(*2*) [Reserved]

* * * * *

(521) * * *

(i) * * *

(A) * * *

(2) Rule 1110.2, ''Emissions from Stationary, Non-Road and Portable Internal Combustion Engines,'' amended on September 18, 2018.

* * * * *

(542) * * *

(i) * * *

(C) Yolo-Solano Air Quality Management District.

(*1*) Rule 2.27, ''Large Boilers,'' revised on May 15, 2019.

(2) [Reserved]

* * * * *

[FR Doc. 2021–19434 Filed 9–9–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R10–RCRA–2021–0142; FRL–8917–02–R10]

Hazardous Waste Management System; Final Exclusion for Identifying and Listing Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) (also, ''the Agency'' or ''we'' in this preamble) is taking final action to finalize technical amendments to an existing exclusion from the list of federal hazardous waste (delisting) issued to the United States Department of Energy (Energy) under the Resource Conservation and Recovery Act. These modifications address changes to the 200-Area Effluent Treatment System associated with the delisting necessary to accept liquid effluents expected to be generated from vitrification of certain low-activity mixed wastes at the Hanford Federal Facility, or Hanford Site, in Richland, Washington.

DATES: This final rule is effective on September 10, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–RCRA–2021–0142. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (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 electronically through *www.regulations.gov.* Due to restrictions related to COVID–19, docket materials are not available in hard copy form at this time. If you have further questions concerning docket materials, we recommend you telephone Dr. David Bartus at (206) 553–2804.

FOR FURTHER INFORMATION CONTACT: Dr. David Bartus, EPA, Region 10, 1200 6th Avenue, Suite 155, M/S M/S 15–H04, Seattle, Washington 98070; telephone number: (206) 553–2804; email address: *bartus.dave@epa.gov.*

As discussed in Section V of this document, the Washington State Department of Ecology is making a separata but parallels decision regarding the Petitioner's request for this modification under state authority. Information on Ecology's action may be found at *https://ecology.wa.gov/Waste-Toxics/Nuclear-waste/Public-comment-periods.*

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information

Based on a petition submitted to the EPA, Energy requested technical amendments to an existing exclusion from the list of federally listed wastes set forth in 40 Code of Federal Regulations (CFR) 261.33 previously issued to the United States Department of Energy (Energy) for the Hanford Federal Facility, or Hanford Site in Richland, Washington (Current delisting). See 40 CFR part 261, appendix IX, Table 2. This existing exclusion applies to treated effluent generated by Hanford's 200 Area Effluent Treatment Facility (ETF). The requested amendments relate to the planned startup of the Hanford Waste Treatment and Immobilization Plant (WTP). Details of Energy's requested technical amendments are more fully described in EPA's proposed regulatory amendments to the existing delisting at 86 (FR) 30237, June 7, 2021. After consideration of comments received on the EPA's proposed regulatory amendments, the EPA is finalizing these amendments as proposed. The EPA is also making one grammatical clarification identified after the proposal cited above.

II. EPA's Evaluation of Public Comments

The EPA received one anonymous set of comments on the proposed regulatory amendments. These comments, and the EPA's evaluation of them, are described below.

This commenter raises several issues. One common theme is that there are data gaps or other uncertainties regarding the ability of the Effluent Treatment Facility to manage future wastes from the WTP. The following sections address each of the comments that have a clear nexus to the proposed modification of the existing 200-Area ETF delisting.

Uncertainty Regarding the Future Capability To Treat ''the Future Unknowns''

The commenter stated ''It appears that the current petition revision is solely to address acetonitrile, but that there are other unknowns and chemicals of concern to be submitted at a later date for future delisting petitions. There is no guarantee that there will be a future capability to treat the future unknowns, leaving a considerable risk of what to do with non-compliant effluent from the WTP.''

In promulgating significant revisions to the 200–ETF delisting in 2005 (70 FR 44498, July 30, 2012), Ecology and EPA explicitly intended to broadly expand the waste streams that the ETF could process within the scope of the treated effluent delisting. More specifically, the final delisting rule stated ''The effect of these changes is to allow the 200 Area ETF to fulfill an expanded role in supporting Hanford Facility cleanup actions beyond those activities considered in the 1995 delisting rulemaking. In particular, these changes will allow the 200 Area ETF to treat mixed wastewaters from a number of additional sources beyond 242–A Evaporator process condensate (PC) upon which the original delisting was based.'' (*See* 70 FR 44497, July 30, 2012).

