

US EPA ARCHIVE DOCUMENT

Commodity	Parts per million
* * *	* *
Cattle, kidney	2.5
* * *	* *
Goat, kidney	2.5
* * *	* *
Horse, kidney	2.5
* * *	* *
Sheep, kidney	2.5
* * *	* *

(3) * * *

Commodity	Parts per million
Milk	0.05
* * *	

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BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 271 and 272**

[EPA-R06-RCRA-2008-0144; FRL-8727-3]

Texas: Final Authorization of State-Initiated Changes and Incorporation by Reference of State Hazardous Waste Management Program**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Immediate final rule.

SUMMARY: During a review of Texas' regulations, the EPA identified a variety of State-initiated changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). We have determined that these changes are minor and satisfy all requirements needed to qualify for Final authorization and are authorizing the State-initiated changes through this Immediate Final action. In addition, today's document corrects technical errors made in the August 18, 1999 and June 14, 2005 **Federal Register** authorization documents for Texas.

The Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), allows the Environmental Protection Agency (EPA) to authorize States to operate their hazardous waste management programs in lieu of the Federal program. The EPA uses the regulations entitled "Approved State Hazardous Waste Management Programs" to provide notice of the authorization status of State programs and to incorporate by reference those provisions of the State statutes and regulations that will be subject to the

EPA's inspection and enforcement. The rule codifies in the regulations the prior approval of Texas' hazardous waste management program and incorporates by reference authorized provisions of the State's statutes and regulations.

DATES: This regulation is effective December 29, 2008, unless the EPA receives adverse written comment on the codification of the Texas authorized RCRA program by the close of business November 28, 2008. If the EPA receives such comments, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** informing the public that this rule will not take effect. The incorporation by reference of authorized provisions in the Texas statutes and regulations contained in this rule is approved by the Director of the Federal Register as of December 29, 2008 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R06-RCRA-2008-0144 by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
2. *E-mail:* patterson.alima@epa.gov or Banks.Julia@epa.gov.
3. *Mail:* Alima Patterson, Region 6, Regional Authorization Coordinator, or Julia Banks, Codification Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.
4. *Hand Delivery or Courier:* Deliver your comments to Alima Patterson, Region 6, Regional Authorization Coordinator, or Julia Banks, Codification Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

Instructions: Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov>, or e-mail. The Federal <http://www.regulations.gov> Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your

name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. You can view and copy the documents that form the basis for this authorization and codification and associated publicly available materials from 8:30 a.m. to 4 p.m. Monday through Friday at the following location: EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, phone number (214) 665-6444. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Regional Authorization Coordinator, or Julia Banks, Codification Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, Phone number: (214) 665-8533, and e-mail address patterson.alima@epa.gov or Banks.Julia@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Authorization of State-Initiated Changes****A. Why are Revisions to State Programs Necessary?**

States which have received Final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal program changes, the States must change their programs and ask the EPA to authorize the changes. Changes to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273 and 279. States can also initiate their own changes to their hazardous waste program and these changes must then be authorized.

B. What Decisions Have We Made in This Rule?

We conclude that Texas' revisions to its authorized program meet all of the

statutory and regulatory requirements established by RCRA. We found that the State-initiated changes make Texas' rules more clear or conform more closely to the Federal equivalents and are so minor in nature that a formal application is unnecessary. Therefore, we grant Texas final authorization to operate its hazardous waste program with the changes described in the table at Section G below. Texas has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out all authorized aspects of the RCRA program, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in Texas, including issuing permits, until the State is granted authorization to do so.

C. What is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Texas subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Texas has enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions after notice to and consultation with the State.

This action does not impose additional requirements on the

regulated community because the statutes and regulations for which Texas is being authorized by today's action are already effective and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

The EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the Proposed Rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens If EPA Receives Comments That Oppose This Action?

If the EPA receives comments that oppose this authorization or the incorporation-by-reference of the State program, we will withdraw this rule by publishing a timely document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of the State program changes, or the incorporation-by-reference, on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. If you want to comment on this authorization and incorporation-by-reference, you must do so at this time. If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program or the incorporation-by-reference of the State program, we may withdraw only that part of this rule, but the authorization of the program changes or the incorporation-by-reference of the State program that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization or incorporation-by-reference of the State program will

become effective and which part is being withdrawn.

F. For What Has Texas Previously Been Authorized?

The State of Texas initially received final authorization on December 26, 1984 (49 FR 48300), to implement its Base Hazardous Waste Management Program. This authorization was clarified in a notice published March 26, 1985 (50 FR 11858). Texas received authorization for revisions to its program, effective October 4, 1985 (51 FR 3952), February 17, 1987 (51 FR 45320), March 15, 1990 (55 FR 7318), July 23, 1990 (55 FR 21383), October 21, 1991 (56 FR 41626), December 4, 1992 (57 FR 45719), June 27, 1994 (59 FR 16987), June 27, 1994 (59 FR 17273), November 26, 1997 (62 FR 47947), December 3, 1997 (62 FR 49163), October 18, 1999 (64 FR 44836), November 15, 1999 (64 FR 49673), September 11, 2000 (65 FR 43246), and June 14, 2005 (70 FR 34371).

