

List of Subjects in 40 CFR Part 180

Environmental protection,
Administrative practice and procedure,
Agricultural commodities, Pesticides
and pests, Reporting and recordkeeping
requirements.

Dated: May 29, 2019.

Michael Goodis,

*Director, Registration 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. In the table in § 180.658(a)(1):

■ a. Remove the entries “Brassica, head
and stem, subgroup 5A” and “Brassica,
leafy greens, subgroup 5B”;

■ b. Add alphabetically the
commodities “Brassica, leafy greens,
subgroup 4–16B”, “Bushberry subgroup
13–07B”, and “Caneberry subgroup 13–
07A”;

■ c. Remove the entry “Canola”;

■ d. Add alphabetically the commodity
“Celtuce”;

■ e. Remove the entry “Cotton, seed”;

■ f. Add alphabetically the commodity
“Fennel, Florence, fresh leaves and
stalk”;

■ g. Remove the entry “Fruit, stone,
group 12”;

■ h. Add alphabetically the
commodities “Fruit, stone, group 12–
12”, “Kohlrabi”, “Leaf petiole vegetable
subgroup 22B”, and “Leafy greens
subgroup 4–16A”;

■ i. Revise the entry “Nut, tree, group
14”;

■ j. Add alphabetically the commodities
“Nut, tree, group 14–12” and “Oilseed
group 20”;

■ k. Revise the entry “Pistachio”;

■ l. Remove the entry “Sunflower,
seed”;

■ m. Add alphabetically the commodity
“Vegetable, brassica, head and stem,
group 5–16”;

■ n. Remove the entry “Vegetable, leafy,
except brassica, group 4”; and

■ o. Add footnote 1 to the table.

The additions and revisions read as
follows:

**§ 180.658 Penthiopyrad; tolerances for
residues.**

(a) * * *

(1) * * *

Commodity	Parts per million
* * * *	*
Brassica, leafy greens, subgroup 4–16B	50

Commodity	Parts per million
* * * *	*
Bushberry subgroup 13–07B	6
Caneberry subgroup 13–07A	10
Celtuce	30
* * * *	*
Fennel, Florence, fresh leaves and stalk	30
* * * *	*
Fruit, stone, group 12–12	4
* * * *	*
Kohlrabi	5
Leaf petiole vegetable subgroup 22B	30
Leafy greens subgroup 4–16A ...	30
* * * *	*
Nut, tree, group 14 ¹	0.06
Nut, tree, group 14–12	0.05
* * * *	*
Oilseed group 20	1.5
* * * *	*
Pistachio ¹	0.06
* * * *	*
Vegetable, brassica, head and stem, group 5–16	5
* * * *	*

¹ This tolerance expires on December 6,
2019.

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[FR Doc. 2019–11676 Filed 6–5–19; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Part 271**

**[EPA–R05–RCRA–2018–0228; FRL–9994–
75–Region 5]**

**Michigan: Final Authorization of State
Hazardous Waste Management
Program Revisions**

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection
Agency (EPA) is granting Michigan final
authorization for changes to its
hazardous waste program under the
Resource Conservation and Recovery
Act (RCRA). The Agency published a
proposed rule on October 10, 2018, and
provided for public comment. No
comments were received on the
proposed revisions. No further
opportunity for comment will be
provided.

DATES: This final authorization is
effective June 6, 2019.

ADDRESSES: The EPA has established a
docket for this action under Docket ID
No. EPA–R05–RCRA–2018–0228. The
Docket ID No. was identified as EPA–
R05–RCRA–2017–0381 in the proposed
rule published in the October 10, 2018,
Federal Register at 83 FR 50868, but
that Docket ID No. was incorrect. All
documents in the docket are listed on
the <http://www.regulations.gov> website.
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 electronically through [http://](http://www.regulations.gov)
www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:**A. What changes to Michigan's
hazardous waste program is EPA
authorizing with this action?**

On March 2, 2018, Michigan
submitted a complete program revision
application seeking authorization of
changes to its hazardous waste program
in accordance with 40 CFR 271.21. EPA
now makes a final decision that
Michigan's hazardous waste program
revisions that are being authorized are
equivalent to, consistent with, and no
less stringent than the Federal program,
and therefore satisfy all the
requirements necessary to qualify for
final authorization. For a list of State
rules being authorized with this final
rule, please see the proposed rule
published in the October 10, 2018,
Federal Register at 83 FR 50869.

**B. Which revised state rules are
different from the federal rules?**

See the October 10, 2018, proposed
rule for a description of which state
rules are different from the federal rules,
with one exception. The proposed rule
incorrectly stated that Michigan has
proposed additions to its Universal
Wastes that will add Antifreeze, Aerosol
Cans and Paint Wastes that are not
already regulated as hazardous waste.
This statement should be disregarded.

