

US EPA ARCHIVE DOCUMENT

pesticide inert ingredient in or on all food commodities. Genetic material necessary for the production means both: Genetic material that encodes a substance or leads to the production of a substance; and regulatory regions. It does not include non-coding, non-expressed nucleotide sequences. Regulatory region means genetic material that controls the expression of the genetic material that encodes a pesticidal substance or leads to the production of a pesticidal substance. Examples of regulatory regions include, but are not limited to, promoters, enhancers, and terminators.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[FRL-7029-1]

#### Vermont: Final Authorization of State Hazardous Waste Management Program Revision

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

**ACTION:** Immediate final rule.

**SUMMARY:** Vermont has applied to EPA for Final authorization of a revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that the revision satisfies all requirements needed to qualify for Final authorization, and is authorizing the State's revision through this immediate final action. EPA is publishing this rule to authorize the revision without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize Vermont's revision to its hazardous waste program will take effect as provided below. If we receive 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.

The rulemaking for which Vermont is being authorized stems from the EPA Project XL initiative. Project XL, which stands for "eXcellence and Leadership," is a national initiative that tests innovative ways of achieving better and more cost-effective public health and environmental protection. It encourages

testing of cleaner, cheaper, and smarter ways to attain environmental results superior to those achieved under current regulations and policies, in conjunction with greater accountability to stakeholders.

**DATES:** This Final authorization will become effective on October 15, 2001 unless EPA receives adverse written comments by September 17, 2001. If EPA receives such comments, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take immediate effect.

**ADDRESSES:** Send written comments to Robin Biscaia, Hazardous Waste Unit, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114-2023; Phone number: (617) 918-1648. You can view and copy materials submitted by Vermont during normal business hours at the following locations: EPA New England Library, One Congress Street, Suite 1100 (LIB), Boston, MA 02114-2023; Phone number: (617) 918-1990; Business hours: 9:00 A.M. to 4:00 P.M.; or the Agency of Natural Resources, 103 South Main Street—West Office Building, Waterbury, VT 05671-0404; Phone number: (802) 241-3888; Business hours: 7:45 A.M. to 4:30 P.M.

**FOR FURTHER INFORMATION CONTACT:** Robin Biscaia, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114-2023; Phone number: (617) 918-1642.

#### SUPPLEMENTARY INFORMATION:

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

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. 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 change 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.

On September 12, 2000 (65 FR 59955) EPA published a final rule for the Project XL Site-Specific Rulemaking for the IBM Semiconductor Manufacturing Facility in Essex Junction, Vermont. In this rule, EPA promulgated a site-specific exemption in 40 CFR 261.4(b)

for the copper metallization process at the IBM Vermont facility from the F006 hazardous waste listing description. This rule was promulgated pursuant to non-HSWA authority. Since Vermont has received authority to implement non-HSWA regulations that specifically identify hazardous wastes by listing them, the rule to modify the listing for F006 would not be effective until Vermont adopted the modification. Vermont adopted the rule on March 15, 2001 and applied for Final authorization on April 10, 2001.

##### B. What Decisions Have We Made in this Rule?

We conclude that Vermont's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Vermont Final authorization to operate its hazardous waste program with the changes described in the authorization application. Vermont has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA).

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

The effect of this decision is that the IBM semiconductor manufacturing site, subject to RCRA, in Essex Junction, Vermont will now have to comply with the authorized State requirements in lieu of Federal requirements in order to comply with RCRA. Vermont has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its full authority under RCRA sections 3007, 3008, 3013, and 7003.

This action does not impose additional requirements on the IBM Essex Junction facility because the regulation for which Vermont is being authorized by today's action is already effective under state law, and is 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 non-controversial 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 change 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.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

#### F. What Has Vermont Previously been Authorized for?

Vermont initially received Final authorization on January 7, 1985, effective January 21, 1985 (50 FR 775) to implement the RCRA hazardous waste management program. The Region published an immediate final rule for certain revisions to Vermont's program on May 3, 1993 (58 FR 26242) and reopened the comment period for these revisions on June 7, 1993 (58 FR 31911). The authorization became effective August 6, 1993 (58 FR 31911). The Region granted authorization for further revisions to Vermont's program on September 24, 1999 (64 FR 51702), effective November 23, 1999. On October 18, 1999 (64 FR 56174) the Region published a correction to the immediate final rule published on September 24, 1999, with the effective date of November 23, 1999. The Region granted authorization for further revisions to Vermont's program on October 26, 2000 (65 FR 65164), effective December 26, 2000.

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

On April 10, 2001 in accordance with 40 CFR 271.21(h), Vermont submitted a final complete program revision application seeking authorization for its revision adopted March 15, 2001. We now make an immediate final decision, subject to receipt of written comments

that oppose this action, that Vermont's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant Vermont Final authorization for the following program changes:

Description of Federal requirement	Analogous State authority <sup>1</sup>
65 FR 59955, September 12, 2000: Project XL Site-specific Rulemaking for the IBM Semiconductor Manufacturing Facility in Essex Junction, VT .....	7-203(v)

<sup>1</sup> Hazardous Waste Management Regulations, effective March 15, 2001.

