

US EPA ARCHIVE DOCUMENT

purposes. The Compact Council Chairman shall refer the response letter to the Sanctions Committee for appropriate action.

(4) If no response letter is received under paragraph (b)(3) of this section within the allotted time, or if the Sanctions Committee deems the response to be insufficient, the Sanctions Committee shall report its finding to the Compact Council. If the Compact Council agrees with the Sanctions Committee's finding, the Compact Council Chairman or the FBI Director or Designee shall direct the FBI Compact Officer to take appropriate action to suspend noncriminal justice access to the III System by the offending agency. If the offending agency is a criminal justice agency, the Compact Council Chairman shall request the Director of the FBI to take appropriate action to suspend noncriminal justice access to the III System by the offending agency.

(5) Reinstatement of full service by the FBI shall occur after the Compact Officer of the FBI or a Party State or the chief administrator of the state repository in a Nonparty State provides satisfactory documentation that the deficiencies have been corrected or a process has been initiated to correct the deficiencies. Upon approval of the documentation by the Sanctions Committee in consultation with the Compact Council Chairman, the Compact Council Chairman or the FBI Director or Designee shall request the FBI Compact Officer to take appropriate action to reinstate full service. Letters to this effect shall be sent to all persons who have previously received letters relating to the deficiencies and resulting suspension of service. The decision to reinstate full service shall be considered for ratification by the Compact Council at its next regularly scheduled meeting.

(c) For good cause, the Compact Council Chairman and the FBI Director or Designee shall be authorized to extend the number of days allowed for the response letters required by paragraphs (b)(1) through (3) of this section.

#### **§ 907.5 Sanction adjudication.**

(a) A Compact Officer of the FBI or a Party State or the chief administrator of the state repository in a Nonparty State may dispute a sanction under this Part by asking the Compact Council Chairman for an opportunity to address the Compact Council.

(b) Unresolved disputes based on the Compact Council's issuance of sanctions under this Part may be referred to the Compact Council Dispute Adjudication Committee when pertaining to disputes

described under ARTICLE XI(a) of the Compact.

(c) Nothing prohibits the Compact Council from requesting the FBI to exercise immediate and necessary action to preserve the integrity of the III System pursuant to Article XI(b) of the Compact.

Dated: November 1, 2005.

**Donna M. Uzzell,**

*Compact Council Chairman.*

[FR Doc. 05-22850 Filed 11-17-05; 8:45 am]

**BILLING CODE 4410-02-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 271**

[FRL-7998-8]

#### **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 extending the expiration date from January 1, 2006 to January 1, 2011 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 with an expiration date of January 1, 2003. This expiration date was subsequently extended until January 1, 2006. As this interim authorization is soon due to expire, an extension is needed 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 January 17, 2006 and remain in effect until January 1, 2011 unless EPA receives adverse written comment by

December 19, 2005. 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:** Submit your comments by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. E-mail: Robin Biscaia, [biscaia.rob@epa.gov](mailto:biscaia.rob@epa.gov).

3. Mail: Robin Biscaia, Hazardous Waste Unit (CHW), EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114-2023;

4. Hand Delivery or Courier. Deliver your comments to Robin Biscaia, Hazardous Waste Unit, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114-2023;

*Instructions:* We must receive your comments by December 19, 2005. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov), or e-mail. The [Federal regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Dockets containing copies of the Commonwealth of Massachusetts' revision application, the materials which the EPA used in evaluating the revision, and materials relating to the State-specific and site-specific Federal regulation changes, have been established at the following two locations: (i) Massachusetts Department of Environmental Protection, Business Compliance Division, One Winter Street—8th Floor, Boston, MA 02108, business hours Monday through Friday 9 a.m. to 5 p.m., tel: (617) 556-1096; and (ii) EPA Region I Library, One

Congress Street—11th Floor, Boston, MA 02114—2023, business hours Monday through Thursday 10 a.m. to 3 p.m., tel: (617) 918–1990. Records in these dockets are available for inspection and copying during normal business hours.

