

US EPA ARCHIVE DOCUMENT

40 CFR PART 271

[EPL-5656-8]

New Mexico: Final Authorization of State Hazardous Waste Management Program Revisions**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Immediate final rule.

SUMMARY: The State of New Mexico has applied for authorization to revise its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA reviewed New Mexico's application and determined that its hazardous waste program revision satisfies all of the requirements necessary to qualify for authorization. Unless adverse written comments are received during the review and comment period provided for public participation in this process, the EPA intends to approve the New Mexico's hazardous waste program revision subject to the authority retained by the EPA in accordance with Hazardous and Solid Waste Amendments of 1984 (HSWA). New Mexico's application for the program revision is available for public review and comment.

DATES: This authorization for New Mexico shall be effective March 10, 1997 unless EPA publishes a prior Federal Register (FR) action withdrawing this Immediate Final Rule. All comments on New Mexico's program revision application must be received by the close of business February 6, 1997.

ADDRESSES: Copies of the New Mexico program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: New Mexico Environment Department, 1190 St Francis Drive, Santa Fe, New Mexico 87502, phone (505) 827-1558 and EPA, Region 6 Library, 12th Floor, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202-2733, phone (214) 665-6444. Written comments, referring to Docket Number NM-96-1, should be sent to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD-G), Multimedia Planning and Permitting Division, EPA Region 6, First Interstate Bank Tower at Fountain

Place, 1445 Ross Avenue, Dallas, Texas 75202-2733, Phone number: (214) 665-8533.

FOR FURTHER INFORMATION CONTACT:

Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD-G), Multimedia Planning and Permitting Division, EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202-2733, Phone number: (214) 665-8533.

SUPPLEMENTARY INFORMATION:**A. Background**

States authorized under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. 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 the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260-262, 263, 264, 265, 266, 268, and 270.

B. New Mexico

The State of New Mexico received authorization January 25, 1985, (50 FR 1515) to implement its base hazardous waste management program. New Mexico received authorization for revisions to its program on April 10, 1990 (55 FR 4604), July 25, 1990 (55 FR 28397), December 4, 1992 (57 FR 45717), August 23, 1994 (59 FR 29734), December 21, 1994 (59 FR 51122), (60 FR 20238) July 10, 1995 and (61 FR 2450) January 2, 1996. The authorized New Mexico RCRA program was incorporated by reference to the CFR, effective December 13, 1993 (58 FR 52677) and November 18, 1996 (61 FR 49266). On September 16, 1996, New Mexico submitted a final complete program revision application for additional program approvals. Today, New Mexico is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

On September 27, 1995, New Mexico promulgated 20 New Mexico Administrative Code (NMAC) 4.1 which adopts the July 1, 1994, version of 40 CFR part 261. Specifically, 20 NMAC

4.1, incorporates by reference 40 CFR part 261 at 20 NMAC 4.1.200. This is the version that is referred to in the Attorney General's Statement submitted with this program revision. The 20 NMAC 4.1, became effective on November 1, 1995. The 20 NMAC 4.1.200 is inclusive of the identification and listing amendments to 40 CFR part 261 promulgated January 4, 1994 at 59 FR 458. New Mexico Statutes Annotated (NMSA) 1978, §§ 74-4-4A(1) and 74-4-4E (Replacement Pamphlet 1993) provides New Mexico with authority to adopt federal regulations by reference including the sections on identification and listing.

The EPA reviewed New Mexico's application and made an immediate final decision that New Mexico's hazardous waste program revision satisfies all of the requirements necessary to qualify for authorization. Consequently, the EPA intends to grant authorization for the additional program modifications to New Mexico. The public may submit written comments on EPA's proposed final decision until February 6, 1997. Copies of New Mexico's application for program revision are available for inspection and copying at the locations indicated in the ADDRESSES section of this notice.

