

US EPA ARCHIVE DOCUMENT

V. DEVELOPING THE CODIFICATION FEDERAL REGISTER (FR) NOTICES

OVERVIEW

Now that you have completed the regulatory and statutory crosswalks, you are ready to prepare the Codification Federal Register notice that will be submitted to the Office of the Federal Register. The steps required for developing the Codification Federal Register notice include:

- A. Selecting the appropriate Model Codification Federal Register Notice to use,
- B. Gathering and organizing the information needed for the codification Federal Register notice,
- C. Familiarizing yourself with the organizational structure of the model codification Federal Register notice you have chosen,
- D. Incorporating the State citations and other information from the statutory and regulatory crosswalks into the Part 272 entry of the model codification Federal Register notice, and
- E. Preparing the preamble to the codification Federal Register notice.

Each step is discussed in a separate section below. Note that preparing the preamble comes after preparing the Part 272 entry. This sequence is suggested because preparing the preamble is much easier if all of the information has already been entered to Part 272. This part organizes the codification information and makes clear what topics must be discussed in the preamble.

A. SELECTING THE APPROPRIATE MODEL CODIFICATION FEDERAL REGISTER NOTICES

KEY CONCEPTS

- Use Models X-1 and X-2 Federal Register notice for codification only.
- Use Models Y-1 and Y-2 Federal Register notice for a combined program revision authorization of State-initiated changes and codification once authorization and codification are aligned.
- The models may be used for initial codification or for subsequent codifications.

AVAILABLE MODELS

In order to have consistency in the language used for codification Federal Register notices, and for your convenience, EPA has prepared the following Model Codification Federal Register Notices that you can use to codify the appropriate State statutes and regulations. For the current version of these models, always check the State authorization website at [www.epa.gov/epaoswer/hazwaste/state/policy.html].

Model X- 1 (Proposed Rule) Model X-2 (Immediate Final Rule)	Codification Only	These models may be used if you are preparing a codification notice for a State that is <u>not</u> being authorized for a program revision at the same time as the codification
Model Y-1 (Proposed Rule) Model Y-2 (Immediate Final Rule)	Program Revision Authorization of State-initiated Changes and Codification	These models may be used if you are preparing a combined program revision authorization for State-initiated changes and codification notice.

Copies of Models X and Y can be found at the State Authorization website. The structure of both models, as well as the differences, between them are discussed in Section C of this chapter.

PROPOSED AND FINAL RULES

An immediate final rule, also known as a direct final rule, is a rule which is published in the Federal Register, and, barring any adverse comment, automatically become effective sixty days after publication. To deal with the possibility of any adverse comment, a proposed rule should be published simultaneously with an immediate final rule.

The procedures for issuing a proposed rule and an immediate final rule to authorize State hazardous waste program revisions and codification are addressed in the 7/14/98 Memorandum from Michaelle Wilson and Brian Grant, which is available at [www.epa.gov/epaoswer/hazwaste/state/policy.htm#authorization] the State Authorization website. The State Authorization website should be consulted for guidance regarding proposed and final rules before the development of any Federal Register notice.

INITIAL VERSUS SUBSEQUENT CODIFICATION

The models can be used for either the **initial codification** or for **subsequent codifications**. The language for a subsequent codification differs from the initial codification in that:

- P language is included that addresses the previous codification.
- P in the Part 272 entry, the amendatory language reads "Subpart__ is amended by revising §272.___1 to read as follows" rather than "Subpart__ is amended by adding §272.___1 to read as follows."

The models in Appendix E reflect language for an initial codification. Chapter IX discusses how to prepare a codification package for subsequent codifications and

contains appropriate language and instructions to change the model FR notices for a subsequent codification.

B. GATHERING INFORMATION NEEDED FOR THE CODIFICATION FEDERAL REGISTER NOTICE

KEY CONCEPTS

- Required sources of information needed for preparing the notice are: the most recent copy of the CFR, completed regulatory and statutory crosswalks, addresses for comments and additional information, previous authorization Federal Register notices, and sources for obtaining the State's statutes and regulations.
- Optional sources of information include: Memoranda of Agreement, Attorney General's Statements and Program Descriptions.

**NECESSARY
INFORMATION**

You will need the following information to prepare the codification FR notice:

- P The Part 272 Subpart and specific sections reserved for the State's entry.
- P Copy of the completed statutory crosswalk.
- P Copy of the completed regulatory crosswalk.
- P Name, address and phone number of individual to whom written comments should be sent.
- P Name, address and phone number of individual from whom further information can be obtained.
- P Federal Register publication date, reference and effective date of State's base program authorization.
- P Federal Register references and effective dates (not FR publication date) of each subsequent authorization.
- P The State's lead agency for the hazardous waste program.
- P [OPTIONAL]: Most recent date of the Memorandum of Agreement (MOA).
- P [OPTIONAL]: Dates of the AG Statements, including dates of any revisions, supplements and addenda.

P [OPTIONAL]: Dates for the Program Description and its revisions.

P Sources for obtaining copies of the State's official statutes and regulations.

