

any, to give affected parties time to adjust their behavior accordingly. Indeed, EPA has determined that, on balance, making this rule effective immediately is in the public interest and affected parties will better be served by the avoidance of confusion (as a result of a discrepancy between the statute and the regulatory text) with regard to such fees. Thus, EPA has concluded that good cause exists to make this rule effective immediately, within the meaning of 5 U.S.C. 553(d)(3).

**V. Statutory and Executive Order Reviews**

This final rule merely conforms the codified regulatory text to the terms of the recently enacted statute. Because the prohibition to collect the tolerance fees in the regulation is imposed by statute, the revisions to the regulatory text do not have any substantive effect. As such, under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and is therefore not subject to OMB review. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Because this action is not subject to notice and comment requirements under the APA or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does this action significantly or uniquely affect small governments. This rule does not have tribal implications, as specified in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). This action will not have federalism implications, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because it is not economically significant under Executive Order 12866. This action is not subject to Executive Order 13211, *Actions concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and

Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

**VI. Congressional Review Act**

The Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*) 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. Section 808 of the CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of March 11, 2004. 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 the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

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

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

Dated: March 11, 2004.  
**Susan B. Hazen**,  
*Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

■ 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. 321q, 346a and 371.

■ 2. In § 180.31, paragraph (b)(1) is revised to read as follows:

**§ 180.31 Temporary tolerances.**

\* \* \* \* \*

(b) (1) A request for a temporary tolerance or a temporary exemption from a tolerance by a person who has obtained an experimental permit for a pesticide chemical under the Federal Insecticide, Fungicide, and Rodenticide Act shall be accompanied by a copy of such experimental permit, such data as are available on subjects outlined in clauses (A), (B), (C), (D), (E), (F), and (G)

of section 408(d)(1) of FFDCa, and an advance deposit to cover fees as provided in § 180.33(d), except that no fee under this section shall be levied during the period beginning on October 1, 2003, and ending on September 30, 2008.

\* \* \* \* \*

■ 3. In § 180.32, paragraph (a) is revised to read as follows:

**§ 180.32 Procedure for amending and repealing tolerances or exemptions from tolerances.**

(a) The Administrator on his own initiative or on request from an interested person furnishing reasonable ground therefor, may propose the issuance of a regulation amending or repealing a tolerance for a pesticide chemical on one or more raw agricultural commodities or granting or repealing an exemption from tolerance for such chemical. Requests for such amendment or repeal shall be made in writing and be accompanied by an advance deposit to cover fees as provided in § 180.33, except that no fee under this section shall be levied during the period beginning on October 1, 2003, and ending on September 30, 2008.

\* \* \* \* \*

■ 4. Section 180.33 is amended by adding new paragraph (p) to read as follows:

**§ 180.33 Fees.**

\* \* \* \* \*

(p) No fee required by this section shall be levied during the period beginning on October 1, 2003, and ending September 30, 2008.

[FR Doc. 04–6008 Filed 3–16–04; 8:45 am]  
**BILLING CODE 6560–50–S**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 271**

[FRL–7633–2]

**Arizona: Final Authorization of State Hazardous Waste Management Program Revisions**

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

**ACTION:** Final rule.

**SUMMARY:** On October 27, 2000, we published an immediate final rule at 65 FR 64369 to authorize revisions to Arizona’s hazardous waste program under the Resource Conservation and Recovery Act (RCRA). At that time, we determined that the identified revisions to Arizona’s hazardous waste program

satisfied all requirements for final authorization and authorized the changes through an immediate final rule. The immediate final rule was to be effective on December 26, 2000, unless written comments opposing the authorization were received during the comment period. At the same time, in the event we received written comments, we also published a proposed rule at 65 FR 64403 proposing these same changes to the Arizona hazardous waste program.

As a result of comments received on the immediate final rule, we withdrew the immediate final rule on December 22, 2000 at 65 FR 80790. By this action, we are issuing a final rule authorizing the revisions to the Arizona hazardous waste program as listed in the immediate final rule at 65 FR 64369 and responding below to each of the comments received.

**EFFECTIVE DATE:** Final authorization for Arizona shall be effective on March 17, 2004.

**FOR FURTHER INFORMATION CONTACT:** Lisa McClain-Vanderpool, WST-2, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco 94105-3901, (415) 972-3316.

**SUPPLEMENTARY INFORMATION:** The reader should also refer to the proposed rule at 65 FR 64403 and the immediate final rule at 65 FR 64369, both published on October 27, 2000.