Approval of New Mexico's program revision shall become effective 75 days from the date this notice is published, unless an adverse written comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse written comment is received, the EPA will publish either (1) A withdrawal of the immediate final decision, or (2) a notice containing a response to the comment that either affirms that the immediate final decision takes effect or reverses the decision.

New Mexico's program revision application includes State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR parts 124, 260-263, 264, 265, 266, and 270 that were published in the FR through June 30, 1994. This proposed approval includes the provisions that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

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Federal citation	State analog
1. Requirements for Preparation, Adoption, and Submittal of Implementation Plans, [58 FR 38816] July 20, 1993. (Checklist 125).	New Mexico Statutes Annotated (NMSA) 1978, §§ 74-4-4A and 74-4-4E (Replacement Pamphlet 1993); Hazardous Waste Management, New Mexico Environmental Improvement Board, 20 New Mexico Administrative Code (NMAC) 4.1.101, Subparts I, and VII, .101, .102 and 700 as amended November 1, 1995, effective November 1, 1995.
2. Testing and Monitoring Activities, [58 FR 46040] August 31, 1993. (Checklist 126).	NMSA 1978, §§ 74-4-4A(1) and 74-4-4E (Repl. Pamph. 1993); 20 NMAC 4.1.101 Subparts I, II, V, VI, VIII, and IX, .102, .200, .500, .501, .600, .601, .800, and .900, as amended November 1, 1995, effective November 1, 1995.
3. Hazardous Waste Management Systems; Identification and Listing of Hazardous Waste from Wood Surface Protection, [59 FR 458] January 4, 1994. (Checklist 128).	NMSA 1978, §§ 74-4-4A(1) and 74-4-4E (Repl. Pamph. 1993); 20 NMAC 4.1.101, .102, Subparts I, and II, .101, and .200, as amended September 23, 1994, effective November 1, 1995.
4. Recording Instructions, [59 FR 13891] March 24, 1994. (Checklist 131).	NMSA 1978, §§ 74-4-4A and 74-4-4E (Repl. Pamph. 1993); 20 NMAC 4.1.500, Subparts V, and VI, .501, .600 and .601, as amended November 1, 1995, effective November 1, 1995.
5. Hazardous Waste Management System; Identification and Listing of Hazardous Wastes; Wastes from Wood Surface Protection; Correction, [59 FR 28484] June 2, 1994. (Checklist 132).	NMSA 1978, §§ 74-4-4A(1) and 74-4-4E (Repl. Pamph. 1993); 20 NMAC 4.1.101, .102, Subpart I, as amended November 1, 1995, effective November 23, 1995.
6. Hazardous Waste Management System; Correction of Listing of P015-Beryllium Powder, [59 FR 31551] June 20, 1994. (Checklist 134).	NMSA 1978, §§ 74-4-4A and 74-4-4E (Repl. Pamph. 1993); 20 NMAC 4.1.800, Subparts II, and VIII, .200, as amended November 1, 1995, effective November 1, 1995.

New Mexico is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

C. Decision

I conclude that New Mexico's application for a program revision meets the statutory and regulatory requirements established by RCRA. Accordingly, New Mexico is granted 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 for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. 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

The EPA uses 40 CFR part 272 for codification of the decision to authorize New Mexico's program and for incorporation by reference of those provisions of New Mexico's Statutes and regulations that the EPA will enforce under section 3008, 3013, and 7003 of RCRA. Therefore, the EPA is reserving amendment of 40 CFR part 272, subpart GG until a later date.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12866.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an Environmental Protection Agency rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments

to have meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The EPA does not anticipate that the approval of New Mexico's hazardous waste program referenced in today's notice will result in annual costs of \$100 million or more.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector. The Act excludes from the definition of a "Federal mandate" duties that arise from participation in a voluntary Federal program, except in certain cases where a "federal intergovernmental mandate" affects an annual federal entitlement program of \$500 million or more that are not applicable here. New Mexico's request for approval of a hazardous waste program is voluntary; if a state chooses not to seek authorization for administration of a hazardous waste program under RCRA Subtitle C, RCRA regulation is left to the EPA.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures \$100 million or more for state, local, and tribal governments in the aggregate, or the private sector in any one year. The EPA does not anticipate that the approval of New Mexico's hazardous waste program

