

“we,” or “our” are used we mean EPA. On October 27, 2004, (69 FR 62591), we published a final rulemaking action announcing approval of a determination of attainment and redesignation of the City of Weirton PM<sub>10</sub> Nonattainment Area (the Weirton area) to attainment and approval of the maintenance plan for the area. In the preamble of this document, we inadvertently omitted language explaining why PM<sub>10</sub> motor vehicle emissions budgets, for purposes of transportation conformity, not required to be part of the maintenance plan for the area. Our intent was to explain that the ambient impact of PM<sub>10</sub> emissions from onroad motor vehicles was not and is not significant as it has been and continues to be less than five percent of the total PM<sub>10</sub> ambient concentrations in the area. Stationary (point) source emissions are responsible for the remaining impacts. The May 24, 2004 submittal from West Virginia requesting redesignation and approval of the maintenance plan (which is in the docket for this final rule) includes a letter from EPA to the State of West Virginia, dated April 26, 1995. In that letter, EPA agreed that because the ambient impact of PM<sub>10</sub> emissions from onroad motor vehicles was less than five percent of the total PM<sub>10</sub> ambient concentrations in the area, the impact of PM<sub>10</sub> emissions from onroad motor vehicles was not responsible for nonattainment. That letter also stated that for purposes of transportation conformity no additional quantitative analyses for transportation-related PM<sub>10</sub> impacts were required for the area. The May 24, 2004 submittal from West Virginia also includes emission inventory data and information regarding the area’s declining population indicating a decrease in on road mobile emissions.

Although the docket for this final rule includes documentation that the ambient impact of PM<sub>10</sub> emissions from onroad motor vehicles did not and do not significantly contribute to the total PM<sub>10</sub> ambient concentrations in the area, the preamble of published final rule itself did not provide this information. This action corrects that omission. In rule document 04–23945 published in the **Federal Register** on October 27, 2004 (69 FR 62591), on page 62594 in the second column, under 2. *Maintenance Demonstration* the revised preamble language is corrected to add a second paragraph to read—“West Virginia’s May 24, 2004 submittal includes documentation that the ambient impact of PM<sub>10</sub> emissions from onroad motor vehicles was not and is not significant as it has been and

continues to be less than five percent of the total PM<sub>10</sub> ambient concentrations in the area. Stationary (point) source emissions are responsible for the remaining impacts. The enforceable measures imposed by West Virginia to reduce emissions from these point sources are the basis of the Weirton area achieving the NAAQS for PM<sub>10</sub>. Therefore, no motor vehicle emissions budgets for transportation conformity purposes are required for the Weirton area’s maintenance plan.”

#### Statutory and Executive Order Reviews

As this action merely provides supplemental text to the preamble of the direct final rule published on October 27, 2004, please refer to that direct final rule (69 FR 62591, 62595) for information regarding applicable Statutory and Executive Order Reviews.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This correction to rule document 04–23945 is not a “major rule” as defined by 5 U.S.C. 804(2).

Dated: November 3, 2004.

**Donald S. Welsh,**

*Regional Administrator, EPA Region III.*

[FR Doc. 04–24912 Filed 11–8–04; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[FRL–7835–9]

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

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

**ACTION:** Immediate final rule.

**SUMMARY:** The State of Maine has applied to EPA for Final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is

authorizing the State’s changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect adverse comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize Maine’s changes to their hazardous waste program will take effect. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and the separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

**DATES:** This Final authorization will become effective on January 10, 2005, unless EPA receives adverse written comment by December 9, 2004. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

**ADDRESSES:** Dockets containing copies of the State of Maine’s revision application and the materials which the EPA used in evaluating the revision have been established at the following two locations: (i) EPA Region 1 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; and (ii) Maine Department of Environmental Protection, Hospital Street, Augusta, ME 04333; business hours Monday through Thursday 8:30 a.m.–4:30 p.m., and Friday 8:30 a.m.–12:30 p.m., tel: (207) 287–7843. Records in these dockets are available for inspection during normal business hours.