G. What Changes Are We Authorizing With Today's Action?

The State has made amendments to the provisions listed in the document which follows. These amendments clarify the State's regulations and make the State's regulations more internally consistent. The State's laws and regulations, as amended by these provisions, provide authority which remains equivalent to and no less stringent than the Federal laws and regulations. These State-initiated changes satisfy the requirements of 40 CFR 271.21(a). We are granting Texas final authorization to carry out the following provisions of the State's program in lieu of the Federal program. These provisions are analogous to the indicated RCRA statutory provisions or RCRA regulations found at 40 CFR as of July 1, 2000. The Texas provisions are from the Texas Administrative Code (TAC), Title 30, effective December 31, 2001.

State requirement	Analogous Federal requirement
30 TAC 335.1(7) "Ancillary equipment"	40 CFR 260.10 "Ancillary equipment".
30 TAC 335.1(29) "Corrective action management unit" or "CAMU"	40 CFR 260.10 "Corrective action management unit" or "CAMU".
30 TAC 335.1(37) "Disposal"	40 CFR 260.10 "Disposal".
30 TAC 335.1(52) "Facility"	40 CFR 260.10 "Facility".
30 TAC 335.1(53) "Final closure"	40 CFR 260.10 "Final closure".
30 TAC 335.1(86) "Manifest"	40 CFR 260.10 "Manifest".
30 TAC 335.24(j)	40 CFR 261.6(a)(4).
30 TAC 335.24(k)	40 CFR 261.6(c)(1) related.
30 TAC 335.29(6)	40 CFR 261, Appendix IX.
30 TAC 335.78(j)	40 CFR 261.5(j).
30 TAC 335.504(1)	40 CFR 261.4(b)(13)–(15).
30 TAC 335.69(a)(1)(D) intro	40 CFR 262.34(a)(1)(iv) intro.
30 TAC 335.69(b)	40 CFR 262.34(b).
30 TAC 335.69(d)	40 CFR 262.34(c)(1).

State requirement	Analogous Federal requirement
30 TAC 335.69(f), except (f)(2) & (f)(4)	40 CFR 262.34(d), except (d)(2) & (d)(4).
30 TAC 335.69(f)(4), except (f)(4)(C)	40 CFR 262.34(d)(2).
30 TAC 335.504(1)	40 CFR 262.11(a).
30 TAC 335.11(a)(4)	40 CFR 263.20(a) (partial analog).
30 TAC 335.41(e)	40 CFR 264.1(g)(1).
30 TAC 335.152(c)(4), except (4)(B), (C), & (F)	40 CFR 264 related; no direct Federal analog.
30 TAC 335.152(c)(4)(B), (C), & (F)	40 CFR 264 related; no direct Federal analog.
30 TAC 335.205(a) intro.—(2)	40 CFR 264.18 related; no direct Federal analog.
30 TAC 335.41(e)	40 CFR 265.1(c)(5).
30 TAC 335.112(b)(3)	40 CFR 265 related; no direct Federal analog.
30 TAC 335.112(b)(4) intro through (b)(4)(D)	40 CFR 265 related; no direct Federal analog.
30 TAC 335.112(b)(4)(E) through (H)	40 CFR 265 related; no direct Federal analog.
30 TAC 335.112(b)(4)(K) & (L)	40 CFR 265 related; no direct Federal analog.
30 TAC 335.112(b)(5)	40 CFR 265 related; no direct analog.
30 TAC 335.112(b)(6)	40 CFR 265 related; no direct analog.
30 TAC 335.112(b)(8)–(10)	40 CFR 265 related; no direct analog.
30 TAC 335.124(e)	40 CFR 265.112 and 265.113 related.
30 TAC 335.221(a)(1)(A)	40 CFR 266.100 related.
30 TAC 335.225(b)	40 CFR 266.111 related; no direct Federal analog.
30 TAC 305.62(a)	40 CFR 124.5(a).
30 TAC 305.62(b)	40 CFR 270.42 related; no direct Federal analog.
30 TAC 305.62(d) except (d)(3), (d)(5) & (d)(6)	40 CFR 270.41(a) except 270.41(a) (3) & (a)(5).
30 TAC 305.125(1) & (3)	40 CFR 270.30(a) & (c).
30 TAC 305.50(4)(G)	40 CFR 270.10(e)(4).
30 TAC 324.2 intro	40 CFR 279.1 related.

H. Who Handles Permits After The Authorization Takes Effect?

This authorization does not affect the status of State permits and those permits issued by the EPA because no new substantive requirements are a part of these revisions.

I. How does Today's Action Affect Indian Country (18 U.S.C. 1151) in Texas?

Texas is not authorized to carry out its Hazardous Waste Program in Indian Country within the State. This authority remains with EPA. Therefore, this action has no effect in Indian Country.

II. Technical Corrections

A. Corrections to the August 18, 1999 (64 FR 44836) Authorization Document

1. There are date errors in the table of program revisions published in the above referenced authorization notice, specific to the following entries:

(a) Throughout the table, the effective date for TWCA (5.103, and THSCA §§ 361.017 and 361.024 should be "September 1, 1995".

(b) For Checklist 135 (Item 1), the effective date for TWCA (5.102 should be "Vernon 1988 and 1998 Supplement, effective September 1, 1985".

(c) For Checklist 137 (Item 3), the effective date for THSCA § 361.003 should be "September 1, 1997".

(d) For Checklist 140, the reference to "September 18, 1998" following the provision 30 TAC (335.29, is incorrect and should be "October 19, 1998". This correction applies to 30 TAC §§ 335.29(4) and (5).