Consistent with this objective, the 2005 delisting modifications established a detailed mechanism based on the concept of a treatability envelope, which defines the ability of the ETF system overall to treat a wide range of waste constituents. This mechanism is based on an engineering model of the various unit operations within the ETF treatment train. Additionally, constituent-specific data for a wide range of constituents were used on a waste-stream specific basis to evaluate the treatability of that waste stream as part of the waste acceptance process for

the ETF. A target goal with this approach was to establish a delisting framework that could consider future waste streams for which characterization data was not available at the time, but that could be managed in the future. More importantly, as Ecology and EPA noted in the 2005 delisting rulemaking ''[s]ince Energy could not reasonably provide detailed characterization of wastes streams that have yet to be generated, EPA proposed a waste acceptance framework based on an engineering evaluation of waste streams. This model provides a degree of confidence that treatment in the 200 Area ETF will meet delisting exclusion limits to the same degree of confidence as if detailed waste stream characterization were available, while avoiding the need to frequently revise the delisting rule itself.'' (*See* 70 FR 44499, July 30, 2012).

Liquid effluents from the Waste Treatment Plant are one example of wastes that, in 2005, were expected to be generated in the future, but were not sufficiently characterized in order to be evaluated at that time. Since the 2005 modifications, the Department of Energy has made progress in both the design and operation of the planned WTP, including a detailed characterization of the liquid effluents from the WTP through engineering design and modelling. (*See* the engineering report and associated supporting calculation documents provided in the docket for the current delisting modifications). From this work, Energy identified a number of constituents in WTP liquid effluent that would need to be considered in the context of the ETF delisting. Energy has provided a request to the EPA (21–ECD–001774 dated June 29, 2021, available in the Hanford administrative records at *www.hanford.gov*) to consider five of these additional constituents through a modification of Tables C–1 and C–2 pursuant to Condition (1)(b) of the existing delisting. This request is consistent with the mechanism already in place under the existing delisting. Because the June 29, 2021 request is outside the scope of this modification to the delisting rule itself, the request to add five additional constituents identified in the June 29, 2021 request are not further considered in this comment response, but will be addressed by EPA's expected future response to the June 29, 2021 request.

As documented in its request for a modification of the 200 Area ETF delisting, Energy identified that acetonitrile exceeded the existing treatability envelope for that constituent. Based on our analysis of information provided by Energy for the current proposed modification, and the overall structure and content of the 2005 modifications to the delisting, EPA and Ecology have determined that with the current proposed modifications, the 200-Area ETF is fully capable of accepting reasonably expected liquid effluents from the WTP, and that there is little if any regulatory, environmental, or project risk associated with WTP liquid effluents that would warrant future modifications of the 200 Area ETF delisting.

The commenter also raised a concern about a lack of pilot scale testing for WTP effluent. In particular the commenter states ''In the case of 242–A condensate, condensates had been sampled, and surrogate wastes were processed through pilot scale ETF treatment units in order to provide an 'up front' petition'' and ''No pilot scale processes have been conducted for the current WTP EMF effluent. There is no pilot EMF and no integrated pilot scale Direct Feed Low Activity Waste (DFLAW) process treatment train. The integrated WTP 'pilot scale' equipment does not exist for DFLAW. Rather WTP itself is being built as a full-scale pilot plant, with unknown and uncertain (but certain to be expensive) results.''

