

US EPA ARCHIVE DOCUMENT

exempt from complying with this regulation.

(i) *Enforcement.* Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this regulation. In the navigable waters of the United States, when immediate action is required and representatives of the Coast Guard are not present or not present in sufficient force to exercise effect control in the vicinity of a tank ship, any Federal Law Enforcement Officer or Washington Law Enforcement Officer may enforce the rules contained in this regulation pursuant to 33 CFR 6.04–11. In addition, the Captain of the Port may be assisted by other Federal, State or local agencies in enforcing this rule.

Dated: October 15, 2002.

**D. Ellis,**

*Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[FRL–7400–1]

#### Massachusetts: Extension of Interim Authorization of State Hazardous Waste Management Program Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Immediate final rule.

**SUMMARY:** The EPA is proposing to extend the expiration date from January 1, 2003 to January 1, 2006 for the interim authorization under the Resource Conservation and Recovery Act, of the Massachusetts program for regulating Cathode Ray Tubes (“CRTs”). Massachusetts was granted interim authorization to assume the responsibility under the Toxicity Characteristics Rule (“TC Rule”) for regulating CRTs, on November 15, 2000. That previously granted interim authorization is due to expire on January 1, 2003 and needs to be extended for the reasons explained below. EPA is publishing this rule to authorize the extension without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this extension during the comment period, the decision to extend the interim authorization will take effect. If we get comments that oppose this action, we will publish a document in the **Federal**

**Register** withdrawing this rule before it takes effect and the separate document in the proposed rules section of this **Federal Register** will serve as the proposal to authorize the changes.

**DATES:** This extension of the interim authorization will become effective on December 30, 2002 and remain in effect until January 1, 2006 unless EPA receives adverse written comment by December 2, 2002. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this extended authorization will not take immediate effect.

**ADDRESSES:** Send any written comments to Robin Biscaia, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023; telephone: (617) 918–1642. Documents related to EPA’s previous decision to grant interim authorization (regarding regulation of CRTs) and the materials which EPA used in now considering the extension (the “Administrative Record”) are available for inspection and copying during normal business hours at the following locations: Massachusetts Department of Environmental Protection Library, One Winter Street—2nd Floor, Boston, MA 02108, business hours: 9 a.m. to 5 p.m., telephone: (617) 292–5802; or EPA New England Library, One Congress Street—11th Floor, Boston, MA 02114–2023, business hours: 10 a.m. to 3 p.m., Monday through Thursday, telephone: (617) 918–1990.

**FOR FURTHER INFORMATION CONTACT:** Robin Biscaia, Hazardous Waste Unit, Office of Ecosystems Protection, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023, telephone: (617) 918–1642.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Why Are Revisions to State Programs Necessary?**

Pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, states which have been authorized to administer the Federal hazardous waste program under RCRA section 3006(b), 42 U.S.C. 6926(b), have a continuing obligation to update their programs to meet revised Federal requirements. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revise their programs because of changes to EPA’s regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

For example, States must revise their programs to regulate the additional wastes determined to be hazardous as a result of using the Toxicity Characteristics Leaching Procedure (“TCLP”) test adopted by the EPA on March 29, 1990, in the TC Rule. 55 FR 11798. The EPA may grant final authorization to a State revision if it is equivalent to, consistent with, and no less stringent than Federal RCRA requirements.

In the alternative, as provided by RCRA section 3006(g), 42 U.S.C. 6926(g), for updated Federal requirements promulgated pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA), such as the TC Rule, the EPA may grant interim (*i.e.*, temporary) authorization to a State revision so long as it is *substantially* equivalent to Federal RCRA requirements.

