

**PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

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

**Subpart DD—Nevada**

■ 2. Section 52.1470 is amended by adding paragraphs (c)(60) and (c)(61) to read as follows:

**§ 52.1470 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(60) The following plan revision was submitted on January 23, 2003, by the Governor's designee.

(i) Incorporation by reference.

(A) Clark County Department of Air Quality and Environmental Management.

(1) Sections 90 and 92, adopted June 22, 2000 by the Clark County Board of Commissioners, and amended on December 17, 2002.

(61) The following plan revision was submitted on March 26, 2003, by the Governor's designee.

(i) Incorporation by reference.

(A) Clark County Department of Air Quality and Environmental Management.

(1) Section 93, adopted on June 22, 2000 by the Clark County Board of Commissioners and amended on March 4, 2003; Section 94, adopted on June 22, 2000 by the Clark County Board of Commissioners and amended on March 18, 2003; and, the "Construction Activities Dust Control Handbook", adopted June 22, 2000 by the Clark County Board of Commissioners and amended on March 18, 2003.

\* \* \* \* \*

[FR Doc. E6-18158 Filed 10-27-06; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 271**

[FRL-8235-5]

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

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

**ACTION:** Immediate final rule.

**SUMMARY:** Washington has applied to EPA for Final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act, as amended, (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 rule. 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 comments that oppose it.

**DATES:** This final authorization will become effective on December 29, 2006, unless EPA receives adverse written comments on or before November 29, 2006. If we receive comments that oppose this action, EPA will publish a document in the **Federal Register** withdrawing this rule before it takes effect.

**ADDRESSES:** Submit your comments, identified by EPA-R10-RCRA-2006-0810 by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. E-mail:

[kocourek.nina@epamail.epa.gov](mailto:kocourek.nina@epamail.epa.gov).

3. Fax: 206-553-8509.

4. Mail: Nina Kocourek, U.S. EPA, Region 10, Office of Air, Waste and Toxics, 1200 Sixth Avenue, Mail Stop AWT-122, Seattle, Washington 98101.

**Instructions:** Direct your comments to EPA-10-RCRA-2006-0810. EPA's policy is that all comments received will be included in the public file without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> website is an "anonymous access" system which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public file and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your

comment. Electronic files should avoid the use of special characters and any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the U.S. Environmental Protection Agency, Region 10 Library, 1200 Sixth Avenue, Seattle, Washington, 98101, phone, and (206) 553-1289. The EPA Region 10 Library is open from 9 a.m. to 12 p.m. and from 1 p.m. to 2:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Nina Kocourek, U.S. EPA, Region 10, Office of Air, Waste and Toxics, 1200 Sixth Avenue, Mail Stop AWT-122, Seattle, Washington 98101, phone number (206) 553-6502, fax number (206) 553-8509, e-mail: [kocourek.nina@epa.gov](mailto:kocourek.nina@epa.gov); or Patricia Hervieux, Washington Department of Ecology, 300 Desmond Drive, Lacey, Washington 98503, phone (360) 407-6756, e-mail: [pher461@ecy.wa.gov](mailto:pher461@ecy.wa.gov).

**SUPPLEMENTARY INFORMATION:****I. Authorization of Revisions to State Program and of State-Initiated Changes to Washington's Hazardous Waste Program**

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

States that have received final authorization from EPA pursuant to section 3006(b) of RCRA, 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 Title 40 of the 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 conclude that Washington's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, with respect to these revisions, we are granting Washington final authorization to operate its hazardous waste program as described in the revision authorization application. Washington's authorized program will be responsible for carrying out the aspects of the RCRA program as described in its revised program application, subject to the limitations of RCRA, including 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 HSWA requirements and prohibitions for which Washington has not been authorized, including issuing HSWA permits, until the State is granted authorization to do so.

*C. What Is the Effect of This Authorization Decision?*

The effect of this authorization decision is that a facility in Washington subject to RCRA will continue to be subject to the authorized State requirements and to the Federal HSWA provisions for which the State is not authorized in order to comply with RCRA. Washington has enforcement responsibilities under its State hazardous waste program for violations of its program, but EPA retains its independent enforcement authority under RCRA sections 3007, 3008, 3013, and 7003, which authority includes, among other things, the authority to:

- Perform inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions regardless of whether Washington has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Washington is

being authorized by this action are already effective under State law, and are not changed by this action.

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

EPA did not publish a proposal before this rule because we view this as a routine program change and do not expect 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 this **Federal Register**, we are publishing a separate document that proposes to authorize Washington's program changes. If we receive comments, which oppose this authorization, that document will serve as a proposal to authorize these changes.

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

If we receive comments that oppose this action, EPA will publish a document in the **Federal Register** withdrawing this rule before it takes effect. EPA will then address public comments in a later final rule based on the proposed rule in this **Federal Register**. If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule. However, the authorization of program changes that are not opposed by any comments will become effective on December 29, 2006. A **Federal Register** withdrawal document will specify which part of the authorization will become effective and which part is being withdrawn. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

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

Washington initially received final authorization on January 30, 1986, effective January 31, 1986 (51 FR 3782), to implement the State's dangerous waste management program. EPA granted authorization for changes to Washington's program on September 22, 1987, effective on November 23, 1987 (52 FR 35556); August 17, 1990, effective October 16, 1990 (55 FR 33695); November 4, 1994, effective November 4, 1994 (59 FR 55322);

February 29, 1996, effective April 29, 1996 (61 FR 7736); September 22, 1998, effective October 22, 1998 (63 FR 50531); October 12, 1999, effective January 11, 2000 (64 FR 55142); April 11, 2002, effective April 11, 2002 (67 FR 17636) and on April 14, 2006, effective June 13, 2006 (71 FR 19442).

*G. What Revisions Are We Authorizing With This Action?*

We are granting final authorization for the revisions to Washington's federally-authorized program described in Washington's final complete program revision application submitted to EPA on June 26, 2006, and deemed complete by EPA on July 25, 2006. We have made a final determination, subject to receipt of written comments that oppose this action, that Washington's hazardous waste program revisions, as described in this rule, satisfy the requirements necessary for final authorization. Regulatory revisions that are less stringent than the Federal program requirements and those regulatory revisions that are broader in scope than the Federal program requirements are not authorized. Washington's authorized hazardous waste program, as amended by these provisions, remains equivalent to, consistent with, and is no less stringent than the Federal RCRA program. Therefore, we grant final authorization for the following program changes as identified in Table 1 and Table 2 below.