Ecology and EPA acknowledge that the current proposed delisting rule modification changes are based on projections, not full-scale operations or demonstration testing. With respect to acetonitrile, the proposed changes to the delisting rule are specifically targeted to ensure an implementable mechanism is in place. This will allow demonstration testing as necessary, to expand the treatability envelope for acetonitrile. Therefore, before full-scale operation of the DFLAW configuration of the WTP begins, Energy will have performed exactly the type of direct demonstration that this comment speaks to. As discussed more fully in the 2005 delisting modification action, the current 200-Area ETF delisting is explicitly structured to accommodate new constituents where such new constituents are within the treatment capacity of ETF (as reflected in the waste-stream specific waste processing strategy required by the delisting rule). New constituents can be accepted for treatment in the 200 Area ETF without modification of the delisting. For new constituents that would require changes to a treatability envelope, the new demonstration testing mechanism in the current proposal would be applied.

Secondary Wastes From the 200-Area ETF

The commenter raises multiple issues regarding secondary waste associated with the 200-Area ETF system. In particular the commenter states ''[a] defined secondary waste disposition path is needed for the solids/brine produced by treatment of WTP EMF hot operations effluent.'' And ''DOE has initiated an additional project to install the capability to load-out brine from the ETF STT's concentrate tanks into totes for shipment off-site. This project will mitigate brine removal issues from the STT and expand the capacity of WTP EMF hot operations effluent treated[.]''

Information in the proposed delisting docket notes that ETF brine could be sent off-site for further treatment. (*See* RPP–RPT–62739, pages 35, 38, 39, and 108). While this may be a valid issue, secondary wastes are not within the scope of the proposed modifications to the 200-Area ETF delisting.

Addition of New Constituents

The commenter notes that Energy has identified multiple additional constituents associated with liquid effluent from the WTP. In particular, the commenter states ''[a]dditionally, RPP–RPT–60974 lists constituents in the projected WTP EMF hot operations wastewater profile that are not included in the delisting treatability envelope, including 2-hexanone, 2-butoxyethanol, acetate, glycolate, oxalate, boron, and manganese. These additional constituents (and their associated limits) will need to be added to the delisting approval treatability envelope. A project is underway to complete this action.'' and ''EPA has noted that acetonitrile is difficult to destroy. Will the yet undiscovered other constituents be similarly difficult to destroy, potentially leading to more 'off-site' promises and off-site risks?''

Ecology and EPA agree that the enumerated constituents have been identified by Energy. However, the mechanism established in the 2005 revisions of the ETF delisting, specifically the treatability group concept, was established to address exactly this circumstance. (*See* Condition (1)(b) of the current delisting). Ecology and EPA are expecting a written request from Energy to modify Tables C–1 and C–2 in the existing delisting, to incorporate these additional constituents. Because treatment of these constituents is expected to be well within the treatability envelope of the associated treatability group (to which they will be

added), no change to the delisting rule itself is necessary.

Ecology and EPA have determined (based on their review of the information provided by Energy regarding new constituents associated with the WTP) that the methodology used by Energy in developing this information is sound and defensible. There is no substantial risk of unidentified constituents appearing in WTP liquid effluents that would preclude acceptance of such wastes for treatment at the 200 Area ETF. Ecology and EPA also note that the 2005 revision to the ETF delisting include rigorous waste characterization and waste treatment plan requirements prior to acceptance of any waste for treatment at the 200 Area ETF, ensuring that even in the remote instance that constituents (or levels of constituents) which would cause a waste to be unacceptable for treatment at ETF are identified prior to waste receipt.

Shipment of Secondary Waste for Off-Site Treatment

The commenter also raised concerns regarding Energy's current proposal to send secondary wastes from the ETF (brine, acetonitrile concentrate) to an off-site treatment, storage or disposal facility. In particular, the commenter states ''[a]ny tank-waste-related feeds to LERF/ETF [Liquid Effluent Retention Facility/Effluent Treatment Facility] and any brines produced as a result of the changing 'projections' of WTP waste compositions as described in the current delisting petition, should be prohibited from off-site treatment. The cradle to grave liability for this waste rests with DOE, and DOE should not share it with a facility that has a poor track record and a poor environmental location.'' and the second citation in the comment discussed in the previous section ''Addition of new constituents''.

Regarding the risks associated with treatment of ETF secondary wastes at off-site facilities, Ecology ensures that all such wastes are treated, stored and disposed at approved facilities and in full compliance with all dangerous waste regulations and applicable permits in a manner fully protective of human health and the environment. However, concerns related to treatment, storage or disposal of secondary wastes are not subject to delisting and to this current delisting rule modification proposal.