#### FOR FURTHER INFORMATION CONTACT:

Sharon Leitch, Hazardous Waste Unit, EPA Region 1, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023; tel: (617) 918–1647, e-mail: [leitch.sharon@epa.gov](mailto:leitch.sharon@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is

modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

**B. What Decisions Have We Made in This Rule?**

We have concluded that Maine's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Maine Final authorization to operate its hazardous waste program with the changes described in the authorization application. Maine has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). 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 those requirements and prohibitions in Maine, including issuing permits, until the State is granted authorization to do so.

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

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

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

This action does not impose additional requirements on the regulated community because the regulations for which Maine is being authorized by today's action are already effective under state law, and are not changed by today's action.

**D. Why Wasn't There a Proposed Rule Before Today's Rule?**

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect adverse comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

**E. What Happens if EPA Receives Comments That Oppose This Action?**

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule based upon this proposed rule that also appears in today's **Federal Register**. You may not have another opportunity to comment. If you want to comment on this authorization, you should do so at this time.

If we receive adverse comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on

the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

**F. What Has Maine Previously Been Authorized for?**

The State of Maine initially received Final authorization on May 6, 1988, effective May 20, 1988 (53 FR 16264) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on June 24, 1997, effective August 25, 1997 (62 FR 34007).

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

On September 27, 2004, Maine submitted a final complete program revision application, seeking authorization for their changes in accordance with 40 CFR 271.21. In particular, Maine is seeking authorization for the Universal Waste Rule and for the metals portion of the TCLP rule, the authorization of which is a prerequisite for authorization of the Universal Waste Rule. Maine is including batteries, mercury thermostats, lamps, CRTs, mercury devices, motor vehicle mercury switches, and PCB ballasts on their list of universal wastes. In general, the Universal Waste Rule establishes streamlined hazardous waste management regulations which are intended to encourage the recycling of certain widely generated wastes, such as batteries.

We are now making an immediate final decision, subject to receipt of written comments that oppose this action, that Maine's hazardous waste program revisions satisfy all of the requirements necessary to qualify for Final authorization. Therefore, we grant Maine Final authorization for the following program changes:

Description of Federal requirement and checklist reference number	Analogous State authority <sup>1</sup>
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**Consolidated Checklist for the Toxicity Characteristic Revisions as of June 30, 2001**

(74) Toxicity Characteristic Revisions: 55 FR 11798, 3/29/90 as amended on 6/29/90, 55 FR 26986 (regarding metals other than chrome);	850.3A(2); 850.3A(3)(a)(ii)(b); 850.3A(3)(c); 850.3A(3)(d); 850.3A(4)(a)(xiv); 850.3B(5); 850.3B(5)(a) & (b); 850.3C Hazard Codes; 850, Appendix II; 852, Appendix I; 855.9G.
(80) Hydrocarbon Recovery Operations: 55 FR 40834, 10/5/90 as amended on 2/1/91, 56 FR 3978, as amended on 4/2/91, 56 FR 13406, optional rule (ME is not seeking authorization for this provision);	
(84) Chlorofluoro Refrigerants: 56 FR 5910, 2/13/91, optional rule (ME is not seeking authorization for this provision);	
(108) Toxicity Characteristics Revision; 57 FR 30657, 7/10/92 (ME is not seeking authorization for this provision);	
(117B) Toxicity Characteristic Revision: 57 FR 23062, 6/1/92 (regarding metals other than chrome);	

Description of Federal requirement and checklist reference number	Analogous State authority <sup>1</sup>
(119) Toxicity Characteristic Revision, TCLP: 57 FR 55114, 11/24/92 optional rule; (126) Testing and Monitoring Activities: 58 FR 46040, 8/31/93 (only as it relates to Appendix I of Part 268); (157) Land Disposal Restrictions Phase IV: 62 FR 25998, 5/12/97 (to remove and reserve Appendix I of Part 268); (192A) Mixture and Derived-From Rules Revisions: 66 FR 27266, 5/16/01 (ME is not seeking authorization for the exclusions in this provision);	