##### **B. What Decisions Have We Made in This Rule?**

###### *1. Background*

The TC Rule grants authority over wastes which first became classified as hazardous as a result of using the “TCLP” test, such as many CRTs. *See* 55 FR 11798, 11847–11849 (March 29, 1990). CRTs are the glass picture tubes found inside television and computer monitors. Because of their high lead content, CRTs generally fail the TCLP test. Thus, under the EPA’s current regulations, CRTs generally become hazardous wastes when they are discarded (*e.g.*, when sent for disposal or reclamation rather than being reused). However, the EPA has recognized that certain widely generated wastes may pose lower risks during accumulation and transport than other hazardous wastes. Thus the EPA has listed certain wastes as Universal Wastes which are subject to reduced regulation and has allowed authorized States to add other appropriate wastes as Universal Wastes. *See* 40 CFR part 273.

On August 4, 2000, Massachusetts adopted regulations which revised its regulatory program as it relates to CRTs. The State adopted a three-part approach: (1) Intact CRTs being disposed are subject to full hazardous waste requirements (along with crushed or ground up CRTs); (2) intact CRTs that may still be reused (without reclamation) generally are considered commodities exempt from hazardous waste requirements; and, finally, (3) intact CRTs which will not be reused, but which instead will be crushed and recycled (*i.e.*, as spent materials being reclaimed), are subject to reduced

requirements which track some but not all of the EPA's Universal Waste Rule requirements. As explained in the **Federal Register** on November 15, 2000, 65 FR 68915, and further explained in a legal memorandum contained in the Administrative Record, dated January 21, 2000 entitled "Massachusetts' Regulation of CRTs," the EPA determined that the State program was "substantially equivalent" to Federal RCRA requirements. Therefore, the EPA granted Massachusetts interim authorization to regulate CRTs under the TC Rule. The State program was determined to be only "substantially" rather than fully equivalent to the federal RCRA program because the maximum flexibility allowed under the federal program was to regulate hazardous CRTs being reclaimed as a Universal Waste, whereas Massachusetts regulates intact CRTs heading to reclamation less stringently in certain respects than does the Universal Waste Rule.

## 2. Today's Decision

There have been no changes in either the Federal or Massachusetts regulations applicable to CRTs since November 15, 2000. Therefore, the State program remains substantially equivalent (but not fully equivalent) to current Federal RCRA requirements, for the reasons previously stated. However, in line with the general deadline for the expiration of interim authorizations set in 40 CFR 271.24, the interim authorization of the Massachusetts CRT program is set to expire on January 1, 2003. Absent further EPA action, the authority to regulate the CRTs would revert to the EPA as of January 1, 2003, and full hazardous waste regulations would become applicable to many CRTs in Massachusetts.

Like Massachusetts, the EPA has recognized that regulating intact CRTs as a fully regulated hazardous waste can discourage recycling of the CRTs and, thus, be counter-productive. Therefore, it is environmentally important not to allow the interim authorization of the Massachusetts regulations to expire.

On June 12, 2002, the EPA proposed to adopt regulations to reduce RCRA regulatory requirements for CRTs. See 67 FR 40508. If the proposed rule is adopted, intact CRTs heading for reclamation will no longer be classified as solid or hazardous wastes. Thus, they will no longer need to be handled in accordance with either full hazardous waste or Universal Waste Rule requirements. Therefore, if and when the proposed rule is adopted, the Massachusetts CRT program will no longer be less stringent than the Federal

program. It will be equivalent to the Federal program in exempting commodity CRTs from regulations while fully regulating CRTs being disposed, and will be more stringent than the Federal program in partially regulating intact CRTs being reclaimed and in fully regulating crushed or ground up CRTs even when they are recycled. However, the final EPA CRT rule is not expected to be issued until after January 1, 2003.