#### A. Background

We received written comments from five parties during the comment period. Only one party submitted comments which opposed the authorization. One comment expressed reservations about the ability of the State to administer the hazardous waste program and noted that there are numerous facilities in Arizona still operating under interim status. One comment expressed concern about the propriety of this authorization when two Title VI (civil rights) administrative complaints against Arizona are pending. Another comment expressed concern that Arizona does not have adequate permitting staff in the hazardous waste program to review and process permit applications. One comment expressed concern that Arizona is not adequately monitoring hazardous waste Treatment, Storage and Disposal facilities (TSDFs) in the State, and that Arizona does not have an adequate compliance and enforcement program. Finally, four parties commented on EPA's statement in the immediate final rule that EPA "continues to have independent authority under RCRA . . . [to] take enforcement action regardless of whether the State has taken its own actions." 65 FR 64369. Specifically, the

comments indicated that this statement conflicts with the Eighth Circuit decision in *Harmon Industries, Inc. v. Browner*, 1919 F.3d 894 (8th Circuit 1999).

#### B. What Were the Comments and Responses to EPA's Proposal?

1. *Comment:* EPA received four comment letters objecting to EPA's assertion in the immediate final rule approving Arizona's RCRA program revisions that EPA retains the authority to take enforcement actions regardless of whether the State has taken its own actions. They assert that EPA's statement is in conflict with the holding in *Harmon Industries, Inc. v. Browner*, 191 F.3d 894 (8th Cir. 1999). In this decision, the court found "no support either in the text of the statute or the legislative history for the proposition that the EPA is allowed to duplicate a state's enforcement authority with its own enforcement action."

*EPA's Response:* EPA has considered the comments it received regarding the effect of state authorization on federal enforcement. The Agency, however, does not agree with the commenters and has not changed the statement in the final rule. EPA continues to believe that the statement in the preamble reflects the correct reading of RCRA § 3008(a) which provides that EPA may bring an enforcement action in a State with an authorized program. The only restriction placed on EPA's authority to enforce in a State with an authorized program is that EPA shall give notice to the State prior to issuing an order or commencing a civil action. See 42 U.S.C. 3008(a)(2). EPA has simply restated a longstanding position taken in civil actions, administrative adjudications, and regulations. See, e.g., *Power Engineering Co. v. U.S.*, 303 F.3d 1232 (10th Cir. 2002), cert. denied, 123 S.Ct. 1029 (2003); *In re: Bil-Dry Corp.*, 1998 WL 743914 (E.P.A. Oct. 8, 1998).

2. In a fifth comment letter, the commenter objected to authorization and expressed several concerns about the Arizona hazardous waste program.

*Comment:* EPA should not authorize the Arizona Department of Environmental Quality's (ADEQ) RCRA program revisions when there are two outstanding Title VI (civil rights) administrative complaints that have been filed against ADEQ.

*EPA's Response:* Title VI of the Civil Rights Act prohibits recipients of federal money, such as ADEQ, from discriminating against persons on the basis of color, race or national origin. Title VI prohibits both intentional and unintentional discrimination. Unintentional discrimination may be

demonstrated if there is evidence that a recipient administers its programs in a way that results in a discriminatory effect. Two complaints related to hazardous waste management were filed on behalf of the communities located near two Arizona facilities, Heritage Environmental Services (Heritage) and Innovative Waste Utilization (IWU). The complaints alleged that ADEQ violated Title VI of the Civil Rights Act when it issued or considered issuing the facilities' RCRA permits. Both Complaints were investigated and dismissed by EPA's Office of Civil Rights (OCR).

Title VI complaints were filed in OCR, which has the legal authority and responsibility to investigate Title VI complaints filed with EPA. The complaints undergo a thorough, independent review, investigation and final decision. As of this date, both the complaint related to the IWU facility and the complaint related to the Heritage facility have been dismissed. In each case, OCR found no violations of Title VI or EPA's Title VI implementing regulations.

*Comment:* EPA should not authorize ADEQ's program revisions while there are numerous facilities in Arizona that are operating under interim status permits.

*EPA's Response:* EPA has been focusing on ADEQ's permitting activities and the need to complete permit processing for Arizona facilities. In the last two-year grant and in the current grant, ADEQ has committed to completion of all interim status permits. Staff and management vacancies in the past and, more recently, ADEQ's increased community involvement have delayed the permit approval process. ADEQ has however committed to meet EPA's national goal for permit decisions at facilities in the regulated universe by 2005. EPA is closely monitoring ADEQ's progress in meeting this commitment and we are confident they will make the agreed upon goal. Currently, there are six facilities operating under interim status, a significant decrease in the number of interim status facilities since 1998. There are ten facilities designated as interim status, inactive or closing. ADEQ estimates that they will be processing several additional closures within the next two years, which will further reduce the interim status universe. EPA is satisfied that ADEQ's progress on completion of the interim status permits is reasonable and adequate for purposes of this authorization decision.