referenced in today's notice will result in annual costs of \$100 million or more. The EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector since the State, by virtue of the approval, may now administer the program in lieu of the EPA and exercise primary enforcement. Hence, owners and operators of treatment, storage, or disposal facilities (TSDFs) generally no longer face dual federal and state compliance requirements, thereby reducing overall compliance costs. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that small governments may own and/or operate TSDFs that will become subject to the requirements of an approved state hazardous waste program. However, such small governments which own and/or operate TSDFs are already subject to the requirements in 40 CFR parts 264, 265, and 270 and are not subject to any additional significant or unique requirements by virtue of this program approval. Once EPA authorizes a State to administer its own hazardous waste program and any revisions to that program, these same small governments will be able to own and operate their TSDFs and underground storage tanks under the approved State program, the in lieu of the Federal program.

Certification Under the Regulatory Flexibility Act

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. The EPA recognizes that small entities may own and/or operate TSDFs that will become subject to the requirements of an approved state hazardous waste program. However, since such small entities which own and/or operate TSDFs are already subject to the requirements in 40 CFR Parts 264, 265 and 270, this authorization does not impose any additional burdens on these small entities. This is because EPA's authorization would result in an administrative change (i.e., whether the EPA or the state administers the RCRA Subtitle C program in that state), rather than result in a change in the substantive requirements imposed on small entities. Once EPA authorizes a state to administer its own hazardous waste program and any revisions to that program, these same small entities will be able to own and operate their TSDFs

under the approved state program, in lieu of the federal program. Moreover, this authorization, in approving a state program to operate in lieu of the federal program, eliminates duplicative requirements for owners and operators of TSDFs in that particular state.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provisions of 5 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.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U. S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 271

Environmental protection, 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: December 11, 1996.

Myron O. Knudson,

Acting Regional Administrator.

[FR Doc. 96-32090 Filed 12-20-96; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-280]

Organization and Delegation of Powers and Duties Delegation to the Commandant, United States Coast Guard

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation is delegating to the Commandant, United States Coast Guard, the authority contained in 46 U.S.C. 14104 to prescribe, by regulation, an alternate tonnage for vessels whenever a statute specifies that an alternate tonnage may be prescribed under that section. In order that the *Code of Federal Regulations* reflects this delegation, a change is necessary.

EFFECTIVE DATE: December 23, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Eareckson, Marine Safety Center (MSC), (202) 366-6502, U.S. Coast Guard, 400 Seventh Street SW., Washington, DC 20590, or Mr. Ron Gordon, Office of the Executive Secretariat, S-10, (202) 366-9761, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Section 702 of the Coast Guard Authorization Act of 1996 (the Act) (Public Law 104-324; October 19, 1996) amends 46 U.S.C. 14104 to authorize the Secretary of Transportation, as the head of the Department in which the Coast Guard is operating, to prescribe by regulation an alternate tonnage for a vessel, if a statute allows for an alternate tonnage to be prescribed under 46 U.S.C. 14104. Sections 703 through 744 of the Act amend various statutes that specify vessel tonnage parameters based on regulatory measurement under 46 U.S.C. 14502. Each statute is amended to authorize an alternate tonnage to be prescribed based on convention measurement under 46 U.S.C. 14302, rather than regulatory measurement. The use of convention measurement may result in the building of safer, more efficient vessels and may enable vessel builders and operators to be competitive in the international market.

This rule amends 49 CFR 1.46 by adding a new paragraph to reflect the delegation of the Secretary's authority under 46 U.S.C. 14104 to the Commandant of the Coast Guard.

This rule is being published as a final rule and is being made effective on the