PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. In § 81.301, the table entitled ''Alabama-Ozone (1-Hour Standard)'' is amended by revising the entries for ''Jefferson County'' and ''Shelby County'' to read as follows:

§ 81.301 Alabama.

* * * * *

ALABAMA-OZONE (1–HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Birmingham Area:				
Jefferson County	4/12/04	Attainment.		
Shelby County	4/12/04	Attainment.		
* * *	*	*	*	*

[1] This date is October 18, 2000, unless otherwise noted.

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[FR Doc. 04–5508 Filed 3–11–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 262 and 271

[FRL–7634–4]

Massachusetts: Final Authorization of State Hazardous Waste Management Program Revisions; State-Specific Modification to Federal Hazardous Waste Regulations, Pursuant to ECOS Program Proposal; Extension of Site-Specific Regulations for New England Universities' Laboratories XL Project

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's action consists of three distinct but related final rulemakings briefly characterized here and further discussed in the supplementary information section of this rule. First, the EPA is granting final authorization to the Commonwealth of Massachusetts, under the Resource Conservation and Recovery Act (RCRA), for revisions to the State's hazardous waste program which meet the standard EPA regulatory requirements for authorization of State programs. The revisions consist of updated State regulations covering hazardous waste definitions and miscellaneous provisions, provisions for the identification and listing of hazardous wastes, and standards for hazardous waste generators, which correspond to RCRA Consolidated Checklists C1, C2 and C3, respectively. These State regulations have been updated to address most Federal RCRA requirements listed in Checklists C1, C2 and C3 through at least July 1, 1990.

Second, the State regulations submitted for authorization also include comprehensive regulations governing hazardous wastes being recycled on-site by generators. These regulations do not meet the standard EPA requirements for State authorization but have been determined by the EPA to meet the RCRA statutory test of protecting human health and the environment. The EPA also has determined that these Massachusetts regulations are at least as environmentally protective overall as the Federal program. Thus the EPA is today making a State-specific modification to the Federal hazardous waste regulations to enable the EPA to authorize these Massachusetts regulations, pursuant to a proposal for flexibility submitted by the Massachusetts Department of Environmental Protection (MADEP) under the program established by the Joint EPA/State Agreement To Pursue Regulatory Innovation between the EPA and the Environmental Council of States (ECOS program). As part of this same rulemaking, the EPA is also today authorizing these Massachusetts hazardous waste recyclable materials regulations.

Third, the EPA is today extending the expiration date of site-specific regulations previously adopted by the EPA under the eXcellence and Leadership program (Project XL) allowing alternative RCRA generator requirements to be followed for laboratories at certain universities in Massachusetts (and Vermont). As part of this same rulemaking, the EPA is also today authorizing the Massachusetts regulations which track these EPA regulations. The EPA already has authorized the Vermont regulations which track these EPA regulations and expects to extend the authorization of the Vermont regulations through a separate rulemaking.

On October 21, 2003, the EPA proposed to take these three actions. No negative public comments were received in response to the proposal.

DATES: This final rulemaking, covering both the revisions to the federal regulations and the EPA's authorization of the State regulations, is effective immediately without further notice as of March 12, 2004.

ADDRESSES: 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.–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, EPA Region I, One Congress St., Suite 1100 (CHW), Boston, MA 02114–2023, tel: (617) 918–1642, e-mail: *biscaia.robin@epa.gov.*

SUPPLEMENTARY INFORMATION: As indicated above, the EPA published a **Federal Register** notice on October 21, 2003 (68 FR 60060) proposing to take the three actions which are the subject of this notice. No negative public comments were received by the EPA in response to the proposal. Thus the EPA is today taking final actions in accordance with its prior proposal. Note that the EPA proposed to approve the

State regulations when they were in proposed form, and conducted its public comment process simultaneously with the State public comment process. The State regulations recently were finalized and submitted for authorization by the EPA.

Today's federal rulemaking includes granting final authorization under 40 CFR part 271 to the Commonwealth of Massachusetts for revisions to its hazardous waste program under the Resource Conservation and Recovery Act. No changes to 40 CFR part 271 result from the authorization of State regulations under that part. Today's federal rulemaking also includes making changes to the federal regulations in 40 CFR part 262, in connection with Massachusetts' ECOS program proposal and the XL project. The resulting changes to 40 CFR part 262 are set out at the end of this document.

In part I, below, this document will discuss the updated State RCRA regulations which are being authorized in accordance with the standard EPA State authorization regulations in 40 CFR part 271.

In part II, below, this document will discuss the State-specific change to the Federal regulations in 40 CFR part 262 being made under the ECOS program to allow authorization of the Massachusetts hazardous waste recyclable materials regulations, and the resulting authorization of the recyclable materials regulations.

In part III, below, this document will discuss the extension of the expiration date in 40 CFR part 262 of the New England Universities' Laboratories project XL regulations, and the authorization of the Massachusetts project XL regulations.

In part IV, below, this document will assess the effects of these decisions, in accordance with various statutes and executive orders.

I. Final Authorization of State Hazardous Waste Management Program Revisions; Standard Authorization:

A. Why Are Revisions to State Programs Necessary?

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation 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. 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.

B. What Has Massachusetts Previously Been Authorized for Under RCRA?

The Commonwealth of Massachusetts initially received Final Authorization on January 24, 1985, effective February 7, 1985 (50 FR 3344), to implement its base hazardous waste management program. This authorized base program generally tracked Federal hazardous waste requirements through July 1, 1984. In addition, the EPA previously has authorized particular Massachusetts regulations which address several of the EPA requirements adopted after July 1, 1984. Specifically, on September 30, 1998, the EPA authorized Massachusetts to administer the Satellite Accumulation rule, effective November 30, 1998 (63 FR 52180). Also, on October 12, 1999, the EPA authorized Massachusetts to administer the Toxicity Characteristics rule (except with respect to Cathode Ray Tubes), and the Universal Waste rule, effective immediately (64 FR 55153). Finally, on November 15, 2000, the EPA granted interim authorization for Massachusetts to regulate Cathode Ray Tubes under the Toxicity Characteristics rule through January 1, 2003, effective immediately (65 FR 68915). This interim authorization subsequently was extended to run through January 1, 2006 (67 FR 66338, October 31, 2002).

C. What Decisions Is the EPA Making in This Standard Authorization?

The EPA is authorizing Massachusetts regulations which will update the State's hazardous waste program. The State regulations cover hazardous waste definitions and miscellaneous provisions, provisions for the identification and listing of hazardous wastes, and standards for hazardous waste generators, which correspond to RCRA Consolidated Checklists C1, C2 and C3, respectively. The State regulations have been updated to address most Federal RCRA requirements listed in Checklists C1, C2 and C3 through at least July 1, 1990. The EPA is authorizing these changes. In addition to addressing requirements in Checklists C1, C2 and C3 not previously covered by authorized State regulations, the State regulations make some changes to the previously authorized Satellite Accumulation, Universal Waste rule and Toxicity Characteristics rule regulations. The EPA also is authorizing these changes. In addition, the State regulations include some State initiated changes to previously authorized Base Program regulations (*i.e.*, changes made for reasons other than addressing new EPA requirements). The EPA also is authorizing these changes insofar as they address hazardous waste definitions and miscellaneous provisions, provisions for the identification and listing of hazardous wastes, and standards for hazardous waste generators, and except as specified below. Finally, the State regulations include provisions which track the 180 Day Accumulation Time rule for metal finishing industry waste water treatment sludges (F006) being recycled, adopted by the EPA on March 6, 2000 (65 FR 12397). The EPA also is authorizing these provisions.

