

US EPA ARCHIVE DOCUMENT

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

[EPA-R01-RCRA-2010-0561; FRL-9203-3]

**Rhode Island: Final Authorization of State Hazardous Waste Management Program Revisions****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** The State of Rhode Island has applied to EPA for final authorization of certain changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA determined that these changes satisfy all requirements needed to qualify for final authorization and recently authorized all but one of the State's changes through an immediate final rule. However, EPA also stated in that rule that it would address the authorization of the state's requirements regarding EPA's Zinc Fertilizer Rule in a separate final rule (following the proposed rule) as it anticipated possible adverse comments that would oppose the Federal authorization of Rhode Island for this particular rule. There was, in fact, an adverse comment filed objecting to EPA authorizing Rhode Island for the Zinc Fertilizer Rule. Today's action responds to that comment but does not agree with it and, thus, finalizes the Agency's decision to authorize Rhode Island for EPA's Zinc Fertilizer Rule. In addition, the comment also objected to EPA authorizing Rhode Island for the Burden Reduction Initiative. Accordingly, EPA is partially withdrawing the immediate final rule insofar as it authorized Rhode Island for the Burden Reduction Initiative. However, EPA is now responding to the comment and again not agreeing with it and, thus, today's action also authorizes Rhode Island for the Burden Reduction Initiative. No objections were filed to EPA regarding authorizing the other revisions submitted by Rhode Island. Accordingly, the immediate final rule is not being withdrawn as to these other revisions, which will continue to be authorized pursuant to the immediate final rule.

**DATES:** Today's decision approving the authorization of Rhode Island's hazardous waste revisions as they relate to the Zinc Fertilizer Rule and Burden Reduction Initiative will be effective September 24, 2010 (as are other aspects of Rhode Island's hazardous waste program revisions approved in the aforementioned immediate final rule).

**ADDRESSES:** *Docket:* EPA has established a docket for this action under Docket ID No. EPA-R01-RCRA-2010-0561. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although it may be listed in the index, some information might not be 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 either electronically through <http://www.regulations.gov> or in hard copy at the following two locations: (i) Rhode Island Department of Environmental Management, 235 Promenade St., Providence, RI 02908-5767, by appointment only through the Office of Technical and Customer Assistance, tel: (401) 222-6822 and (ii) EPA Region I Library, 5 Post Office Square, 1st Floor, Boston, MA 02109-3912, by appointment only, (617) 918-1990.

**FOR FURTHER INFORMATION CONTACT:** Robin Biscaia, RCRA Waste Management Section, Office of Site Remediation and Restoration (OSRR 07-1), EPA New England—Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109-3912; telephone number: (617) 918-1642; fax number: (617) 918-0642, e-mail address: [biscaia.robin@epa.gov](mailto:biscaia.robin@epa.gov).

**SUPPLEMENTARY INFORMATION:** As stated in EPA's recent immediate final rule, 75 FR 43409 (July 26, 2010), because of anticipated adverse public comment on the authorization of Rhode Island's Hazardous Waste Program revisions for EPA's Zinc Fertilizer Rule, the authorization of that rule never was included in the immediate final rule. Instead, we are in today's action making a separate determination (following an opportunity for public comment) regarding the authorization of Rhode Island for the Zinc Fertilizer Rule. As noted above, in response to the adverse public comment, we also are partially withdrawing the immediate final rule insofar as it authorized Rhode Island for the Burden Reduction Initiative. However, we are not agreeing with the comment and, thus, are authorizing Rhode Island for the Burden Reductive Initiative.

For general information regarding why revisions to state programs are necessary and what aspects of Rhode Island's hazardous waste program have been previously authorized as well those provisions which were authorized by the immediate final rule referenced above, please see 75 FR 43409 (July 26, 2010).

The following information relates only to the authorization of Rhode Island for hazardous waste revisions as they relate to EPA's Zinc Fertilizer Rule and Burden Reduction Initiative.

**A. What decisions have we made in this rule?**

We have concluded that Rhode Island's application to revise its authorized program with regard to EPA's Zinc Fertilizer Rule and Burden Reduction Initiative meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Rhode Island final authorization to operate its hazardous waste program with the changes relating to the Zinc Fertilizer Rule and Burden Reduction Initiative as described in the authorization application. Rhode Island's Department of Environmental Management (RIDEM) has responsibility for carrying out the aspects of the RCRA program covered by its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement any such requirements and prohibitions in Rhode Island, including implementation of the Land Disposal Restrictions (LDR) requirements in 40 CFR part 268 because Rhode Island has not yet sought and obtained authorization for those requirements. Regulated entities in Rhode Island must comply with these directly administered EPA requirements, in addition to the State hazardous waste requirements.