The provisions listed in these tables are from the Washington Administrative Code (WAC) and are analogous to the RCRA regulations as indicated in the tables. The RCRA regulations are those as published in 40 CFR parts 260 through 265, 268, 270, and 279, as of July 1, 2003, unless otherwise noted. Table 1 identifies new State rules that EPA is authorizing as equivalent or more stringent to the Federal program, and Table 2 identifies those State-initiated changes to its previously-authorized program. (Note, in Table 2 some State provisions have no direct Federal analog but are related to particular paragraphs, sections, or parts of the Federal hazardous waste requirements in the 40 CFR). All of the referenced analogous State authorities were legally adopted and effective as of January 1, 2005.

TABLE 1.—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL PROGRAM <sup>1</sup>

Checklist <sup>4</sup>	Federal requirements	Federal Register	Analogous state authority (WAC 173-303-* * *)
17D <sup>3</sup> .....	Waste Minimization HSWA Codification Rule.	50 FR 28702, 7/15/85 .....	180(1); 370(1); 380(1); 390(1); 380(1)(q); 810(11)(c); 805(1)(b), 805(1)(c).

TABLE 1.—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL PROGRAM <sup>1</sup>—Continued

Checklist <sup>4</sup>	Federal requirements	Federal Register	Analogous state authority (WAC 173-303-* * *)
30 .....	Biennial Report Correction .....	51 FR 28556, 8/8/86 .....	390(2)(g), 390(2)(h), 390(2)(i).
108 .....	Toxicity Characteristic Revisions; Technical Corrections.	57 FR 30657, 7/10/92 .....	071(3)(aa); 071(3)(g)(i); 400(3)(a) Incorporated by Reference (IBR) 045(1)
152 .....	Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision.	61 FR 16290, 4/12/96 .....	120(6); 170(6); 070(1); 230(2); 280(1), 280(2); 600(3)(f); 950; 960; 230(1) IBR 045(1); 240(11); 250(1); 290(1)(a), 290(1)(b); 370(6); 525(1)(b)(ii), 525(1)(b)(iii); 573(16); 573(27), 573(34), 573(38), 573(38)(d).
156 <sup>3</sup> .....	Military Munitions Rule .....	62 FR 6622, 2/12/97 .....	578(3); 578(4)(d), 578(4)(d)(i), 578(4)(d)(ii), 578(4)(e).
159 .....	Conformance With the Carbamate Vacatur.	62 FR 32974, 6/17/97 .....	9904; 082(1); 9903; 082(4) IBR 045(1); 9905; 140(2)(a) IBR 045(1).
161 .....	Emergency Revision of the Carbamate Land Disposal Restrictions (LDR).	62 FR 45568, 8/28/97 .....	140(2)(a) IBR 045(1).
168 .....	Hazardous Waste Combustors; Revised Standards.	63 FR 33782, 6/19/98 .....	830(4)(j), 830(4)(j)(i), 830(4)(j)(ii), 830 Appendix I—L. 9.; 805(7)(b)(viii).
182 .....	Hazardous Air Pollutants Standards for Combustors.	64 FR 52828, 9/30/99 amended at 64 FR 63209, 11/19/99.	040; 670(1)(b), 670(1)(b)(i), 670(1)(b)(ii), 670(1)(c), 670(1)(d); 680(2); 400(3)(a) IBR 045(1); 510(1)(a) IBR 045(1); 806(4)(f), 806(4)(f)(v), 806(4)(n); 830 Appendix I—A.8 and I.9.; 807 Intro.; 811 IBR 045(1).
183 .....	LDR Phase IV—Technical Correction.	64 FR 56469, 10/20/99 .....	9904; 082(1); 200(1)(f); 140(2)(a) IBR 045(1).
184 <sup>2</sup> .....	Accumulation Time for Waste Water Treatment Sludges.	65 FR 12378, 3/8/00 .....	200(1)(e), 200(1)(f); 200(4)(a), 200(4)(a)(i), 200(4)(a)(ii), 200(4)(a)(iii), 200(4)(a)(iv), 200(4)(a)(iv)(A), 200(4)(a)(iv)(A)(I), 200(4)(a)(iv)(A)(II), 200(4)(a)(iv)(A)(III), 200(4)(a)(iv)(A)(III) 1st and 2nd Bullets, 200(4)(a)(iv)(B), 200(4)(a)(iv)(C), 200(4)(a)(v)(D), 200(4)(a)(iv)(E), 200(4)(b), 200(4)(c).
187 .....	Petroleum Refining Process Wastes—Clarification.	64 FR 36365, 6/8/00 .....	9904; 140(2) IBR 045(1).
188 .....	Hazardous Air Pollutant Standards; Technical Corrections.	65 FR 42292, 7/10/00 .....	670(1)(b)(i), 670(1)(b)(iii); 830(4)(j)(i).
189 .....	Chlorinated Aliphatics Listing and LDR for Newly Identified Wastes.	65 FR 67068, 11/8/00 .....	9904; 082(1); 082(4) IBR 045(1); 9905; 140(2)(a) IBR 045(1).
192A <sup>2</sup> .....	Mixture and Derived—From Rules Revisions.	66 FR 27266, 5/16/01 .....	070(2)(a), 070(2)(c)(i), 070(2)(c)(ii), 070(2)(c)(ii)(A), 070(2)(c)(ii)(B); 071(2), 071(3)(bb), 071(3)(o); 081(3); 082(3).
192B .....	LDR Correction .....	66 FR 27266, 5/16/01 .....	140(2) IBR 045(1).
193 .....	Change of Official EPA Mailing Address.	66 FR 34374, 6/28/01 .....	110(3)(a).
194 <sup>2</sup> .....	Mixture and Derived—From Rules Revision II.	66 FR 50332, 10/3/01 .....	071(2); 081(3); and 082(3).
195 .....	Inorganic Chemical Manufacturing Wastes Identification and Listing.	66 FR 58258, 11/20/01; 67 FR 17119, 4/9/02.	071(3)(kk), 071(3)(kk)(i), 071(3)(kk)(ii), 071(3)(kk)(iii), 071(3)(kk)(iv), 071(3)(kk)(v); 9904; 082(1), 082(4) IBR 045(1); 140(2)(a) IBR 045(1).