The specific RCRA program revisions for which the EPA is authorizing the Commonwealth of Massachusetts are listed in the table below. The Federal requirements in the table are identified by their checklist numbers and rule descriptions. The following abbreviation is used in defining analogous state authority: CMR = Code of Massachusetts Regulations. The citations in the table are to the CMR provisions as recently adopted/amended by the MADEP in Massachusetts Register No. 994 (February 27, 2004).

Description of Federal requirements and checklist reference numbers	Analogous state authority
Consolidated Checklist 1 through July 1, 1990, covering base program requirements in 40 CFR part 260, and requirements in the following rule checklists included in part 260:	310 CMR 30.001–30.009; 30.010 (definitions), except for definitions relating to program elements not being authorized, namely ''mixed waste,'' ''municipal or industrial wastewater treatment facility permitted under M.G.L. c. 21, sec. 43'' and definitions relating to used oil program; 30.011–30.030.
(5) National Uniform Manifest (definitions), 49 FR 10490, 3/20/84;	
(11) Corrections to Test Methods Manual, 49 FR 47390, 12/4/84;	

Description of Federal requirements and checklist reference numbers	Analogous state authority
(13) Definition of Solid Waste, 50 FR 14216, 4/11/85 as amended on 8/20/85 at 50 FR 33541 (except for variance authorities, 40 CFR 260.30 through 40 CFR 260.33); (23) Generators of 100 to 1000 kg Hazardous Waste (definitions), 51 FR 10146, 3/24/86; (24) Financial Responsibility; Settlement Agreement (definitions), 51 FR 16422, 5/2/86; (28) Standards for Hazardous Waste Storage and Treatment Tank Systems (definitions), 51 FR 25422, July 14, 1986 as amended on August 15, 1986 at 51 FR 29430; (35) Revised Manual SW–846, Amended Incorporation by Reference (definitions), 52 FR 8072–8073, March 16, 1987; (49) Identification and Listing of Hazardous Waste, Treatability Studies Sample Exemption (definition), 53 FR 27290, 7/19/88; (67) Testing and Monitoring Activities, 54 FR 40260, 9/29/89; (71) Mining Waste Exclusion II (definition), 55 FR 2322, 1/23/90.	
Consolidated Checklist 2 through July 1, 1990, covering base program requirements in 40 CFR part 261 and requirements in the following rule checklists included in part 261:	310 CMR 30.101–30.103; 30.104 (exemptions), except for 30.104(3)(d) (research study samples); 30.105–30.162; 30.353 (rules for very small quantity generators, being authorized in place of EPA conditional exemption in 40 CFR 261.5)
(4) Chlorinated Aliphatic Hydrocarbon Listing (F024), 49 FR 5308, 2/10/84; (7) Warfarin and Zinc Phosphide Listing, 49 FR 19922, 5/10/84; (8) Lime Stabilized Pickle Liquor Sludge, 49 FR 23284, 6/5/84; (9) Household Waste, 49 FR 44978, 11/13/84; (13) Definition of Solid Waste, 50 FR 614, 1/4/85 as amended 4/11/85 at 50 FR 14216 and 8/20/85 at 50 FR 33541; (14) Dioxin Waste Listing and Management Standards, 50 FR 1978, 1/14/85; (17C) HSWA Codification Rule—Household Waste, 50 FR 28702, 7/15/85; (17J) HSWA Codification Rule—Cement Kilns, 50 FR 28702, 7/15/85; (18) Listing of TDI, TDA, DNT, 50 FR 42936, 10/23/85; (20) Listing of Spent Solvents, 50 FR 53315, 12/31/85 as amended on 1/21/86 at 51 FR 2702; (21) Listing of EDB Waste, 51 FR 5327, 2/13/86; (22) Listing of Four Spent Solvents, 51 FR 6537, 2/25/86; (23) Generators of 100 to 1000 kg hazardous waste, 51 FR 10146, 3/24/86; (26) Listing of Spent Pickle Liquor, 51 FR 19320, 5/28/86 amended on 9/22/86 by 51 FR 33612 and on 8/3/87 by 52 FR 28697; (28) Standards for Hazardous Waste Storage and Treatment Tank Systems, 51 FR 25422, 7/14/86 as amended on 8/15/86 at 51 FR 29430; (29) Correction to Listing of Commercial Chemical Products and Appendix VIII, 51 FR 28296, 8/6/86 (superseded by Checklist 46, see below); (31) Exports of Hazardous Waste, 51 FR 28664, 8/8/86; (33) Listing of EBDC, 51 FR 37725, 10/24/86; (37) Definition of Solid Waste, Technical Correction, 52 FR 21306, 6/5/87; (41) Identification and Listing of Hazardous Waste, 52 FR 26012, 7/10/87; (46) Technical Correction, Identification and Listing of Hazardous Waste, 53 FR 13382, 4/22/88; (47) Identification and Listing of Hazardous Waste, Technical Correction (corrects CL 23); (49) Identification and Listing of Hazardous Waste, Treatability Studies Sample Exemption, 53 FR 27290, 7/19/88; (53) Identification and Listing of Hazardous Waste, and Designation, Reportable Quantities, and Notification, 53 FR 35412, 9/13/88; (56) Identification and Listing of Hazardous Waste, Removal of Iron Dextran from the List of Hazardous Wastes, 53 FR 43878, 10/31/88; (57) Identification and Listing of Hazardous Waste, Removal of Strontium Sulfide from the List of Hazardous Wastes, 53 FR 43881, 10/31/88; (65) Mining Waste Exclusion I, 54 FR 36592, 9/1/89; (67) Testing and Monitoring Activities, 54 FR 40260, 9/29/89; (68) Reportable Quantity Adjustment Methyl Bromide Production Wastes, 54 FR 41402, 10/6/89; (69) Reportable Quantity Adjustment, 54 FR 50968, 12/11/89; (71) Mining Waste Exclusion II, 55 FR 2322, 1/23/90; (72) Modifications of F019 Listing, 55 FR 5340, 2/14/90; (73) Testing and Monitoring Activities, Technical Corrections, 55 FR 8948, 3/9/90; (75) Listing of 1,1-Dimethylhydrazine Production Wastes, 55 FR 18496, 5/2/90; (76) Criteria for Listing Toxic Wastes, technical amendment, 55 FR 18726, 5/4/90.	
Consolidated Checklist 3 through July 1, 1990, covering base program requirements in 40 CFR part 262 and requirements in the following rule checklists included in part 262:	310 CMR 30.301–30.352 (rules for large and small quantity generators); revisions to 30.685(1) (referenced by generator regulations); 30.361 (international shipments); 30.061–30.064 (generator notifications/i.d. numbers).
(1) Biennial Report, 48 FR 3977, 1/28/83;	

Description of Federal requirements and checklist reference numbers	Analogous state authority
(5) National Uniform Manifest, 49 FR 10490, 3/20/84; (17D) HSWA Codification Rule, Waste Minimization, 50 FR 28702, 7/15/85; (23) Generators of 100 to 1000 kg Hazardous Waste, 51 FR 10146, 3/24/86; (28) Standards for Hazardous Waste Storage and Treatment Tank Systems, 51 FR 25422, 7/14/86 as amended on 8/15/86 at 51 FR 29430; (31) Exports of Hazardous Waste, 51 FR 28664, 8/8/86; (32) Standards for Generators, Waste Minimization Certifications, 51 FR 35190, 10/1/86; (42) Exception Reporting for Small Quantity Generators of Hazardous Waste, 52 FR 35894, 9/23/87; laboratories (48) Farmer Exemptions, Technical Corrections, 53 FR 27164, 7/19/88; (58) Standards for Generators of Hazardous Waste, Manifest Renewal, 53 FR 45089, 11/8/88; (71) Mining Waste Exclusion II, 55 FR 2322, 1/23/90.	
	Note: The Massachusetts ''Class A'' recycling regulations regarding generators doing on-site recycling also are being authorized, as described in Part II of this document. Special rules for certain university covered by the New England Universities' Laboratories XL project also are being authorized, as described in Part III of this document.
RCRA Cluster X:	
(184) Accumulation Time for Waste Water Treatment Sludges, 65 FR 12378, 3/8/00.	310 CMR 30.340(5)
Revisions to Previously Authorized Rules:	
(12) Satellite Accumulation Rule, 49 FR 49568, 12/20/84;	310 CMR 30.340(6), 30.351(5), 30.351(2)(b)(6.) and 30.353(2)(b)(6.).
(119) Toxicity Characteristics Revision, TCLP Correction, 57 FR 55114, 11/24/92 as amended on 2/2/93 at 58 FR 6854.	310 CMR 30.155 and 30.012 (updated incorporation by reference).
(142) Universal Waste Rule, 60 FR 25492, 5/11/95	310 CMR 30.1034(5)(c)(1.)(c.) (revised cross-reference).