**Consolidated Checklist for the Universal Waste Rule as of June 30, 2001**

(142A) Universal Waste Rule: General Provisions; 60 FR 25492, 5/11/95;	850.3A(2); 850.3A(4)(vii); 850.3A(10); 850.3A(11); 850.3A(13); 850.3A(13)(a)(vi); 850.3A(13)(a)(ix); 850.3A(13)(a)(xiii); 850.3A(13)(b)(1) through (b)(v); 850.3A(13)(c); 850.3A(13)(d);
(142B) Universal Waste Rule: Specific Provisions for Batteries, 60 FR 25492, 5/11/95;	
(142C) Universal Waste Rule: Specific Provisions for Pesticides, 60 FR 25492, 5/11/95 (ME is not seeking authorization for this provision);	850.3A(13)(e); 850.3A(13)(e)(i); 850.3A(13)(e)(ii) and (e)(iii); 850.3A(13)(e)(vi) through (e)(ix); 850.3A(13)(e)(xii) and (e)(xiii); 850.3A(13)(e)(xv); 850.3A(13)(e)(xvi) and Notes; 850.3A(13)(e)(xix)c.; 850.3A(13)(e)(xxi)a. and (xxi)c; 850.3A(13)(e)(xxii) and (e)(xxiii); 850.3A(13)(e)(xxiii)a and (e)(xxiii)e.;
(142D) Universal Waste Rule: Specific Provisions for Thermostats, 60 FR 25492, 5/11/95;	
(143E) Universal Waste Rule: Petition Provisions to Add a New Universal Waste, 60 FR 25492, 5/11/95;	
(152) Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision, 61 FR 16290, 7/11/96;	850.3A(13)(e)(xxv)c.; 850.3A(13)(e)(xxvi) and (e)(xxvii); 850.3A(13)(f)(iv) through (f)(vi); 850.3A(13)(g); 850.3A(13)(g)(ii); 850.3A(13)(g)(v); 850.3A(14); 850.3D; 850.3D(1); 850.3D(3) through (9);
(153) Conditionally Exempt Small Quantity Generator Disposal Options under Subtitle D, 61 FR 34252, 7/1/96 (ME is not seeking authorization for this provision);	
(157) Land Disposal Restrictions—Phase IV, 62 FR 25998, 5/12/97 (ME is not seeking authorization for this provision);	851.3C; 851.3E; 853; 853.10B; 853.11O; 853.11Q, 854; 856; 857.4; 857.7D; 857.7H 857.9A; 857.9A(1), (2); 857.9A(3)(f); 857.9C;
(166) Recycled Used Oil Management Standards; Technical Correction and Clarification, 63 FR 24963, 5/6/98 and 63 FR 37780, 7/14/98 (ME is not seeking authorization for this provision);	
(169) Petroleum Refining Process Wastes, 63 FR 42110, 8/6/98 (ME is not seeking authorization for this provision);	
(176) Universal Waste Rule—Technical Amendments; 63 FR 71225, 12/24/98;	
(181) Universal Waste Rule: Specific Provisions for Hazardous Waste Lamps, 64 FR 36466, 7/6/99;	

<sup>1</sup> State of Maine's Hazardous Waste Management Rules, effective January 23, 2001, November 3, 2002, and July 20, 2004.

**Note:** The final authorization of new state regulations and regulation changes is in addition to the previous authorization of state regulations, which have not changed and remain part of the authorized program.

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

The most significant differences between the proposed 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.