C. ORGANIZATIONAL STRUCTURE OF THE MODEL CODIFICATION FEDERAL REGISTER (FR) NOTICES

KEY CONCEPTS

- The Federal Register notice consists of a Preamble and a Part 272 entry.
- The structure for the preamble and the Part 272 entry are similar for both the Model X and Model Y notices.
- Model Y also includes a listing of the specific provisions for which the State is being authorized and an explanation of EPA's decision concerning the authorization of the State-initiated changes.
- Use Exhibits V-1 through V-3 to gain an overall understanding of the content of the codification Federal Register notice.

A codification Federal Register notice consists of two primary components:

PRIMARY COMPONENTS

1. The Preamble and
2. The Part 272 entry.

Even Model Y, which is structured to address both authorization of State-initiated changes and codification, contains these two components. The portion of the Model Y preamble which pertains to codification is similar to the preamble found in notices addressing only codification. This is also true for the Part 272 entry. These two primary components of the codification Federal Register notice are discussed in separate sections below.

1. THE PREAMBLE

Exhibit V-1 presents an outline for the preamble. The Model X (codification only) preamble is represented by the left column and the Model Y (combined authorization of State-initiated changes and codification) preamble is represented by the right column. The specific components of the Model X preamble and their general content are as follows:

MODEL X PREAMBLE

- P The **title** of the Federal Register Notice
- P The **Agency** responsible for the notice,
- P What **action** is being taken (Immediate Final Rule, Proposed Rule, Final Rule),
- P A **summary** addressing what action is being taken, why the action is necessary and the intended effect of the action,
- P **Effective dates** and deadlines for comments,
- P **Addresses** from which additional information may be obtained and where comments may be sent, and
- P **Supplemental information** which provides background information concerning: EPA authorization and codification, how the State's program relates to the Federal program, the implication of codification for Federal enforcement, and the scope of the State's authorized program. Administrative Requirements including Certification under the Regulatory Flexibility Act, compliance with Executive Orders 12866, 13045 and 13084, the Unfunded Mandates Reform Act, Submission to Congress and the Comptroller General, the Paperwork Reduction Act and the National Technology Transfer and Advancement Act are also addressed. This section ends with a listing of the subjects in 40 CFR Part 272.
- P **Date** and **Signature** by the EPA Regional Administrator.

MODEL Y PREAMBLE

The preamble structure is very similar for Model Y. The major difference between the two models is that the supplemental information section must also address the authorization and includes the following:

- P a discussion and listing of the specific provisions for which the State is being authorized, and
- P an explanation of EPA's decision concerning the authorization of the State-initiated changes.

In both models, the preamble ends with the statement: "For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:".

2. THE PART 272 ENTRY

An outline of the Part 272 entry of the codification Federal Register notice is presented in Exhibit V-2. This entry consists of three major components:

THREE COMPONENTS

- P The **authority citation** for Part 272,
- P The **State-Administered Program** which describes the State's hazardous program, and
- P An **Appendix A** listing the State's statutory and regulatory provisions incorporated by reference.

Each major component begins with amendatory language placing the new language into Part 272.

STATE ADMINISTERED PROGRAM

The **State Administered Program** is the most complicated portion of the Part 272 entry and includes:

- 272.__1(a) which addresses effective dates of each of the State's program authorizations, pursuant to RCRA section 3006(b).
- 272.__1(b) which describes State Statutes and Regulations.

§272.__1(b)

Exhibit V-3 presents a breakdown of §272.__1(b) of the State Administered Program that can be thought of as consisting of five categories of information:

- P Statutes and regulations that are **incorporated by reference**,
- P Statutes and regulations that are **procedural/enforcement** in nature,
- P **Broader in scope** provisions,
- P State provisions and amendments that are **unauthorized**, that cannot be easily redlined, and
- P **Optional information** regarding the Memorandum of Agreement, the Attorney General's Statements, and the Program Description.

Each of these five categories will be discussed in detail in the next section that explains how to complete Part 272 of the two Model Federal Register Notices.

Exhibit V-1. Outline of the Preamble for a Codification Federal Register Notice.

Model X Preamble for Codification Only		Model Y Preamble for Program Revision Authorization and Codification
<p>ENVIRONMENTAL PROTECTION AGENCY</p> <p>40 CFR Part 272</p> <p>[FRL-]</p> <p>Hazardous Waste Management Program: Incorporation by Reference of Approved State Hazardous Waste Program for <i>[Insert Name of State]</i></p> <p>AGENCY: Environmental Protection Agency</p> <p>ACTION: Immediate final rule</p> <p>SUMMARY: * * * *</p> <p>EFFECTIVE DATES: * * * *</p> <p>ADDRESSES: * * * *</p> <p>FOR FURTHER INFORMATION CONTACT: * * * *</p> <p>SUPPLEMENTARY INFORMATION:</p> <p>Background</p> <p><i>[State]</i> Authorized Hazardous Waste Program</p> <p>HSWA Provisions</p> <p>Administrative Requirements</p> <p>List of Subjects in 40 CFR Part 272</p> <p>Dated:</p>		<p>ENVIRONMENTAL PROTECTION AGENCY</p> <p>40 CFR Part 272</p> <p>[FRL-]</p> <p>Final Authorization of State Hazardous Waste Management Program: <i>[Insert Name of State]</i></p> <p>AGENCY: Environmental Protection Agency</p> <p>ACTION: Immediate final rule</p> <p>SUMMARY: * * * *</p> <p>DATES: * * * *</p> <p>ADDRESSES: * * * *</p> <p>FOR FURTHER INFORMATION CONTACT: * * * *</p> <p>SUPPLEMENTARY INFORMATION:</p> <p>A. Background</p> <p>B. <i>[Insert State Name]</i></p> <p>C. Decision</p> <p>D. <i>[State]</i> Authorized Hazardous Waste Program</p> <p>E. HSWA Provisions</p> <p>Administrative Requirements</p> <p>List of Subjects in 40 CFR Part 272</p> <p>Dated:</p>
P R E A M B L E		Regional Administrator
		Regional Administrator