2. In item 12 on page 44838 of the authorization document, "Checklist 114" should be corrected to read "Checklist 144".

B. Corrections to the June 14, 2005 (70 FR 34371) Authorization Document

1. For Checklist 159, the authorization document should include a reference to "335.431(c)" effective November 15, 2001.

2. For Checklist 166, the effective date for 335.24(c)(4)(A)–(C) should be "April 4, 1999" not "April 14, 1999".

3. For checklist 168, the reference to "305.51(a)(8)" is incorrect and should be "305.51(c)(8)".

4. For checklist 169 the following corrections should be made:

a. The authorization document entry should include a reference to "335.24(c)(4)(C)" effective November 15, 2001;

b. The authorization document entry should include a reference to "335.29(4)" effective November 15, 2001; and,

c. The authorization document entry should include a reference to "335.221(b)(2)" effective November 15, 2001.

5. For checklist 175 the following corrections should be made:

a. The authorization document entry should include a reference to "305.69(k) D.3.g and M.3" effective November 15, 2001; and,

b. The authorization document entry should include a reference to "335.1 (definition of miscellaneous unit)" effective November 15, 2001.

6. For checklist 181, the authorization document entry should include a reference to "335.1 (definition of lamp)" effective November 15, 2001.

III. Incorporation-By-Reference

A. What is Codification?

Codification is the process of placing a State's statutes and regulations that comprise the State's authorized hazardous waste management program into the Code of Federal Regulations (CFR). Section 3006(b) of RCRA, as amended, allows the Environmental Protection Agency (EPA) to authorize State hazardous waste management programs to operate in lieu of the Federal hazardous waste management regulatory program. The EPA codifies its authorization of State programs in 40 CFR part 272 and incorporates by reference State statutes and regulations that the EPA will enforce under sections 3007 and 3008 of RCRA and any other applicable statutory provisions.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and State requirements that can be Federally enforced. This effort provides clear notice to the public of the scope of the authorized program in each State.

B. What Is the History of the Codification of Texas' Hazardous Waste Management Program?

The EPA incorporated by reference Texas' then authorized hazardous waste program effective December 3, 1997 (62

FR 49163) and November 15, 1999 (64 FR 49673). In this action, EPA is revising subpart SS of 40 CFR part 272 to include the recent authorization revision actions effective October 18, 1999 (64 FR 44836), September 11, 2000 (65 FR 43246), and June 14, 2005 (70 FR 34371).

C. What Codification Decisions Have We Made in This Rule?

The purpose of today's **Federal Register** document is to codify Texas' base hazardous waste management program and its revisions to that program. The EPA provided notices and opportunity for comments on the Agency's decisions to authorize the Texas program, and the EPA is not now reopening the decisions, nor requesting comments, on the Texas authorizations as published in the **Federal Register** notices specified in section F of this document.

This document incorporates by reference Texas' hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and federally enforceable program. By codifying Texas' authorized program and by amending the Code of Federal Regulations, the public will be more easily able to discern the status of federally approved requirements of the Texas hazardous waste management program.

The EPA is incorporating by reference the Texas authorized hazardous waste program in subpart SS of 40 CFR part 272. Section 272.2201 incorporates by reference Texas' authorized hazardous waste statutes and regulations. Section 272.2201 also references the statutory provisions (including procedural and enforcement provisions) which provide the legal basis for the State's implementation of the hazardous waste management program, the Memorandum of Agreement, the Attorney General's Statements and the Program Description, which are approved as part of the hazardous waste management program under Subtitle C of RCRA.

D. What Is the Effect of Texas' Codification on Enforcement?

The EPA retains its authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013, and 7003, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in authorized States. With respect to these actions, the EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than any

authorized State analogues to these provisions. Therefore, the EPA is not incorporating by reference such particular, approved Texas procedural and enforcement authorities. Section 272.2201(c)(2) of 40 CFR lists the statutory and regulatory provisions which provide the legal basis for the State's implementation of the hazardous waste management program, as well as those procedural and enforcement authorities that are part of the State's approved program, but these are not incorporated by reference.

E. What State Provisions Are Not Part of the Codification?

The public needs to be aware that some provisions of Texas (hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are "broader in scope" than RCRA subtitle C (see 40 CFR 271.1(i));

(2) Federal rules for which Texas is not authorized, but which have been incorporated into the State regulations because of the way the State adopted Federal regulations by reference;

(3) Unauthorized amendments to authorized State provisions; and

(4) New unauthorized State requirements.

State provisions that are "broader in scope" than the Federal program are not part of the RCRA authorized program and EPA will not enforce them. Therefore, they are not incorporated by reference in 40 CFR part 272. For reference and clarity, 40 CFR 272.2201(c)(3) lists the Texas regulatory provisions which are "broader in scope" than the Federal program and which are not part of the authorized program being incorporated by reference. "Broader in scope" provisions cannot be enforced by EPA; the State, however, may enforce such provisions under State law.

Texas has adopted but is not authorized for the following Federal rules published in the **Federal Register** on April 12, 1996 (61 FR 16290); December 5, 1997 (62 FR 64504); November 8, 2000 (65 FR 67068); and December 26, 2000 (65 FR 81373). Therefore, these Federal amendments included in Texas' (adoption by reference at 30 Texas Administrative Code (TAC) sections: 335.1(123)(A)(iv), 335.112(a)(19) and (20), 335.152(a)(17) and (18), and 335.431(c)(1), are not part of the State's authorized program and are not part of the incorporation by reference addressed by today's **Federal Register** document.