In this program change, EPA is only authorizing the State for the metals portion of the Toxicity Characteristic (TC) rule, for metals other than the

chrome wastes at 850.3A(4)(xiv). EPA is not authorizing the Maine analog for 40 CFR 261.4(b)(6)(ii) regarding chrome wastes because the Maine regulations continue to reference the EP toxicity test instead of the TCLP test for the specific exemptions for the leather tanning wastes listed at 850.3A(4)(xiv). This will be corrected in the next program change for Maine. EPA also is not authorizing Maine for the organics and pesticide wastes (waste codes D012 through D043), because Maine has not yet adopted the TC regulations for these wastes. EPA will continue to directly enforce the TC Rules in Maine for the remaining Toxicity Characteristics of DO12 through DO43 and the chrome wastes since both of these rules were promulgated under the Hazardous Solid Waste Amendments (HSWA) and EPA can enforce this regulation when necessary. Regulated entities will need

to comply with the entire TC rule, but some parts of the rule will be enforced directly by EPA and some parts by the State.

#### 1. More Stringent Provisions

There are aspects of the Maine program which are more stringent than the Federal program. All of these more stringent requirements are, or will, become part of the federally enforceable RCRA program when authorized by the EPA, and must be complied with in addition to the State requirements which track the minimum Federal requirements.

The more stringent requirements relating to the Universal Waste Rule are as follows: Maine has not added pesticides to its list of Universal Wastes. Thus, pesticides in Maine remain fully regulated hazardous wastes. Also, all universal waste, except for ballasts and

mercury spill residue, must be sent for recycling under state rules whereas federal rules allow universal waste to be sent to treatment, storage or disposal facilities (TSDFs) or to a recycler. However, mercury spill residue and ballasts may be sent to a treatment, storage or disposal facility under the Maine rules. Also, in the Maine regulations generators can send universal wastes to their own central facility but not to another generator's facility and may also ship to a consolidation facility or directly to a recycler, whereas the federal rules allow universal waste generators to send their universal waste to another universal waste handler, a destination facility, or a foreign destination. Additionally, the State definition of small universal waste generator, which is an equivalent term for the federal small quantity handler of universal waste, is more stringent in that to meet this definition this category of generator can only generate or accumulate on site no more than 200 universal waste items, including batteries as described in 850.3A(14), or 4,000 motor vehicle mercury switches at a time or in any given month, and the total weight must be no more than 40 tons of cathode ray tubes or 5,000 kg of all other universal wastes. A one time generation of lamps under a Green Lights or similar program that is completed within 6 months or a mercury thermometer collection event, is exempt from the 200 item count provided that no more than 5,000 kg of universal waste are generated. In comparison, the federal definition of small quantity handler of universal waste means a universal waste handler who does not accumulate more than 5000 kilograms total of universal waste at any time.

### 2. Broader-in-Scope Provisions

There also are aspects of the Maine 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 Maine. These broader-in-scope requirements include the following: Maine has added PCB ballasts to the State's universal waste rule. PCB ballasts are not considered a federal hazardous waste however, the federal rule allows a state to include state-only hazardous wastes in their universal waste rules. Also, in addition to including lamps that fail the TCLP test in the State's universal wastes rule, which is equivalent to the Federal requirements, the State includes lamps

that contain mercury but pass the TCLP test in their universal waste rules, which is a partially broader in scope provision.

### 3. Different but Equivalent Provisions

There also are some Maine regulations which differ from, but have been determined to be equivalent to, the Federal regulations. These State regulations will become part of the Federally enforceable RCRA program when authorized by the EPA. These different but equivalent requirements include the following: (1) In addition to batteries, thermostats and mercury-containing lamps which are included in the federal universal waste rule, Maine has added CRTs, mercury devices and motor vehicle mercury switches to the State's universal waste rule. We deem this equivalent because the federal Universal Waste Rule allows states the flexibility to add additional hazardous wastes to their state list of universal wastes without requiring the waste to be added at the federal level; (2) In the federal universal waste rule, a universal waste handler may accumulate universal waste for more than one year from the date the universal waste is generated, or received from another handler, if the handler can show that this additional time is necessary to facilitate proper recovery, treatment or disposal. The state rule automatically assumes that a full container is necessary to facilitate proper recovery, treatment or disposal and no further proof is required to justify a longer storage period provided the generator complies with certain standards. These standards specify the container sizes for each type of universal waste and specifies that the storage must be for no more than 90 days from the date the container becomes full. We feel that the state's generic determination that a full container is necessary to facilitate proper recovery, treatment or disposal and that specific container size requirements apply is environmentally "equivalent" to the federal regulations which require sources to make case by case demonstrations when accumulating universal waste for more than one year.