*Comment:* The commenter raised the issue of ADEQ's staff competence in reviewing and approving permit

applications. Specifically, the commenter questioned ADEQ's approval of the permit for Innovative Waste Utilization, Inc. (IWU) in spite of a deficient emergency plan.

*EPA's Response:* ADEQ reviewed the draft permit application from IWU and found that it met all regulatory requirements, including those for the contingency plan (emergency plan). As a result of public comment, ADEQ revised the permit adding specificity as well as voluntary requirements in several sections, and adding conditions restricting transportation by schools, community education on potential emergencies and establishing a five year compliance and safety review to determine permit continuance. For example, compatibility testing requirements were added that include commonly accepted scientific references for compatibility, such as those identified in the EPA document *Technical Resources Document for the Storage and Treatment of Hazardous Waste in Tank Systems* (NIS PB 87-134391), and *A Method for Determining the Compatibility of Hazardous Waste* written by the California Department of Health Services (EPA Document 600/2-80-076). This information was not a requirement but rather supplemental information ADEQ chose to include to satisfy public concern.

EPA monitors ADEQ's permit activities regularly and often reviews draft permit decisions to ensure the protection of human health and the environment. EPA is satisfied with the quality of ADEQ's permit decisions and the competence of the staff.

*Comment:* The commenter questioned whether ADEQ was adequately monitoring (inspecting) Treatment, Storage and Disposal Facilities (TSDFs).

*EPA's Response:* There are 26 Treatment, Storage and Disposal Facilities (TSDFs) in Arizona's universe of regulated hazardous waste facilities. RCRA requires that each TSDF be inspected every two years. ADEQ ensures that the appropriate number of RCRA inspections are conducted in Arizona, although at times ADEQ or EPA may inspect TSDFs more often. Every other year EPA conducts oversight of ADEQ inspections to determine the adequacy of their inspection program. In the oversight inspections, EPA has been satisfied with the quality of inspections as well as the competence of the inspection staff. In addition, EPA has not observed significant violations at these TSDFs. EPA also monitors ADEQ's program through reporting on grant work plan commitments, annual on-site evaluations and oversight inspections,

conference calls and joint inspections. EPA is satisfied that ADEQ provides adequate coverage of the universe of hazardous waste facilities and we continue to monitor and oversee this program to ensure that the public and the environment are protected.

*Comment:* In this comment, ADEQ's regulation of a particular facility, SONAS, was questioned. A lack of inspections at the facility was cited as evidence of ADEQ's failure to aggressively monitor compliance. The commenter also expressed concern about the treatment of contaminated soils at SONAS and the applicability of new rules on the treatment standards for metal wastes and mineral processing wastes to these soils.

*EPA's Response:* The SONAS facility is not a hazardous waste facility; it is a solid non-hazardous waste facility. ADEQ's regulation of the SONAS facility is therefore not specifically applicable to EPA's authorization of revisions to Arizona's hazardous waste management program. The petroleum contaminated soil (PCS) and the metals contaminated waste accepted at the SONAS facility are not RCRA hazardous wastes. These soils are defined as solid waste in the Arizona regulations. Therefore, the newly promulgated treatment standards for metal wastes do not apply. The approved solid waste facility plan for SONAS is available for public review at ADEQ. The ADEQ Solid Waste Section and the ADEQ Air Quality Division have conducted inspections at this facility and oversee facility operations. Additionally, a joint inspection by EPA and ADEQ's Hazardous Waste Section was conducted in May 2002.

*Comment:* The commenter raised questions regarding ADEQ's ability to carry out an adequate and equivalent RCRA compliance and enforcement program.

*EPA's Response:* As a result of program evaluations and grant negotiations with EPA, ADEQ is implementing an escalated enforcement policy which has shown significant program improvements in state fiscal year 2002-2003. ADEQ has revised internal procedures and created and filled a new enforcement coordinator position. The Inspections and Compliance Unit has also undertaken a vigorous staff hiring and training program. EPA is satisfied that ADEQ is developing a strong and consistent compliance and enforcement program that is equivalent to EPA's program.