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

There are no differences between the Federal rule and the revised state rule.

#### I. Who Handles Permits After the Authorization Takes Effect?

Vermont will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Vermont is not yet authorized.

#### J. What Is Codification and Is EPA Codifying Vermont's 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. EPA is authorizing but not codifying Vermont's updated program at this time. We reserve the amendment of 40 CFR part 272, subpart UU for this State program until a later date.

#### K. 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. This rule will not have a significant impact on a substantial number of small entities because it only

affects the IBM facility in Essex Junction, VT, and it is not a small entity. 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 is applicable only to one facility in Vermont, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). There are no communities of Indians tribal governments located in Vermont. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action. 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 new decisions based on environmental health or safety risks.

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 sixty (60) 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, Intergovernmental relations, Penalties, Reporting and Recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 202(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 17, 2001.

**Carl Dierker,**

*Acting Regional Administrator, EPA New England.*

[FR Doc. 01-20046 Filed 8-15-01; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 46 CFR Parts 4, 5, and 16

[USCG-2000-7759]

RIN 2115-AG00

#### Chemical Testing

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard revises its chemical drug testing regulations to conform with the Department of Transportation's (DOT) final rule on drug testing procedures published in the **Federal Register** on December 19, 2000.

The Coast Guard amends the regulations on Marine Casualties and Investigations and Chemical Testing by removing obsolete sections and sections duplicating the DOT regulations; adding new definitions; and incorporating new terms and procedures contained in the DOT final rule.

**DATES:** This final rule is effective August 16, 2001.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2000-7759 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call LCDR Scott Budka, Coast Guard, at 202-267-2026. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202-366-5149.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory History

On April 30, 2001, the Coast Guard published a notice of proposed rulemaking NPRM entitled Chemical Testing in the **Federal Register** (66 FR 21502). On the same day, DOT published a common preamble (66 FR 21492) in the **Federal Register** as referred to in our NPRM. In our NPRM we proposed amendments that conformed our drug testing regulations with the Department of Transportation's (DOT) final rule entitled Procedures for Transportation Workplace Drug and Alcohol Testing published in the **Federal Register** (December 19, 2000 (66 FR 79462)). No public hearing was requested and none was held.

#### Background and Purpose

As discussed above, DOT published a comprehensive revision to their drug and alcohol testing procedural rules (49 CFR Part 40). The DOT final rule makes numerous changes in the way that drug and alcohol testing will be conducted. The DOT final rule is effective on August 1, 2001.

It is important that the six DOT agency rules that cover specific transportation industries be consistent with the DOT final rule to avoid duplication, conflict, or confusion among DOT regulatory requirements. For these reasons, the Coast Guard is

revising its drug testing regulations affected by Part 40. Since the DOT rule is effective on August 1, 2001, we are making this final rule effective on the date of publication to ensure that these "conforming amendments" are effective as soon as possible. For these reasons, under 5 U.S.C. 553(b)(3) the Coast Guard finds good cause to make this rule effective in fewer than 30 days after publication in the **Federal Register**.

This preamble discusses the revisions to Coast Guard chemical testing regulations to ensure consistency with the DOT final rule.

#### Discussion of Comments and Changes

The Coast Guard is revising its chemical drug testing regulations to conform with the Department of Transportation's (DOT) final rule on drug testing procedures in 49 CFR part 40. We are revising 46 CFR parts 4, 5, and 16 by removing obsolete sections and sections duplicating the DOT regulations; adding new definitions required by the DOT regulations; and modifying existing text to incorporate new terms and procedures contained in the DOT procedural requirements.

Some new DOT requirements, such as the requirement for split specimens, are implemented without a revision or conforming amendment to our regulations. In this case, the requirement is in 49 CFR part 40, and our regulations require employers to follow the procedures in that part when conducting required chemical tests for dangerous drugs.

The DOT rule includes new qualification and training requirements for Medical Review Officers (MROs) and Substance Abuse Professionals (SAPs). The Coast Guard is not changing the ability of the MRO to perform a dual MRO/SAP function in the return-to-duty decision process. However, where an individual performs both SAP and MRO functions, Part 40 requires the individual to meet the qualification and training requirements for individuals performing each of these functions.

Another DOT change, the minimum number of follow-up drug tests required during the first year after return to work in a safety-sensitive position, requires a conforming amendment to add this requirement to our existing regulatory text.

The following is a discussion of the comments received addressing the Coast Guard's NPRM published in the **Federal Register** (April 30, 2001 (66 FR 21502)), as well as a discussion of how the Coast Guard has revised its regulations to conform to DOT's final rule.

In response to the NPRM published on April 30, 2001, we received a total