Following review of these Massachusetts regulations, the EPA has determined that they are equivalent to, no less stringent than and consistent with the Federal program. Therefore, under the standard authorization process, the EPA is granting Massachusetts final authorization to operate its updated hazardous waste program as reflected in the table above. The reasons for these determinations are set forth in the Administrative Docket, which is available for public review. Many of the State regulations track Federal requirements virtually identically. Others differ from the Federal regulations in particular details, but have been determined by the EPA to be equivalent to the Federal regulations in providing the same (or greater) overall level of environmental protection with respect to each Federal requirement. The resolution of various issues relating to the State regulations is recorded in an EPA Memorandum dated February 14, 2003 entitled ''Comments on Proposed Massachusetts RCRA Regulations'' and an EPA Memorandum dated March 31, 2003 entitled ''Resolution of Issues Regarding Proposed Massachusetts RCRA Regulations.''

The final State regulations being authorized by the EPA today are virtually identical to the proposed State regulations that were proposed to be approved by the EPA on October 21, 2003. The only substantive difference between the proposed state regulations and final regulations is that, in response to public comments made at the State level, the MADEP has not adopted the proposed requirement that inspection logs be kept of inspections made in Satellite accumulation areas. The requirement that weekly inspections occur in such areas has been maintained. The EPA is today authorizing the State's Satellite accumulation area regulations, notwithstanding this change, since the State's regulations remain at least as stringent as the federal Satellite accumulation area regulations. The EPA is granting this final authorization without conducting an additional public comment process, since the change is a minor one and is a logical outgrowth from the State regulations initially proposed to be authorized by the EPA.

Today's authorization addresses some but not all of the RCRA provisions which need to be adopted by the State. Future updates of the State's regulations will need to address requirements covered by Checklists C1 through C3 adopted after July 1, 1990 and requirements covered by Checklists C4 through C10 adopted since July 1, 1984. The EPA has not reviewed and is not currently authorizing changes the State may have made to Base Program regulations relating to Checklists C4–C10. (Note, Checklists C4 through C10 address EPA provisions found in 40 CFR parts 263, 264, 265, 266, 268, 270, 124 and 279). Also not covered in the current authorization are some rules issued by the EPA before July 1, 1990 which apply in part to generators, namely the 1986 Radioactive Mixed Waste rule/interpretation, the various rules relating to Land Disposal Restrictions (''LDRs''), and the 1990 Organics Air Emissions rule (''AA'' and ''BB'' rule). Also not covered in the current authorization are sector-specific rules that the MADEP has adopted for printers, photo processors and dry cleaners under its Environmental Results Program (''ERP''). Although many sources in these sectors are subject to RCRA requirements, the MADEP has advised the EPA that the ERP regulations have not made any changes to the hazardous waste management requirements applicable to these sectors, and has not submitted the ERP regulations for authorization at this time. Also not covered in the current authorization is the State regulation at 310 CMR 30.104(3)(d) relating to research facilities. That regulation relates to an exemption from full Treatment, Storage, Disposal Facility (''TSDF'') requirements found at 310 CMR 30.864. The EPA will review that research facility provision (and the related exemption) when the MADEP submits updated regulations for TSDFs (Consolidated Checklists C5, C6 and C9). Also not covered in the current authorization is the proposed State definition of ''municipal or industrial

wastewater treatment facility permitted under M.G.L. c. 21, sec. 43'' in 310 CMR 30.010. That definition relates to an exemption from full TSDF requirements found at 310 CMR 30.801(4). The EPA will review this definition (and the related exemption) when the MADEP submits updated regulations for TSDFs.

D. Where Are the State Rules Different From the Federal Rules?

The most significant differences between the State rules and the Federal rules are summarized below. It should be noted that this summary does not describe every difference, or every detail regarding the differences that are described. Members of the regulated community are advised to read the complete regulations to ensure that they understand all of the requirements with which they will need to comply.

1. More Stringent Provisions

There are aspects of the Massachusetts program which are more stringent than the Federal program. All of these more stringent requirements are part of the federally enforceable RCRA program, and must be complied with in addition to the State requirements which track the minimum Federal requirements. These more stringent requirements include the following:

- Massachusetts does not follow the EPA interpretation allowing Large Quantity Generators and Small Quantity Generators to conduct treatment without permits in accumulation tanks and containers.
- Massachusetts imposes various requirements regarding storage of hazardous wastes by generators which are more stringent than Federal requirements. For example, Massachusetts requires that labels on tanks and containers include identification of the hazardous wastes and the type of hazards associated with the wastes, as well as tracking the Federal requirement that the labels include the words ''hazardous waste.''
- In addition, Massachusetts specifies record-keeping requirements to document compliance with requirements in some circumstances where the record-keeping is not expressly required under the Federal regulations, *e.g.*, the keeping of an inspection log for container inspections in central storage areas.
- Massachusetts imposes spill containment requirements for container areas (not just for tanks as in the Federal regulations), including a requirement that indoor containers be located on an impervious base and a requirement that outdoor containers have full secondary containment.
- Massachusetts requires security measures and posting of signs at hazardous waste storage areas, in addition to the labeling of individual tanks and containers as required by the Federal regulations.
- Massachusetts does not allow any storage of hazardous wastes in open tanks, whereas the Federal regulations allow such storage except when otherwise required by the 40 CFR parts 264 and 265, subpart CC hazardous air emission rules.
- The Massachusetts satellite storage regulations require containers to be moved from satellite areas to central storage areas within three days of a container being filled, whereas this three-day period begins to run under the Federal regulations only when more than 55 gallons has been accumulated in the satellite area.
- Massachusetts specifies requirements for Very Small Quantity Generators (''VSQGs'') (Federal Conditionally Exempt Small Quantity Generators) which go beyond the Federal requirements for conditional exemption. For example, Massachusetts specifies safe storage practices for VSQGs whereas the Federal regulations regarding tank and container storage apply only to Large Quantity Generators (''LQGs'') and Small Quantity Generators (''SQGs'').
- In addition, Massachusetts prohibits VSQGs from generating or accumulating any acutely hazardous wastes, whereas the Federal regulations allow such generators to accumulate up to one kilogram of such wastes.
- Finally, VSQG hazardous wastes may be sent to municipal solid waste landfills under the Federal program but not under the Massachusetts program.

