

published in the **Federal Register** from January 28, 1983 through March 20, 1984 (48 FR 3977, 48 FR 39611, 48 FR 52718, 49 FR 5308, and 49 FR 10490); the Federal rules regarding corrective action published on July 15, 1985 (50 FR 28702) and December 1, 1987 (52 FR 45788); the September 1, 1988 (53 FR 33938) and the July 1, 1991 (56 FR 30200) amendments to parts 264 and 265 addressing liability requirements; amendments to the Toxicity Characteristic rule as published on October 5, 1990 (55 FR 40834), February 1, 1991 (56 FR 3978), February 13, 1991 (56 FR 5910) and April 2, 1991 (56 FR 13406); and amendments to the F037 and F038 listings as published on May 13, 1991 (56 FR 21955). Therefore, these Federal amendments included in New Mexico's adoption by reference of Federal code at Parts I, II, III, V, VI, and IX are not Federally enforceable.

Since EPA cannot enforce a State's requirements which have not been reviewed and approved according to the Agency's authorization standards, it is important that EPA clarify any limitations on the scope of a State's approved hazardous waste program. Thus, in those instances where a State's method of adopting Federal law by reference has the effect of including unauthorized requirements, EPA will provide this clarification by: (1) Incorporating by reference the relevant State legal authorities according to the requirements of the Office of Federal Register; and (2) subsequently identifying in 272.1601(b)(4) any requirements which while adopted and incorporated by reference, are not authorized by EPA, and therefore are not Federally enforceable. Thus, notwithstanding the language in the New Mexico hazardous waste regulations incorporated by reference at 272.1601(b)(1), EPA would only enforce the State provisions that are actually authorized by EPA. With respect to HSWA requirements for which the State has not yet been authorized, EPA will continue to enforce the Federal HSWA standards until the State receives specific HSWA authorization from EPA.

HSWA Provisions

As noted above, the Agency is not amending part 272 to include HSWA requirements and prohibitions that are immediately effective in New Mexico and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA

requirement or prohibition once it is effective. A HSWA requirement or prohibition supercedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (see 50 FR 28702, July 15, 1985).

Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and incorporated by reference State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibitions by the deadlines set forth in 40 CFR § 271.21, and then to seek authorization for those revisions pursuant to part 271. EPA expects that the States will be modifying their programs substantially and repeatedly. Instead of amending the part 272 every time a new HSWA provision takes effect under the authority of RCRA 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's part 272 incorporation by reference. In the interim, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

Certification Under The Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. It intends to incorporate by reference the decisions already made to authorize New Mexico's program and has no separate effect on handlers of hazardous waste in the State or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: March 30, 1995.

Allyn M. Davis,

Acting Regional Administrator.

For the reasons set forth in the preamble, subpart GG of 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. 40 CFR part 272, subpart GG is amended by revising § 272.1601 to read as follows:

§ 272.1601 New Mexico State-Administered Program: Final Authorization.

(a) Pursuant to Section 3006(b) of RCRA, 42 U.S.C. 6926(b), New Mexico has final authorization for the following elements as submitted to EPA in New Mexico's base program application for final authorization which was approved by EPA effective on January 25, 1985. Subsequent program revision applications were approved effective on April 10, 1990, July 25, 1990, December 4, 1992, August 23, 1994 and December 21, 1994.

(b) *State Statutes and Regulations.* (1) The New Mexico statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(i) EPA Approved New Mexico Statutory Requirements Applicable to the Hazardous Waste Management Program, dated March, 1995.