**Exhibit V-2. Outline of the Codification Federal Register Notice:
Part 272 Entry**

PART 272 - APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS	
AUTHORITY	<p>1. The authority citation for part 272 continued to read as follows:</p> <p><i>Authority:</i> 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).</p>
STATE ADMINISTERED PROGRAM	<p>2. Subpart <i>[insert appropriate letter(s)]</i> is amended by adding § 272. __1 to read as follows:</p> <p>§ 272. __1 <i>[Insert State name]</i> State-Administered Program: Final Authorization</p> <p>(a) Pursuant to section 3006(b) of RCRA</p> <p>(b) <i>State Statutes and Regulations</i></p> <p>(1) The <i>[Insert State name]</i> statutes and regulations are incorporated.....</p> <p>(i) EPA Approved <i>[Insert State name]</i> Statutory Requirements.....</p> <p>(ii) EPA Approved <i>[Insert State name]</i> Regulatory Requirements.....</p> <p>(2) The following statutes and regulations concerning State enforcement.....</p> <p>(i) <i>[list State statutory citations]</i></p> <p>(ii) <i>[list State regulatory citations]</i></p> <p>(3) The following statutory and regulatory provisions are broader in scope * *</p> <p>(i) <i>[list State statutory citations]</i></p> <p>(ii) <i>[list State regulatory citations]</i></p> <p>(4) <i>Unauthorized State Provisions.</i> * * *</p> <p>(5) <i>Unauthorized State Amendments.</i> * * *</p> <p>(6) <i>[OPTIONAL] Memorandum of Agreement.</i> * * *</p> <p>(7) <i>[OPTIONAL] Statement of Legal Authority.</i> * * *</p> <p>(8) <i>[OPTIONAL] Program Description.</i> * * *</p>
APPENDIX	<p>3. Appendix A to part 272 is amended by adding in alphabetical order, "<i>[Insert State name]</i>" and its listing to read as follows:</p> <p><i>[Insert State Name]</i></p> <p>The statutory provisions include:</p> <p>* * * *</p> <p>The regulatory provisions include</p> <p>* * * *</p> <p>BILLING CODE: 6560-50-P</p>

Exhibit V-3. Outline of Subsection 272. 1(b) of the Part 272 Entry

§ 272. 1(b) Statutes and Regulations	
INCORPORATED BY REFERENCE	<p>(1) The <i>[Insert State Name]</i> 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.</p> <p>(i) EPA Approved <i>[Insert State name]</i> Statutory Requirements Applicable to the Hazardous Waste Management Program, <i>[Insert month and year of EPA binder]</i>.</p> <p>(ii) EPA Approved <i>[Insert State name]</i> Regulatory Requirements Applicable to the Hazardous Waste Management Program, <i>[Insert month and year of EPA binder]</i>.</p>
PROCEDURAL/ ENFORCEMENT	<p>(2) The following statutes and regulations concerning State enforcement, although not incorporated by reference, are part of the authorized State program:</p> <p>(i) <i>[list State statutory citations]</i></p> <p>(ii) <i>[list State regulatory citations]</i></p>
BROADER IN SCOPE	<p>(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:</p> <p>(i) <i>[list State statutory citations]</i></p> <p>(ii) <i>[list State regulatory citations]</i></p>
UNAUTHORIZED	<p>(4) <i>Unauthorized State Provisions.</i> The State's adoption of the Federal rules listed below, while incorporated by reference at § 272. ___(b)(1), is not approved by EPA and are, therefore, not enforceable:</p> <p><i>[List the unauthorized Federal rules adopted by State]</i></p> <p>(5) <i>Unauthorized State Amendments.</i> The following authorized provisions of the <i>State</i> regulations, while incorporated by reference at § 272. ___1(b)(1), include amendments published in the <i>State Register</i> that are not approved by EPA. Such unauthorized amendments are not part of the State's authorized program and are, therefore, not Federally enforceable. * * *</p> <p><i>[List the unauthorized State amendments]</i></p>
OPTIONAL	<p>(6) <i>[OPTIONAL] Memorandum of Agreement.</i> The Memorandum of Agreement between EPA Region ___ and the <i>[insert State lead agency]</i>, signed by the EPA Regional Administrator on <i>[insert appropriate date]</i>, is referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et. seq.</p> <p>(7) <i>[OPTIONAL] Statement of Legal Authority.</i> "Attorney General's Statement for Final Authorization", signed by the Attorney General of <i>[insert State name]</i> on <i>[insert appropriate date]</i> and revisions, supplements and addenda to that Statement dated <i>[insert appropriate dates]</i> are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et. seq.</p> <p>(8) <i>[OPTIONAL] Program Description.</i> The Program Description and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et seq.</p>