### C. What Decisions Have We Made in This Rule?

EPA has determined that approval of Arizona's RCRA program revisions identified in the October 27, 2000 immediate final rule (65 FR 64369) and Proposed Rule (65 FR 64403) should proceed. After reviewing the public comments received in response to the proposed authorization, EPA has made a final determination that Arizona's application to revise its authorized program meets all the statutory and regulatory requirements established by RCRA. Therefore, we grant Arizona final authorization to operate its hazardous waste program with the changes described in its application for program revisions previously identified. Arizona has responsibility for permitting Treatment, Storage and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement any such HSWA requirements and prohibitions in Arizona, until the State is granted authorization to do so. ADEQ and EPA have agreed to a joint permitting process for RCRA permits for those provisions of HSWA for which ADEQ does not have authorization.

For further information on the scope and effect of today's action to approve Arizona's RCRA program revisions, please refer to the preambles of EPA's October 27, 2000 Immediate Final Rule (65 FR 64369) and Proposed Rule (65 FR 64403), as well as the withdrawal of those rules on December 22, 2000 (65 FR 80790).

### D. Statutory and Executive Order Reviews

This rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes no requirements other than those imposed by State law. Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

#### 1. Executive Order 12866: Regulatory Planning Review

The Office of Management and Budget has exempted this rule from its review under Executive Order (EO) 12866.

## 2. Paperwork Reduction Act

This rule does not impose an information collection burden under the Paperwork Reduction Act.

## 3. Regulatory Flexibility Act

After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

## 4. Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act.

## 5. Executive Order 13132: Federalism

EO 13132 does not apply to this rule because it will not have federalism implications (*i.e.*, substantial direct effects on the State, 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 described in EO 13132.

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

EO 13175 does not apply to this rule because it will not have tribal implication (*i.e.*, substantial direct effects on one or more Indian tribes, 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).

## 7. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks

This rule is not subject to EO 13045 because it is not economically significant and it is not based on health or safety risks.

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

This rule is not subject to EO 13211 because it is not a significant regulatory action as defined in EO 12866.

## 9. National Technology Transfer Advancement Act

EPA approves State programs as long as they meet criteria required by RCRA,

so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus, Section 12(d) of the National Technology Transfer and Advance Act does not apply to this rule.

## 10. Congressional Review Act

EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective on March 17, 2004.

## List of Subjects in 40 CFR Part 271

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

**Authority:** This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: February 29, 2004.

**Laura Yoshii,**

*Acting Regional Administrator, Region 9.*

[FR Doc. 04-5641 Filed 3-16-04; 8:45 am]

**BILLING CODE 6560-50-P**

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 15 and 76

[CS Docket No. 97-80; PP Docket No. 00-67; FCC 03-225]

### Commercial Availability of Navigation Devices and Compatibility Between Cable Systems and Consumer Electronics Equipment; Public Information Collection Approved by Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** The Federal Communications Commission has received Office of

Management and Budget (OMB) approval for the revised public information collection, Commercial Availability of Navigation Devices and Compatibility Between Cable Systems and Consumer Electronics Equipment, CS Docket No. 97-80 and PP Docket No. 00-67, OMB Control Number 3060-1032. Therefore, the Commission announces that OMB Control No. 3060-1032 and associated rules 47 CFR 15.123, 76.1905, and 76.1906 are effective March 17, 2004. The incorporation by reference in 47 CFR 15.123 is approved as of March 17, 2004.

**DATES:** The rules in 47 CFR 15.123, 76.1905, and 76.1906 are effective March 17, 2004. The incorporation by reference in 47 CFR 15.123 is approved as of March 17, 2004.

**SUPPLEMENTARY INFORMATION:** The Federal Communications Commission has received OMB approval for a revised information collection in Commercial Availability of Navigation Devices and Compatibility Between Cable Systems and Consumer Electronics Equipment, CS Docket No. 97-80 and PP Docket No. 00-67, 68 FR 66728, November 28, 2003. Through this document, the Commission announces that it received this approval on March 2, 2004; OMB Control No. 3060-1032. The effective date for this collection and associated rules 47 CFR 15.123, 76.1905, and 76.1906 is March 17, 2004. The incorporation by reference in 47 CFR 15.123 is approved as of March 17, 2004.

Pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13, an agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Leslie F. Smith, Federal Communications Commission, (202) 418-0217 or via the Internet at [leslie.smith@fcc.gov](mailto:leslie.smith@fcc.gov).

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

[FR Doc. 04-6026 Filed 3-16-04; 8:45 am]

**BILLING CODE 6712-01-P**