TABLE 1.—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL PROGRAM <sup>1</sup>—Continued

Checklist <sup>4</sup>	Federal requirements	Federal Register	Analogous state authority (WAC 173-303-* * *)
196 .....	Corrective Action Management Unit (CAMU) Amendments.	67 FR 2962, 1/22/02 .....	040; 64650(1), 64650(2); 64640, 64640(1); 64650(3), 64650(3)(a), 64650(3)(a)(i), 64650(3)(a)(ii), 64650(3)(a)(ii)(A), 64650(3)(a)(ii)(B), 64650(3)(a)(iii), 64650(3)(b), 64650(3)(c), 64650(3)(c)(i), 64650(3)(c)(ii), 64650(3)(c)(iii), 64650(3)(c)(iv), 64650(3)(d), 64650(3)(e), 64670(1), 64670(1)(a), 64670(1)(b), 64670(2); 64660(1), 64660(1)(a), 64660(1)(b), 64660(1)(c), 64660(1)(d), 64660(1)(e), 64660(1)(f), 64660(1)(g), 64660(2), 64660(2)(a), 64660(2)(b), 64660(2)(c), 64660(3), 64660(3)(a), 64660(3)(b), 64660(3)(c), 64660(3)(c)(i), 64660(3)(c)(ii), 64660(3)(c)(ii)(A), 64660(3)(c)(ii)(B), 64660(3)(d), 64660(3)(d)(i), 64660(3)(d)(i)(A), 64660(3)(d)(i)(A)(I), 64660(3)(d)(i)(A)(II), 64660(3)(d)(i)(B), 64660(3)(d)(i)(C), 64660(3)(d)(ii), 64660(3)(d)(iii), 64660(3)(d)(iv), 64660(3)(d)(iv)(A), 64660(3)(d)(iv)(B), 64660(3)(d)(iv)(C), 64660(3)(d)(iv)(D), 64660(3)(d)(iv)(E), 64660(3)(d)(iv)(F), 64660(3)(d)(v), 64660(3)(d)(v)(A), 64660(3)(d)(v)(B), 64660(3)(d)(v)(C), 64660(3)(d)(v)(D), 64660(3)(d)(v)(E), 64660(3)(d)(v)(E)(I), 64660(3)(d)(v)(E)(II), 64660(3)(d)(v)(E)(III), 64660(3)(d)(v)(E)(IV), 64660(3)(d)(v)(E)(V), 64660(3)(d)(vi), 64660(3)(d)(vii), 64660(3)(e), 64660(3)(e)(i), 64660(3)(e)(ii), 64660(3)(e)(iii), 64660(3)(f), 64660(3)(f)(iv), 64660(3)(f)(i), 64660(3)(f)(i)(A), 64660(3)(f)(i)(B), 64660(3)(f)(ii), 64660(3)(f)(ii)(A), 64660(3)(f)(ii)(B), 64660(3)(f)(ii)(C), 64660(3)(f)(ii)(D), 64660(3)(f)(ii)(E), 64660(3)(f)(ii)(F), 64660(3)(f)(iii), 64660(3)(f)(iii)(A), 64660(3)(f)(iii)(A)(I), 64660(3)(f)(iii)(A)(II), 64660(3)(f)(iii)(A)(III), 64660(3)(f)(iii)(A)(IV), 64660(3)(f)(iii)(A)(V), 64660(3)(f)(iii)(B), 64660(3)(f)(iv), 64660(4), 64660(4)(a), 64660(4)(b), 64660(4)(b)(i), 64660(4)(b)(ii), 64660(5), 64660(6), 64660(7), 64660(8); 64650(4); 64690 IBR 045(1); 646910(1), 646910(1)(a), 646910(1)(b), 646910(1)(b)(i), 646910(1)(b)(ii), 646910(1)(b)(iii), 646910(1)(c), 646910(2), 646910(3), 646910(4), 646910(5), 646910(5)(a), 646910(5)(b), 646910(5)(c), 646910(5)(d), 646910(5)(e), 646910(5)(f), 646910(6), 646910(7).
197 .....	Hazardous Air Pollutant Standards for Combustors: Interim Standards.	67 FR 6792, 2/13/02 .....	670(1)(b)(i), 670(1)(b)(iv), 670(1)(b)(iv)(A), 670(1)(b)(iv)(B); 400(3)(a) IBR 045(1); 806(4)(f)(v), 806(4)(n); 807 Introduction; 811 IBR 045(1); 841 IBR 045(1).
198 .....	Hazardous Air Pollutant Standards for Combustors: Corrections.	67 FR 6968, 2/14/02 .....	510(1)(a) IBR 045(1); 830(4)(j)(i).
200 .....	Zinc Fertilizer Rule .....	67 FR 48393, 7/24/02 .....	071(3), 071(3)(pp), 071(3)(pp)(i), 071(3)(pp)(i)(A), 071(3)(pp)(i)(B), 071(3)(pp)(ii), 071(3)(pp)(iii), 071(3)(pp)(iii)(A), 071(3)(pp)(iii)(B), 071(3)(pp)(iii)(C), 071(3)(pp)(iii)(D), 071(3)(pp)(iii)(E), 071(3)(pp)(iii)(F); 505(1)(b)(i), 505(1)(b)(iii), 505(1)(b)(iii)(A), 505(1)(b)(iii)(B); 140(2)(a) IBR 045(1).
201 .....	Treatment Variance for Radioactively Contaminated Batteries.	67 FR 62618, 10/7/02 .....	140(2)(a) IBR 045(1).
202 .....	Hazardous Air Pollutant Standards for Combustors: Corrections 2.	67 FR 77687, 12/19/02 .....	806(4)(f)(v), 806(4)(n); 807 Introduction; 811 IBR 045(1).
204 <sup>2</sup> , 204.1 <sup>2</sup> ...	Performance Track and Amendments.	69 FR 21737, 4/22/04 amended 69 FR 62217, 10/25/04.	200(5) IBR 045(1), 200(5)(a), 200(5)(b), 200(5)(c), 200(5)(d), 200(5)(e).