Lack of Direct Liquid Effluent Characterization

The commentor made several comments regarding a lack of direct waste stream characterization and lack of pilot plant data. In particular, the commenter stated ''[i]n the case of 242–A condensate, condensates had been sampled, and surrogate wastes were processed through pilot scale ETF treatment units in order to provide an 'up front' petition[]'' and ''[n]o pilot scale processes have been conducted for the current WTP EMF effluent. There is no pilot EMF and no integrated pilot scale DFLAW process treatment train. The integrated WTP 'pilot scale' equipment does not exist for DFLAW. Rather WTP itself is being built as a full-scale pilot plant, with unknown and uncertain (but certain to be expensive) results.''

Ecology and EPA acknowledge that the current delisting rule modification changes are based on projections, not full-scale operations or demonstration testing. With respect to acetonitrile, the proposed changes to the delisting rule are specifically targeted to ensure an implementable mechanism is in place to allow demonstration testing as necessary to expand the treatability envelope for acetonitrile. Therefore, before full-scale operation of the DFLAW configuration of the WTP begins, Energy will have performed exactly the type of direct demonstration noted in these comments. As discussed more fully in the 2005 delisting modification action, the current 200-Area ETF delisting is explicitly structured to accommodate new constituents–where such new constituents are within the treatment capacity of ETF (as reflected in the waste-stream specific waste processing strategy) required by the delisting rule. Constituents can be accepted for treatment in the 200 Area ETF without modification of the delisting. For new constituents that would require changes to a treatability envelope, the new demonstration testing mechanism in the current proposal would be applied.

Alternate Treated Effluent Reuse

The commenter also raised an issue regarding alternate re-use practices as documented in RPT–63053, page 19 (This is the engineering report provided as Attachment 3 to the March 31, 2021 delisting modification request, included in the docket). Alternate reuse practices are provided for under Condition 7 of the current delisting, which is not being changed under the current modification proposal. Ecology and EPA understand that Energy will be seeking approval under Condition 7 for expanded treated effluent reuse practices at a later date. Approval of this change is outside of the current proposed delisting modification.

The EPA is also making one grammatical clarification identified after the regulatory amendment proposed rulemaking was published. The EPA is modifying the last phrase of Condition (6)(c) originally worded as ''that the Energy will be liable for Energy's reliance on the void exclusion.'' to read ''. . .that Energy will be liable for Energy's reliance on the voided exclusion.''

III. Final Rule

A. What are the terms of this exclusion?

EPA is finalizing Energy's requested amendments as proposed. Conditions of the existing delisting not modified by this action remain unchanged.

B. When is the delisting effective?

This rule is effective September 10, 2021. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA, 42 U.S.C. 6930(b)(1), 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. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

C. How does this action affect the states?

This exclusion modification is being issued under the federal RCRA delisting program. Therefore, only states subject to federal RCRA delisting provisions would be affected. This exclusion is not effective in states that have received authorization to make their own delisting decisions. Moreover, the exclusion modifications may not be effective in states having a dual system that includes federal RCRA requirements and their own requirements. The EPA allows states to impose their own regulatory requirements that are more stringent than EPA's, under Section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. As noted in the notice of proposed rulemaking, Ecology is expected to make a parallel delisting decision under their separate state authority.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is exempt from review by the Office of Management and Budget because it is a rule of particular applicability, not general applicability. The action approves a modification of an existing delisting petition under RCRA for the petitioned waste at a particular facility.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is considered an Executive Order 13771 deregulatory action. This final rule maintains meaningful burden reduction afforded by the existing exclusion consistent with changes necessary to allow management of liquid effluents expected from startup and operation of Hanford's Waste Treatment and Immobilization Plant.

C. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it only applies to a particular facility.

D. Regulatory Flexibility Act

Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provision of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

F. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538) and does not significantly or uniquely affect small governments. The action imposes no new enforceable duty on any state, local, or tribal governments or the private sector.

G. Executive Order 13132: Federalism

This action 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.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action applies only to a particular facility on non-tribal land. Thus, Executive Order 13175 does not apply to this action.

I. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

J. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

K. National Technology Transfer and Advancement Act

This action does not involve technical standards as described by the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272).

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

The EPA believes that this action does not have disproportionately high or adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The EPA has determined that this action will not have disproportionately high or 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.

M. Congressional Review Act

This action is exempt from the Congressional Review Act (5 U.S.C. 801 *et seq.*) because it is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

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

Timothy Hamlin,

Director, Land, Chemicals and Redevelopment Division.

For the reasons set out in the preamble, the EPA amends 40 CFR part 261 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. In appendix IX to part 261, amend table 2, under the entry ''United States Department of Energy (Energy)'' by:

■ a. Revising Conditions (1)(a)(i) and (ii), and (1)(b);

■ b. Redesignating Conditions (1)(c) and (d) as Conditions (1)(d) and (e);

■ c. Adding a new Conditions (1)(c);

■ d. Revising the newly redesignated Conditions (1)(e)(iv); and

■ e. In Conditions (5) under the entry for ''Organic Constituents'' by:

■ i. Removing the entry ''Dichloroisopropyl ether'' and adding an entry ''Dichloroisopropyl ether—6.0×10^{-2}'' in its place;

■ ii. Removing the entry ''[Bis(2-Chloroisopropyl) either]—6.0×10^{-2}'';

■ iii. Removing the entry ''Arochlor [total of Arochlors 1016, 1221, 1232, 1242, 1248, 1254, 1260]—5.0×10^{-4}'' and adding an entry ''Aroclor [total of Aroclors 1016, 1221, 1232, 1242, 1248, 1254, 1260]—5.0×10^{-4}'' in its place; and

■ f. Revising Condition (6)(c).

The revisions and additions read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

* * * * *

TABLE 2—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * * * *
United States Department of Energy (Energy).	Richland, Washington	* * * Conditions: (1) * * * (a) * * * (i) Complete sufficient characterization of the waste stream to demonstrate that the waste stream is within the treatability envelope of 200 Area ETF as specified in Tables C–1 and C–2 of the delisting petition dated November 29, 2001, as amended. Results of the waste stream characterization and the treatability evaluation must be in writing and placed in the facility operating record, along with a copy of Tables C–1 and C–2 of the November 29, 2001 petition, as amended. Waste stream characterization may be carried out in whole or in part using the waste analysis procedures in the Hanford Facility RCRA Permit, WA7 89000 8967; (ii) Prepare a written waste processing strategy specific to the waste stream, based on the ETF process model documented in the November 29, 2001 petition, the March 31, 2021 modification request, and Tables C–1 and C–2 of the November 29, 2001 petition, as amended. For waste processing strategies applicable to waste streams for which organic envelope data is provided in Table C–2 of the November 29, 2001 petition, as amended, Energy shall use envelope data specific to that waste stream, if available. Otherwise, Energy shall use the minimum envelope in Table C–2. (b) Energy may modify the 200 Area ETF treatability envelope specified in Tables C–1 and C–2 of the November 29, 2001 delisting petition, as amended, to reflect changes in treatment technology or operating practices upon written approval of the Regional Administrator. Requests for modification shall be accompanied by an engineering report detailing the basis for a modified treatment envelope. Data supporting modified envelopes must be based on at least four influent waste stream characterization data points and corresponding treated effluent verification sample data points for wastes managed under a particular waste processing strategy. Treatment efficiencies must be calculated based on a comparison of upper 95 percent confidence level constituent concentrations. Upon written EPA approval of the engineering report, the associated inorganic and organic treatment efficiency data may be used in lieu of those in Tables C–1 and C–2 for purposes of condition (1)(a)(i). (c) Where operation of the 200 Area ETF for purposes of gathering data supporting a modified treatability envelope pursuant to Condition (1)(b) requires operation outside of an existing treatability envelope or where a new treatability envelope is to be proposed, Energy may request interim approval to conduct such demonstration testing for purposes of developing a new or modified treatability envelope. Such a request must include the following documentation: (i) An Engineering Report documenting the basis for a modified treatability envelope. The Engineering Report shall, based on best available information, document that operation of the 200 Area ETF during the period of interim approval can be reasonably expected to produce treated effluent satisfying the delisting levels in Condition (5). The Engineering Report shall include, but is not limited to, engineering calculations, process modelling results, or performance data provided by equipment manufacturers; (ii) A demonstration test plan documenting the following: (A) The quantity and characterization of the waste stream to be used in conducting demonstration testing, and information that will be included in the waste processing strategy required by Condition (1)(a)(ii) for the demonstration testing. The test plan shall document, to a reasonable degree of certainty, that data gathered from the demonstration testing will be suitable for use in modifying the treatability envelope pursuant to Condition (1)(b). The test plan may include provisions for ‘‘spiking’’ the demonstration test waste feed to ensure that a waste feed meeting the requirements of the test plan is available;

