

US EPA ARCHIVE DOCUMENT

Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: June 14, 1990.

Daniel McGovern,
Regional Administrator.

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40 CFR Part 271

[FRL-3808-6] *program revision #2*

State of New Mexico: Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule on New Mexico program revision application.

SUMMARY: The State of New Mexico has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Environmental Protection Agency (EPA) has reviewed New Mexico's application and has reached a decision that New Mexico's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to New Mexico to operate its expanded program, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984.

EFFECTIVE DATE: Final authorization for New Mexico shall be effective at 1 p.m. on July 25, 1990.

FOR FURTHER INFORMATION CONTACT: RCRA Regional Authorization Coordinator, Attention: Ms. Lynn Prince, RCRA Programs Branch (6H-HS), U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 655-6760.

SUPPLEMENTARY INFORMATION:

A. Background

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 266 and 124 and 270.

B. New Mexico

The State of New Mexico initially received final authorization effective January 25, 1985 (50 FR 1515), published on January 11, 1985. The State program was later revised with those revisions

approved by EPA on April 10, 1990 (55 FR 4604). On July 25, 1989, New Mexico submitted a program revision application for additional program approvals. On March 19, 1990, EPA published a proposal to approve New Mexico's application for program revision in accordance with 40 CFR 271.21(b)(4).

EPA has reviewed New Mexico's application, and has made a final decision that New Mexico's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization for the additional program modifications to New Mexico.

The public was given the opportunity to provide comments on the proposal to approve the State application. To date, no comments have been received concerning the proposal to approve the New Mexico revision application.

The following chart lists the State rules that have been changed and that are being recognized as equivalent to the analogous Federal rules, as they have been changed.

Federal citation	State analog
1. Radioactive mixed waste requirements, as published in the <i>Federal Register</i> on July 3, 1986.	1. New Mexico Hazardous Waste Act, §§ 74-4-1 to 74-4-13 NMSA 1978.
2. Hazardous waste miscellaneous units, as published in the <i>Federal Register</i> on December 10, 1987.	2. New Mexico Hazardous Waste Act and Hazardous Waste Management Regulations (HWMR)—5, Parts I, V, and IX.
3. Research, Development and Demonstration Permits, as published in the <i>Federal Register</i> on July 15, 1985.	3. HWMR-5, Part IX.
4. Closure, post-closure and financial responsibility requirements, as published in the <i>Federal Register</i> on May 2, 1986.	4. HWMR-5, Parts I, V, VI, and IX.
5. Standards for hazardous waste storage and treatment tank systems, as published in the <i>Federal Register</i> on July 14, 1986.	5. HWMR-5, Parts I, II, III, V, VI, and IX.
6. Amendments to Part B information requirements, as published in the <i>Federal Register</i> on June 22, 1987.	6. HWMR-5, Part IX.
7. Permit rules—Settlement Agreement, as published in the <i>Federal Register</i> on April 24, 1984.	7. HWMR-5, Part IX.

The State also submitted revisions to the Program Description. Attorney

General's Statement, and the Memorandum of Agreement between the State of New Mexico and EPA Region 6.

One State hazardous waste permit will need to be modified to reflect the mixed waste component as a result of the State receiving this additional authority.

The State of New Mexico is not seeking authority over activities on Indian lands.

C. Decision

I conclude that New Mexico's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, the State of New Mexico is granted final authorization to operate its hazardous waste program as revised. New Mexico now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its program revision application and previously approved authorities. New Mexico also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

EPA uses part 272 for codification of the decision to authorize State programs and for incorporation by reference of those provisions of a State's statutes and regulations that EPA will enforce under sections 3008, 3013, and 7003 of RCRA. Therefore, EPA will be amending part 272, subpart G under a separate *Federal Register* notice, that will be published at a later date.

Compliance with Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of New Mexico's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This

rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

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

Authority: This notice 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: June 14, 1990.

Bill Hathaway,

Acting Regional Administrator.

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FEDERAL MARITIME COMMISSION

46 CFR Parts 502 and 587

[Docket No. 89-24]

Miscellaneous Amendments to Rules of Practice and Procedure

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is amending its Rules of Practice and Procedure governing matters before the Commission. The amendments clarify certain filing and service requirements, address facsimile filings, and add a provision governing the filing of confidential materials, and thereby correct current rule deficiencies.