Additionally, Texas' hazardous waste regulations include amendments which have not been authorized by the EPA. Since the EPA cannot enforce a State's requirements which have not been reviewed and authorized in accordance with RCRA section 3006 and 40 CFR part 271, it is important to be precise in delineating the scope of a State's authorized hazardous waste program. Regulatory provisions that have not been authorized by the EPA include amendments to previously authorized State regulations as well as new State requirements.

In those instances where Texas has made unauthorized amendments to previously authorized sections of State code, the EPA is identifying in 40 CFR 272.2201(c)(4) any regulations which, while adopted by the State and incorporated by reference, include language not authorized by the EPA. Those unauthorized portions of the State regulations are not Federally enforceable. Thus, notwithstanding the language in Texas hazardous waste regulations incorporated by reference at 40 CFR 272.2201(c)(1), the EPA will only enforce those portions of the State regulations that are actually authorized by the EPA. For the convenience of the regulated community, the actual State regulatory text authorized by the EPA for the citations listed at 272.2201(c)(4) (i.e., without the unauthorized amendments) is compiled as a separate document, *Addendum to the EPA Approved Texas Regulatory Requirements Applicable to the Hazardous Waste Management Program, June 2005*. This document is available from EPA Region 6, Sixth Floor, 1445 Ross Avenue, Dallas, Texas 75202-2733, Phone number: (214) 665-8533, EPA Resource and Conservation Recovery Act (RCRA) Docket Information Center (5305G), 1200 Pennsylvania Avenue., NW., Washington DC 20460, National Archives and Records Administration (NARA), for information on the availability of this material at NARA, call 202-741-6030, and also Texas Commission on Environmental Quality, 1700 N. Congress Avenue, Austin, Texas 78711-3087.

State regulations that are not incorporated by reference in today's rule at 40 CFR 272.2201(c)(1), or that are not listed in 40 CFR 272.2201(c)(3) ("broader in scope") or 40 CFR 272.2201(c)(4) ("unauthorized amendments to authorized State provisions"), are considered new unauthorized State requirements. These requirements are not Federally enforceable.

With respect to any requirement pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) for which the State has not yet been authorized, the EPA will continue to enforce the Federal HSWA standards until the State is authorized for these provisions.

F. What Will Be the Effect of Federal HSWA Requirements on the Codification?

The EPA is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are implemented by EPA. Section 3006(g) of RCRA provides that any HSWA requirement or prohibition (including implementing regulations) takes effect in authorized and not authorized States at the same time. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by the EPA (50 FR 28702, July 15, 1985). The EPA has the authority to implement HSWA requirements in all States, including authorized States, until the States become authorized for such requirement or prohibition. Authorized States are required to revise their programs to adopt the HSWA requirements and prohibitions, and then to seek authorization for those revisions pursuant to 40 CFR part 271.

Instead of amending the 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), the EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR part 272 incorporation by reference. Until then, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

Some existing State requirements may be similar to the HSWA requirement implemented by the EPA. However, until the EPA authorizes those State requirements, the EPA can only enforce the HSWA requirements and not the State analogs. The EPA will not codify those State requirements until the State receives authorization for those requirements.

Statutory and Executive Order Reviews

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore, this action is not subject to review by OMB. This rule incorporated by reference Texas' authorized hazardous waste management

regulations, and imposes no additional requirements beyond those imposed by State law. This final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Incorporation by reference will not impose any new burdens on small entities. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely incorporates by reference certain existing State hazardous waste management program requirements which the EPA already approves under 40 CFR part 271, and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely incorporates by reference existing State hazardous waste management program requirements without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also does not have Tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000).

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply Distribution or Use" (66 FR 28344, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a State's application for incorporation by reference as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State incorporation by reference application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d)

of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. The final rule does not include environmental justice issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994). The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Parts 271 and 272

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

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: September 17, 2008.

Richard E. Greene,
Regional Administrator, Region 6.

■ For the reasons set forth in the preamble, 40 CFR parts 271 and 272 are amended as follows:

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

EPA is granting final authorization under part 271 to the State of Texas for revisions to its hazardous waste

program under the Resource Conservation and Recovery Act.

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

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

Authority: Sections 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).

Subpart SS—[Amended]

■ 2. Subpart SS is amended by revising § 272.2201 to read as follows:

§ 272.2201 Texas State-Administered Program: Final Authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), the EPA granted Texas final authorization for the following elements as submitted to EPA in Texas' Base program application for final authorization which was approved by EPA effective on December 26, 1984. Subsequent program revision applications were approved effective on October 4, 1985, February 17, 1987, March 15, 1990, July 23, 1990, October 21, 1991, December 4, 1992, June 27, 1994, November 26, 1997, December 3, 1997, October 18, 1999, November 15, 1999, September 11, 2000, June 14, 2005, and December 29, 2008.

(b) The State of Texas has primary responsibility for enforcing its hazardous waste management program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State Statutes and Regulations.* (1) The Texas statutes and regulations cited in paragraph (c)(1)(i) of this section are incorporated by reference as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* This incorporation by reference is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the Texas regulations that are incorporated by reference in this paragraph are available from West Publishing Company, 620 Opperman Drive, P.O. Box 64526, Saint Paul, MN 55164-0526; Phone: 1-800-328-4880; Web site: <http://west.thomson.com>.