D. INCORPORATING INFORMATION INTO 40 CFR PART 272**KEY CONCEPTS**

- The Part 272 portion of the Federal Register notice consists of three major components--the authority citation, the State Administered Program and the State's insert for Appendix A to Part 272.
- §272.____1(b)(1) references the EPA binders, prepared as part of the codification package, that contain a copy of the State statutes and regulations incorporated by reference. The Part 272, Appendix A is used to list the specific provisions incorporated by reference.
- Use §272.____1(b)(2)&(b)(3) to list, respectively, procedural/enforcement provisions and broader in scope provisions that are not incorporated by reference.
- Use §272.____1(b)(4)&(b)(5) to address unauthorized State provisions and amendments that cannot be easily redlined.
- Use §272.____1(b)(6)-(8) to reference the MOA, Attorney General's Statements and the Program Description, only if you choose to include them.

INTRODUCTION

As you will recall, there are three major components to the Part 272 entry:

- P the Authority citation,
- P the State Administered Program, and
- P the Appendix.

Although there are instructions (bracketed and shaded) embedded in the text of the codification Federal Register models, detailed guidance for completing each component will be discussed below. Note that Part 272 entry is the same for Models X and Y; therefore, the models will not be discussed separately.

**1. PART 272
AUTHORITY
CITATION**

This portion of the Part 272 entry lists the RCRA authorities for 40 CFR Part 272. Both the amendatory language and the authority paragraph should remain as shown in the model.

**2. PART 272
STATE
ADMINISTERED
PROGRAM**

This portion begins with the amendatory language for the State's Part 272 entry. To determine the Part 272 subpart and section reserved for the State in question, refer to the Part 272 Table of Contents in the most recent Code of Federal Regulations (CFR). For example, the 1993 CFR shows that Subpart SS and §§272.2200 through

272.2299 are reserved for Texas. Thus, the specific section to be amended in the codification notice is §272.2201.

The amendatory language is followed by the entries for §272.____1(a) and (b) addressing, respectively, the effective dates and the description of the State statutes and regulations.

§272.____1(a) This paragraph is used to provide a history of previous authorizations. Only **effective dates** of previous authorizations must be entered. You must not include **Federal Register** references or publication dates. The State's name also needs to be inserted in this entry. Just follow the bracketed instructions in the model.

§272.____1(b) If you will recall, § 272.____1(b) consists of the five major categories of information shown in the left column of Exhibit V-3. The following discussion is organized according to these five categories and provides specific guidance for completing the subparagraphs of § 272.____1(b). The statutory and regulatory crosswalks are the major sources of information for this portion of the **Federal Register** notice.

§272.____1(b)(1) **Authorized Statutes and Regulations Incorporated by Reference**

GUIDANCE:

§272.____1(b)(1) incorporates by reference the authorized State statutes and regulations that are not procedural or enforcement in nature. This paragraph references the EPA binders that contain a redlined copy of the State statutes and regulations incorporated by reference. Note that the specific citations for the incorporated statutory and regulatory provisions are listed in the State's insert for Appendix A to Part 272. The §272.____1(b)(1) entry requires two pieces of information: 1) the State name and 2) the date (month and year) that appears on the EPA binder. Typically, the date on the EPA binder is either the date that the binder was prepared or the date on which the final codification package was submitted to the Office of Federal Register.

ACTION:

Insert the State name, and the date (month and year) of the EPA binder at the appropriate places in the model **Federal Register** notice.

§272.____1(b)(2) **Authorized Procedural and Enforcement Provisions**

GUIDANCE:

§272.____1(b)(2) is used to list those State procedural and enforcement provisions that are considered part of the State's authorized program, but are not incorporated by

reference as part of the codification. As such, these provisions are not listed in Appendix A to Part 272. Procedural/enforcement provisions are identified in the "procedural/enforcement" column of the statutory and regulatory crosswalks.

The §272.____1(b)(2) list of citations should not include any explanatory statements that could be subject to interpretation. Any phrases or words that are excepted from a citation must be found in the statutes and regulations referenced for the State, i.e., they must be found in the EPA binders. Specifically:

- A citation, such as "§ 2a (excluding the portion of 2a(5) addressing PCBs)" is not acceptable. However, "§2a (excluding all of 2a(5), except the first sentence)" is acceptable.
- All citations must be very precise. The following examples of citations are all acceptable:
 - § 335.130
 - § 335.23 (except 335.23(a)(10))
 - §§ 335.100 through 335.285
 - § 2a(5) first sentence
 - § 16c(e) (except the phrase "or the letters "PCB" for PCB shipments")

ACTION:

1. At §272.____1(b)(2)(i), provide full reference(s) (including year of publication) for the statutes, followed by the procedural/enforcement provisions from the statutory crosswalk.
2. At §272.____1(b)(2)(ii), provide full reference(s) (including year of publication) for the regulations, followed by the procedural/enforcement provisions from the regulatory crosswalk.