2. Broader in Scope Provisions

There also are aspects of the Massachusetts program which are broader in scope than the Federal program. The State requirements which are broader in scope are not considered to be part of the Federally enforceable RCRA program. However, they are fully enforceable under State law and must be complied with by sources within Massachusetts. These broader in scope requirements include the following:

- As further discussed in part II, below, Massachusetts designates and regulates as hazardous many recyclable materials not regulated as hazardous wastes under the Federal RCRA program, in addition to regulating those hazardous recyclable materials that are regulated as hazardous wastes in the Federal program.
- Massachusetts regulates both Centers and Events which collect household hazardous wastes and VSQG hazardous wastes. In contrast, household hazardous wastes are not regulated as hazardous wastes under the Federal program even when collected at centers and events. In addition, under the Federal regulations, VSQG hazardous wastes may be sent to facilities authorized by the State to manage such wastes, but there are no Federal regulations specifying the standards to be followed at facilities which are centers and events.

3. Different but Equivalent Provisions

As noted in part I.C. above, there also are various Massachusetts regulations which differ from but have been determined to be equivalent to the Federal regulations. These State regulations which are different from but equivalent to the Federal regulations are part of the Federally enforceable RCRA program. These different but equivalent requirements include the following:

- The Massachusetts regulations regarding satellite storage allow more than one container in a satellite area (so long as there is only one container per waste stream) whereas the Federal regulations contemplate that there will be only one 55 gallon container in each satellite area. Unlike the Federal regulations, however, the State regulations impose requirements to ensure that multiple containers will be stored safely, including aisle spacing requirements, requirements for separation of containers with incompatible wastes and inspection requirements.
- The Massachusetts regulations specify that while hazardous wastes placed into satellite storage must be counted when determining a generator's rate of generation, they need not be counted when determining the amount of hazardous waste stored on site (for purposes of determining whether a generator is a LQG, SQG or VSQG). In contrast, under the Federal regulations, wastes in satellite storage are counted both when determining a generator's rate of generation and when determining the amount of hazardous waste stored on site.
- The Massachusetts regulations contain the same exemption from hazardous waste requirements for certain chromium wastes as is found in the Federal regulations at 40 CFR 261.4(b)(6). However, under the EPA regulation, a generator seeking to claim the exemption for other than specifically listed waste streams must petition the EPA and obtain a determination that its particular wastes are exempt. In contrast, Massachusetts is allowing a generator to make this

determination for itself provided that the generator documents compliance with the criteria listed in the State (and Federal) regulations. Of course, a generator is responsible for making the correct determination, and the EPA encourages generators who have any questions to seek guidance from the MADEP or EPA. Also, an exemption determination made by a generator under the Massachusetts regulations will apply only within Massachusetts. Petitions will need to be filed with any other authorized State to which shipments are made, or with the EPA if shipments are made to a non-authorized State.

• The Massachusetts regulations contain conditional exemptions for bulk scrap metal items as well as smaller particle scrap metal items being recycled, for whole used circuit boards as well as shredded circuit boards being recycled and for certain mixtures of water and unused gasoline being recycled. The Federal regulations similarly exempt these materials, but sometimes under different categories (*e.g.*, whole used circuit boards under the scrap metal category, certain mixtures of water and unused gasoline under the commercial chemical products category).

• Massachusetts allows VSQGs to conduct certain kinds of treatment on site without a permit. The exemption is limited to non-thermal treatment (typically neutralization) of wastes generated on site and is subject to a requirement that the treatment be conducted safely. The Massachusetts program operates somewhat similarly to the EPA interpretation allowing certain kinds of treatment in accumulation tanks and containers without permits, by LQGs and SQGs. However, Massachusetts allows treatment without permits only by VSQGs, whereas the EPA interpretation instead allows it by LQGs and SQGs. Also, the EPA interpretation allows treatment only within accumulation tanks and containers, whereas the Massachusetts regulation allows treatment in non-accumulation containers (*e.g.*, laboratory containers) at the site where the waste was generated, provided of course that this can be done safely.

• The Massachusetts regulations require that secondary containment systems for outdoor above-ground tanks must have a capacity at least equal to 110% of the volume of the largest tank. This requirement is designed to take the place of the Federal requirement (in 40 CFR 265.193(e)) that such containment systems must have a capacity at least equal to 100% of the volume of the largest tank plus sufficient capacity to contain precipitation from a 25 year, 24 hour storm. The Massachusetts regulations generally track the Federal requirements regarding secondary containment requirements for underground tanks. The Massachusetts regulations have been amended to require secondary containment for indoor above-ground tanks with a capacity at least equal to 100% of the volume of the largest tank (the Federal standard).

• The Massachusetts regulations specify standards for when tanks will be considered ''empty.'' The EPA regulations specify such standards only for containers, while specifying that tanks must be decontaminated before being disposed or reused. It should be noted that the State's empty tank standard for non-acute wastes is more stringent than the State (and Federal) empty container standard, *i.e.*, it does not allow waste residues to be left in tanks. The State standards will operate similarly to the tank decontamination requirement in the Federal regulations, but the State regulations clarify that generators may be able to determine that tanks are ''empty'' based on knowledge of the waste (*e.g.*, knowledge that there has been appropriate thorough cleaning of the tanks), without needing to do TCLP testing in every case.

E. What Will Be the Effect of the Authorization Decision?

The effect of the authorization decision will be that entities in Massachusetts subject to RCRA will need to comply with the authorized State requirements instead of the Federal requirements, with respect to the matters covered by the authorized State requirements, in order to comply with RCRA. However, until the authorized Massachusetts program is brought fully up to date, there will continue to be a dual state/Federal RCRA program in Massachusetts. RCRA was amended by the Hazardous and Solid Waste Amendments (''HSWA'') in 1984. Section 3006(g) of RCRA, 42 U.S.C. 6906(g), provides that when the EPA promulgates new regulatory requirements pursuant to HSWA, the EPA shall directly carry out these requirements in states authorized to administer the underlying hazardous waste program, until the states are authorized to administer these new requirements. The EPA has established various new regulatory requirements pursuant to HSWA which have not yet been authorized to be administered by Massachusetts. There also are various self-implementing requirements directly established by the HSWA statutory amendments themselves. Regulated entities must comply with these HSWA requirements as set out in the Federal regulations and statute in addition to authorized State program requirements. The HSWA requirements that will continue to be administered by the EPA in Massachusetts include all of the Land Disposal Restriction (''LDR'') requirements set out in 40 CFR part 268 (including requirements adopted prior to July 1, 1990), the Corrective Action requirements referenced in 40 CFR 264.101, and the hazardous air emission standards set out in 40 CFR parts 264 and 265, subparts AA, BB and CC. A complete list of HSWA requirements is set out in 40 CFR 271.1, Tables 1 and 2.

With respect to TSDF permitting, Massachusetts will continue to issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits it has issued. The EPA also will continue to issue permits or portions of permits covering HSWA requirements for which Massachusetts is not authorized. In addition, the EPA will continue to implement the provisions of 40 CFR 264.1(f)(2) within Massachusetts. That provision specifies that TSDFs must comply with any standards promulgated by the EPA (HSWA or non-HSWA) after a State is authorized, until the State obtains authorization to issue permits covering such newly promulgated standards. The major effect of this provision in Massachusetts is that the EPA will remain responsible for issuing permits for Miscellaneous Units, since the EPA promulgated the Miscellaneous Unit standards in 40 CFR part 264, subpart X after the initial authorization of the Massachusetts base program, and since Massachusetts has not yet applied for and is not now being authorized to carry out these requirements.

Massachusetts is not authorized to carry out its hazardous waste program in Indian country within the State (land of the Wampanoag tribe). Today's action will have no effect on Indian country. The EPA will continue to implement and administer the RCRA program in these lands.

The EPA is authorizing but not codifying the enumerated revisions to the Massachusetts program. 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. The EPA does this by referencing the authorized State rules in 40 CFR part 272. The EPA reserves the amendment of 40 CFR part 272, subpart W for the codification of the

Massachusetts' program until a later date.