(i) The Binder entitled "EPA Approved Texas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program", dated June 2005

(ii) [Reserved]

(2) The following provisions provide the legal basis for the State's implementation of the hazardous waste management program, but they are not being incorporated by reference and do not replace Federal authorities:

(i) Texas Health and Safety Code (THSC) Annotated, (Vernon, 2001); Chapter 361, The Texas Solid Waste Disposal Act, sections 361.002, 361.016, 361.017, 361.018, 361.024(e), 361.032, 361.033, 361.036, 361.037(a), 361.061, 361.063, 361.064, 361.066(b), 361.067, 361.068(a), 361.069 first two sentences, 361.078, 361.079, 361.080(a), 361.082(b), 361.082(c) (except second sentence), 361.082(e), 361.083, 361.084 (except 361.084(a) and (c)), 361.084(c) (except the phrase "or evidence of * * * waste management"), 361.085, 361.088(a) and (b), 361.088(c) (except the phrase "Except as provided by Subsection (e)"), 361.089, 361.090, 361.095(b)–(f), 361.096, 361.097, 361.098(a) (except the phrase "Except as provided in Subsections (b) and (c),"), 361.099(a), 361.100, 361.101, 361.102(a) (except the phrase "Except as provided by Subsections (b) and (c),"), 361.103 through 361.108, 361.109(a), 361.301, 361.321(a) and (b), 361.321(c) (except the phrase "Except as provided by Section 361.322(a),"), 361.321(d), and 361.321(e) (except the phrase "Except as provided by Section 361.322(e),"); Chapter 371, Texas Oil Collection, Management, and Recycling Act, sections 371.0025(b) and (c), 371.024(a), 371.024(c) and (d), 371.026(a) and (b), 371.028, and 371.043(b).

(ii) Texas Health and Safety Code (THSC) Annotated, (Vernon, 2002 Supplement), effective September 1, 2001: Chapter 361, The Texas Solid Waste Disposal Act, sections 361.082(h), 361.084(a), 361.088(g), and 361.114.

(iii) Texas Water Code (TWC), Texas Codes Annotated (Vernon, 2000), effective September 1, 1999, as amended: Chapter 5, sections 5.102 through 5.105, 5.112, 5.351, and 5.501; Chapter 7, sections 7.051(a), 7.053 through 7.062, 7.064 through 7.069, 7.075, 7.101, 7.102, 7.104, 7.107, 7.110, 7.162, 7.163, 7.176, 7.187, 7.189, 7.190, 7.252(1), 7.351, 7.353; Chapter 26, section 26.011; and Chapter 27, sections 27.018 and 27.019.

(iv) Texas Water Code (TWC), Texas Codes Annotated (Vernon, 2002), effective September 1, 2001, as amended: Chapter 5, section 5.177;

Chapter 7, sections 7.031, 7.052(a), and 7.102.

(v) Texas Government Code (Vernon, 1998), section 311.027, effective May 11, 1993.

(vi) Texas Administrative Code (TAC), Title 30, Environmental Quality, 1994, as amended, effective through January 1, 1994: Chapter 305, sections 305.91 through 305.93, 305.98, and 305.99.

(vii) Texas Administrative Code (TAC), Title 30, Environmental Quality, 1997, as amended, effective through January 1, 1997: Chapter 281, sections 281.17(d)–(f); Chapter 305, sections 305.29(b)–(d), 305.94 and 305.95, 305.97, 305.100, 305.101 (except 305.101(c)), 305.102, 305.103, and 305.105.

(viii) Texas Administrative Code (TAC), Title 30, Environmental Quality, 2002, as amended, effective through December 31, 2001: Chapter 39, sections 39.13 (except (10)), 39.413 (except (10)); Chapter 50, sections 50.13, 50.19, 50.39, 50.113, 50.119, and 50.139; Chapter 55, sections 55.27 (except (b)), 55.201 (except as applicable to contested case hearings), and 55.211 (except as applicable to contested case hearings); Chapter 70, section 70.10; Chapter 281, sections 281.1 (except the clause "except as provided by * * * Prioritization Process"), 281.2 introductory paragraph, 281.2(4), 281.3(a) and (b), 281.5 (except the clause "Except as provided by * * * Discharge Permits") and the phrase "radioactive material"), 281.18(a) (except for the sentence "For applications for radioactive * * * within 30 days."), 281.19(a) (except the last sentence), 281.19(b) (except the phrase "Except as provided in subsection (c) of this section,"), 281.20, 281.21(a) (except the phrase "and the Texas Radiation Control Act * * * Chapter 401."), 281.21(b), 281.21(c) (except the phrase "radioactive materials," in 281.21(c)(2)), 281.21(d) introductory paragraph (except the phrase "and the Texas Radiation Control Act * * * Chapter 401." and the phrase "For applications for minor amendments * * * summary is not necessary."), 281.21(d)(1)–(6) (except the phrase "and, for radioactive * * * radiation safety" in 281.21(d)(3)), 281.22(a) (except the phrase "For applications for radioactive * * * to deny the license."), 281.22(b) (except the phrase "or an injection well," in the first sentence and the phrase "For underground injection wells * * * the same facility or activity."), 281.23(a), 281.24; Chapter 305, sections, 305.64(d) and (f), 305.66(c), 305.66(e) (except for the last sentence), 305.66(f)–(l), 305.123 (except the phrase "and 401 * * *

regulation)", 305.125(1) and (3), 305.125(20), 305.127(1)(B)(i), 305.127(4)(A) and (C), 305.127(6), 305.401(a), 305.401(b) (except the text "\$ 39.3 of this title (relating to Purpose) * * * § 55.21 of this title (relating to Requests for Contested Case Hearings, Public Comment")", 305.401(d)–(h); and Chapter 335, sections 335.2(b), 335.43(b), 335.206, 335.391 through 335.393.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, and are not part of the authorized program, and are not incorporated by reference:

(i) Texas Health and Safety Code (THSC) Annotated, (Vernon 2001): Chapter 361, The Texas Solid Waste Disposal Act, sections 361.131 through 140; Chapter 371, Texas Oil Collection, Management, and Recycling Act, sections 371.021, 371.022, 371.024(e), 371.0245, 371.0246, 371.025, and 371.026(c).