TABLE 1.—EQUIVALENT AND MORE STRINGENT ANALOGUES TO THE FEDERAL PROGRAM <sup>1</sup>—Continued

Checklist <sup>4</sup>	Federal requirements	Federal Register	Analogous state authority (WAC 173-303-* * *)
209 <sup>2</sup>	Mercury Containing Equipment, Universal Waste.	70 FR 45508, 8/5/05	040; 077(2), 077(3); 600(3)(o)(ii), 600(3)(o)(iii); 400(2)(c)(xi)(B), 400(2)(c)(xi)(C); 573(4)(d) IBR 045(1); 800(7)(c)(iii)(B), 800(7)(c)(iii)(C); 573(3)(a), 573(3)(b), 573(3)(b)(i), 573(3)(b)(ii), 573(3)(c)(i), 573(3)(c)(ii), 573(4)(a), 573(4)(b), 573(4)(b)(i), 573(4)(b)(ii), 573(4)(c)(i), 573(4)(c)(ii); 573(9)(b), 573(9)(b)(i), 573(9)(b)(ii), 573(9)(b)(ii)(A)–(H), 573(9)(b)(iii)(A), 573(9)(b)(iii)(A)(I), 573(9)(b)(iii) (9)(A)(II), 573(9)(b)(iii)(B), 573(9)(b)(iii)(C), 573(10)(b), 573(10)(c), 573(11)(c)(ii), 573(19)(b)(iv), 573(19)(b)(v), 573(20)(b), 573(20)(b)(i), 573(20)(b)(ii), 573(20)(b)(ii)(A)–(H), 573(20)(b)(iii)(A), 573(20)(b)(iii)(A)(I), 573(20)(b)(iii)(A)(II), 573(20)(b)(iii)(B), 573(20)(b)(iii)(C), 573(21)(b), 573(21)(c), 573(22)(c)(ii), 573(26)(a)(ii), 573(26)(b)(ii), 573(37)(a)(ii).
13, 79 (Consolidated Checklist C2).	Identification and Listing of Hazardous Waste—Recycling Facility Requirements.	50 FR 614, 1/4/85; amended 50 FR 14216, 4/11/85 and 50 FR 33541, 8/20/85; 55 FR 25454, 6/21/90.	120(4).
IVA, IVB, 34, 64, 78, 102 (Consolidated Checklist C5/C6).	Standards for Owners and Operators of Hazardous Waste Treatment Storage and Disposal Facilities—Waste Analysis Plan.	45 FR 33232, 5/19/80; 51 FR 40572, 11/7/86 amended 52 FR 21010, 6/4/87; 54 FR 33376, 8/14/89; 55 FR 22520, 6/1/90; 57 FR 8086, 3/6/92.	300(1), 300(2); 040.
V, 13, 71 (Consolidated Checklist C9 <sup>2</sup> ).	Permits by Rule—Subpart F—Special Forms of Permits.	48 FR 14228, 4/12/83, amended 48 FR 30113, 6/30/83; 50 FR 614, 1/4/85; amended 50 FR 14216, 4/11/85 and 50 FR 33541, 8/20/85; 55 FR 2322, 1/23/90.	802(5)(a), 802(5)(b); 040.
54, 85, 94, 168, 188, 198 (Consolidated Checklist C9).	Hazardous Waste Management Facilities—Boilers and Industrial Furnaces.	53 FR 37912, 9/28/88 amended 53 FR 41649, 10/24/88; 56 FR 7134, 2/21/91; 56 FR 32688, 7/17/91; 63 FR 33782, 6/19/98; 65 FR 42292, 7/10/00; amended 66 FR 24270, 5/14/01 and 66 FR 35087, 7/3/01; 67 FR 6968, 2/14/02.	830(4)(g), 830(4)(g)(i), 830(4)(g)(i)(A), 830(4)(g)(i)(B), 830(4)(g)(i)(C), 830(4)(g)(i)(D), 830(4)(g)(i)(E), 830(4)(j), 830(4)(j)(i), 830(4)(j)(ii).

<sup>1</sup> For further discussion on where the revised State rules differ from the Federal rules refer to Section G. below, the authorization revision application, and the administrative record for this decision.

<sup>2</sup> State rule contains some more stringent provisions. For identification of more stringent State provisions refer to the authorization revision application and the administrative record for this decision.

<sup>3</sup> State requested authorization for portions of the Federal regulation. For identification of which portions are authorized refer to the authorization revision application and the administrative record for this decision.

<sup>4</sup> Checklists generally reflect changes made to the Federal regulations pursuant to a particular **Federal Register** notice and EPA publishes these Checklists as aids for States to use for the development of their authorization application. (See EPA's RCRA State Authorization Web page at <http://www.epa.gov/epaoswer/hazwaste/state/rcra/>.)

TABLE 2.—STATE INITIATED CHANGES

State requirement and reason for change (WAC 173-303-* * *)	Analogous Federal 40 CFR citation <sup>1</sup>
40 "Partial closure" definition, Internal citation corrected	260.10.
045(1), Date of incorporation by reference updated	No direct federal analog.
045(2)(a) Federal citation for a delegable provision moved to next subsection.	260.20–260.22.
045(2)(b), Citation corrected	264.301(l).
045(2)(c), Citation corrected	268.5, 268.6, 268.10–14, 268.42(b), 268.44 except 268.44(a)–(g).
045(3), Clarification of delegable federal citation not incorporated by reference.	260.20–22.
045(4), New subsection—substitution of state for federal terms	No direct federal analog.
060(1), Clarification of ID# issuance and state-only transfer facility registration number issuance.	262.12(a)&(c).
060(2), Corrections for new form name	262.12(b).
060(5), Corrections for new form name	262.12 related.
070(2)(c), Hazardous debris exclusion moved to 071(3)(qq)	261.3(f).
070(7)(c)(ii), Citation added	261.5(c) and 262.10 related.
070(8)(b)(iii)(C), Citation updated	261.5(f)(3) & 261.5(g)(3) related.
070(8)(d), Clarification of application of used oil standards to CESQGs	261.6(a)(4).
071(3)(k), Citation corrected	No direct federal analog.