F. Response to Public Comments

The EPA received one comment generally supporting the authorization of the updated State regulations. A second commenter took no position on the authorization, but suggested that the EPA make a minor revision to the description of the federal Satellite accumulation regulations contained in the proposed rulemaking notice. Specifically, in the second bulleted item in part I.D.3. of the proposed rulemaking notice, Region I indicated that under the federal regulations, when a container is moved from a Satellite accumulation area to a central storage area, the time allowed for central storage begins to run when the container is required to be moved, which can be up to three days before the container is actually moved. The commenter pointed out that EPA's Office of Solid Waste has issued a more liberal interpretation of the federal regulations, stating that the time allowed for central storage begins to run only when the container is moved (provided of course that the container is moved within the three-day period). *See* RCRA/Superfund Hotline Monthly Summary, October 1990 (Faxback 13410). To avoid confusion, the Region has dropped its prior description of this federal Satellite accumulation requirement from today's final rulemaking notice. The Region plans to follow the OSW interpretation when applying the federal regulations.

This change has no effect on the interpretation of the Massachusetts regulations being authorized. In the proposed rulemaking notice, the Region correctly described the State regulations as specifying that the time allowed for central storage begins to run when a container is moved (within the three-day period).

II. State-Specific Modification to Federal Hazardous Waste Regulations, Pursuant to ECOS Program Proposal, To Enable EPA To Authorize Certain Portions of the Massachusetts Revisions; Resulting Authorization of Massachusetts Recyclable Materials Regulations

A. What Massachusetts Regulations Are Being Authorized?

In 1986, the MADEP adopted regulations to comprehensively regulate hazardous recyclable materials, under provisions separate from those governing hazardous wastes planned to be disposed. These regulations are found in 310 CMR 30.200. In the Federal RCRA program, some hazardous recyclable materials are not considered to be hazardous wastes and thus are exempt from hazardous waste regulation (*e.g.*, sludges and byproducts exhibiting a characteristic of hazardous waste and being reclaimed) whereas other hazardous recyclable materials are considered to be hazardous wastes and are subject to regulation including all of the usually applicable hazardous waste generator regulations (*e.g.*, spent materials, listed sludges and listed byproducts being reclaimed). In contrast, the State regulations cover virtually all hazardous recyclable materials under some level of regulation. However, based on the perceived level of risk, different recyclable materials are subject to different levels of regulation, from the least regulated Class A to the most regulated Class C.

Initially, the State's Class A regulations applied only to recyclable materials that are exempt from Federal regulation. Thus the State was not required to seek Federal authorization for these regulations. In 1995, however, the MADEP expanded the Class A category to include many recyclable materials that are recycled at the site of generation. Under the State regulations, these Class A recyclable materials must be recycled in a recycling system that is completely enclosed, but may be stored in tanks or containers prior to being recycled, without the entire storage to recycling process being completely enclosed. Thus the Class A regulations now apply to certain federally regulated hazardous wastes that are recycled on site by generators, namely those hazardous recyclable materials that are spent materials, listed sludges and listed byproducts, that are accumulated or stored on site before being recycled, and that are recycled through a process that does not meet all of the conditions for Federal exemption as a completely enclosed recycling process set out in 40 CFR 261.4(a)(8). In particular, the Class A regulations apply to Federally regulated recyclable materials currently being stored by about 136 generators with stand alone solvent stills/distillation units and to Federally regulated recyclable materials currently being stored by about 40 generators with stand alone silver recovery units.

The EPA is today authorizing the State's Class A regulations insofar as they apply to the storage of recyclable materials by generators with stand alone solvent stills/distillation units, generators with stand alone silver recovery units, and any other generators who may store Federally regulated recyclable materials subject to the Class A regulations in the future (*i.e.*, generators referenced by 310 CMR 30.212(10)). These Class A regulations are now part of the federally approved and enforceable State base program generator requirements.

It should be noted that the State has just revised its Class A regulations (as part of its recent update), and it is the revised Class A regulations which the EPA is authorizing. With respect to the Class A program, there are no substantive differences between the final State regulations being authorized by the EPA today and the proposed State regulations that were proposed to be approved by the EPA on October 21, 2003.

Today's authorization does not cover the Class A regulations insofar as they apply to the Federally exempt recyclable materials referenced by 310 CMR 30.212(1) through (7), as the regulation of these recyclable materials is beyond the scope of the Federal RCRA program. The authorization also does not cover the Class A regulations insofar as they apply to waste oil and specification used fuel oil as referenced by 310 CMR 30.212 (8)—(9), since the MADEP has not yet applied to be authorized for the Federal RCRA Used Oil program (established in 40 CFR part 279). Finally, the authorization does not cover the State's Class B and Class C regulations, since the MADEP has not yet applied to be authorized for these regulations (which generally relate to off-site non-generator recycling).

B. Why is the EPA Making a Federal Regulation Change?

The EPA has reviewed the Massachusetts Class A regulations and determined that they do not meet particular requirements for State authorization set out in the current EPA regulations. However, the EPA also has determined that the Massachusetts Class A regulations meet the RCRA statutory test of protecting human health and the environment and are at least as environmentally protective overall as the Federal program. Thus the EPA is making a State-specific Federal regulation change to allow authorization of the Massachusetts Class A regulations.

1. Differences in the State Class A Regulations Which Preclude a Standard Authorization

In comparison with the EPA regulations applicable to storage of hazardous wastes by generators, the Class A regulations regarding storage of hazardous recyclable materials by generators differ with respect to various details. For example, under the Federal regulations, storage of hazardous wastes

without TSDF permits by LQGs and SQGs generally is limited to 90 and 180 days, respectively. In contrast, the Class A regulations allow recyclable materials to be stored pending recycling so long as there is no ''speculative accumulation.'' This typically allows storage times without TSDF permits of a year or longer. The EPA regulations on State authorization specify that, ''[s]tate law must require [TSDF] permits for owners and operators of all hazardous waste management facilities required to obtain permits under 40 CFR part 270 . . .'' 40 CFR 271.13(a). By allowing generator storage times without TSDF permits longer than the Federal regulations, the Class A regulations do not comply with this current EPA requirement for State authorization.

In addition, the Class A regulations impose requirements regarding storage of recyclable materials by generators which are quite different from the Federal regulations in 40 CFR part 262 regarding generator storage. In place of the Federal categories of LQG, SQG and CESQG (Massachusetts VSQG), the Class A regulations establish a dual status system. Generators are classified as LQGs or SQGs or VSQGs with respect to wastes to be shipped off-site based on the amount of such wastes to be shipped off-site. Generators are separately classified and regulated with respect to Class A recyclable materials based on the amounts of such materials (and are placed in either a merged LQG/SQG category or a VSQG category for that purpose). The resulting differences between the State and Federal regulations are fully described in a EPA memorandum dated July 8, 2002 entitled ''Massachusetts RCRA Program Update: Issues Regarding Regulation of Recyclable Materials Reclaimed by Generators on Site.'' The differences include that the State does not count Class A recyclable materials in determining generator status (for wastes to be shipped off-site), resulting in some sources which would be LQGs under the Federal program instead being regulated in a lesser-regulated generator category. In addition, for sources which remain LQGs (notwithstanding the difference regarding counting), the usual LQG requirements regarding contingency planning and training do not apply to the parts of the generator's site handling the Class A hazardous recyclable materials. Rather, with respect to these recyclable materials, such generators are instead subject to the less formal and detailed Class A requirements regarding emergency planning and training.