TABLE 2—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(B) A sampling and analysis plan with supporting systematic planning documentation (*e.g.,* Data Quality Objectives) and with an associated Quality Assurance Project Plan, for all sampling and analysis specific to the demonstration testing. A minimum of four independent sample sets over the course of the demonstration test are required from both the influent to the 200 Area ETF and the effluent to the verification tanks; (C) A schedule for conducting the demonstration testing. The demonstration testing schedule may be based on functional criteria in addition to or in lieu of fixed calendar dates. The testing schedule may contain contingencies for revising the test plan should additional testing be required to obtain the required performance data points. Energy may not commence demonstration testing until written interim approval is obtained from the Regional Administrator. The effect of interim approval shall be limited to relief from the requirement of operating within the treatability envelope specified in Tables C–1 and C–2 of the November 29, 2001 delisting petition, as amended, during the period of demonstration testing. Interim approval shall remain in effect only for the duration of the demonstration testing as documented in the required testing schedule. Within 60 days following completion of demonstration testing, or such other time as may be approved in writing by the EPA, Energy shall submit a written completion report documenting analysis of data gathered during the demonstration test. Energy may request an extension of interim approval for the period of time between completion of the demonstration testing and final approval of the modified treatability envelope. The EPA may approve amendments to the demonstration test plan, including the associated schedule, as necessary to successfully complete demonstration testing. The EPA's written approval of the completion report shall be considered approval of the modified treatability envelope pursuant to Condition (1)(b).
* * * *	* * *	(e) * * * (iv) Key unit operations are defined as filtration, UV/OX, reverse osmosis, ion exchange, steam stripping, and secondary waste treatment.
* * * *	* * *	(5) * * * Dichloroisopropyl ether—6.0×10^{-2}
* * * *	* * *	Aroclor [total of Aroclors 1016, 1221, 1232, 1242, 1248, 1254, 1260]—5.0×10^{-4}
* * * *	* * *	(6) * * * (c) Records required by Condition (6)(a) must be furnished on request by EPA or the State of Washington and made available for inspection. 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 U.S.C. 1001 and 42 U.S.C. 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 the document for which I cannot personally verify its (their) truth and accuracy, I certify as the official having supervisory responsibility of 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 Energy, I recognize and agree that this exclusion of waste will be void as if it never had effect to the extent directed by EPA and that Energy will be liable for Energy's reliance on the voided exclusion."

TABLE 2—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
*	*	* * * * * * *

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[FR Doc. 2021–19048 Filed 9–9–21; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Parts 77, 78, 79, 80, 201, and 206

[Docket ID: FEMA–2019–0011]

RIN 1660–AA96

FEMA's Hazard Mitigation Assistance and Mitigation Planning Regulations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This final rule revises the Federal Emergency Management Agency's Hazard Mitigation Assistance and mitigation planning regulations to reflect current statutory authority and agency practice.

DATES: This rule is effective October 12, 2021.

ADDRESSES: The docket for this rulemaking is available for inspection using the Federal eRulemaking Portal at *http://www.regulations.gov* and can be viewed by following that website's instructions.

