

Revision Checklist 129 Summary

Rule Title:	Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Treatability Studies Sample Exclusion
Checklist Title:	Revision of Conditional Exemption for Small Scale Treatability Studies
Reference:	59 <u>FR</u> 8362-8366
Promulgation Date:	February 18, 1994
Effective Date:	February 18, 1994
Cluster:	RCRA Cluster IV
Provision Type:	Non-HSWA
Linkage:	Revision Checklists 49 and 141
Optional:	Yes

Summary. On July 19, 1988 (53FR 27290; Revision Checklist 49) EPA promulgated the Treatability Sample Exemption Rule which conditionally exempted from Subtitle C regulation samples of hazardous waste collected for purposes of conducting small-scale treatability studies. That rule was promulgated in recognition of the inhibiting effect of the stringent RCRA Subtitle C requirements on the development of new treatment capacity and the minimal public health and environmental risks involved in conducting small-scale treatability studies. This February 18, 1994 rule revises that existing rule, the principal change being to increase the quantity and time limits for major classes of contaminated media (specifically soil and debris) used in treatability studies without triggering RCRA Subtitle C requirements. The rule increases the exempt amounts from 1000 kg to 10,000 kg of media contaminated with non-acute hazardous waste and from 250 kg to 2500 kg of media contaminated with acute hazardous waste, when used in treatability studies. To the initial period of two years for completing testing, this new rule also allows the Administrator to grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The existing case-by-case variance provision at 40 CFR 261.4(e)(3) has also been increased from 500 kg to 5,000 kg for media contaminated with non-acute hazardous waste and from 250 kg to 2,500 kg for media contaminated with acute hazardous waste. Provisions have been added to allow these additional quantities to be requested prior to commencing treatability studies. This revised rule is based in part on the recognition that larger quantities of contaminated media are often needed for treatability testing by technology developers and that larger-scale testing would also greatly increase confidence with which remedial action decision-makers make remedy selection, thus improving CERCLA response activities and RCRA corrective actions.

State Authorization: This rule is placed in RCRA Cluster IV; the changes addressed by it were promulgated under non-HSWA authority. Thus, this regulation is immediately applicable only in states that do not have final authorization for a base RCRA program. For states that are authorized for a base program, these changes do not go into effect until the state becomes authorized for them. Like the initial Treatability Exemption rule, these changes are considered optional as they are less stringent or reduce the scope of the federal program. The Agency encourages the states to adopt these changes and plans to work with states to encourage timely adoption of this rule because of its benefits to the development of treatment capacity. For states that choose to adopt these changes, the state modification deadline is July 1, 1995 (or July 1, 1996 if a State Statutory change is necessary). The State Revision Application must include applicable regulations, AG statement addendum, Revision Checklist 129, other associated checklists and other application materials, i.e. a program description and an MOA, as determined by the Regional office.

Attorney General's Statement Entry. The following entry should be placed at Subsection I DD in the Model Revision Attorney General's Statement.

Revision Checklist 129 Summary (cont'd)

DD. [OPTIONAL]: This is a reduced requirement.] State statutes and regulations increase the quantity and time limits for contaminated media used in treatability studies, as indicated in Revision Checklist 129.

Federal Authority: RCRA §3001; 40 CFR 261.4(e)(2)(i)&(ii), (e)(3), (f)(3), (f)(4), and (f)(5) as amended February 18, 1994 (59 FR 8362).

Citation of Laws and Regulations; Date of Enactment and Adoption

Remarks of the Attorney General