(ii) Texas Administrative Code (TAC), Title 30, Environmental Quality, 2002, as amended, effective through December 31, 2001: Chapter 305, sections 305.53, 305.64(b)(4), 305.127(1)(G); Chapter 335, sections 335.321 through 335.332, and Appendices I and II.

(4)(i) *Unauthorized State Amendments*. The following authorized provisions of the Texas regulations include amendments published in the Texas Register that are not approved by EPA. Such unauthorized amendments are not part of the State's authorized program and are, therefore, not Federally enforceable. Thus, notwithstanding the language in the Texas hazardous waste regulations incorporated by reference at paragraph (c)(1)(i) of this section, EPA will enforce the State provisions that are actually authorized by EPA. The effective dates of the State's authorized provisions are listed in the following Table.

State provision	Effective date of authorized provision	Unauthorized State Amendments	
		Texas register reference	Effective date
335.2(c)	11/7/91	18 TexReg 2799	5/12/93
		18 TexReg 8218	11/23/93
35.6(a)	7/29/92	18 TexReg 2799	5/12/93
		22 TexReg 12060	12/15/97
		23 TexReg 10878	10/19/98
335.6(c) introductory paragraph	7/29/92	17 TexReg 8010	
		20 TexReg 2709	11/27/92
		20 TexReg 3722	4/24/95
		21 TexReg 1425	5/30/95
		21 TexReg 2400	3/01/96
		22 TexReg 12060	3/06/96
		23 TexReg 10878	12/15/97
			10/19/98
335.6(g)	7/29/92	18 TexReg 3814	6/28/93
		22 TexReg 12060	12/15/97
		23 TexReg 10878	10/19/98
335.10(b)(22)	7/27/88	17 TexReg 8010	11/27/92
335.24(b) introductory paragraph	3/1/96	21 TexReg 10983	11/20/96
		23 TexReg 10878	10/19/98
335.24(c) introductory paragraph	3/1/96	21 TexReg 10983	11/20/96
		23 TexReg 10878	10/19/98
335.41(c)	9/1/86	18 TexReg 8218	11/23/93
335.45(b)	9/1/86	17 TexReg 5017	7/29/92
335.204(a)(1)	5/28/86	16 TexReg 6065	11/07/91
335.204(b)(1)	5/28/86	16 TexReg 6065	11/07/91
335.204(b)(6)	5/28/86	16 TexReg 6065	11/07/91
335.204(c)(1)	5/28/86	16 TexReg 6065	11/07/91
335.204(d)(1)	5/28/86	16 TexReg 6065	11/07/91
335.204(e)(6)	5/28/86	16 TexReg 6065	11/07/91

(ii) The actual State regulatory text authorized by EPA (i.e., without the unauthorized amendments) is available as a separate document, *Addendum to the EPA-Approved Texas Regulatory and Statutory Requirements Applicable to the Hazardous Waste Management Program, June, 2005*. Copies of the document can be obtained from U.S. EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202.

(5) *Memorandum of Agreement*. The Memorandum of Agreement between EPA Region VI and the State of Texas, signed by the Executive Director of the Texas Natural Resource Conservation Commission (TNRCC) on April 26,

2000, and by the EPA Regional Administrator on June 14, 2000, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Statement of Legal Authority*. "Attorney General's Statement for Final Authorization", signed by the Attorney General of Texas on May 22, 1984 and revisions, supplements, and addenda to that Statement dated November 21, 1986, July 21, 1988, December 4, 1989, April 11, 1990, July 31, 1991, February 25, 1992, November 30, 1992, March 8, 1993, January 7, 1994, August 9, 1996, October 16, 1996, as amended February

7, 1997, March 11, 1997, January 5, 1999, November 2, 1999, and March 1, 2002 are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Program Description*. 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.*

3. Appendix A to part 272, State Requirements, is amended by revising

the listing for “Texas” to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Texas

The statutory provisions include:

Texas Health and Safety Code (THSC) Annotated, (Vernon 2001): Chapter 361, The Texas Solid Waste Disposal Act, sections 361.003 (except (3), (4), (19), (27), (35), and (39)), 361.066(a), 361.082(a), 361.082(f), 361.086, 361.087, 361.093, 361.094, 361.095(a), 361.099(b), and 361.110; Chapter 371, The Texas Oil Collection, Management, and Recycling Act, sections 371.003, 371.024(b), 371.026(d), and 371.041.

Copies of the Texas statutes that are incorporated by reference are available from West Publishing Company, 620 Opperman Drive, P. O. Box 64526, St. Paul, Minnesota 55164-0526; Phone: 1-800-328-4880; Web site: <http://west.thomson.com>.