TABLE 2.—STATE INITIATED CHANGES—Continued

State requirement and reason for change (WAC 173–303–* * *)	Analogous Federal 40 CFR citation <sup>1</sup>
071(3)(o), SIC changed to NAIC Codes .....	261.3(c)(2)(ii)(A).
071(3)(cc), SIC changed to NAIC Codes .....	261.4(a)(12).
071(3)(hh), SIC changed to NAIC Codes .....	261.4(a)(18).
071(3)(nn), State-only drug exclusion .....	No direct federal analog.
081(3), Clarification of “mixture” language .....	261.3(c).
082(3), Clarification of “mixture” language .....	261.3(b)(2).
090(5)(a)(iii), Citation deletion to conform to federal rule .....	261.21.
100(5)(b)(i), Clarification .....	No direct federal analog.
100(6), Publication reference update .....	No direct federal analog.
100(6)(d), Obsolete reference deleted .....	No direct federal analog.
104, State-only waste codes identified in one location .....	No direct federal analog.
110(3)(g)(vii), Spelling correction and year update .....	260.11(a)(15).
120(3) .....	261.6(a)(2).
120(4) .....	261.6(c)(1).
120(4)(c)(v)–(viii) .....	261.6(c)(2).
Closure requirements for recycling and used oil facilities (new in 2005).	
140(2)(a), Citation added Clarification .....	Part 268.
161(6), 5 years added as retention period for labpacks .....	No direct federal analog.
170(5), Citations corrected .....	262.10(i).
190(5)(b), Marking directions corrected .....	No direct federal analog 262.30–260.33 related.
200(1)(b)(i)&(ii), Citation corrected .....	262.34(a)(1) intro and (a)(1)(i) & (ii).
200(1)(b)(ii)&(iii), Stress of installation added for equivalence with federal rule.	262.34(a)(1) intro and (a)(1)(ii) & (iii).
200(1)(b)(iv)(B), Citation added for equivalence with federal rule at un-numbered paragraph following (B).	262.34(a)(1)(iv) paragraph following (B).
200(1)(e)(i), Citation added for equivalence with federal rule .....	262.34(a)(4).
201(2)(e), Citations corrected; generators of between 220 and 2200 pounds are subject to secondary containment.	262.34(d).
210(2), Corrections for new form name .....	262.40(b).
240(6)(a), Corrections for new form name .....	263.12 related.
283(2), Citation corrected .....	No direct federal analog.
290(1)(a)(i) through (vi), Subsection renumbered .....	264/265.12(a).
320(2)(a), Edit for clarity .....	264/265.15 except (b)(4)&(d).
380(1)(i), (j), (k), (l), (m), (n), (o), Citations corrected .....	264.73(b)(8), (9), (10), (11), (12), (13), (14), (15), and (16).
380(1)(p), Reference added .....	264.73(b)(17).
390(1), Deleted obsolete form title .....	264/265 Intro.
395(1)(d), Uniform Fire Code changed to International Fire Code .....	264/265.17.
400(3)(c)(ix), Closure notification clarified .....	265.112(d)(1) related.
400(3)(c)(xi)(C) & (G), Citations corrected .....	265 related.
500(1), Reference to 120(3) & (5) added .....	No federal analog.
505(1) Intro, Reference to 120(3) added .....	No direct federal analog.
505(1)(b), State fertilizer registration requirements moved from (1)(b)(i) to (1)(b)(iv).	No direct federal analog.
506(1), Reference to 120(3) added .....	261.4(b)(12).
510(1), Reference to 120(3) added .....	266.30(a) (1990 CFR).
510(1)(b)(i)(B) and Note, Clarification; Previous (C) deleted and consolidated into (B) References to state-only W001 removed.	266.30(b) intro and (b)(1) (1990 CFR) 266.100(b)(1) (1999 CFR).
515(5)(a), State waste code W001 changed to WPCB .....	279.12.
515(9)(a), Closure requirements for recycling and used oil facilities (new in 2005).	279.52 related.
515(13), Used oil testing (new subsection) .....	279 related.
520 Intro, Reference to 120(3) added .....	266.80(a).
522(1), Reference to 120(3) added .....	No federal analog.
525(1), Reference to 120(3) added .....	266.70 except 266.70(v)(3).
600(3)(e), Citation correction .....	270.1(c)(2) 264.1(b).
600(3)(g), Citation correction .....	270.1(c)(2) 264.1(b).
610(1)(c), (previous “c” became “d” & “d” became “e”) Closure requirements for recycling and used oil facilities (new in 2005).	264.110 related.
610(2)(b)(i), Closure standard wording corrected .....	264.111(c).
610(3)(c)(i), Closure notification clarified .....	264.112(d).
610(12) New subsection, Closure requirements for recycling and used oil facilities (new in 2005).	264.112 related.
620(1)(e) New sub-subsection, Closure requirements for recycling and used oil facilities (new in 2005).	264.140 related.
620(2)(a), Closure requirements for recycling and used oil facilities (new in 2005); Closure plan definition modified to include recycling and used oil processors.	264.141(a)–(e) related.
620(3), New un-numbered exception paragraph, Closure requirements for recycling and used oil facilities (new in 2005).	264.142 related.
620(4)(a), Reference to used oil and recycling facilities added, Closure requirements for recycling and used oil facilities (new in 2005).	264.143 related.
620(4)(b), Clarification .....	264.143.

