

US EPA ARCHIVE DOCUMENT

tolerances and exemptions that are established on the basis of a petition under FFDCa section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCa section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any tribal implications as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Policies that have tribal implications is defined in the Executive Order to include regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive 13175. Thus,

Executive Order 13175 does not apply to this rule.

**VIII. Submission to Congress and the Comptroller General**

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 rule 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 of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 14, 2001.

**James Jones**,  
*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.565 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

**§ 180.565 Thiamethoxam; tolerances for residues.**

(a) *General.* \* \* \*

Commodity	Parts per million
* * * * *	
Cucurbit Vegetables Crop Group .....	0.2
Fruiting Vegetables Crop Group .....	0.25
Pome Fruit Crop Group .....	0.2
Tomato Paste .....	0.80
Tuberous and Corm Vegetables Crop Subgroup .....	0.02

\* \* \* \* \*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 272**

[FRL-6983-2]

**Wisconsin: Clarification of Codification of Approved State Hazardous Waste Program for Wisconsin**

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

**ACTION:** Clarification.

**SUMMARY:** Under the Resource Conservation and Recovery Act of 1976, as amended, the Environmental Protection Agency (EPA) may grant Final Authorization to States to operate their hazardous waste management programs in lieu of the Federal program. EPA uses part 272 of title 40 of the Code of Federal Regulations (40 CFR part 272) to codify its authorization of State programs. Through codification the authorized elements of approved State programs are placed in the Code of Federal Regulations (CFR). The codification of State programs is designed to enhance the public's ability to discern the current status of the approved State program and to better alert the public to the specific State regulations that the Federal government can enforce if necessary. The purpose of today's **Federal Register** document is to clarify EPA's codification of Wisconsin's authorized hazardous waste program.

**FOR FURTHER INFORMATION CONTACT:** Denise Reape, U.S. EPA Region 5, Waste Pesticides and Toxics Division, Program Management Branch (DM-7J), 77 W. Jackson Blvd., Chicago, IL 60604, Phone (312) 353-7925.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does This Action Apply to Me?*

This action is directed to the public in general. This document clarifies certain requirements of the authorized RCRA program in the State of Wisconsin and, therefore, may be of particular interest to persons who generate, treat, store, dispose of, or otherwise handle hazardous waste in the State of Wisconsin.

*B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?*

*Electronically.* You may obtain electronic copies of this document by going to the listings from the EPA Internet Home Page at <http://www.epa.gov/>. To access this

document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>. If you have any questions regarding the information in this notice or want copies of any other related documents, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

**II. Background**

*A. What is Authorization?*

When a state is authorized to administer the RCRA program, EPA has made a determination that the state's authorized program is equivalent to the federal program. Thereafter the state's authorized laws and regulations apply in the state in lieu of the equivalent federal program regulations. ( See RCRA section 3006(b) and (c)). Authorized States are required to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal hazardous waste program changes, the States must revise their programs and apply for authorization of the revisions. Revisions to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes

occur. Authorization revision applications generally consist of a copy of the State regulations, a revised Attorney General's (AG) statement, a revised Program Description, a revised Memorandum of Agreement (MOA), or other documents EPA determines to be necessary (see 40 CFR 271.21(b)(1)). EPA maintains authority to bring enforcement action in authorized States under RCRA sections 3008, 3013, and 7003.

*B. Why does EPA Codify Authorized Programs?*

EPA codifies authorized State programs through incorporating the authorized state law in the Code of Federal Regulations, to better place regulated entities and members of the public on notice of the requirements pertaining to the generation and management of hazardous waste in a particular State. EPA incorporates by reference only the substantive authorized rules because the federal government uses its own enforcement authorities when bringing actions for alleged violations of the authorized state RCRA program. 40 CFR part 272 has been reserved for codification of approved State RCRA programs.

*C. Wisconsin*

1. What is the Authorization and Codification History for Wisconsin?

Wisconsin initially received Final Authorization on January 31, 1986 (51

FR 3783, January 30, 1986) to implement its base hazardous waste management program. Wisconsin received authorization for revisions to its program on June 6, 1989 (54 FR 22278, May 23, 1989), January 22, 1990 (54 FR 48243, November 22, 1989), April 24, 1992 (57 FR 15029, April 24, 1992), August 2, 1993 (58 FR 31344, June 2, 1993), October 4, 1994 (59 FR 39971, August 5, 1994) and October 4, 1999 (64 FR 42602, August 5, 1999). EPA uses 40 CFR 272.2501 for codification of decisions to authorize Wisconsin's program and for incorporation by reference of those provisions of its statutes and regulations that EPA will enforce under sections 3008, 3013 and 7003 of RCRA. EPA codified Wisconsin's authorized program on April 24, 1989 (54 FR 7422, February 21, 1989), May 29, 1990 (55 FR 11910, March 30, 1990), and November 22, 1993 (58 FR 49199).

2. Which Notices and Requirements are Being Clarified?

In the following authorization and codification documents, EPA included references to a state variance authority which allows the Wisconsin Department of Natural Resources (WDNR) to issue variances from hazardous waste licensing requirements in cases of "undue or unreasonable hardship:"

Effective date	FR cite	This document clarifies references to
April 24, 1989 .....	54 FR 7422, February 21, 1989, at 7424 .....	Wis. Stat. 144.64(3) and WAC NR 181.55(10).
May 29, 1990 .....	55 FR 11910, March 30, 1990, at 11911 .....	WAC NR 181.55(10).
August 2, 1993 .....	58 FR 31344, June 2, 1993, at 31344 .....	WAC NR 181.55(10).
November 22, 1993 .....	58 FR 49199, November 22, 1993, at 49200 .....	Wis. Stat. 144.64(3) and WAC NR 680.50.
October 4, 1999 .....	64 FR 42602, August 5, 1999, at 42607 .....	Wis. Stat. 144.64(3) and 291.31.

