927, 6934, and 6937.

■ 4. Subpart O is removed.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 43

[WC Docket No. 07–38; FCC 08–148]

Development of Nationwide Broadband Data To Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriberhip Data, and Development of Data on Interconnected Voice Over Internet Protocol (VoIP) Subscriberhip

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In the Order on Reconsideration (Order), the Federal Communications Commission (Commission) amends the FCC Form 477 data collection to collect additional data on broadband service subscriptions. The Commission modifies Form 477 to require broadband providers to report the percentage of broadband connections in service that are residential.

DATES: The requirements in this document contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Alan Feldman, Wireline Competition Bureau, Industry Analysis and Technology Division, (202) 418–0940.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration in WC Docket No. 07–38, adopted on June 11, 2008, and released on June 12, 2008. The complete text of this Order on Reconsideration is available for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30

a.m. in the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text is available also on the Commission's Internet site at <http://www.fcc.gov>. Alternative formats are available for persons with disabilities by contacting the Consumer and Governmental Affairs Bureau, at (202) 418–0531, TTY (202) 418–7365, or at fcc504@fcc.gov. The complete text of the decision may be purchased from the Commission's duplicating contractor, Best Copying and Printing, Inc., Room CY–B402, 445 12th Street, SW., Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, or e-mail at fcc@bcpweb.com.

Synopsis of Order on Reconsideration

1. On June 12, 2008, the Commission released *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriberhip Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriberhip*, WC Docket No. 07–38, Report and Order and Further Notice of Proposed Rulemaking, FCC 08–89 (*Form 477 Order*) (published elsewhere in this issue). Pursuant to section 1. 108 of the Commission's rules, 47 CFR 1. 108, the Commission reconsiders on its own motion the reporting requirements of Form 477 as adopted by the *Form 477 Order*. In particular, the Commission expands the *Form 477 Order's* broadband connecting reporting requirement to also require reporting of the percentage of residential broadband connections.

2. While comments in the record for the *Form 477 Order* show support for distinguishing residential services from business services, the Commission maintained the pre-existing requirement to report the percentage of residential broadband connections at the state level. On May 13, 2008, after the Commission adopted the *Form 477 Order*, representatives from AT&T and Free Press met with the Commission to discuss the feasibility of extending the existing requirement that providers report state-wide percentages of residential lines to the Census Tract level. These parties proposed an approach that, subject to certain assumptions, would enable reporting of the percentage of residential broadband connections at the Census Tract level. The Commission finds that proposed approach reasonable, and therefore adopts such a requirement, as discussed below.

3. On reconsideration, the Commission concludes that extending the existing residential percentage reporting requirement will improve its understanding of the scope of broadband deployment and will assist the Commission's ongoing efforts to foster increased deployment of broadband services to residential customers in accordance with the Commission's obligation under section 706 of the Telecommunications Act of 1996, to an extent that outweighs the cost to providers. The Commission therefore requires wired, terrestrial fixed wireless, and satellite broadband service providers to report, for each Census Tract and each speed tier in which the provider offers service, the number of subscribers and the percentage of subscribers that are residential. For terrestrial mobile wireless broadband service providers, which only report broadband connection at the state level under the *Form 477 Order* as adopted, the Commission does not modify the obligation for such providers to report percentage of residential broadband connections at the state level. As in the *Form 477 Order*, the Commission finds that granting a blanket exemption to small carriers would undercut the benefits of the revised information collection by depriving the Commission and other parties of adequate information on broadband deployment and adoption in rural, unserved, and underserved areas of the nation, the areas where additional information is most needed and would be likely to have the greatest impact. Additionally, the Commission notes that all Form 477 filers must currently submit, for each state in which they provide service, the percentage of their broadband subscribers that are residential. The Commission concludes that any incremental burden associated with providing this information on the Census Tract basis is outweighed by the utility of the data the Commission will obtain. The Commission thus applies the revised requirement to all broadband service providers, regardless of size. However, we note that the *Form 477 Order* created an alternative form of reporting this information which we retain but modify slightly here. See *Form 477 Order*, paras. 15, 32. Upon a showing of significant hardship, reporting entities may report a list of service addresses or GIS coordinates of service, along with the speed and technology of service offered at each address and whether the subscriber at that service address is a residential or business subscriber, in lieu of the requirement to report subscriber counts