The regulatory provisions include:

Texas Administrative Code (TAC), Title 30, Environmental Quality, 2002, as amended, effective through December 31, 2001. Please note that the 2002 TAC, Title 30 is the most recent version of the Texas authorized hazardous waste regulations. For a few provisions, the authorized version is found in the TAC, Title 30, Environmental Quality dated January 1, 1994, January 1, 1997, or December 31, 1999. Texas made subsequent changes to these provisions but these changes have not been authorized by EPA. The provisions from earlier sets of regulations are noted in the table below.

Chapter 20, Section 20.15; Chapter 35, Section 35.402(e); Chapter 39, Sections 39.5(g), 39.11, 39.103(a)(2), (b), (d)(4), and (g), 39.405(f)(1), 39.411 (except (b)(4)(B), (b)(10), (11), and (13)), 39.503(d); Chapter 55, Sections 55.25(b)(1)–(3), 55.152(b), 55.154, and 55.156(b)(1); Chapter 281, Section 281.3(c);

Chapter 305—Sections 305.1(a) (except the reference to Chapter 401, relative to Radioactive Materials); 305.2 introductory paragraph (except the references to Chapter 401, relative to Radioactive Materials), 305.2(1), (6), (12), (13), (16), (17), (21), (25), (27)–(29), (32), and (41)–(43); 305.29(a), (January 1, 1997); 305.30; 305.41 (except the reference to Chapter 401, relative to Radioactive Materials); 305.42(a), (b), and (d); 305.43(b); 305.44 (except (d)); 305.45(a) (except (a)(7)(I) and the phrase “§ 305.54 of this title * * * Content of Applications”), in 305.45(a)(8)(C)); 305.45(b); 305.47; 305.50 introductory paragraph—(3) (except the last two sentences in 305.50(2)); 305.50(4) introductory paragraph and (A); 305.50(4)(B)–(D), (January 1, 1994); 305.50(4)(G); 305.50(5)–(8), (13) and (14); 305.51; 305.61; 305.62(a) (except the phrase in the first sentence “§ 305.70 of this title * * * Solid Waste Class I Modifications” and the phrase in the fifth sentence “If the permittee requests a modification of a municipal solid waste permit * * * § 305.70 of this title.”); 305.62(b); 305.62(c), (January 1, 1997); 305.62(d) (except (d)(6)); 305.62(e)–(h); 305.63(a) introductory paragraph (except

first sentence); 305.63(a)(1) and (2); 305.63(a)(3) (except last sentence); 305.63(a)(4)–(6); 305.64(a), 305.64(b) (except (4) and (5)); 305.64(c); 305.64(e); 305.64(g), (December 31, 1999); 305.66(a) (except (7)–(9)); 305.66(d); 305.67 (except (c)); 305.69(a)–(h), (January 1, 1997); 305.69(i)–(k) (except (k) A.8–A.10); 305.121 (except the phrase “radioactive material disposal”); 305.122(a)–(c); 305.124; 305.125 (except (1), (3), the last two sentences in (5), (6), (9)(C), the phrase “as otherwise required by Chapter 336 of this title” relative to Radioactive Substances in (11)(B), (20), and (22)); 305.125(6), (January 1, 1997); 305.127 introductory paragraph; 305.127(1)(B)(iii), (E) and (F); 305.127(2); 305.127(3)(A) (except the last two sentences); 305.127(3)(B) and (C); 305.127(4)(B) and (5)(C); 305.128; 305.141 through 305.145; 305.146 introductory paragraph and (1), (January 1, 1997); 305.150; 305.171 through 305.175; 305.181 through 305.184; 305.191 through 305.194; 305.401(c); 305.571 through 305.573;

Chapter 324—Used Oil—Sections 324.1 through 324.2(6); 324.2(7)–(9), (January 1, 1997); 324.3; 324.4, (January 1, 1997); 324.6; 324.7, (January 1, 1997); 324.11 through 324.14; 324.15, (January 1, 1997); 324.16; 324.21, (January 1, 1997);

Chapter 335, Subchapter A—Industrial Solid Waste and Municipal Hazardous Waste in General—Sections 335.1 introductory paragraph—(4), (6)–(13), (17), (18), (20)–(24), (27), (29), (30), (32)–(39), (40) (except for the phrase “or is used for neutralizing the pH of non-hazardous industrial solid waste”), (41)–(43), (45)–(50), (52)–(58), (61)–(70), (72)–(79), (80)–(85) (except the phrase “solid waste or” in each subsection), (86)–(89), (90) (except the phrase “solid waste or”), (91)–(105), (107) (except the phrase “solid waste”), (108), (112), (113) (except the phrase “solid waste”), (114)–(117); 335.1(119) (December 31, 1999); 335.1(121)–(125), (127), (128), (129)(A)–(G) (except the phrase “Except for materials described in subparagraph (H) of this paragraph.”, at (129)(D) and (G) introductory paragraphs, (129)(I) and (J), (130), (132)–(141) (except the phrase “solid waste or” at (134), (137) and (139)), (142) (except the phrase “or industrial solid”), (143), (144), (145) (except the phrase “or industrial solid”), (146) (except the phrase “or industrial solid”), (148)–(150), (151) (except the phrase “solid waste or”), (152)–(157), (158) (except the phrase “or industrial solid”), (159)–(160), (161) (except the phrase “solid waste or”); 335.2(a) and (c); 335.2(d), (January 1, 1997); 335.2(e)–(g); 335.2(i), (j) and (l); 335.4; 335.5; 335.6(a); 335.6(b), (January 1, 1997); 335.6(c); 335.6(d) and (e), (January 1, 1994); 335.6(f)–(j); 335.7, (December 31, 1999); 335.8(a)(1) and (2); 335.9(a) (except (a)(2) and (3)); 335.9(a)(2) and (3), (January 1, 1997); 335.9(b), (January 1, 1994); 335.10(a) introductory paragraph and (a)(1), (January 1, 1994); 335.10(a)(3) (except the phrase, “unless the generator is identified in paragraph (2) of this section”); 335.10(a)(4); 335.10(a)(6); 335.10(b) (except 335.10(b)(5), (8), and (18)); 335.10(b)(5), (8), and (18), (January 1, 1994); 335.10(c) (except the phrase “the United States customs official,”); 335.10(d)–(f); 335.11 (except 11(d)); 335.12 (except 335.12(a)(5) and (d));