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

Maine will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer and enforce any RCRA and HSWA (Hazardous and Solid Waste Act) permits or portions of permits which it has issued in Maine prior to the effective date of this authorization until the State incorporates the terms and

conditions of the federal permits into the State RCRA permits. EPA will not issue any more new permits, or new portions of permits, for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Maine is not yet authorized.

### J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in Maine?

Maine has not applied for and is not authorized to carry out its federal hazardous waste program in Indian country within the State, which includes the land of the Houlton Band of Maliseet Indians, the Aroostook Band of Micmacs, the Passamaquoddy Tribe at Pleasant Point and Indian Township, and the Penobscot Nation. Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the federal RCRA program in these lands.

### K. What Is Codification and Is EPA Codifying Maine's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart U for this authorization of Maine's program changes until a later date.

### L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993); therefore, this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). For the same reason, this action also does not significantly or uniquely affect the communities or Tribal governments, as

specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001) ) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action nevertheless will be effective January 10, 2005, because it is an immediate final rule.

#### List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indians—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: October 28, 2004.

**Ira Leighton,**

*Acting Regional Administrator, EPA New England.*

[FR Doc. 04-24920 Filed 11-8-04; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 49 CFR Part 40

[Docket OST-2003-15245]

RIN 2105-AD47

#### Procedures for Transportation Workplace Drug and Alcohol Testing Programs

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Interim final rule.

**SUMMARY:** The Department of Transportation is amending certain provisions of its drug and alcohol testing procedures to change instructions to laboratories and medical review officers with respect to adulterated, substituted, and diluted specimen results. This change is intended to avoid inconsistency with new requirements established by the U.S. Department of Health and Human Services that went into effect on November 1, 2004.

**DATES:** This rule is effective November 9, 2004. Comments to the interim final

rule should be submitted by December 9, 2004. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

(1) By mail to the Docket Management System (SVC-124), U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001;

(2) By delivery to room PL-401 on the Plaza Level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366-9329;

(3) By fax to the Docket Management Facility at (202) 493-2251; or,

(4) By electronic means through the Web site for the Docket Management System at: <http://dms.dot.gov>.

The Docket Management Facility maintains the public docket for this rulemaking. Comments to the docket will be available for inspection or copying at room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The public may also review docketed comments electronically at: <http://dms.dot.gov>.

Anyone wishing to file a comment should refer to the OST docket number (OST-2003-15245).

**FOR FURTHER INFORMATION CONTACT:** Jim L. Swart, Deputy Director (S-1), Office of Drug and Alcohol Policy and Compliance, 400 Seventh Street, SW., Washington, DC 20590; telephone number (202) 366-3784 (voice), (202) 366-3897 (fax), or [jim.swart@ost.dot.gov](mailto:jim.swart@ost.dot.gov) (e-mail).

#### SUPPLEMENTARY INFORMATION:

##### Purpose

Recently, the U.S. Department of Health and Human Services (HHS) revised their Mandatory Guidelines (69 FR 19644) with an effective date of November 1, 2004. Among the many revisions contained in the HHS Mandatory Guidelines are the requirements that laboratories modify substituted specimen and diluted specimen testing and reporting criteria. HHS revised laboratory requirements for adulterated specimen testing. HHS also requires each Federal agency to conduct specimen validity testing (SVT) to determine if urine specimens collected under HHS Federal Workplace Drug Testing Programs have been adulterated or substituted.