**B. What is the effect of today's authorization decision?**

The effect of this decision is that a facility in Rhode Island subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Rhode Island has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA also retains its full authority under RCRA sections 3007, 3008, 3013, and 7003, which includes, among others, authority to:

- Perform inspections, and require monitoring, tests, analyses or reports.
- Enforce RCRA requirements and suspend or revoke permits.
- Take enforcement actions.

This action does not impose additional requirements on the regulated community because the

regulations for which Rhode Island is being authorized by today's action are already effective under State law, and are not changed by today's action.

### C. Proposed Rule

On July 26, 2010, EPA published a proposed rule (75 FR 43478) in which we proposed granting authorization of changes to Rhode Island's Hazardous Waste program. This was included as a companion document to the immediate final rule in order to ensure the opportunity for public comment. In this proposed rule, EPA noted that because of anticipated adverse comments related to the authorization of Rhode Island for revisions relating to EPA's Zinc Fertilizer Rule, the agency would make a separate determination (following the opportunity for public comment) regarding the authorization of Rhode Island for the Zinc Fertilizer Rule. Thus, today's action makes a separate determination relating to the authorization of Rhode Island for revisions which pertain to EPA's Zinc Fertilizer Rule. As noted above, today's action also authorizes Rhode Island for the Burden Reduction Initiative.

### D. What changes are we authorizing with this action?

On June 17, 2010 EPA received Rhode Island's complete program revision application dated June 15, 2010 seeking authorization for their changes in accordance with 40 CFR 271.21. The RCRA program revisions for which Rhode Island is seeking authorization addressed by this action relate only to EPA's Zinc Fertilizer Rule and the Burden Reduction Initiative. (Although the application sought authorization for many other program revisions as well, those provisions were addressed in the aforementioned immediate final rule published on July 26, 2010.) The State has adopted the Federal requirements relating to the Zinc Fertilizer Rule, 67 FR 48393 (July 24, 2002) and the Burden Reduction Initiative, 71 FR 1686 (April 24, 2006) at Rule 2.00 in its general incorporation by reference of Federal requirements through July 1, 2008 (except as otherwise noted in the following paragraph). The State's authorization application consists of a cover letter requesting authorization, a copy of RIDEM's Rules and Regulations for Hazardous Waste Management dated June 2010, regulatory checklists (specifically related to this action, CL 200—Zinc Fertilizer Rule and CL 213—Burden Reduction Initiative) comparing the State and Federal requirements and a Supplement to the Attorney General's Statement.

We are now making a final decision that Rhode Island's hazardous waste program revisions which relate to EPA's Zinc Fertilizer Rule and the Burden Reduction Initiative satisfy all of the requirements necessary to qualify for final authorization. Therefore, we grant Rhode Island final authorization for the specific program changes which relate to these rules as identified below. Note, the Federal requirements are identified by their checklist (CL) number and rule description followed by the corresponding state regulatory analog(s) ("Rule(s)") from Rhode Island's Rules and Regulations for Hazardous Waste Management as in effect on June 7, 2010: CL 200—Zinc Fertilizer Rule, 67 FR 48393, July 24, 2002; Rules 2.2C and 2.2H; CL 213—Burden Reduction Initiative, 71 FR 16862, April 24, 2006 (other than LDR requirements): Rules 2.2 C, 2.2 C.4, 2.2 F, 2.2 G, 2.2 I, 2.2 J, 7.0 B.82, 8.1 A.17, 8.1 A.41, 8.1 A.45 and 8.1 A.64.

### E. Response to Comments

The adverse comment filed was from Ms. Patricia Anne Martin on behalf of the organization Safe Food and Fertilizer. The comment objects first to the EPA's decision in the Zinc Fertilizer Rule to allow the application to the land of zinc fertilizers made from hazardous wastes or hazardous secondary materials. Such application to the land is allowed under the Zinc Fertilizer Rule only when contaminants are below levels determined by the EPA in that Rule to be protective of human health and the environment (see 40 CFR 261.4(a)(21)), but Safe Food and Fertilizer disagrees with the EPA determinations and states that the "use of hazardous waste in fertilizer has not been proven safe." The comment also objects to the EPA's decisions in the Burden Reduction Initiative rulemaking to allow one time notices of shipments of zinc fertilizer and to allow such notices to be kept on file (see 40 CFR 268.7(b)(6) (July 1, 2008)) as opposed to the prior requirements that there be notices regarding each shipment and that such notices be sent to the relevant EPA office or authorized State (see 40 CFR 268.7(b)(6) (July 1, 2005)). Based on these concerns, Safe Food and Fertilizer asks that EPA Region I not authorize Rhode Island for the Zinc Fertilizer Rule or the Burden Reduction Initiative.