§272.____1(b)(3)

Broader in Scope Provisions

GUIDANCE:

§272.____1(b)(3) is used to list, if any, State statutory and regulatory provisions which are broader in scope than the Federal program. Such provisions ARE NOT PART OF THE STATE'S AUTHORIZED PROGRAM and are not incorporated by reference. These provisions are identified in the "broader in scope" column of the statutory and regulatory crosswalks. Omit this paragraph if the State has no broader in scope provisions.

ACTION:

1. At §272.____1(b)(3)(i), provide full reference(s) (including year of publication) for the statutes, followed by the broader-in-scope provisions from the statutory crosswalk.
2. At §272.____1(b)(3)(ii), provide full reference(s) (including year of publication) for the regulations, followed by the broader-in-scope provisions from the regulatory crosswalk.

§272._1(b)(4)
&(5)

Unauthorized State Provisions and Amendments

GUIDANCE:

§272._1(b)(4) and §272._1(b)(5) are used to address unauthorized State provisions or amendments that cannot be easily redlined.

§272._1(b)(4) is needed only if the State adopts by reference more Federal rules than it is authorized for. These unauthorized Federal rules should have been identified when the regulatory crosswalk was developed. The information concerning these rules is found in the "Description/RCRA analogous citation" column if the regulatory crosswalk format presented in the previous chapter is used. Each unauthorized Federal rule should be identified by the title of the rule, Federal Register reference and the publication date. Note that unauthorized non-HSWA rules are not Federally enforceable. However, unauthorized States' HSWA rules, while not part of the authorized program, are enforceable by EPA until the State is authorized for such rules.

§272._1(b)(5) is needed only if the State has made unauthorized amendments to previously authorized provisions and these amendments cannot be easily redlined. The information concerning these amendments is also found in the regulatory crosswalk in the "Description/RCRA analogous citation" column. Each provision with one or more unauthorized amendments must be identified by specifying:

1. the date of the last authorized amendment to that provision, and
2. each unauthorized amendment by date and State Register or other reference number.

In addition, you must prepare an *addendum* to the materials incorporated by reference to give notice to the regulated community that notwithstanding the language in the State's hazardous waste regulations incorporated by reference at 272._1(b)(1), EPA will only enforce the State provisions actually authorized by EPA. Guidance for preparing such an *addendum* is discussed in Chapter VI.

§272._1(b)(4)&(5)
(CONT'D)

ACTION:

1. **At §272._1(b)(4)**, insert the appropriate §272._1(b)(1) reference for the State and list all Federal non-HSWA rules that the State has adopted but for which it is not authorized. A list of Federal rules may be organized in tabular form as shown in the example below.

Example: Entry for 272._1(b)(4)

(4) **Unauthorized State Provisions:** The State's adoption of the Federal rules listed below, is not approved by EPA and are, therefore, not enforceable:

Federal Requirement	<u>Federal Register</u> Reference	Publication Date
Liability Requirements	53 FR 33938	09/01/88
Biennial Report	48 FR 3977	01/28/83
Permit Rules: Settlement Agreement	48 FR 39611	09/01/83
Interim Status Standards Applicability	48 FR 52718	11/22/83

In addition, if applicable, include a discussion or list of the Federal HSWA rules adopted by the State and not authorized by EPA, but which are enforceable by EPA until State authorization.

2. **At §272._1(b)(5)**, insert the appropriate §272._1(b)(1) reference for the State as well as insert the name of the State Register. All provisions containing unauthorized amendments must be listed in this subparagraph as well as the other information for these provisions given in the guidance above. An example from a Texas codification notice, illustrates how the information concerning unauthorized State amendments that cannot be redlined may be presented.

**Example: Table Listing Unauthorized State Amendments
at 272.__1(b)(5)**

State Provision	Effective Date of Authorized Provision	Unauthorized State Amendments	
		State Reference	Effective Date
335.2(c)	November 7, 1991 ..	18 TexReg 2799	05/12/93
		18 TexReg 8218	11/23/93
335.6(a)	July 29, 1992	18 TexReg 2799	5/12/93
335.6(g)	July 29, 1992	18 TexReg 3814	6/28/93
335.10(b)(22) ..	July 27, 1988	17 TexReg 8010	11/27/92
335.45(b)	September 1, 1986 ..	17 TexReg 5017	7/29/92
335.204(a)(1) ..	May 28, 1986	16 TexReg 6065	11/7/91

§272.__1(b)(6)-(8)

Optional Information

GUIDANCE:

§272.__1(b)(6) through §272.__1(b)(8) are optional.

§272.__1(b)(6) addresses the Memorandum of Agreement. To include this paragraph, you need (1) the name of the State lead agency and (2) the date on which the EPA Regional Administrator signed the most recent Memorandum of Agreement between the State and EPA.

§272.__1(b)(7), Statement of Legal Authority, addresses the State's Attorney General's Statements. To include this paragraph, you need the dates the State's Attorney General or a duly designated representative signed each of the Attorney General's Statements and supplements.

§272.__1(b)(8) addresses the State's Program Description. To include this paragraph, no additional information is required. However, you may, if you choose, include dates for the Program Description and supplements.

ACTION:

1. At **§272.__1(b)(6)**, insert the name of the State Lead Agency and the date

that the most recent Memorandum of Agreement was signed by the Regional Administrator.

