

US EPA ARCHIVE DOCUMENT

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## IX. PREPARING A CODIFICATION PACKAGE FOR SUBSEQUENT CODIFICATIONS

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### OVERVIEW

This chapter discusses how to prepare and submit a codification package for a State whose statutes and regulations have been previously codified. This chapter assumes there has been no major renumbering and restructuring of the State's statutes and regulations. This chapter also assumes that you are already familiar with the concepts and procedures for initial codification as described and presented in Chapters II through VIII of this Codification Workbook; therefore, detailed information is not provided. If you are not familiar with the codification process, you should first review Chapters II through VIII before following the guidance presented in this chapter.

### SPECIFIC STEPS FOR SUBSEQUENT CODIFICATION

The process for developing and submitting a codification package for a State whose statutes and regulations have previously been incorporated by reference is very similar to the process of developing a package for an initial codification. The specific steps to follow for a subsequent codification are discussed in separate sections below and are as follows:

- A. Conduct background research and organize appropriate resources needed for the codification,
- B. Update the statutory crosswalk from the previous codification,
- C. Update the regulatory crosswalk from the previous codification,
- D. Develop the codification Federal Register notice,
- E. Develop the *Addendum* to the State's EPA-approved hazardous waste management program, if applicable,
- F. Prepare the codification package, and
- G. Submit sets of the codification packages to the Office of the Federal Register (OFR) and EPA's State and Regional Programs Branch.

**A. CONDUCT BACKGROUND RESEARCH AND ORGANIZE APPROPRIATE RESOURCES****KEY CONCEPTS**

- The organizational steps for conducting background research for a subsequent codification are the same as those for an initial codification.
- The primary background materials needed are those documents submitted with authorization packages since the last codification, but documents for prior authorizations can be helpful references.
- Contact EPA Headquarters, Office of Federal Register (OFR) and other Regions for additional guidance issued since the State's last codification.

**ORGANIZATIONAL STEPS**

The same organizational steps outlined in Chapter II for an initial codification also apply when you update a State's codification. Therefore, prior to beginning the update codification process, you should:

- ➊ Set up a Regional codification team;
- ➋ Determine the authorization status of the State since the last codification;
- ➌ Obtain official versions of the State's statutes and regulations, if the dates of the State's statutes and regulations are different from the ones previously codified;
- ➍ Identify, obtain and organize required background documents; and
- ➎ Be sure to interact with EPA Headquarters, Office of the Federal Register and Regions with codification experience.

**STEPS ➊➋➌**

The process involved in steps 1 through 3 above are the same as those described for an initial codification and will not be discussed in this chapter. For detailed information concerning these steps, refer to Chapter II, Sections A, B and C, of the Codification Workbook.

**STEP ➍****Identify, Obtain and Organize Required Background Documents**

The list of materials for a subsequent codification is the same as that identified for an initial codification, except that the materials are background documents dating from the last authorization codified to the present. It is recommended that you organize and file the materials in three-ring binders in the same manner as was discussed for the initial codification in Section D, Chapter II. Some of the background materials

required for an initial codification may not be required for a subsequent codification, as listed below.

**REQUIRED  
MATERIALS**

**Required Materials Since the Last Codification**

- P** Authorized regulatory checklists since the last codification;
- P** Statutes submitted with each authorization package;
- P** Regulations submitted with each authorization package; and
- P** Attorney General's Statements to assist in identifying broader-in-scope provisions; they would also be needed if you choose to reference them in the codification Federal Register notice.

**OTHER MATERIALS**

**Other Materials**

- P** State Legislation checklists (if revised since the last codification);
- P** HSWA Statutory checklist (if State is seeking HSWA authorization for the first time, or if revised since the last codification);
- P** Program Description (if revised since the last codification or if you choose to reference it in the codification article); and
- P** Most recent Memorandum of Agreement (if you choose to reference it in the codification Federal Register notice).

While the primary documents you will need are those listed above, the background materials gathered for the initial codification should be available to you, particularly earlier versions of the regulations and statutes. Sometimes these documents can be helpful in researching the listing of a particular section/paragraph of the regulations or statutes, or if there is a question about how a particular section/paragraph was classified in the initial codification.