In the proposed rule regarding this matter, the Region had suggested that if any commenter objected to the Zinc Fertilizer Rule, it should have addressed its comments to the EPA prior to the adoption of that Rule. In response, Safe Food and Fertilizer asserts that it did

object to the Zinc Fertilizer Rule but that the EPA "ignored" the comments.

In the proposed rule regarding this matter, the Region had further suggested that if any commenter objected to Rhode Island adopting the Zinc Fertilizer Rule, it should have filed comments with Rhode Island during its comment period on its rules, rather than waiting and asking EPA to not authorize the State rules. The Region pointed out that while under RCRA, a State has the right to be more stringent than a Federal rule, it also has the right not to be more stringent and thus a State may simply track the Federal RCRA rules. Thus, if a commenter wants a State not to adopt a Federal rule such as the Zinc Fertilizer Rule but rather to be more stringent, it should file timely comments with the State. In response, Safe Food and Fertilizer asserts that Rhode Island does not have the right "not to be more stringent" than the Zinc Fertilizer Rule, since by adopting the Zinc Fertilizer Rule, Rhode Island is being less protective than what Safe Food and Fertilizer believes the correct minimum Federal standards should be as mandated by the Congress. However, Safe Food and Fertilizer does not explain why it did not file comments to Rhode Island.

Under the RCRA statute, the EPA must promulgate Federal RCRA regulations that are protective of human health and the environment. 42 U.S.C. 6922–6924. Then the EPA is further directed to authorize State RCRA programs if they are "equivalent" to the Federal programs and meet other requirements. 42 U.S.C. 6926. This involves comparing the State regulations to the Federal regulations. State regulations may be "more stringent" than the Federal requirements or may simply be "equivalent," but may not be less stringent. 42 U.S.C. 6929. The statute clearly contemplates a two step process. First, the EPA issues its regulations and any person disagreeing with the EPA's determinations generally must challenge them in court within 90 days. 42 U.S.C. 6976. Second, when the EPA later authorizes State regulations, it simply compares them to the federal regulations. The statute does not contemplate that whether the Federal regulations are adequately protective should be revisited in the course of determining whether to authorize State regulations.

Here, Safe Food and Fertilizer did object to the EPA adopting the Zinc Fertilizer Rule and indeed challenged the Rule in court. However, their petition was denied by the court and the regulations generally were upheld. *Safe Food and Fertilizer v. Environmental*

*Protection Agency*, 350 F.3d 1263 (DC Cir. 2003). The Zinc Fertilizer Rule remains in effect at the federal level. The Burden Reduction Initiative Rule was not challenged by either Safe Food and Fertilizer or anyone else. As a result, it also remains in effect at the Federal level. Thus these are the Federal requirements that Rhode Island must meet in order to obtain authorization for these particular rules. While States need not adopt the Zinc Fertilizer Rule or the Burden Reduction Initiative, since not doing so would make them more stringent than the Federal rules, States are allowed to adopt these rules. Rhode Island decided to adopt and seek authorization for these Federal rules. In its regulations, Rhode Island has adopted the Zinc Fertilizer Rule requirements exactly, by incorporating them by reference in its Rules 2.2C and 2.2H. Thus Rhode Island clearly is being equivalent to and as stringent as this Federal rule. While Safe Food and Fertilizer may disagree with the Federal rule in question, the Region is appropriately comparing the State rules to the Federal rules, rather than comparing the State rules to what Safe Food and Fertilizer thinks the Federal rules should be.

Rhode Island also has adopted the Burden Reduction Initiative Rule requirements, with some more stringent revisions (not relevant to the Zinc Fertilizer Rule), by incorporating them by reference in its Rules 2.2C, 2.2C.4, 2.2F, 2.2G, 2.2I, 2.2J, 7.0B82 and 8.1A.64. However, Rhode Island has not adopted any of the Federal Land Disposal Restriction (LDR) rules. See Rhode Island's Rule 2.2 B. Thus, as earlier explained in the immediate final rule, Rhode Island is not being authorized for any of the LDR Rules. The reduced reporting requirement that Safe Food and Fertilizer is objecting to is an LDR regulation—40 CFR 268.7(b)(6). Thus, Rhode Island is not being authorized for this particular regulation. That reduced reporting requirement actually is in effect in Rhode Island, but that is because the EPA is directly administering the Federal LDR program in Rhode Island and the reduced reporting requirement is part of the federal program. But this is a result of the EPA issuing the Burden Reduction Initiative Rule in 2006, not a result of today's authorization. Thus, insofar as Safe Food and Fertilizer is objecting to Rhode Island being authorized for 40 CFR 268.7(b)(6), its comment is in error, since Rhode Island is not being authorized for that regulation. Insofar as Safe Food and Fertilizer is otherwise objecting to

