



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R09-RCRA-2019-0491; FRL-10023-58-Region 9]

California: Authorization of State Hazardous Waste Management Program Revisions; Final Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final authorization; correction.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing corrections to the authorization of California's hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA approved revisions to California's federally authorized hazardous waste program (specifically, updates to California's Universal Waste program) by publishing proposed and final rules in the *Federal Register* on October 18, 2019, and January 14, 2020, respectively. On March 5, 2021, the Agency published and sought public comment on a Proposed Rule to correct information contained in the October 18, 2019, *Federal Register* proposal and the January 14, 2020 approval. No comments were received on the proposed revisions. This document finalizes those corrections.

DATES: This final authorization is effective [insert date 30 days after date of publication in the *Federal Register*].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-RCRA-2019-0491. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

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SUPPLEMENTARY INFORMATION:

A. What corrections to California's hazardous waste program is the EPA authorizing with this action?

The EPA approved revisions to California's federally authorized hazardous waste program by publishing proposed and final rules in the *Federal Register* on October 18, 2019 (80 FR 55871), and January 14, 2020 (85 FR 2038), respectively. On March 5, 2021, the EPA proposed to add citations for approving the State's authority to adopt additional waste streams as universal wastes in the *State Analogues to the Federal Program* table and revise the scope of the State program that is considered "broader in scope" than the Federal program. The changes detailed in the proposed correction are summarized below.

1. The EPA added citations to the table for Title 22 of the California Code of Regulations (CCR) 66260.22 and 66260.23 and the Federal analogues, 40 CFR 260.20(a) and 260.23(a) through (d), respectively. In addition, the EPA added a footnote to the table clarifying the implications of the authorization of the State's universal waste program as to a waste stream that the State already identified as a universal waste before the universal waste authorization update was effective, i.e., aerosol cans. (Similarly, effective January 1, 2021, California also now includes photovoltaic solar panels in the State's universal waste program.)

2. The EPA revised the list of California requirements that the EPA considers beyond the scope of the Federal program by deleting California-only universal wastes (further defined as non-RCRA hazardous wastes) from the list of State requirements that are broader in scope than the Federal program and adding language to the broader in scope analysis that specifies that any non-RCRA hazardous wastes that the State regulates as a hazardous waste are generally considered beyond the scope of the Federal program.

No comments were received on the proposal. The corrections are hereby finalized and the changes to the scope of California's authorized universal hazardous waste program will become effective on the date listed in the DATES section above.

B. What is codification and is the EPA codifying California's hazardous waste program as authorized in this rule?

Codification is the process of placing citations and references to 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 adding those citations and references to the authorized state rules in 40 CFR part 272. The EPA is not codifying the authorization of California's revisions at this time. However, the EPA reserves the right to amend 40 CFR part 272, subpart F, for the authorization of California's program at a later date.

C. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action (RCRA state authorization) from the requirements of Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Therefore, this action is not subject to review by OMB. This action finalizes corrections to the authorization of state requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by state law. Accordingly, 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 finalizes corrections to the authorization of 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 (Pub. L. 104-4). This action also does not significantly or uniquely affect the communities of 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 corrects the *Federal Register* document in which the EPA authorized 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 concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children. This correction 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), the 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 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 otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 do not apply. See 15 U.S.C. 272 note, sec. 12(d)(3), Public Law No. 104-113, 110 Stat. 783 (Mar. 7, 1996) (exempting compliance with the NTTAA’s requirement to use VCS if compliance is “inconsistent with applicable law”). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this correction to its rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the correction to 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 correction to the rule authorizing California’s universal waste program does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs,

policies, and activities on minority populations and low-income populations in the United States. Because this correction to the California universal waste authorization rule authorizes pre-existing state rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by state law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898. 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. The 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 of the final rule correction in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This correction is not a “major rule” as defined by 5 U.S.C. 804(2).

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, and 6974(b).

Dated: May 24, 2021.

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