2. **At §272.__1(b)(7)**, insert the dates that each Attorney General's Statement and their supplements or revisions were signed by the Attorney General or a duly designated representative.
3. **At §272.__1(b)(8)**, you may retain the wording as given in the model. If you choose to, you may revise the paragraph to include the dates for the Program Description and any supplements.

3. PART 272 APPENDIX A

GUIDANCE:

The statutory and regulatory citations that are incorporated by reference are listed in this Appendix. These provisions are identified in the "Authorized: Approved and incorporated by reference (b)(1)" column on the statutory and regulatory crosswalks. You also need to provide the source from which copies of the statutes and regulations may be obtained.

ACTION:

1. Provide full references for the titles of the statutes and regulations, including the year of publication. Make sure that the reference corresponds to the actual document submitted for the incorporation by reference.
2. List the statutory citations first, followed by the regulatory citations using the citation conventions discussed under the guidance for 272.__1(b)(2) above.
3. Complete the list of citations by providing the name and address of the source from which copies of the regulations and statutes may be obtained.

Appendix A to Part 272--State Requirements

* * * * *

New Mexico

The statutory provisions include:

New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4, (1992 Replacement Pamphlet), Sections 74-4-2, 74-4-3 (except 74-4-3L, 74-4-3O, and 74-4-3R), 74-4-3.1, 74-4-4.2A, 74-4-4.2B, 74-4-4.2F, 74-4-4.2G(2), 74-4-4.3F, 74-4-7 introductory paragraph, 74-4-7A, 74-4-9, and 74-4-101C, as published by the Law Publishers, 1 Town Hall Square, Charlottesville, Virginia 22906-7587.

The regulatory provisions include: New Mexico Hazardous Waste Management Regulations, Environmental Improvement Board (EIB), HWMR-6, as amended, February 28, 1991, New Mexico Register, Vol. II-No.4, Parts I through VIII; Part IX, Sections 901, 902.B.1 through 902.B.6; and Part X, Section 1003. Copies of the New Mexico regulations can be obtained from the New Mexico Register, New Mexico Information Systems, P.O. Box 6703, Santa Fe, NM 87502.

* * * * *

Example of an entry for Part 272, Appendix A

E. PREPARING THE PREAMBLE**KEY CONCEPTS**

- In general, the model preamble language may be used directly without change except for a few insertions concerning the State's name, contacts, addresses and phone numbers.
- Use the information placed in the State's §272.____1(b)(1) portion of the Federal Register notice to make the required insertions for the "Background" section of the preamble.
- Tailor the language in the "State's Authorized Waste Program" section of the preamble to reflect the appropriate information from the State's §272.____1(b)(1) through (b)(8) portion of the Federal Register Notice.

INTRODUCTION	This subsection provides specific guidance for completing the preamble. Below, each of the preamble components shown in Exhibit V-1 for Model X is discussed in detail. The additional information required by Model Y concerning authorization is beyond the scope of this workbook and is not addressed.
40 CFR PART 272	This component of the preamble is used to specify which 40 CFR Part is being amended by the notice. It should be left as it is.
[FRL-]	This component is used by the Office of the Federal Register to assign a number to the notice uniquely identifying it. You do not have to enter anything here.
TITLE	The title gives a short description of what the notice addresses. You only need to provide the State's name.
AGENCY	This component specifies that EPA is the Agency responsible for the notice and should be left as is.
ACTION	This component specifies the type of action addressed by the notice. You must specify if the notice is a "Proposed rule," an "Immediate final rule," or a "Final rule."
SUMMARY	This component provides a summary of the notice. The language for this summary is already included in the model. You only need to provide the State's name in the place provided in the model.
EFFECTIVE DATES	This component indicates when the codification is effective and gives the deadline for receiving comments. As shown in the table below, the effective date and comment period will differ depending on the type of "action" (e.g., immediate final rule) you choose above.

Number of days after Publication of Notice		
Action	Effective Date	Comment Period
Immediate final rule	60	30
Proposed rule	NA	30
Final rule	14	NA

The specific language for this component is provided in Model X found in Appendix E for the immediate final rule and in Appendix F for the proposed and final rules.

ADDRESSES	This component provides the name, complete address and phone number of the person to whom written comments should be sent. This contact person will typically be the Regional Representative responsible for the codification.
FOR FURTHER INFORMATION	This component provides the name, complete address and phone number of the person from whom further information about the codification may be obtained. You must decide who this contact will be. Often the contact is the Regional Representative responsible for the codification.
SUPPLEMENTAL INFORMATION	Supplemental information portion of the preamble provides background information regarding EPA authorization and codification, how the State's program relates to the Federal program, the implication of codification for Federal enforcement, and the scope of the State's authorized program. Administrative Requirements including Certification under the Regulatory Flexibility Act, compliance with Executive Orders 12866, 13045 and 13084, Unfunded Mandates Reform Act, Submission to Congress and the Comptroller General, the Paperwork Reduction Act and the National Technology transfer and Advancement Act are also addressed. The State Authorization website should be consulted for updates to the Administrative Requirements. This section ends with a listing of the subjects in 40 <u>CFR</u> Part 272.
BACKGROUND	This portion of "Supplemental Information" is used to briefly describe the State's authorization status and includes information on the implication of codification for Federal enforcement. You can use the language provided in Models X or Y without modification except for the second paragraph where you must provide the dates of the State's previous authorizations. The information needed for the second paragraph is the same as that used for completing §272.__1(a). Note that the date needed for the base program is the <u>Federal Register</u> publication date. For subsequent authorizations, the effective dates are referenced. <u>Federal Register</u> references are cited only for the subsequent authorizations.
THE STATE'S AUTHORIZED WASTE PROGRAM	<p>This portion of "Supplemental Information" is used to describe the status of the State's <u>current</u> hazardous waste program. Thus, you must tailor the language in this section to reflect the appropriate information from State's §§272.__1(b)(1) through (b)(8).</p> <p>For example, if you chose not to include the Attorney General's Statement, Memorandum of Agreement and Program Description information in the State's Part 272 entry, then omit the language concerning these documents. Similarly, if the State does not have any broader-in-scope provisions or any unauthorized amendments to previously authorized provisions, then omit the language concerning them. Models X and Y, found in Appendix E contain preamble language corresponding to each paragraph §272.__1(b)(1) through (b)(8). You may also want to refer to Appendix G which contains a codification notice that was published in the <u>Federal Register</u>.</p>