The EPA believes that extension of the interim authorization of the Massachusetts CRT program beyond the generally applicable deadline of January 1, 2003 is appropriate in the unusual circumstances presented. An extension to January 1, 2006 will enable the Massachusetts program to continue to operate pending the EPA's final decision on its own CRT Rule. This should give the EPA sufficient time to finalize its own CRT Rule. If the final EPA CRT Rule is the same as the proposed rule or otherwise remains at least as flexible as the Massachusetts CRT Rule, then the EPA should be able to later grant final authorization to the Massachusetts CRT Rule, as soon as the EPA CRT Rule is adopted. If the final EPA CRT Rule is more stringent than the Massachusetts CRT Rule, the EPA and State can address the resulting situation at that time. If the final EPA CRT Rule has not been issued by January 1, 2006, the EPA may consider a further extension of the interim authorization of the Massachusetts CRT Rule, but is making no decision on such a further extension at this time.

## C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that for CRTs regulated under the TC Rule, a facility in Massachusetts subject to RCRA will have to continue to comply with the authorized State requirements instead of the Federal requirements in order to comply with RCRA. The Commonwealth of Massachusetts has enforcement responsibilities under its State hazardous and solid waste programs for violations of such programs, but EPA also retains its full authority under RCRA sections 3007, 3008, 3013, and 7003.

This action does not impose additional requirements on the regulated community because the State regulations for which interim authorization to Massachusetts is being extended by today's action are already in effect under State law, and are not changed by today's action.

## D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

## E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

## F. What Has Massachusetts Previously Been Authorized for?

Massachusetts initially received Final Authorization on January 24, 1985, effective February 7, 1985 (50 FR 3344) to implement its base hazardous waste management program. EPA granted authorization for changes to their program on September 30, 1998, effective November 30, 1998 (63 FR 52180) and October 12, 1999, effective that date (64 FR 55153), in addition to the previously discussed November 15, 2000 authorization of the Massachusetts CRT Rule (65 FR 68915).

## G. What Changes Are We Authorizing in Today's Action?

The Massachusetts regulations authorized by today's action are the same as those listed in the chart set forth in the **Federal Register** document dated November 15, 2000 (65 FR 68915, 68918). Today's action simply extends the interim authorization previously granted from January 1, 2003 to January 1, 2006.

## H. Where Are the Revised State Rules Different From the Federal Rules?

The differences between the State and Federal regulations with respect to CRTs are discussed in the November 15, 2000 **Federal Register** document. Notwithstanding these differences, the EPA believes that the State regulations are substantially equivalent to the Federal regulations and, thus, the State

continues to qualify to have interim authorization. During the interim authorization period, for CRTs regulated under the TC Rule, these State regulations will operate in lieu of the Federal hazardous waste regulations.

#### *I. Who Handles Permits After This Authorization Takes Effect?*

Massachusetts will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Massachusetts is not yet authorized.

#### *J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in Massachusetts?*

Massachusetts is not authorized to carry out its hazardous waste program in Indian country within the State. Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in these lands.

#### *K. What Is Codification and Is EPA Codifying Massachusetts' Hazardous Waste Program as Authorized in This Rule?*

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We are today authorizing, but not codifying the enumerated revisions to the Massachusetts program. We reserve the amendment of 40 CFR part 272, subpart W for the codification of Massachusetts' program until a later date.

#### *L. Administrative Requirements*

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and, therefore, this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required

by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action 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 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

Under RCRA section 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 action, nevertheless, will be effective 60 (sixty) days after publication pursuant to the procedures governing immediate final rules.

#### **List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indians-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, 6974(b).

Dated: October 17, 2002.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*

[FR Doc. 02-27341 Filed 10-30-02; 8:45 am]

**BILLING CODE 6560-50-P**

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## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 73**

[DA 02-2612; MM Docket No. 00-31; RM-9815, RM-10014, RM-10095]

### **Radio Broadcasting Services; Nogales, Vail and Patagonia, AZ**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document dismisses an Application for Review filed by Big Broadcast of Arizona, LLC directed to the *Report and Order* in this proceeding. See 65 FR 11540, published March 3, 2000. With this action, the proceeding is terminated.

**FOR FURTHER INFORMATION CONTACT:** Robert Hayne, Media Bureau (202) 418-2177.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 00-31, adopted October 9, 2002, and released October 18, 2002.