The EPA is committed to reexamining the extent of flexibility that should be employed when reviewing State RCRA programs. In connection with another part of Massachusetts' ECOS program proposal, the EPA has created a Work Group of EPA and State personnel to examine authorization issues. Without waiting for the results of this effort, the EPA nevertheless has employed some flexibility consistent with its current regulations in reviewing the Massachusetts RCRA program update, as indicated by its approval of some Massachusetts provisions which differ from Federal provisions, discussed in part I.D. above. However, the differences between the Massachusetts Class A regulations and the EPA generator storage regulations are greater than those discussed in part I.D., and a standard authorization of the Class A regulations is precluded under the current EPA State authorization regulations by, for example, the difference regarding when TSDF permits are required. Thus the EPA is not approving the Massachusetts Class A regulations as a standard authorization.

2. Justification for Making a Change to the Federal Regulations to Allow the Authorization

The EPA was persuaded to make a State-specific regulation change to its Federal regulations to enable the authorization of the Class A regulations, based on the following reasons. The Massachusetts program comprehensively regulates hazardous wastes that are recycled on site by generators, and has operated successfully for many years. The State regulations contain incentives that encourage recycling (*e.g.*, lower fees for generators which recycle). In its ECOS project application, the MADEP reported that as of 1999, over 490,000 tons of wastes were recycled under its program, as opposed to 90,000 tons of hazardous wastes that were disposed. Basic requirements are in place in the State's recycling program, including the requirement to do waste determinations, the requirement to obtain hazardous waste i.d. numbers (except for VSQGs) and safe handling requirements. While less stringent with respect to certain details, the Massachusetts program is at least as stringent as the Federal program overall. In particular, the Massachusetts program regulates a broader universe of hazardous recyclable materials than are regulated in the Federal program. Even if the focus is limited to Federally regulated wastes, the Massachusetts program is as stringent as the Federal program overall. It regulates the recycling process itself as well as prior hazardous waste storage, unlike the Federal program which regulates only the storage. Finally, some of the State's more stringent storage requirements (described in part I.D. above), have been applied to the storage of Class A materials, including additional labeling requirements and the prohibition of the use of open tanks.

Thus the Massachusetts Class A regulations meet the RCRA statutory test of protecting human health and the environment, and constitute an acceptable alternative approach (to regulating hazardous recyclable materials) to the approach currently set forth in the Federal regulations. In addition, the EPA recently announced that it is planning to propose a change to its regulations to revise the Federal RCRA regulatory requirements with respect to recyclable materials that remain in use in a continuous industrial process. 49 FR 11251 (March 13, 2002). This is a part of the EPA's response to the court's decision in *Association of Battery Recyclers* v. *EPA*, 208 F.3d 1047 (D.C.Cir. 2000) *(''ABR'')*, which set aside a portion of an EPA regulation regarding mineral processing industry recyclable materials. If the EPA ultimately adopts a regulation exempting recyclable materials used in a continuous industrial process from Federal RCRA regulation, this exemption is likely to cover at least most Class A recyclable materials.

The EPA does not believe that in light of the *ABR* decision, it should determine now that all Class A materials are not subject to Federal regulation, and thus conclude that the Class A regulations create no authorization issues. Such a result is not compelled by the court's decision and would prejudge the EPA's anticipated general rulemaking process. However, the fact that the EPA is planning to move in the direction of reducing regulation regarding recyclable materials is an additional reason counseling in favor of authorizing the State's program regarding Class A recyclable materials under the authority of a special EPA regulation. As mentioned above, the State's Class A program has operated successfully for many years. Requiring the State to now change that program to track EPA requirements does not make sense in the particular circumstances, including the EPA's announced intention to soon change the requirements.

The EPA is making the State-specific change to its Federal regulations pursuant to a proposal for flexibility submitted by the MADEP under the ECOS program. Under the Joint EPA/State Agreement to Pursue Regulatory Innovation, the EPA agreed to entertain

State proposals for flexibility in an agreement entered into between the EPA and the Environmental Council of States. *See* 63 FR 24784 (May 5, 1998). As specified in that agreement, the EPA may accept State proposals to follow alternative regulatory requirements when (as here) the alternative requirements provide at least an equivalent overall level of environmental protection as the standard EPA mandated requirements.

C. What Is the Regulation Change?

The change to the Federal regulations which is enabling the EPA to grant the requested flexibility is set out at the end of this document. The EPA is amending 40 CFR 262.10 to add a paragraph (k), which specifies that generators within Massachusetts may comply with the Class A regulations, when authorized, with respect to the recyclable materials and matters covered by the authorization, instead of complying with certain standard EPA regulations. This new regulation is taking effect immediately upon today's publication in the **Federal Register**. Having the regulation take effect immediately is justified under RCRA section 3010(b), 42 U.S.C. 6930(b) and under the Administrative Procedures Act, 5 U.S.C. 553(d), since this new regulation allows the EPA to authorize a long-standing State program and the regulated community does not need any further time to come into compliance with that State program. The EPA Administrator has delegated one-time authority to the Regional Administrator, EPA New England, to make this regulation change.

D. What Will be the Effect of the Federal Regulation Change?

The change to the Federal regulations is enabling the EPA to today authorize the Massachusetts regulations, since the Federal regulations now specify that the State regulations contain acceptable alternative standards for Massachusetts. The State regulations are equivalent to, consistent with and no less stringent than these acceptable alternative standards. Allowing the alternative standards is justified for the reasons discussed in part II.B, above. In particular, the EPA has determined that the alternative program protects human health and the environment and is at least as stringent overall as the standard EPA RCRA program. The EPA believes that it has the authority to approve this alternative program under the RCRA statute.

However, the change to the Federal regulations does not itself result in any change to the legal requirements applicable to generators in Massachusetts. Rather, generators became subject to the revised Class A requirements under State law following their recent adoption in final form by the MADEP. These requirements are in turn becoming part of the Federally enforceable RCRA program upon being authorized by the EPA today. For the sake of efficiency, the EPA is both making the Federal regulation change and authorizing the State regulations in this same rulemaking today. Thus in this particular case, the State requirements are becoming authorized and federally enforceable at the same time as the Federal regulation change.

Under section 3006 of RCRA, the EPA may authorize a qualified State to administer and enforce a hazardous waste program within the State. (*See* 40 CFR part 271 for the requirements for authorization). States with final authorization administer their own hazardous waste programs in lieu of the Federal program. Following authorization, the EPA continues to have independent enforcement authority under RCRA sections 3007, 3008, 3013 and 7003.

After authorization, Federal rules written under RCRA provisions which predate the Hazardous and Solid Waste Amendments of 1984 (HSWA) no longer apply in the authorized state. Rather, the authorized State regulations apply in lieu of such Federal requirements. In addition, new Federal requirements imposed by such rules do not take effect in an authorized state until the state adopts the requirements.

In contrast, under section 3006(g) of RCRA, new requirements and prohibitions imposed by HSWA take effect in authorized states at the same time that they take effect in non-authorized states. The EPA is directed to carry out HSWA requirements and prohibitions in authorized states until the state is granted authorization to do so.

Today's federal regulation change is promulgated pursuant to non-HSWA authority. Thus, as explained above, the alternative standards contemplated by the rule took effect in Massachusetts following adoption by Massachusetts and are becoming Federally enforceable upon being authorized by the EPA today. They now apply in lieu of the EPA program with respect to the recyclable materials and matters covered by the authorization. For example, generators storing solvents for recycling in stand alone stills/distillation may store such solvents without permits for more than the 90 or 180 days set out in the Federal regulations, so long as they do not engage in ''speculative accumulation.''

Of course, generators still will need to comply with any other applicable RCRA requirements in addition to the Class A requirements. For example, generators storing some wastes for recycling and other wastes for disposal will need to comply with the authorized State requirements regarding wastes being stored for disposal with respect to those other wastes. In addition, generators will need to comply with any applicable Federal requirements which are being directly implemented by the EPA within Massachusetts pursuant to HSWA, *i.e.*, all HSWA requirements for which the State has not yet been authorized.