HSWA PROVISIONS	This portion of "Supplemental Information" is informative and addresses the impact of HSWA requirements on authorized states. You need to insert the State's name in the places indicated in the Model.
CERTIFICATION UNDER THE REGULATORY FLEXIBILITY ACT	This portion of "Supplemental Information" certifies compliance with the Regulatory Flexibility Act. You need to insert the State's name in the places indicated in the model.
COMPLIANCE WITH EXECUTIVE ORDER 12866	This portion of "Supplemental Information" certifies compliance with Executive Order 12866. You do not have to provide any information for this paragraph.
COMPLIANCE WITH EXECUTIVE ORDER 13045	This portion of "Supplemental Information" certifies compliance with Executive Order 13045. You do not have to provide any information for this paragraph.
COMPLIANCE WITH EXECUTIVE ORDER 13084	This portion of "Supplemental Information" certifies compliance with Executive Order 13084. You do not have to provide any information for this paragraph.
UNFUNDED MANDATES REFORM ACT	This portion of "Supplemental Information" certifies compliance with the Unfunded Mandates Reform Act. You need to insert the State's name in the places indicated in the model.
SUBMISSION TO CONGRESS AND THE COMPTROLLER GENERAL	This portion of "Supplemental Information" certifies compliance with requirements for submission to Congress and the Comptroller General. You do not have to provide any information for this paragraph.
NATIONAL TECHNOLOGY TRANSFER AND ADVANCEMENT ACT	This portion of "Supplemental Information" certifies compliance with the National Technology Transfer and Advancement Act. You do not have to provide any information for this paragraph.
PAPERWORK REDUCTION ACT	This portion of "Supplemental Information" certifies compliance with the Paperwork Reduction Act. You do not have to provide any information for this paragraph.
LIST OF SUBJECTS IN 40 CFR PART 272	This portion of "Supplemental Information" lists the subject or topics addressed by 40 CFR Part 272. You do not have to provide any information for this paragraph.
DATE AND SIGNATURE	This component contains the name of the Regional Administrator and the date on which the final codification notice was signed by that Administrator.

F. EXERCISES

PURPOSE The following four exercises are designed to reinforce the topics presented in Chapter V and provide hands-on experience in completing specific tasks encountered during the development of the codification Federal Register notice.

EXERCISE V-1 Completing the authorization paragraph in the "Background" Section of the preamble.

EXERCISE V-2 Determining which 272.____1(b) paragraphs to include in the codification Federal Register notice.

EXERCISE V-3 Organizing information regarding unauthorized State amendments.

EXERCISE V-4 Preparing a State's entry for Part 272, Appendix A.

ANSWERS The answers to these exercises are in Appendix L, pages L-12 through L-15.

EXERCISE V-1

Completing the Authorization Paragraph in the "Background" Section of the Preamble.

PURPOSE

- Provide experience in completing the authorization paragraph in the preamble **Background** section of the Model X codification Federal Register notice.

**WORKBOOK
REFERENCE**

Chapter V, Section E.

**BACKGROUND
MATERIALS
PROVIDED**

P Internet Website StATS Report for Colorado.

(See Appendix K-6 for background materials.)

ASSUMPTIONS

This exercise assumes that you have read Workbook Chapter V and that you have already:

P Determined that the StATS Report data accurately reflects the authorization status of Colorado.

INSTRUCTIONS

On the next page is an excerpt from a modified Model X codification Federal Register notice. Using information from StATS Report found in Appendix K-6 of this workbook for Colorado, fill in the blank spaces to complete the preamble authorization paragraphs.

ANSWER

See Appendix L, page L-12.

**Exercise V-1. Completing the Authorization Paragraph in the
"Background" Section of the Preamble**

**FEDERAL REGISTER FOR INCORPORATION BY REFERENCE OF THE
COLORADO AUTHORIZED HAZARDOUS WASTE PROGRAM**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL-]

**Hazardous Waste Management Program: Incorporation by Reference of Approved State Hazardous
Waste Program for Colorado**

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: * * * * *

DATES: * * * * *

ADDRESSES: * * * * *

FOR FURTHER INFORMATION CONTACT: * * * * *

SUPPLEMENTARY INFORMATION:

Background

Section 3006 of RCRA, 42 U.S.C. 6926 et seq., allows the EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. The purpose of today's Federal Register document is to incorporate by reference EPA's approval of _____'s base hazardous waste management program and its _____revisions to that program.