There is no analogous Federal variance authority. The purpose of this document is to clarify the limited circumstances under which the State may use this authority to vary an authorized RCRA requirement.

The Wisconsin legislature enacted the State hardship variance in 1978 and the WDNR adopted implementing administrative rules in 1981. Both the statutory and administrative provisions have been amended and renumbered over time; however, at all times relevant to this clarification document the hardship variance authority has been codified in State law at section 144.64(3) or section 291.31 of the Wisconsin Statutes and section NR 181.55(10) or section NR 680.50 of the Wisconsin Administrative Code.

Consequently, this document clarifies all references to those specific state statutory and regulatory provisions in the authorization and codification of Wisconsin's hazardous waste program.

3. What is the Clarification?

In the **Federal Register** documents listed above, EPA included reference to section 144.64(3) or section 291.31 of the Wisconsin Statutes and section NR 181.55(10) or section NR 680.50 of the Wisconsin Administrative Code without explaining that the use of these authorities to waive authorized RCRA rules is generally limited to granting variances from the surface impoundment double liner requirements of section 3005(j)(2)

through (9) and (13) of RCRA <sup>1</sup> or when the State varies authorized State requirements that are more stringent than current Federal requirements imposing instead the same standards as the less stringent Federal requirements. For example, EPA may promulgate less stringent amendments to Federal rules while the States, because of a temporary lag in authorization, remain authorized for the pre-existing more stringent rules.

<sup>1</sup> Unlike the Federal RCRA program, Wisconsin's hazardous waste requirements do not include a specific waiver for the double liner requirements for RCRA regulated surface impoundments. Instead, the Wisconsin Attorney General, in a statement supporting State authorization, referenced the State hardship waiver as State authority to grant such waivers. EPA is unaware of any instance wherein Wisconsin has granted a waiver from the double liner requirements for surface impoundments.

States may use State waiver authorities to relax authorized State rules to the extent those rules are more stringent than analogous Federal rules (See, for example, 63 FR 65874 at 65925 (November 30, 1998)).

In addition, if a State authorized to implement the RCRA program has a permit waiver authority that is analogous to EPA's authority under section 121(e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or RCRA section 7003, it may use this authority to waive the requirement to obtain a RCRA permit with respect to on-site response actions. As explained in EPA guidance, the two preconditions to allowing the use of this authority are that: "(1) The State has the authority under its own statutes or regulations to grant permit waivers; and (2) the State waiver authority is used in no less stringent a manner than allowed under Federal permit waiver authority, for example, section 7003 of RCRA or section 121(e) of CERCLA." (See the Memorandum, "RCRA Permit Requirements for State Superfund Actions", from J. Winston Porter to Regional Administrators, Region I-X (Nov. 16, 1987) (OSWER Dir. No. 9522.00-2).) Nothing in this clarification document changes or affects this policy in any way.

#### 4. Summary

The references in 40 CFR 272.2501 and appendix A to part 272 to sections 144.64(3) and 291.31 of the Wisconsin Statutes and sections NR 181.55(10) and 680.50 of the Wisconsin Administrative Code provide notice that the State, as part of the authorized program, may use this authority only: (1) to grant variances from the surface impoundment double liner requirements of RCRA in those cases wherein the facility meets all of the requirements of RCRA section 3005(j); (2) to grant variances from more stringent authorized requirements that impose instead the same standards as the less stringent federal requirement; and (3) in the manner consistent with sections 7003 of RCRA or 121(e) of CERCLA, as described in applicable EPA guidance. Use of the State hardship variance authority with respect to any other authorized RCRA requirements is not part of the RCRA approved State program. Of course, States retain authority to waive or vary those State requirements that are broader in scope than, and therefore not part of, the Federal RCRA program. Therefore, with certain limited exceptions discussed herein, a State hardship variance cannot excuse compliance with RCRA program

requirements. Persons who fail to comply with RCRA program requirements are subject to Federal enforcement under sections 3008, 3013, and 7003 of RCRA.

**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).

**David A. Ullrich,**

*Acting Regional Administrator, Region 5.*  
[FR Doc. 01-12894 Filed 5-22-01; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 01-1221, MM Docket No. 01-45, RM-9997]

#### Digital Television Broadcast Service; Mountain View, AR

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Arkansas Educational Television Commission, licensee of noncommercial educational station KEMB(TV), substitutes DTV channel \*13 for DTV channel \*35 at Mountain View, Arkansas. See 66 FR 12748, February 28, 2001. DTV channel \*13 can be allotted to Mountain View in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates (35-48-47 N. and 92-17-24 W.) with a power of 20.0, HAAT of 425 meters and with a DTV service population of 337 thousand. With this action, this proceeding is terminated.

**DATES:** Effective July 2, 2001.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 01-45, adopted May 16, 2001, and released May 18, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

### List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

#### 47 CFR Part 73—[Amended]

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

#### § 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Arkansas, is amended by removing DTV channel \*35 and adding DTV channel \*13 at Mountain View.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 01-12991 Filed 5-22-01; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 01-1222, MM Docket No. 01-29, RM-10044]

#### Digital Television Broadcast Service; Butte, MT

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Eagle Communications, Inc., licensee of station KTVM(TV), substitutes DTV channel 33 for DTV channel 2 at Butte, Montana. See 66 FR 9062, February 6, 2001. DTV channel 33 can be allotted to Butte in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates (46-00-27 N. and 112-26-30 W.) with a power of 1000, HAAT of 576 meters and with a DTV service population of 122 thousand. Since Butte is located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government has been obtained for this allotment.

With this action, this proceeding is terminated.

**DATES:** Effective July 2, 2001.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 01-29,