In particular, the State has not yet been authorized for and the EPA is continuing to administer within Massachusetts the air emission standards for tanks and containers set out in 40 CFR part 265, subpart CC (''CC regulations''). These regulations are applicable to many large quantity generators storing solvents, among others. Following today's authorization of the Class A regulations, the EPA plans to administer and enforce these CC regulations within Massachusetts as follows. First, only generators which are classified as large quantity generators under the State regulations will be considered subject to the CC regulations. That is, the EPA will utilize the Massachusetts counting rules when administering the CC rule within Massachusetts. This will avoid generators needing to do two separate State and Federal status calculations. Second, however, any generators which are classified as large quantity generators under the State regulations with respect to any part of their site will be subject to the CC regulations throughout their sites. Large quantity generators storing solvents will need to comply with all applicable requirements imposed by the CC regulations, whether the solvents are being stored for disposal or recycling. That is, the EPA will not utilize the Massachusetts dual status concept when administering the CC rule within Massachusetts. The EPA expects that any generator which is a LQG will take the steps required under the CC rule to prevent hazardous air emissions, just as such generators are subject to all applicable Clean Air Act requirements whether they dispose of their wastes or recycle.

E. For How Long Will the Authorization Continue?

Unlike the authorization of the Labs XL project regulations discussed in part III below, today's authorization of the Massachusetts ECOS project regulations will continue indefinitely. The EPA believes this is justified based on the

long successful operation of the Massachusetts Class A program, *i.e.*, no further assessment is necessary prior to the permanent authorization of this RCRA program element. Of course, like any other authorized program element, the Massachusetts Class A program will be subject to EPA oversight and possible future revision. But absent future EPA action to modify or rescind the action, the authorization will continue.

If the EPA issues future final regulations changing the status of recyclable materials used in a continuous industrial process under Federal RCRA regulation, portions of the Massachusetts Class A program now being authorized could then become beyond the scope of Federal regulation. If and when any revised national regulations take effect, the EPA will then address, in connection with a later update of the Massachusetts RCRA program, the effect of the national regulations on the Massachusetts program.

F. Response to Public Comments

The EPA received one comment supporting the authorization of the State's Class A program. No comments were filed opposing authorization of the program.

III. Extension of Site-Specific Regulations for New England Universities' Laboratories XL Project To Enable EPA To Authorize Certain Portions of the Massachusetts Revisions; Authorization of Massachusetts XL Project Regulations

A. What Is the New England Universities' Laboratories XL Project?

Project XL—''eXcellence and Leadership'' was announced in May 1995 as a part of the National Performance Review and the EPA's effort to reinvent environmental protection. *See* 60 FR 27282 (May 23, 1995). Project XL provides a limited number of private and public regulated entities an opportunity to develop pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current standard regulations and reasonably anticipated future regulations.

One of the projects that has been approved under Project XL is the New England Universities' Laboratories project. A Project XL proposal that the EPA exercise flexibility under RCRA was developed for the University of Massachusetts—Boston, Boston, MA, Boston College, Chestnut Hill, MA, and the University of Vermont, Burlington, VT (the ''participating universities''). A Final Project Agreement approving the proposal was signed by the EPA, the participating universities, the MADEP and the Vermont Department of Environmental Conservation, on September 28, 1999. Pursuant to that agreement, the participating universities have been allowed to comply with Environmental Management Plans (EMPs) covering their laboratories in place of certain standard requirements for hazardous waste generators, during a trial period. In order to allow this experiment, the EPA adopted special regulations during 1999 which are set forth in 40 CFR 262.10(j) and 40 CFR 262.100–108. *See* 64 FR 52380 (September 28, 1999) (final rulemaking) and 64 FR 40696 (July 27, 1999) (proposed rulemaking). The reasons for approving the special EPA regulations are fully set forth in those rulemaking notices and will not be repeated here. Like the special regulation discussed in part II above in connection with the proposed ECOS project, the special EPA regulations were designed to enable the EPA to authorize State regulations that are different from the standard EPA regulations. Also like the ECOS project, the actual implementation of the XL project requires the adoption, and Federal authorization, of State regulations.

Following the adoption of EPA's special Project XL regulations, both Massachusetts and Vermont adopted regulations setting alternative standards for laboratories at the participating universities. The Vermont regulations were authorized by the EPA and became part of the Federally enforceable Vermont RCRA program on October 26, 2000. *See* 65 FR 64164. The Massachusetts regulations are in effect under State law and recently were submitted to the EPA to be authorized as part of the current update of the Massachusetts RCRA program.

B. Why Is the EPA Extending the Expiration Date of Its XL Project Regulations?

The New England Universities' Laboratories XL project was initially planned to run for four years (September 1999 through September 2003). Thus the EPA project regulations had an expiration date of September 30, 2003. *See* 40 CFR 262.108.

The EPA conducted a mid-term evaluation of the project between September 2001 and September 2002. As set out in the mid-term evaluation report, the project has shown great success in some important areas: developing EMPs, training staff, increasing awareness, shifting attitudes and behaviors, improving the range of activities that determine compliance and emergency preparedness, and demonstrating that the environmental management system approach to managing laboratory waste is gaining hold and making progress. *See* Project in Excellence and Leadership: New England Universities' Laboratories Mid-Term Evaluation: Piloting Superior Environmental Performance in Labs, EPA 100–R–02–005 (September 2002), page 5. On the other hand, the project has not to date shown the expected successes in other areas such as chemical reuse and redistribution and pollution prevention. *Id.* The implementation of the EMPs proved to be complex, and took somewhat longer than anticipated, resulting in delays in aggressively focusing on reuse, redistribution and pollution prevention. However, efforts to encourage pollution prevention and ''Green Chemistry'' practices have begun to be more widely endorsed by faculty, and the EPA hopes and expects that they will bear fruit in the next several years.

Taking account of both the progress that has been made and the remaining issues, the EPA (with the concurrence of the MADEP and VTDEC) believes that the appropriate course of action is to extend the project's expiration date by three years, *i.e.*, to September 30, 2006. This will allow for a further period of evaluation, including a further test of whether the universities will succeed in their efforts to implement significant chemical reuse and redistribution and pollution prevention. In light of the success that has occurred in EMP development and implementation, the EPA believes that the continuation of this project should provide a superior level of environmental performance in comparison to an immediate return to standard RCRA regulation.

In addition, the EPA Office of Solid Waste currently is analyzing issues regarding the management of hazardous waste in laboratories, using a discussion group of EPA Headquarters and Regional personnel, and stakeholder meetings. This process may result in changes to the EPA requirements or the way the EPA interprets its requirements regarding laboratories. The proposed three-year extension of the New England Universities' Laboratories XL project will allow the three participating universities to continue to follow the alternative project requirements while the EPA considers whether to make changes in national policy. This will avoid those universities needing to terminate the project, prior to the EPA having a chance to consider whether standard RCRA requirements applicable

to university laboratories should be changed. The continuation of the project also should provide information that is useful to the EPA as it analyzes the potential national impact of making changes regarding the management of hazardous waste in laboratories.

C. What Is the Federal Regulation Change?

The Federal regulation change is extending the expiration date in 40 CFR 262.108 from September 30, 2003 to September 30, 2006. The other special EPA regulations adopted to allow the implementation of the New England Universities' Laboratories XL project are staying the same. The regulation change is set out at the end of this document. This regulation change is taking effect immediately upon today's publication in the **Federal Register**. Having the regulation take effect immediately is justified under RCRA section 3010(b), 42 U.S.C. 6930(b) and under the Administrative Procedures Act, 5 U.S.C. 553(d), since this regulation change simply allows the EPA to extend an ongoing XL project and the regulated entities involved in the project do not need any further time to come into compliance with the requirements of this project. The EPA Administrator has delegated one-time authority to the Regional Administrator, EPA New England, to make this regulation change.