On _____, EPA published a Federal Register notice announcing its decision to grant final authorization for the RCRA base program to the State of _____ (see ____ FR ____). Effective _____, (see ____ FR ____); _____, (see ____ FR ____), _____, (see ____ FR ____), and _____, (see ____ FR ____), EPA granted additional authorization.

* * * * *

EXERCISE V-2

Determining which 272._1(b) paragraphs to include in the codification Federal Register notice.

PURPOSE

- Provide experience in properly identifying, from a crosswalk, which 272._1(b) paragraphs should be included in the codification Federal Register notice.

**WORKBOOK
REFERENCE**

Chapter V, Section D

**MATERIALS
PROVIDED**

- P Excerpts from an Oregon regulatory crosswalk.
- P Excerpts from a Texas regulatory crosswalk.

(See Appendix K-7 for background materials.)

ASSUMPTIONS

This exercise assumes that you have read Workbook Chapter V and that you have already:

- P Conducted all of the background procedures described in Chapter II.
- P Developed the regulatory and statutory crosswalks for the States examined.

INSTRUCTIONS

Study the provided excerpts from the Oregon crosswalk and determine which of the 272.1901(b) paragraphs (272.1901(b)(1)-(5)) should be included in the codification Federal Register notice.

Study the provided excerpts from the Texas crosswalk and determine which of the 272.2201(b) paragraphs (272.2201(b)(1)-(5)) should be included in the codification Federal Register notice.

ANSWER

See Appendix L, page L-13.

EXERCISE V-3

Organizing Information Regarding Unauthorized State Amendments.

PURPOSE

- Provide experience in using the crosswalk to organize the information regarding unauthorized State amendments.

**WORKBOOK
REFERENCE**

Chapter V, Section D

**BACKGROUND
MATERIALS
PROVIDED**

P Selected entries from Washington's regulatory crosswalk.

(See Appendix K-8 for background materials.)

ASSUMPTIONS

This exercise assumes that you have read Workbook Chapter V and that:

- P** You already know how to develop, or at least interpret, the information on a regulatory crosswalk.

INSTRUCTIONS

On the next page is a modified page from the Model X codification Federal Register notice with a blank table that you will use for this exercise. Complete the blank table using the regulatory crosswalk information provided in Appendix K-8 of this workbook.

ANSWER

See Appendix L, page L-14.

Exercise V-3. Organizing the Information Regarding Unauthorized State Amendments

For the reasons set forth in the preamble, 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. Subpart WW is amended by adding § 272.2401 to read as follows:

§ 272.2401 Washington State-Administered Program: Final Authorization.

(a) * * *

(b) *State Statutes and Regulations.*

* * * * *

(5) *Unauthorized State Amendments.* The following authorized provisions of the Washington regulations...

State Provision	Date of Authorized State Code	Unauthorized State Amendments	
		State Reference	Effective Date

EXERCISE V-4

Preparing a State's Entry for Part 272 Appendix A.

PURPOSE

- Provide experience in using a crosswalk and redlined regulations and statutes to prepare a State's entry for Part 272 Appendix A.

**WORKBOOK
REFERENCE**

Chapter V, Section D

**BACKGROUND
MATERIALS
PROVIDED**

- P Selected entries from a completed statutory crosswalk for Oklahoma.
- P Excerpts from the redlined version of the official Oklahoma statutes (Oklahoma Controlled Industrial Waste Disposal Act, 63 O.S. 1991).
- P Selected entries from a completed regulatory crosswalk for Oklahoma.
- P Excerpts from the redlined version of the official Oklahoma regulations (Industrial Waste Management Regulations, Chapter 270, Title 310, *The Oklahoma Administrative Code (OAC)*, December 31, 1991).

(See Appendix K-9 for background materials.)

ASSUMPTIONS

This exercise assumes that you have read Chapter V of this Workbook and that you have already:

- P Completed the State's regulatory and statutory crosswalks, and
- P Redlined all provisions not incorporated by reference from the State's official regulations and statutes.

INSTRUCTIONS

On the next page is a modified page from the Model X codification Federal Register notice showing a State's Part 272 entry. Blanks indicate those areas you need to complete, based on the crosswalks and the redlined Oklahoma statutes and regulations provided for this exercise in Appendix K-9.

To complete this entry you also need the complete address for West Publishing Company which is: West Publishing Company, 610 Opperman Drive, P. O. Box 64526, St. Paul, Minnesota 55164-0526.

ANSWER

See Appendix L, page L-15.

Exercise V-4. Preparing a State's Entry for Part 272 Appendix A

For the reasons set forth in the preamble, 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. Subpart LL is amended by adding § 272.1851 to read as follows:

* * * * *

3. Appendix A to Part 272 is amended by adding in alphabetical order, Oklahoma and its listing to read as follows:

Oklahoma

The statutory provisions include:

Copies of the statutes that are incorporated by reference are available from

The regulatory provisions include:

Copies of the regulations that are incorporated by reference are available from

* * * * *

BILLING CODE: 6560-50-P