**STEP 5**

**Interacting with EPA Headquarters, Office of the Federal Register and Other Regions**

Section E, Chapter II provides information about the need to interact with individuals at EPA Headquarters, the Office of the Federal Register and other Regions who may serve as resource persons for the codification. Therefore, prior to developing the codification materials, be sure to contact EPA's State and Regional Programs Branch and the EPA Liaison to OFR to obtain additional guidance information that may have been developed since your last codification. Obtaining such information will help ensure that your completed codification package meets the necessary requirements of OFR.

## B. UPDATING THE STATUTORY CROSSWALK FROM THE PREVIOUS CODIFICATION

### KEY CONCEPTS

- Use the statutory crosswalk from the most recent codification as the starting point for a subsequent codification.
- Use authorization Federal Register (FR) notices since the last codification, the corresponding checklists and the AG Statements to initially update the crosswalk.
- Evaluate the State statutes on a section-by-section basis to update the classification on the crosswalk.

### TWO-STAGE PROCESS

The statutory crosswalk developed for the previous codification is used as the starting point for the update to a State's codification. However, it is recommended that you update the crosswalk in two stages.

#### STEP 1: PRELIMINARY UPDATE

**P** First, update the information in columns 2 through 4 of the statutory crosswalk by using authorization Federal Register notices published since the last one used in the initial (or most recent) codification, the corresponding revision checklists and the supporting Attorney General's Statements. In order to make it easy to identify and verify the new information added to the statutory crosswalk, you may want to shade or bold all revisions.

#### STEP 2: CLASSIFICATION UPDATE

**P** Second, identify the authorized language and classify each section/paragraph of the statutes/regulations. All sections of the regulations and statutes should be examined, even if the first step of the update indicates that none of the authorized changes have affected a given section or paragraph. This section-by-section, paragraph-by-paragraph examination is necessary because the State may have made changes which were not part of a submitted and approved authorization package.

### PRELIMINARY UPDATE PROCEDURES

The information needed for columns 2 through 4 of the crosswalk include (1) sections/paragraphs cited in the authorization Federal Register notices published since the last one used in the initial (or most recent) codification or in any checklists or Attorney General's Statements associated with these authorizations, (2) the most recent amendment or effective date for each cited section/paragraph, (3) RCRA analog if identified and (4) which document (authorization FR notice, AG Statement, checklist, etc.) cited the statutory section/paragraph.

#### CITED SECTION/ PARAGRAPH ALREADY ON CROSSWALK

If a cited section/paragraph is already on the crosswalk,

**P** Verify whether the amendment or effective date of the most recent authorized version has changed and replace the old date in Column 2 with the new date. Column 3--Description/RCRA analog, likely, would not have to be updated unless the section/paragraph was replaced by new requirements.

- P Update Column 4 by indicating if the subsequent authorization of the section/paragraph is from the authorization Federal Register notice, an AG Statement, an updated State legislation checklist or a HSWA statutory checklist, as explained in Chapter III.

CITED SECTION/  
PARAGRAPH NOT ON  
CROSSWALK

If a section/paragraph cited in a State's authorization package is not already on the crosswalk,

- P Insert the new section/paragraph in numerical order on the crosswalk and complete columns 1 through 4 (i.e., enter (1) the citation, (2) date, (3) section heading/RCRA analog and (4) Basis for the classification), using the conventions explained in Chapter III).

CLASSIFY EACH  
SECTION/  
PARAGRAPH IN  
STATE'S STATUTES

Once you have updated the statutory crosswalk to account for all the citations cited in the authorized Federal Register notice, go through the State's statutes section by section to ensure that all sections/paragraphs in the State's statutes are accounted for, and at the same time, verify and update the classification of each section/paragraph in Columns of 5 through 8, as indicated below.