TABLE 2.—STATE INITIATED CHANGES—Continued

State requirement and reason for change (WAC 173–303–* * *)	Analogous Federal 40 CFR citation <sup>1</sup>
620(4)(c), New sub-subsection, Closure requirements for recycling and used oil facilities (new in 2005).	No direct federal analog.
620(6)(a)(i), Partially funded trust funds no longer allowed for closure ..	264.145.
620(6)(a)(v), Minimum ratings of financial strength for financial and insurance institutions required.	264.145.
620(6)(a)(vi), Minimum tangible net worth increased to \$20M .....	264.145.
620(8)(a), Closure requirements for recycling and used oil facilities (new in 2005); Liability requirements modified to apply to recyclers and used oil processors.	264.147(a).
620(8)(a)(i), Minimum ratings of financial strength for financial and insurance institutions required.	264.147(a).
620(8)(a)(ii), Allow Ecology to file claims against liability insurance .....	264.147(a).
620(8)(a)(iii), Minimum tangible net worth increased to \$20M .....	264.147(a).
620(8)(b)&(f), Citations corrected .....	264.147(b), 264.147(f)–(j).
630(8)(a) and (b), Uniform Fire Code references changed to International Fire Code.	264.176.
640(2)(c)(iv)(B) Note, Reference to obsolete guidance replaced with list of publications that may be used.	264.191(b)(5)(ii), Note.
640(4)(i), Citations corrected .....	264.193.
640(4)(i)(iii) Note, Reference to obsolete guidance replaced with list of publications that may be used.	264.193.
640(7)(d)(i)–(iii), (ii) and (iii) deleted; Spill requirements modified—must be reported immediately.	264.196.
640(7)(d)(i)(F), Section 360 applies in the event of emergency .....	264.196.
645(1)(a)(ii), Citations corrected .....	264.90(a).
645(10)(h) Lettering corrected, (h) was added as a reserved sub-subsection since it had been missing from previous text. No text is missing. Two federal provisions (g) and (h) are combined at (g) in the State rules.	264.99.
64690 (previous 646(8)), Clarification that “director” means “department”.	264.554.
670(1)(c)(i)–(ii) .....	264.340(b) & (c).
670(1)(c)(iii) .....	264.340 related.
670(1)(d) .....	264.340(d).
Re-lettered from (b) to (c) and (c) to (d) to accommodate new (b).	
680(3), Citation corrected .....	264.602.
690(1)(c), Citation clarified .....	264.1030(c).
691(1)(b) Intro, Citation clarified .....	264.1050(b) intro.
691(1)(c), Paragraph updated .....	264.1050(c).
692(2) Note, Citations corrected .....	264.1081–1091.
802(3), Citation corrected .....	270.60(b).
802(4)(c)(viii), Citation corrected .....	270.60(c).
803(3)(c), SIC changed to NAIC Codes .....	270.13.
805(7)(a)(v), Citation correction .....	270.72(a)(5).
806(6), Note added .....	270.10(h).
830 Appendix I—6. and 7.a. & b., Citations corrected .....	270.42 Appendix I.
830 Appendix I—N.1. and 2., Citations corrected .....	270.42 Appendix I.
910(1)(c), Minimum public comment period reduced from 45 to 21 days	260.20(c).
910(6)(f)(i), Minimum public comment period reduced from 45 to 21 days.	268 related.
960, Changed to be consistent with Hazardous Waste Management Act.	RCRA 7003 related.
9904 State sources, State PCB waste code changed from W001 to WPCB.	261.31(a), 261.32.

<sup>1</sup> Reference to “No direct federal analog” is for informational purposes and is not authorized.

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

Under RCRA 3009, EPA may not authorize State rules that are less stringent than the Federal program. Any State rules that are less stringent do not supplant the Federal regulations. State rules that are broader in scope than the Federal program requirements are allowed but are not authorized. State rules that are equivalent to, and State rules that are more stringent than, the

Federal program may be authorized, in which case they are enforceable by EPA.

This section discusses certain rules where EPA has made the finding that the State program is more stringent and will be authorized; it discusses those State rules which are being authorized as different but equivalent to the Federal program; it discusses those rules where the State program is broader in scope, and cannot be authorized. Certain portions of the Federal program are not

delegable to the States because of the Federal government’s special role in foreign policy matters and because of national concerns that arise with certain decisions. EPA does not delegate import/export functions. Under RCRA regulations found in 40 CFR part 262, EPA will continue to implement requirements for import/export functions. The State amended its import and export rules to include 40 CFR part 262, subpart H in accordance with the

Federal rule on Imports and Exports Regulations of Hazardous Waste: Implementation of Organization for Economic Cooperation and Development (OECD) Council Decision (61 FR 16290, 4/12/96). The State's counterpart to this Federal rule is found at WAC 173-303-120(6), although EPA will continue to implement those requirements. Not all program differences are discussed in this section because Washington writes its own version of the Federal hazardous waste rules. Persons must consult Tables 1 and 2, in Section G above, for the specific State regulations that EPA is authorizing in this final rule.

#### 1. More Stringent

States are allowed to seek authorization for State requirements that are more stringent than Federal requirements. EPA has authority to authorize and enforce those parts of a State's program EPA finds to be more stringent than the Federal program. This section does not discuss each more stringent finding made by EPA, but persons can locate such sections by consulting Table 1 in Section G above, as well as by reviewing the docket for this rule. The State program is authorized for each more stringent requirement as part of this rulemaking.

The State revised its previously-authorized permits-by-rule provision at WAC-173-303-802(5)(a) and (5)(b) to allow off-site dangerous waste, including federally-regulated waste, to be received at a wastewater treatment unit. These State provisions are considered broader in scope for State-only wastes and more stringent for the federally-regulated wastes since the State rule includes additional safeguards that the Federal requirements found at 40 CFR 270.1(c)(2)(iv) and (v) do not include, such as: (1) Requirement that the source of the wastewater be identified; (2) requirement that the generator keep an operating record when federally-regulated wastes are received from off-site, and (3) requirement that wastewater received from off-site be generated within the same industry and be able to be effectively treated by the wastewater treatment unit.