**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. Absent further EPA action, the authority to regulate the CRTs would revert to the EPA as of January 1, 2006, 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, 2006.

The general deadline for the expiration of interim authorization for HSWA regulations set in 40 CFR 271.24 is 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, 2011 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.

### **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), October 12, 1999, effective that date (64 FR 55153) and March 12, 2004, effective that date (69 FR 11801), in addition to the previously discussed November 15, 2000 interim authorization of the Massachusetts CRT Rule (65 FR 68915) and the extension EPA granted to that rule on October 31, 2002, effective January 1, 2003 (67 FR 66338).

### **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, 2006 to January 1, 2011.

### **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 (land of the Wampanoag tribe). 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 (Pub. L. 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 13175 (65 FR 67249, November 9, 2000). 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. 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.

Under RCRA 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, 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, 6974(b).

Dated: November 9, 2005.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*

[FR Doc. 05-22891 Filed 11-17-05; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 224

[Docket No. 041213348-5285-02; I.D. 110904E]

RIN 0648-AS95

#### Endangered and Threatened Wildlife and Plants: Endangered Status for Southern Resident Killer Whales

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NOAA's National Marine Fisheries Service (NMFS) is issuing a final determination to list the Southern Resident killer whale distinct population segment (DPS) as endangered under the Endangered Species Act of (ESA) 1973. Following an update of the status review of Southern Resident killer whales (*Orcinus orca*) under the ESA, NMFS published a proposed rule to list the Southern Resident killer whale DPS as threatened on December 22, 2004. After considering public comments on the proposed rule and other available information, we reconsidered the status of Southern Residents and are issuing a final rule to list the Southern Resident killer whale DPS as an endangered species. The prohibition on take of an endangered species will go into effect at the time this final rule is effective (see **DATES**).

**DATES:** This final rule is effective February 16, 2006.

**ADDRESSES:** Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection by appointment during normal business hours at the NMFS, Protected Resources Division, 7600

Sand Point Way NE, Seattle, WA, 98115. The final rule, references and other materials relating to this determination can be found on our website at [www.nwr.noaa.gov](http://www.nwr.noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Ms. Lynne Barre at the address above or at (206) 526-4745, or Ms. Marta Nammack, Office of Protected Resources, Silver Spring, MD (301) 713-1401, ext. 180.

#### SUPPLEMENTARY INFORMATION:

#### Background

On May 2, 2001, we received a petition from the Center for Biological Diversity and 11 co-petitioners (CBD, 2001) to list Southern Resident killer whales as threatened or endangered under the ESA. On August 13, 2001, we provided notice of our determination that the petition presented substantial information indicating that a listing may be warranted and requested information to assist with a status review to determine if Southern Resident killer whales warranted listing under the ESA (66 FR 42499). To assist in the status review, we formed a Biological Review Team (BRT) of scientists from our Alaska, Northwest, and Southwest Fisheries Science Centers. We convened a meeting on September 26, 2001, to gather technical information from co-managers, scientists, and individuals having research or management expertise pertaining to killer whale stocks in the North Pacific Ocean. Additionally, the BRT discussed its preliminary scientific findings with Tribal, State and Canadian co-managers on March 25, 2002. The BRT considered information from the petition, the September and March meetings, and comments submitted in response to our information request in preparing a final scientific document on Southern Resident killer whales (NMFS, 2002).

After conducting the status review, we determined that listing Southern Resident killer whales as a threatened or endangered species was not warranted because Southern Resident killer whales did not constitute a species as defined by the ESA. The ESA's definition of species includes subspecies and "distinct population segments." The agency considers a group of organisms to be a DPS when it is both discrete from other populations and significant to the taxon to which it belongs (61 FR 4722; February 7, 1996). We considered Southern Resident killer whales in the context of the global taxon (i.e., all killer whales worldwide) and found that the population did not meet the significance criterion for consideration as a DPS. The finding, along with supporting documentation, was published on July