#### ☐ Section/Paragraph Cited on Previous Statutory Crosswalk

If the section/paragraph is already cited on the crosswalk as part of a previous codification, do the following:

BROADER IN  
SCOPE/OUTSIDE  
SCOPE OF RCRA  
SUBTITLE C  
PROVISIONS

- P **If the section/paragraph is already classified as "broader in scope" or "outside the scope of RCRA Subtitle C", skip it and go to the next section/paragraph on the crosswalk even if it has been amended.**

PREVIOUSLY  
UNAUTHORIZED  
SECTION/  
PARAGRAPH; NOT  
CITED IN NEW  
AUTHORIZATION  
MATERIALS

- P **If the section/paragraph was previously classified as an unauthorized RCRA provision and, subsequently, has not been cited in an authorization notice, leave the classification as "unauthorized" and go on to the next section/paragraph.**

AUTHORIZED  
PROVISION, NO  
UNAUTHORIZED  
AMENDMENTS

- P **If the section/paragraph was previously classified as part of the authorized program (i.e., there is an "X" in either column 5 or 6) and all amendments to the section/paragraph can be accounted for by an authorization article, then no changes are needed on the crosswalk, except for updating the date of the most recent unauthorized provision, if it has changed.**

AUTHORIZED  
PROVISION WITH  
UNAUTHORIZED  
AMENDMENTS

**P If the section/paragraph was previously classified as part of the authorized program but now contains unauthorized amendments**, redline the unauthorized amendment, if possible, or identify the unauthorized amendments, as discussed in Steps 5 through 7 of Section C, Chapter III of the Codification Workbook.

PREVIOUSLY  
UNAUTHORIZED  
SECTION/  
PARAGRAPH;  
CURRENTLY CITED  
IN NEW  
AUTHORIZATION  
MATERIALS

**P If the section/paragraph was previously classified as an unauthorized RCRA provision but has subsequently been cited in an authorization notice**, checklist or AG Statement, evaluate the paragraph and classify as "authorized to be incorporated by reference", "procedural/enforcement" or "broader in scope" as discussed in Chapter III. Also determine if the section/paragraph has any unauthorized amendments and take appropriate action as discussed in Steps 5 through 7 of Section C, Chapter III of the Codification Workbook.

### ☐ **Section/Paragraph Not on Previous Statutory Crosswalk**

If the section/paragraph is new, (i.e., it was not on the crosswalk as part of a previous codification), and has just been added to the statutory crosswalk.

GUIDANCE IN  
SECTION C,  
CHAPTER IV FOR  
CLASSIFICATION

**P Follow the guidelines provided in Steps 1 through 6 of Section C, Chapter IV to classify the section/paragraph into one of the columns of Columns 5 through 8 as either:**

- authorized to be incorporated by reference,
- procedural/enforcement,
- broader in scope, or
- unauthorized.

### ☐ **Final Review of Regulatory Crosswalk**

Review the crosswalk to ensure that all citations from the State's regulations are accounted for on the crosswalk and that all sections/paragraphs have been accurately classified.

**D. DEVELOPING THE CODIFICATION FEDERAL REGISTER NOTICE****KEY CONCEPTS**

- The Model X (codification only) and Model Z (combined program revision authorization and codification) Federal Register notices may be modified for use in a subsequent codification.

**MODELS X AND Z  
CODIFICATION FR  
NOTICES**

As discussed in Chapter V, the Model X codification Federal Register notice is used for codification only; whereas, the Model Z notice is used for a combined program revision authorization and codification. Both model codification Federal Register notices, as found in Appendix F, reflect language for an initial codification. However, both models can be modified for use in a subsequent codification as indicated below. Also note that the models may also be used to publish the Federal Register notice as an **immediate final rule** or as a **proposed/final rule**, by using the replacement language found in Appendix F.

**REPLACEMENT  
LANGUAGE FOR  
MODEL X**

The replacement language for a **subsequent** codification using **Model X** codification Federal Register notice is as follows:

**SUMMARY**

- 1 In the **Summary**, replace the last sentence with

“The purpose of this action is to incorporate by reference EPA’s approval of recent revisions to [insert State name]’s program.”

**BACKGROUND**

- 2 In the **Background** section of Supplemental Information:
  - (a) replace the last sentence of the first paragraph with:

“The purpose of this action is to incorporate by reference EPA’s approval of recent revisions to [insert State name]’s program.”