The State adopted portions of the Federal Mercury-Containing Equipment, Universal Waste Rule (70 FR 45508, 8/5/05). The State's rule is based on EPA's proposed rule (67 FR 40508, 6/12/02) and until the State revises its rules to include the changes EPA made with its final rule (70 FR 45508, 8/5/05) the State's program will be more stringent than the Federal program. The State's rule is more stringent because it does

not include the following Federal provisions: the definition for "ampule" (40 CFR 260.10); merging "mercury-containing thermostats" with "mercury-containing equipment" into one universal waste category (40 CFR 260.10); and revised waste management standards for mercury-containing equipment that have open housings instead of ampules (40 CFR 273.13). Additionally, the State's definitions of small and large quantity handler of universal waste found at WAC 173-303-040 are more stringent than the Federal rule (40 CFR 273.9) because (1) the State's rule regulates universal waste lamps at a lower accumulation threshold than the Federal requirement and (2) the State's rule does not include the Federal language that allows equipment with non-contained elemental mercury to be managed as universal waste.

The State incorporated by reference most of the Federal Performance Track Rule (69 FR 21737, 4/22/04) into State law (WAC 173-303-200(5)). However, there are some Federal provisions for which the State included its own internal citations, which include the following more stringent requirements: aisle space requirement for containers (WAC 173-303-630(5)(c)); risk labeling (WAC 173-303-200(1)(d)); verification of training (WAC 173-303-300(2)(c)); cause of incident (WAC 173-303-360(2)(k)(viii)); and description of corrective action taken to prevent reoccurrence of the incident (WAC-173-303-360(2)(k)(ix)); and the requirement that drip pads remain subject to closure standards (WAC 173-303-675(6)(b)).

We also consider the State's new requirement for accumulating dangerous waste on-site for waste water treatment sludges (WAC 173-303-200(1)(e) and (f)) to be more stringent than the Federal requirement (40 CFR 262.34(a)(4)) because the State rule-unlike the Federal rule-requires compliance with "general inspections" (WAC 173-303-320) in addition to the other Federal requirements.

The State's revised mixture rules (WAC 173-303-071(2); 081(3); and 082(3)) are more stringent than the Federal rules because the State rules do not include all of the Federal wastewater mixture exclusions as identified in the Federal Mixture and Derived-From Rule Revisions (66 FR 27266, 5/16/01; and 66 FR 50332, 10/3/01).

#### 2. Different But Equivalent

The following State requirements are different than the Federal requirements, but EPA has determined that they are

nevertheless equivalent to the Federal program.

In 2005, the State enacted its Hazardous Waste Facilities Initiative (HWFI), which among other things makes many recycling activities subject to closure plan requirements, pollution liability coverage requirements, and financial assurance requirements. In contrast, under the Federal rules, hazardous waste recycling activities are generally exempt from hazardous waste requirements and therefore are not subject to closure plans, pollution liability coverage and financial assurance. Additionally, the State amended its previously authorized provision (WAC 173-303-120(4)) to be more similar to the Federal rule (40 CFR 261.6(c)(2)) in that the State removed the provision that specified that recyclable materials would be considered stored unless they were moved into an active recycling process within 24 hours. The State revised its rule so that it can determine on a case-by-case basis whether recyclable materials received from off-site are not stored if they are moved into an active recycling process in a period of time not to exceed 72 hours. While the Federal analog does not specify a timeframe after which holding recyclable materials is considered storage, EPA Region 1 authorized the State of Vermont for a similar provision (see 64 FR 51702, September 24, 1999), stating "EPA has previously agreed that States administering the RCRA program have some discretion to determine that short periods of accumulation by recyclers of incoming material do not constitute storage and would not trigger the RCRA storage permitting requirements". Region 1 determined that Vermont's rule, which allows up to three days without a storage permit, was equivalent to the Federal program and therefore federally approvable. Based on the Vermont authorization and based on the fact that Washington's comprehensive recycling program approach will result in significantly better environmental performance by affected facilities, EPA has determined Washington's rule to be equivalent to the Federal program and federally approvable.

The State revised its previously-authorized waste analysis plan requirements at WAC 173-303-300(1) and (2). The State amended its rule to provide clarity for Treatment, Storage and Disposal (TSD) facilities. The State rule is worded differently than the Federal rule at 40 CFR 264.13(a)(1) and (2); however, we consider it to be equivalent to the Federal program. While the Federal rule states that a TSD facility must obtain a detailed chemical



and physical analysis of a representative sample of the waste, 40 CFR 264.13(2) states that the analysis may include data developed under 40 CFR part 261 and existing published or documented data on the hazardous waste or on hazardous waste generated from similar processes. Federal guidance allows the use of knowledge rather than direct testing under certain circumstances (*Waste Analysis at Facilities That Generate, Treat, Store, and Dispose of Hazardous Waste—A Guidance Manual OSWER 9938.4-03, April 1994*). Therefore, the State amended its rule to require documentation when a TSD facility relies upon such knowledge other than testing. The State rule clarifies when the use of knowledge, as defined in WAC 173-303-040, is acceptable, and requires documentation to ensure that such knowledge is sufficient and used appropriately. Overall, EPA believes that the State rule ensures that wastes will be properly designated and managed in a safe and protective manner, and therefore we have determined that the State rule is equivalent to the Federal program.

### 3. Broader in Scope

States are not allowed to seek authorization for State requirements that are broader in scope than Federal requirements. EPA does not have authority to authorize and enforce those parts of a State's program EPA finds to be broader in scope than the Federal program. However, they remain part of the State's hazardous waste program and the regulated community must comply with them in accordance with State law. Such rules are identified in the State's authorization revision application, and include, but are not limited to, the following:

The State adopted the Federal Zinc Fertilizer Rule (67 FR 48393, 7/24/02) but did not adopt the Federal exclusions found at 40 CFR 261.4(a)(20) and (21) for hazardous secondary materials used to make zinc fertilizers. Therefore, the State rule as applied to waste excluded under Federal rules is broader in scope than the Federal requirements. Additionally, the State added a State-only provision at WAC 173-303-505(1)(b)(iv) for waste-derived fertilizer registration which is not a Federal requirement and is considered broader in scope than the Federal program.

The State adopted the Federal Hazardous Waste Combustors Revised Standards (63 FR 33782, 6/19/98) but did not adopt the Federal comparable or syngas fuel exclusion (40 CFR 261.38), and therefore is broader in scope as applied to waste excluded under the Federal rules because the State rule

considers these wastes to be solid wastes.