As part of its recent update, Massachusetts has similarly changed its State regulations to extend the expiration date of this XL project to September 30, 2006. The EPA and other signatories also are amending the Final Project Agreement for this XL project to extend the expiration date, with annual reporting obligations also being extended and all other provisions of the agreement remaining the same.

D. What Will Be the Effect of the Federal Regulation Change?

The change to the Federal regulations is enabling the EPA to today authorize the Massachusetts regulations governing the New England Universities' Laboratories XL project, through September 30, 2006. The State regulations (310 CMR 30.354) have been submitted to the EPA to be authorized as part of this current update of the Massachusetts RCRA program. The EPA is granting this authorization to run through September 30, 2006.

The different effects of authorization regarding HSWA and non-HSWA rules was discussed above in part II.D. The extension to the Federal XL project regulation is being promulgated pursuant to non-HSWA authority. Thus, the extension took effect in under State law following its recent adoption by Massachusetts, and the requirements of the alternative XL program are becoming Federally enforceable today, through September 30, 2006, with respect to the two universities in Massachusetts, due to today's authorization of the State regulations by the EPA.

E. Response to Public Comments

The EPA received one comment supporting the extension of the XL project. No comments were filed opposing extension of the project or authorization of this program element.

IV. Statutory and Executive Order Reviews

The EPA has examined the cumulative effects of the State authorization decisions discussed above, and the two changes to the Federal regulations, and reached the conclusions set out below.

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely effect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of these actions will be significantly less than $100 million and because these actions will not meet any of the other criteria specified in the Executive Order, it has been determined that this rule is not a ''significant regulatory action'' under the terms of the Executive Order and is therefore not subject to OMB review.

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or final rule. These actions authorize or enable the authorization of state requirements for the purpose of RCRA 3006 and impose no additional requirements beyond those imposed by State law. Therefore, they require no information collection activities subject to the Paperwork Reduction Act. In addition, no Federal reporting obligations have been established under the ECOS project. Rather, the EPA will monitor this project through its regular oversight of the Massachusetts RCRA program. Finally, the New England Universities' Laboratories XL project applies to only three universities, and any reporting obligations for nine or fewer sources are not subject to the Paperwork Reduction Act. Therefore no information collection request (ICR) was submitted to OMB for review under the Paperwork Reduction Act.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking under the Administrative Procedure Act or other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

These actions authorize or enable the authorization of state requirements for the purpose of RCRA 3006 and impose no additional requirements beyond those imposed by state law. In addition, the two Federal regulatory changes will increase regulatory flexibility, which should have a positive economic effect on small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, the impact of concern is any significant adverse economic impact, since the primary purpose of any regulatory flexibility analysis would be to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or

otherwise has a positive economic effect on all of the small entities subject to the rule. Accordingly, the EPA hereby certifies 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.*). Thus a regulatory flexibility analysis is not required to be prepared under that Act.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. In addition, before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments about the regulatory requirements, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the section 202 and 205 requirements do not apply to this action because the rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local or tribal governments and the private sector already exist under the State program, and the actions will not impose any additional obligations on regulated entities. In fact, the EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector, by reducing the need for companies to comply with Federal requirements in addition to State requirements. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not cover duties arising from voluntary participation in a Federal program, such as Massachusetts' voluntary decision to operate the RCRA program.

Because this action will authorize pre-existing requirements under state law and will not impose any additional enforceable duties beyond those required by state law, it also will not uniquely affect small governments, as described in section 203 of UMRA. Thus the requirements of section 203 that the EPA develop a small government agency plan will not apply to this rule.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the 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.''

The actions will not have Federalism implications, as defined in the Executive Order, because they merely authorize (or enable the authorization of) 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.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires the 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 the Indian tribes.''

The actions will not have tribal implications, as defined by the Executive Order, because they will have no direct effect on Indian lands. As noted in Part I.E. above, Massachusetts is not authorized to administer the RCRA program in Indian country. Rather, the EPA directly administers the Federal RCRA program in Indian country within Massachusetts.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks,'' applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866. In addition, it does not concern environmental health or safety risks that the EPA has reason to believe may have a disproportionate effect on children.

As discussed in parts II and III above, the EPA has determined that the regulatory flexibility to be allowed by the two Federal regulatory changes will not create health and safety risks. In any event, the particular RCRA program elements affected do not pose any disproportionate risks to children. As discussed in part I above, the standard authorization portion of this rule simply authorizes Massachusetts regulations which are equivalent to previously established Federal RCRA requirements. Authorizing State regulations which equivalently protect the environment, in place of Federal regulations, does not create any disproportionate risks to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211 because that Executive Order applies only to rules that are ''significant'' under Executive Order 12866, and this rule is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 *note*) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards covered by voluntary consensus standards. In addition, under RCRA section 3006(b), the EPA grants a State's application for authorization as long as the State meets the criteria required under RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that satisfies the requirements of RCRA. Therefore, the EPA did not consider the use of any voluntary consensus standards in developing this rule.

J. Congressional Review Act

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 is submitting 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 in 5 U.S.C. 804(2). This action will be effective immediately upon today's publication in the **Federal Register**.

List of Subjects

40 CFR Part 262

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous materials transportation, Indian-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: The Federal regulation changes are being made under the authority of the Resource Conservation and Recovery Act (RCRA) sections 2002 and 3002, 42 U.S.C. 6912 and 6922. The authorizations of the Massachusetts revisions are being made under the authority of RCRA sections 2002 and 3006, 42 U.S.C. 6912 and 6926.

Dated: March 3, 2004.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

■ For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

■ 1. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

Subpart A—General

■ 2. Section 262.10 is amended by adding paragraph (k) to read as follows:

§ 262.10 Purpose, scope and applicability.

* * * * *

(k) Generators in the Commonwealth of Massachusetts may comply with the State regulations regarding Class A recyclable materials in 310 C.M.R. 30.200, when authorized by the EPA under 40 CFR part 271, with respect to those recyclable materials and matters covered by the authorization, instead of complying with the hazardous waste accumulation requirements of § 262.34, the reporting requirements of § 262.41, the storage facility operator requirements of 40 CFR parts 264 and 265 and the permitting requirements of 40 CFR part 270. Such generators must also comply with any other applicable requirements, including any applicable authorized State regulations governing hazardous wastes not being recycled and any applicable Federal requirements which are being directly implemented by the EPA within Massachusetts pursuant to the Hazardous and Solid Waste Amendments of 1984.

Subpart J—University Laboratories XL Project—Laboratory Environmental Management Standard

■ 3. Section 262.108 is revised to read as follows:

§ 262.108 When will this subpart expire?

This subpart will expire on September 30, 2006.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

■ EPA is granting Final authorization under part 271 to the Commonwealth of Massachusetts for revisions to its hazardous waste program under the Resource Conservation and Recovery Act.

[FR Doc. 04–5644 Filed 3–11–04; 8:45 am]

BILLING CODE 6560–50–P

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

45 CFR Part 2400

Fellowship Program Requirements

AGENCY: James Madison Fellowship Foundation.

ACTION: Final rule.

SUMMARY: The following are amendments to the regulations governing the annual competition for James Madison Fellowships and the obligations of James Madison Fellows. These amendments update and replace certain provisions of the Foundation's existing regulations as implemented by the James Madison Memorial Fellowship Act of 1986. These revised regulations govern the qualifications and applications of candidates for fellowships; the selection of Fellows by the Foundation; the graduate programs Fellows must pursue; the terms and conditions attached to awards; the Foundation's annual Summer Institute on the Constitution; and related requirements and expectations regarding fellowships. No comments were received regarding this new rule.