- (b) replace the second paragraph with:

“Effective [Insert effective date of previous incorporation by reference] (see \_\_ FR \_\_),..... and [Insert effective date of previous incorporation by reference] (see \_\_ FR \_\_), EPA incorporated by reference [Insert State's name]'s then authorized hazardous waste program. Effective [insert effective date of subsequent authorization] (see \_\_ FR \_\_),.....and [insert effective date of subsequent authorization] (\_\_ FR \_\_); ... and [insert effective date of subsequent authorization] (\_\_ FR \_\_), EPA granted authorization to [Insert State Name] for additional program revisions. In this document, EPA is incorporating the currently authorized State hazardous waste program in [Insert State Name].”

STATE AUTHORIZED  
HAZARDOUS WASTE  
PROGRAM

- ③ In the **State Authorized Hazardous Waste Program** section of **Supplemental Information**, replace the model language in the first sentence of the first paragraph (i.e., "To incorporate by reference....") with:

“EPA is incorporating by reference the [insert State name] authorized hazardous waste program in subpart \_\_ of part 272.”

PART 272 ENTRY

- ④ In the **Part 272 entry**, replace the model amendatory language with:

“Subpart \_\_ is amended by revising §272.\_\_\_\_1 to read as follows:

APPENDIX A TO  
PART 272

- ⑤ In **Appendix A**, replace the model amendatory language with:

“Appendix A to part 272 is amended by revising the listing for “[insert State name]” to read as follows:”

REPLACEMENT  
LANGUAGE FOR  
MODEL Z

The replacement language for a **subsequent** codification using **Model Y** codification Federal Register notice is as follows:

SUMMARY

- ① In the Summary, replace the last sentence with

“The purpose of this action is to incorporate by reference EPA’s approval of recent revisions to [insert State name]’s program.”

STATE AUTHORIZED  
HAZARDOUS WASTE  
PROGRAM

- ② At Section D—**State Authorized Hazardous Waste Program of Supplemental Information**, replace the first sentence of the first paragraph (i.e., “To incorporate by reference....”) with:

“Effective [Insert effective date of previous incorporation by reference] (see \_\_ FR \_\_),..... and [Insert effective date of previous incorporation by reference] (see \_\_ FR \_\_), EPA incorporated by reference [Insert State's name]'s then authorized hazardous waste program. Effective [insert effective date of subsequent authorization] (see \_\_ FR \_\_),.....and [insert effective date of subsequent authorization] (\_\_ FR \_\_); ... and [insert effective date of subsequent authorization] (\_\_ FR \_\_), EPA granted authorization to [Insert State Name] for additional program revisions. In this document, EPA is incorporating the currently authorized [Insert State Name] hazardous waste program in subpart \_\_ of part 272.”

PART 272 ENTRY

- ③ In the **Part 272 entry**, replace the model amendatory language with:

“Subpart \_\_ is amended by revising §272.\_\_\_\_1 to read as follows:

APPENDIX A TO  
PART 272

- ④ In **Appendix A**, replace the model amendatory language with:

“Appendix A to part 272 is amended by revising the listing for “[insert State name]” to read as follows:”

**E. DEVELOPING THE *ADDENDUM* TO THE STATE'S EPA-APPROVED HAZARDOUS WASTE MANAGEMENT PROGRAM**

**KEY CONCEPTS**

- Check the State's previous Addendum, if any, to verify if all problems have been eliminated from the State's regulations and, therefore, should no longer be in the Addendum.
- Develop an Addendum only if the provisions incorporated by reference include State amendments that cannot be redlined.
- Develop an Addendum based on the State's updated crosswalk.

**DEVELOPING AN ADDENDUM**

The process of preparing an Addendum for a subsequent codification is the same as that for an initial codification. If you prepared an Addendum for an initial codification, you may find that Addendum cannot be simply updated because:

- (1) the State may have authorized, since the last codification, previously unauthorized amendments making the previous Addendum obsolete, or
- (2) the State may have introduced changes to previously authorized sections/paragraphs.

