municipal solid waste disposal facility is subject to §§ 257.5 through 257.30 and thus could legally accept CESQG waste. Furthermore, as stated previously, some States require that disposal of CESQG waste occur only at permitted Subtitle C facilities and CESQGs in these States would not face any burden as a result of this rule due to the more stringent State standard that the CESQG is currently subject to. Today's proposal does not change the generator's obligation to first determine if the waste is hazardous and, secondly, to determine if the waste is below the quantity levels established for a CESQG. If a generator is a CESQG, today's proposal continues an existing obligation on the generator to ensure that acceptable management of the CESQG hazardous waste occurs.

A CESQG may elect to screen-out or segregate out the CESQG hazardous wastes from his non-hazardous waste and then manage the CESQG hazardous portion in a facility meeting the requirements of proposed § 261.5(f)(3) and (g)(3). The remaining nonhazardous waste is not subject to today's proposed §§ 257.5 through 257.30; however, it must be managed in a facility that complies with either the part 258 Criteria or the existing Criteria in §§ 257.1–257.4.

On the other hand, a CESQG may elect not to screen-out or segregate the CESQG hazardous waste preferring instead to leave it mixed with the mass of non-hazardous waste. If the CESQG elects this option, the entire mass of material must be managed in a Subtitle C facility or a Subtitle D facility that is subject to part 258 or the proposed requirements in §§ 257.5 through 257.30.

## VI. Implementation and Enforcement

## A. State Activities Under Subtitle C

1. Hazardous and Solid Waste Amendments to RCRA

Today's proposal changes the existing requirements in § 261.5, paragraphs (f)(3) and (g)(3) pertaining to the special requirements for CESQGs. Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization). Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibilities.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facility which the State was authorized to permit. When, new more stringent, Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time they take effect in unauthorized States. EPA is directed to carry out these requirements and prohibitions in previously authorized States, including the issuance of permits and primary enforcement, until the State is granted HSWA authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA provisions apply in authorized States in the interim.

The amendments to § 261.5, paragraphs (f)(3) and (g)(3), are proposed pursuant to section 3001(d)(4) of RCRA, which is a provision added by HSWA. Therefore, the Agency is proposing to add the requirement to Table 1 in § 271.1(j) which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1, as discussed in the following section of the preamble.

## 2. Effect on State Authorizations

As noted above, EPA will implement today's rule in authorized States until they modify their programs to adopt the §261.5 rule change and the modification is approved by EPA. Because the rule is proposed pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire January 1, 2003. (See § 271.24(c) and 57 FR 60129 (December 18, 1992)).

40 CFR 271.21(e)(2) provides that States that have final authorization must modify their programs to reflect Federal program changes, and must subsequently submit the modifications to EPA for approval. The deadline by which the State must submit its application for approval for this proposed regulation will be determined by the date of publication of the final rule in accordance with § 271.21(e). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

EPA is aware that a number of States have more stringent requirements for the disposal of waste generated by CESQGs. In particular, some States do not allow the disposal of this waste into any Subtitle D landfill. For these States, today's proposed rule would clearly be considered less stringent than the applicable provisions in these States' authorized programs. Section 3009 of RCRA allows States to adopt or retain provisions that are more stringent than the Federal provisions. Therefore, regarding today's proposed rule, EPA believes that States which do not allow the disposal of wastes generated by CESQGs into Subtitle D landfills under their existing authorized Subtitle C program would not be required to revise their programs and obtain authorization for today's proposed rule. Of course this situation would only apply in those cases where a State is not changing its regulatory language. Further, the authorized State requirements in such States, since they would be more stringent than today's proposed rule, would continue to apply in that State, even though today's rule is proposed pursuant to HSWA authority.

For a State to not be required to submit an authorization revision application for today's proposed rule, the State must have provisions that are authorized by EPA and that are more stringent than all the provisions in the new Federal rule. For those States that would not be required to revise their authorization, EPA strongly encourages the State to inform their EPA Regional Office by letter that for this proposed rule, it is not required to submit a revision application pursuant to 40 CFR 271.21(e), because in accordance with RCRA section 3009 the authorized State provision currently in effect is more stringent than the requirements contained in today's proposed rule. Otherwise, EPA would conclude that a revised authorization application is required.

Other States with authorized RCRA programs may already have adopted requirements under State law similar to those in today's proposal. These State