DATE: Effective August 10, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: The Commission's Rules of Practice and Procedure, 46 CFR part 502, govern proceedings and other matters before the Commission. Experience under the rules suggests certain provisions are either unclear, conflicting or inadequate to achieve their desired purpose. In addition, the current rules do not have provisions governing facsimile ("fax") filings or filings containing confidential material. To remedy these deficiencies, to address fax filings, and to provide for the handling of confidential materials, the Commission issued a Notice of Proposed Rulemaking, 54 FR 48649, November 24, 1989, to solicit comments on several proposed revisions to its rules.

Discussion

Limited comments were received from Matson Navigation Company, Inc. ("Matson") and jointly from the Asia North America Eastbound Rate Agreement and the South Europe/U.S.A. Freight Conference ("the Conferences"). For the most part, the proposed amendments are unopposed and are adopted herein as published except as discussed below.

Matson comments that, in addition to the proposed changes, the Commission's rules should be amended to correct so-called "serious deficiency" in the proscription against "replies to replies" found in § 502.74(a)(1). Matson is concerned about the ability of parties initiating pleadings to rebut what it terms "factual inaccuracies or requests for alternate legal relief" contained in replies, and cites two recent Matson petitions as examples of how the rule barring "replies to replies" can lengthen proceedings. Matson suggests amending § 502.74(a)(1) to allow filing of a "reply to a reply" by a party who initiates a proceeding " * * * to answer those matters * * * which require rebuttal in order to prevent undue hardship or manifest injustice, or where required to promote the expeditious conduct of business," noting that § 502.10 permits waiver of the rules for such reasons.

Matson's proposal is beyond the scope of this rulemaking. Moreover, the Commission fails to see how the proposed revision would generate more fairness or expedite Commission proceedings. As Matson itself notes, § 502.10 now allows the Commission to waive its rule for the reasons Matson proposes. It is not clear if Matson proposes that the rebutting party have the discretion to effect such a waiver or if it proposes to allow surrebuttal in each case. Matson has failed to fully explain its proposal and the need for it. For the above reasons, Matson's proposal is not adopted.

Matson also commented on the proposed new § 502.119 regarding treatment of confidential material. Matson supports adoption of the proposed section, but urges that it be expanded to apply to confidential business and financial information submitted outside docketed proceedings, such as financial workpapers submitted in support of a general rate increase pursuant to § 502.67.

Proposed § 502.119 would apply to any filing submitted that has been designated as confidential by any Commission rule in part 502. Section 502.67 makes underlying workpapers confidential and bars their disclosure, except to the extent authorized by an

order of the Commission or a presiding officer. Therefore, it does not appear necessary to expand the proposed rule. To reduce the likelihood of misleading implications, however, the language in the first sentence of proposed § 502.119 has been modified to clarify that § 502.119 applies to "all filings" under part 502. In addition, the proposed rule has been modified to require that such confidential materials be marked "confidential-restricted," so as to avoid confusion with national security information that is classified "confidential."

The Conferences support the proposed amendments, but ask for clarification of the proposed provision prohibiting the filing of fax transmission copies. The Conferences state that it is often necessary to file photocopies of faxed signature pages to meet Commission filing deadlines because conference headquarters are located overseas, even though deadlines may be met by placement in the mail or delivery to a courier under § 502.114. The conferences also ask for clarification whether the proposal would preclude use of photocopies of faxed documents in exhibits to part 502 filings.

Currently, fax filings are deficient since they do not comply with the requirements of § 502.111 for a signed original and multiple copies. The Commission has experienced difficulty obtaining properly signed and verified originals as well as the required number of copies when filings have been submitted by fax. Additionally, fax filings do not appear to provide the quality or permanency of copy needed for long term recordkeeping purposes. Moreover, the Commission does not believe fax filings are necessary in view of the provision in § 502.114 which permits most filing deadlines to be met by mailing or delivery to a courier. Conferences with overseas headquarters almost always manage to meet filing deadlines. Most do not use fax for that purpose.

Nevertheless, the Commission is cognizant of the convenience and widespread use of fax, and therefore will allow the tentative filing of photocopies of signature pages, provided that the originals are received by the Commission within seven workdays, and will allow use of photocopies of faxed documents in exhibits to part 502 filings. Also, since the filing date of protests under § 502.67 is determined by date of receipt and such proceedings involve a compressed time period, fax transmissions in those matters will be accepted provided the original and appropriate copies are