C. What is codification and is EPA codifying the Michigan's hazardous waste program as authorized in this rule?

Codification is the process of placing citations and references to the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by adding those citations and references to the authorized state rules in 40 CFR part 272. EPA is not codifying the authorization of Michigan's revisions at this time. However, EPA reserves the ability to amend 40 CFR part 272, subpart X for the authorization of Michigan's program changes at a later date.

D. Statutory and Executive Order Reviews

This final authorization revises Michigan's authorized hazardous waste management program pursuant to Section 3006 of RCRA and imposes no requirements other than those currently imposed by state law. For further information on how this authorization complies with applicable executive orders and statutory provisions, please see the proposed rule published in the October 10, 2018 **Federal Register** at 83 FR 50869. 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. EPA will submit a report containing this document 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 in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This final action will be effective on June 6, 2019.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as

amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: May 21, 2019.

Cheryl L. Newton,

Acting Regional Administrator, Region 5.

[FR Doc. 2019-11895 Filed 6-5-19; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS-1708-N]

Medicare Program; Explanation of Federal Fiscal Year (FY) 2004, 2005, and 2006 Outlier Fixed-Loss Thresholds as Required by Court Rulings

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Clarification.

SUMMARY: In accordance with court rulings in cases that challenge the federal fiscal year (FY) 2004, 2005, and 2006 outlier fixed-loss threshold (FLT) rulemakings, this document provides further explanation of certain methodological choices made in the FLT determinations for those years.

DATES: June 6, 2019.

FOR FURTHER INFORMATION CONTACT: Don Thompson, (410) 786-6504.

SUPPLEMENTARY INFORMATION:

I. Background

On May 19, 2015, in *District Hospital Partners v. Burwell*, 786 F.3d 46 (D.C. Cir. 2015), the Court of Appeals for the District of Columbia Circuit held that the FY 2004 fixed-loss threshold (FLT) was inadequately explained in the federal fiscal year (FY) 2004 hospital inpatient prospective payment systems (IPPS) final rule. The court of appeals ordered the district court to remand to CMS for further explanation of the handling of data pertaining to 123 hospitals the agency had identified as likely to have engaged in "turbocharging," that is, manipulating their charges to obtain greater outlier payments. The United States District Court for the District of Columbia then remanded to the Secretary in accordance with the decision of the Court of Appeals. Order, *Dist. Hosp. Partners, L.P. v. Burwell*, Civil Action No. 11-0116 (ESH) (D.D.C. August 13, 2015).

On September 2, 2015, the District Court issued an order in a separate case,

Banner Health v. Burwell, No. 10-1638 (ECF Nos. 149 and 150), 126 F. Supp. 3d 28 (D.D.C. 2015), remanding for additional explanation of the FLT from the FY 2004 final rule consistent with the D.C. Circuit's decision in *District Hospital Partners*. The court stated that the agency should explain further why it did not exclude data from the 123 hospitals from the outlier charge inflation calculation used to produce estimates of future Medicare payments for FY 2004.

In the January 22, 2016 **Federal Register** (81 FR 3727), we published an additional explanation in response to these court orders. In the October 14, 2016 **Federal Register** (81 FR 70980), we published a minor, non-substantive correction to the January 2016 document.

In *Banner Health v. Price*, 867 F.3d 1323 (D.C. Cir. 2017), the court of appeals reviewed the January 2016 document and found that the agency still had not adequately explained why the agency, in the FY 2004 rulemaking, did not exclude the charge data from the 123 hospitals it had identified as likely turbochargers when calculating the charge inflation factor used to transform historical charges into future charges for purposes of the agency's projections. The court of appeals also found that the agency had not adequately explained why it did not apply a downward adjustment to hospitals' cost-to-charge ratios when determining the FLTs for FYs 2004, 2005, and 2006, an issue not addressed in the Court of Appeals decision in *District Hospital Partners*. The court in *Banner Health* ordered the district court to remand to CMS to provide additional explanation on these two points. The district court issued a remand order on April 12, 2018. The district court also entered a similar order with respect to the FY 2004 determination in another case, *District Hospital Partners, L.P. v. Azar*, 320 F. Supp. 3d 42 (D.D.C. 2018).

We are issuing this document to provide the additional explanation required by these decisions.

II. Provisions of the Explanation

A. Inclusion of Data Pertaining to 123 Hospitals Identified as Likely Turbochargers in the Calculation of Estimated Charge Inflation for FY 2004

The first issue pertains to the use of data pertaining to 123 hospitals whom we described in a March 5, 2003 proposed rule (68 FR 10420), as hospitals likely to have engaged in turbocharging. We chose to calculate the FY 2004 charge inflation adjustment using data that incorporated data