FOR FURTHER INFORMATION CONTACT: Katherine Fox, Assistant Administrator for Mitigation, Federal Emergency Management Agency, 202–646–1046, *Katherine.Fox5@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Discussion of the Rule

On August 28, 2020, the Federal Emergency Management Agency (FEMA) published a Notice of Proposed Rulemaking (NPRM) (85 FR 53474) to revise FEMA's Hazard Mitigation Assistance (HMA) program regulations to reflect current statutory authority and agency practice.[1] FEMA's HMA program regulations consist of the Flood Mitigation Assistance (FMA) grant program, the Hazard Mitigation Grant Program (HMGP), financial assistance for property acquisition and relocation of open space, and mitigation planning regulations. The NPRM proposed to revise the FMA grant program regulations to incorporate changes made by amendments to the National Flood Insurance Act of 1968 (NFIA).[2] The NPRM also proposed to update terms and definitions throughout the HMA and Mitigation Planning regulations to better align with uniform administrative requirements that apply to all Federal assistance.

The NPRM solicited public comment on these proposed changes. FEMA received five comments related to the rulemaking and one unrelated comment that was outside the scope of the rulemaking. (The unrelated comment was an expression of the commenter's political views and therefore not germane to this rule). FEMA does not consider the one unrelated comment in this preamble. In this final rule, FEMA adopts the changes it proposed in the NPRM with some minor revisions in consideration of the related comments as well as Title 2 of the Code of Federal Regulations (CFR) part 200. FEMA describes the comments received and changes to the final rule below.

II. Summary and Discussion of Public Comments

FEMA received five written responses to the amendments to its Hazard Mitigation Assistance (HMA) program regulations. All commenters submitted responses online at regulations.gov. FEMA reviewed each unique comment and considered whether to change the regulation in response to the comment. A summary of each comment and FEMA's response is provided below. Responses are listed in order of Docket ID number.

Individual Citizen, Docket ID FEMA–2019–0011–0003

This individual citizen recommended that FEMA eliminate the FMA program and reallocate those resources to be available for the purposes of obtaining open space. FEMA appreciates this comment and recognizes the importance of maintaining open space as a critical component of many hazard mitigation programs; indeed, this is why the acquisition of open space is one of the eligible project types under FEMA's HMA programs. However, FEMA lacks authority to eliminate the FMA program because FEMA is required by statute to implement this program (42 U.S.C. 4104c(a)(1)–(3)). FEMA also recognizes that a one size fits all approach to hazard mitigation is not aligned with the comprehensive community and hazard mitigation planning processes.

Individual Citizen, Docket ID FEMA–2019–0011–0004

This individual citizen recommended that the definition of ''community'' be expanded to include community organizations. In response, FEMA notes that ''community'' is defined in statute in 42 U.S.C. 4104c(h)(1) and as a result, FEMA cannot reinterpret, expand or change this definition. Although private nonprofits and other private sector entities such as businesses, industry associations, native corporations, and individuals are unable to apply for FEMA's HMA programs based on statute, FEMA encourages partnerships and recognizes that these entities can provide value to projects eligible for HMA funding.

The Association of State Floodplain Managers, Docket ID FEMA–2019–0011–0005

The Association of State Floodplain Managers (ASFPM) is an organization of professionals involved in floodplain management, flood hazard mitigation, the flood insurance, and flood preparedness, warning and recovery. The ASFPM Flood Mitigation Committee submitted a number of comments on behalf of the organization.

First, the ASFPM expressed concerns that the proposed 44 CFR 77.7(b) states that ''[Pre-award] costs can only be incurred during the open application period for the FMA program.'' Under FEMA's current practice, eligible pre-award costs may be incurred prior to application submission (limited by 44 CFR 79.8 to costs incurred during the open application period). However, it is not FEMA's intent to disallow otherwise

[1] FEMA has already implemented most of the changes discussed in this Final Rule through the *Hazard Mitigation Assistance Guidance* in 2013. *See* FEMA, Hazard Mitigation Assistance Guidance, Feb 27, 2015, available at *https://www.fema.gov/sites/default/files/2020-04/HMA_Guidance_FY15.pdf* (last accessed Feb 5, 2021). FEMA is now updating its HMA regulations to reflect these changes.

[2] 42 U.S.C. 4001 *et seq.*