### 4. Partial Rules Adopted

In addition to the program differences described above, the State's program has also elected to adopt portions of the following Federal rules. We have found the State portions to these Federal rules to be consistent with and equivalent to the Federal program.

The State's program includes those requirements of the Federal Waste Minimization Rule (50 FR 28702, 7/15/95) that are applicable to owners and operators of hazardous waste TSD facilities. The Federal waste minimization requirements applicable to generators (40 CFR 262.41(a)(6)-(8)) were not adopted by the State because generators must comply with the State-only pollution prevention planning requirements.

EPA implements the Boilers and Industrial Furnaces (BIF) program in Washington State under its HSWA authority, although in order to fully implement the BIF program the State must adopt and receive authorization for the Non-HSWA Federal BIF requirements. In this action, the State is not seeking authorization for the BIF program (40 CFR 266.102 through 40 CFR 266.111). Although, the State did not adopt these Federal provisions, it did adopt the Non-HSWA Federal permit modification provisions (40 CFR 270.42(g) and 40 CFR 270.42(j)) related to boilers and industrial furnaces (WAC 173-303-830(4)(g) and WAC 173-303-830(4)(j)).

### 5. Renumbering of Corrective Action Requirements

In addition to authorizing the State's corrective action management unit (CAMU) amendments, as identified in Table 1, Section G above, the State regulations for corrective action that were located at WAC 173-303-646 have been renumbered and restructured into eleven new sections. See table at WAC 173-303-646 for cross-references between new and previous State corrective action citations.

#### *I. Who Handles Permits After This Authorization Takes Effect?*

After authorization, Washington will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits that were issued prior to the effective date of this authorization. EPA will not issue any new permits or new portions of permits for the provisions listed in Section G after the effective

date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Washington is not yet authorized.

#### *J. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Washington?*

EPA's decision to authorize the Washington hazardous waste program does not include any land that is, or becomes after the date of this authorization, "Indian Country," as defined in 18 U.S.C. 1151, with the exception of the non-trust lands within the exterior boundaries of the Puyallup Indian Reservation (also referred to as the "1873 Survey Area" or "Survey Area") located in Tacoma, Washington. EPA retains jurisdiction over "Indian Country". Effective October 22, 1998 (63 FR 50531, 9/22/98) Washington's State program was authorized to implement the State authorized program on the non-trust lands within the 1873 Survey Area of the Puyallup Indian Reservation. The authorization did not extend to trust lands within the reservation. EPA retains its authority to implement RCRA on trust lands and over Indians and Indian activities within the 1873 Survey Area.

#### *K. What Is Codification and Is EPA Codifying Washington'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. EPA does this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart WW, for this authorization of Washington's program revisions until a later date.

## **II. Statutory and Executive Order Reviews**

This rule authorizes revisions to the State of Washington's authorized hazardous waste program pursuant to section 3006 of RCRA and imposes no requirements other than those currently imposed by State law. This rule complies with applicable executive orders and statutory provisions as follows.

### *1. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant," and therefore subject to 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 affect 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 entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (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. It has been determined that this final rule is not a “significant regulatory action” under the terms of Executive Order 12866 and is therefore not subject to OMB review.

## 2. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this final rule does not establish or modify any information or recordkeeping requirements for the regulated community and only seeks to authorize the pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing, and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

## 3. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business

Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any 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. For purposes of assessing the impacts of today’s rule on small entities, small entity is defined as: (1) A small business, as codified in the Small Business Size Regulations at 13 CFR part 121; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has determined that this action will not have a significant impact on small entities because the final rule will only have the effect of authorizing pre-existing requirements under State law. After considering the economic impacts of today’s rule, I certify that this action will not have a significant economic impact on a substantial number of small entities.

## 4. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 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, 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 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires 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 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 the alternative was not adopted. Before 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, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Similarly, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, this rule is not subject to the requirements of sections 202 and 203 of the UMRA.

## 5. Executive Order 13132: Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, 8/10/99), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.” This rule does not have federalism implications. It 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 various levels of government, as specified in Executive Order 13132. This rule addresses the authorization of pre-existing State rules. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (59 FR 22951, 11/9/00), requires EPA to

develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This rule does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045 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 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 economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, 5/22/01) because it is not a “significant regulatory action” as defined under Executive Order 12866.

*9. 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) directs 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 bodies. The NTTAA directs EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not involve “technical

standards” as defined by the NTTAA. Therefore, EPA is not considering the use of any voluntary consensus standards.

*10. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations*

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands. Because this rule addresses authorizing pre-existing State rules 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.

*11. 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 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**. 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 rule will be effective on the December 29, 2006.

**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 18, 2006.

**Ronald A. Kreizenbeck,**

*Acting Regional Administrator, Region 10.*

[FR Doc. E6–18222 Filed 10–27–06; 8:45 am]

**BILLING CODE 6560–50–P**

**DEPARTMENT OF TRANSPORTATION**

**49 CFR Part 37**

[Docket OST–2006–26035]

**RIN 2105–AC86**

**Transportation for Individuals With Disabilities; Adoption of New Accessibility Standards**

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** The Department is amending its Americans with Disabilities Act (ADA) regulations to adopt, as its regulatory standards, the new Americans with Disabilities Act Accessibility Guidelines (ADAAG) recently issued by the Access Board, including technical amendments the Access Board subsequently made to the new ADAAG. In adopting the new ADAAG as its standards, the Department is making minor modifications to some of the Guidelines and is providing further guidance concerning its newly-adopted standards.

**DATES:** This rule is effective November 29, 2006.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** Under the ADA, the Access Board has the responsibility of creating “guidelines” for the accessibility of buildings, facilities, and vehicles subject to ADA requirements (the Americans with Disabilities Act Accessibility Guidelines, or ADAAG). It is then the responsibility of the Department of Transportation and Department of Justice to incorporate into their ADA regulations accessibility “standards” consistent with the Access Board’s minimum guidelines.

The Department met this obligation in its 1991 ADA regulations through verbatim incorporation of the original ADAAG in Appendix A to part 37. The Access Board issued a major revision to