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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://>

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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

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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.

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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

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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.

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2. Section 261. 6 is amended by revising paragraph (a)(2) introductory text and removing paragraph (a)(2)(v) to read as follows:

Sec. 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:

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

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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.

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4. Subpart O is removed.

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