Rhode Island being authorized for the Burden Reduction Initiative, its comment is in error for the same reasons why its objection to the authorization of Rhode Island for the Zinc Fertilizer Rule is in error. That is, a State has the right not to be more stringent than the Federal regulations and is being "equivalent" to the federal regulations when it tracks the Federal regulations.

Thus, the Region does not agree with Safe Food and Fertilizer's comment that it should not authorize these Rhode Island regulations. Thus the regulations are being authorized. The Region continues to encourage Safe Food and Fertilizer to file timely comments with the States during future program updates, if it believes that the States should not adopt the Zinc Fertilizer Rule or should revisit past adoptions of the Zinc Fertilizer Rule. If, alternatively, Safe Food and Fertilizer believes that the EPA should reconsider and change the federal regulations, it needs to request this at the national level. A Region does not have the authority to change the national regulations.

#### F. Administrative Requirements

The Office of Management and Budget has exempted this action (RCRA State Authorization) from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993); 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 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).

#### 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: September 9, 2010.

**Ira W. Leighton,**

*Acting Regional Administrator, EPA New England.*

[FR Doc. 2010-23401 Filed 9-17-10; 8:45 am]

**BILLING CODE 6560-50-P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 325

[Docket No. FMCSA-2006-24065]

RIN-2126-AB31

#### Compliance With Interstate Motor Carrier Noise Emission Standards: Exhaust Systems

**AGENCY:** Federal Motor Carrier Safety Administration, DOT.

**ACTION:** Direct final rule.

**SUMMARY:** In response to a petition for rulemaking from the Truck Manufacturers Association (TMA), the Federal Motor Carrier Safety Administration (FMCSA) amends its regulations to eliminate turbochargers from the list of equipment considered to be noise dissipative devices. As written, the regulation may allow vehicle operators to remove mufflers and still meet the Federal inspection requirements if commercial motor vehicle (CMV) engines are equipped with turbochargers. This was not the intent of that rule. Therefore, the Agency amends the rule to restore its original intent.

**DATES:** This rule is effective November 19, 2010, unless an adverse comment, or notice of intent to submit an adverse comment, is either submitted to our online docket via <http://www.regulations.gov> on or before October 20, 2010 or reaches the Docket Management Facility by that date. If an adverse comment, or notice of intent to

submit an adverse comment, is received by October 20, 2010, we will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

**ADDRESSES:** You may submit comments identified by docket number FMCSA-2006-24065 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, e-mail or call Mr. Brian Routhier, Vehicle and Roadside Operations Division (MC-PSV), Office of Bus and Truck Standards and Operations, [brian.routhier@dot.gov](mailto:brian.routhier@dot.gov) or (202) 366-1225.

#### SUPPLEMENTARY INFORMATION:

##### I. Public Participation and Comments

If you would like to participate in this rulemaking, you may submit comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

##### A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA-2006-24065), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. As a reminder, FMCSA will only consider adverse comments as defined in 49 CFR 389.39(b) and explained below.

To submit your comment online, go to <http://www.regulations.gov>, click on the

“submit a comment” box, which will then become highlighted in blue. In the “Document Type” drop down menu select “Rule” and insert “FMCSA-2006-24065” in the “Keyword” box. Click “Search,” then click on the balloon shape in the “Actions” column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

##### B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the “read comments” box, which will then become highlighted in blue. In the “Keyword” box insert “FMCSA-2006-24065” and click “Search.” Click the “Open Docket Folder” in the “Actions” column. If you do not have access to the Internet, you may also view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

##### C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

## II. Regulatory Information

FMCSA publishes this direct final rule under 49 CFR 389.11 and 389.39 because the Agency determined that the rule is a routine and non-controversial amendment to 49 CFR part 325. The rule will restore the original intent of 49 CFR 325.91(b). FMCSA does not expect any adverse comments. If no adverse comments or notices of intent to submit an adverse comment are received by October 20, 2010, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, we will publish a document in the **Federal Register** stating that no adverse comments were received and confirming that this rule will become effective as scheduled. However, if we