**RECOMMENDED APPROACH**

Thus, it is recommended that a new Addendum be developed for each codification based on the updated regulatory crosswalk. However, you must review the previous Addendum to determine which amendments the State has become authorized for and, therefore, no longer need to be in the Addendum, and which provisions still have unauthorized amendments and should, therefore, be retained in the new Addendum.

**REPLACEMENT LANGUAGE FOR EXPLANATORY STATEMENT**

A detailed discussion on the structure of the Addendum and how to prepare one for an initial Addendum is given in Chapter VI. The structure of the Addendum for a subsequent codification is identical to that for an initial codification. The only difference between the two is in the **Explanatory Statement**. The replacement language for a subsequent Addendum is provided in Exhibit IX-1.

**F. PREPARING THE CODIFICATION PACKAGE**

**KEY CONCEPTS**

- Use the same procedures as described for initial codification in Chapter VII.
- Contact FSTPB and OFR for possibility of new guidance.

**PREPARING THE  
CODIFICATION  
PACKAGE**

The same procedures for preparing the initial codification package applies to the subsequent codification. However, be sure to refer to additional guidance that may have been issued by OFR or FSTPB since the publication of this Workbook or since your last codification.

**G. SUBMITTING SETS OF THE CODIFICATION PACKAGES TO THE OFFICE OF THE FEDERAL REGISTER AND EPA'S FEDERAL, STATE AND TRIBAL BRANCH**

**KEY CONCEPTS**

- Use the same procedures as described for initial codification in Chapter VIII.
- Contact FSTPB and OFR for possibility of new guidance.

**PREPARING THE  
CODIFICATION  
PACKAGE**

The same instructions described in Chapter VIII for submitting the codification packages to OFR and FSTPB for an initial codification apply to the subsequent codification. However, be sure to refer to additional guidance that may have been issued by OFR or FSTPB since the publication of this Workbook or since your last codification.

**NOTE**

No separate exercises are included for Chapter IX. For exercises based on information presented in this chapter, see Chapters II through VIII.

**Exhibit IX-1. Model Language for the Addendum Explanatory Statement  
for a Subsequent Codification**

**ADDENDUM TO THE  
EPA-APPROVED [INSERT STATE NAME] REGULATORY & STATUTORY  
REQUIREMENTS APPLICABLE TO THE  
HAZARDOUS WASTE MANAGEMENT PROGRAM  
[Insert Month and Year of EPA Binder]**

"Effective [Insert effective date of previous incorporation by reference] (see \_\_ FR \_\_),..... and [Insert effective date of previous incorporation by reference] (see \_\_ FR \_\_), EPA incorporated by reference [Insert State's name]'s then authorized hazardous waste program. Effective [insert effective date of subsequent authorization] (see \_\_ FR \_\_),.....and [insert effective date of subsequent authorization] (\_\_ FR \_\_); ... and [insert effective date of subsequent authorization] (\_\_ FR \_\_), EPA granted authorization to [Insert State Name] for additional program revisions.

On [insert publication date of FR associated with most recent codification addressed by this Addendum] and effective [insert effective date] (see insert FR reference), EPA published a Federal Register document announcing its decision to incorporate by reference the currently authorized [Insert State Name] hazardous waste program at §272.\_\_(b)(1). However, [list authorized State citations with unauthorized State amendments] of the [Insert Full Title and date of State regulations], while incorporated by reference into the Federal regulations effective [insert effective date], include State amendments that have not been reviewed or approved by EPA. Such unauthorized amendments are not part of the State's authorized program and are, therefore, not Federally enforceable. This document gives notice that notwithstanding the language in the [Insert State name] hazardous waste regulations incorporated by reference at §272.\_\_(b)(1), EPA will only enforce the State provisions actually authorized by EPA. This Addendum to the *EPA-Approved [insert State name] Regulatory and Statutory Requirements Applicable to the Hazardous Waste Management Program*, dated [insert date of corresponding EPA binder] contains the actual authorized text of the regulatory language at the citations listed above that EPA will enforce. The Addendum replaces the previous Addenda dated [insert dates of previous of Addenda].