335.13(a), (January 1, 1997); 335.13(c) and (d), (January 1, 1994); 335.13(e) and (f), (January 1, 1997); 335.13(g), (January 1, 1994); 335.14; 335.15 introductory paragraph, (January 1, 1994); 335.15(1); 335.17(a); 335.18 (except 335.18(b)); 335.19 (except 335.19(d)); 335.20 through 335.22; 335.23 (except 335.23(2)); 335.23(2), (January 1, 1994); 335.24(a)–(f); 335.24(j) and (k); 335.29 through 335.31;

Chapter 335, Subchapter B—Hazardous Waste Management General Provisions—335.41(a)–(h); 335.41(j); 335.43 and 335.44, (December 31, 1999); 335.45; 335.47 (except 335.47(b) and the second sentence in 335.47(c)(3)); 335.47(b), (December 31, 1999);

Chapter 335, Subchapter C—Standards Applicable to Generators of Hazardous Waste—335.61 (except (f)); 335.62; 335.63; 335.65 through 335.69 (except 335.69(i)); 335.70; 335.71, (January 1, 1994); 335.73; 335.74; 335.76 (except 335.76(a), (b)(1), (f) and (h)); 335.76(a), (b)(1), and (f), (January 1, 1997); 335.77; 335.78 (except (b), (d)(2), (e) introductory paragraph, (f)(2), and (g)(2)); 335.78(b), (e) introductory paragraph, (f)(2), and (g)(2), (January 1, 1997);

Chapter 335, Subchapter D—Standards Applicable to Transporters of Hazardous Waste—335.91 (except 335.91(e)); 335.92; 335.93 (except 335.93(e)); 335.93(e), (December 31, 1999); 335.94 (except the phrase “owned or operated by a registered transporter” in (a) introductory paragraph);

Chapter 335, Subchapter E—Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities—335.111; 335.112 (except (a)(7), (a)(17), (b)(4)(I) and (J), and (b)(7)); 335.112(a)(7), (January 1, 1997); 335.113; 335.114, (January 1, 1997); 335.115 introductory paragraph, (January 1, 1997); 335.115 (1)–(4); 335.116; 335.117 (except (a)(2)(B), (a)(2)(C), and (b)(2)); 335.117(a)(2)(B), (a)(2)(C), and (b)(2) (January 1, 1997); 335.118 through 335.127;

Chapter 335, Subchapter F—Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities—335.151; 335.152 (except (a)(4), (a)(6), and (c)(5)–(7)); 335.152(a)(4), (a)(6), (January 1, 1997); 335.153; 335.154, (January 1, 1997); 335.155 introductory paragraph, (January 1, 1997); 335.155 (1)–(3); 335.156 through 335.166; 335.167(a); 335.167(b) and (c), (December 31, 1999); 335.168 through 335.178;

Chapter 335, Subchapter G—Location Standards for Hazardous Waste Storage, Processing, or Disposal—335.201 (a) (except (a)(3)); 335.201(c); 335.202 introductory paragraph, (2), (4), (9)–(11), (13), (15)–(18); 335.203; 335.204(a) introductory paragraph—(5); 335.204(b)(1)–(6); 335.204(c)(1)–(5); 335.204(d)(1)–(5); 335.204(e) introductory paragraph; 335.204(e)(1) introductory paragraph (except the phrase “Except as * * * (B) of this paragraph,” and the word “event” at the end of the paragraph); 335.204(e)(2)–(7); 335.204(f); 335.205(a) introductory paragraph—(2) and (e);

Chapter 335, Subchapter H—Standards for the Management of Specific Wastes and Specific Types of Facilities—335.211; 335.212; 335.213, (January 1, 1997); 335.214; 335.221 (except (a)(1)(B)); 335.222 through

335.225; 335.241 (except (b)(4) and (d)); 335.241(d), (January 1, 1997); 335.251; 335.261 (except (e)); 335.271; 335.272;

Chapter 335, Subchapter O—Land Disposal Restrictions—335.431; Chapter 335, Subchapter R—Waste Classification—335.504 introductory paragraph—(2); 335.504(3) and (4), (December 31, 1999).

Copies of the Texas regulations that are incorporated by reference are available from West Publishing Company, 620 Opperman Drive, P.O. Box 64526, St. Paul, Minnesota 55164-0526; Phone: 1-800-328-4880; Web site: <http://west.thomson.com>.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 98-120; FCC 08-224]

Carriage of Digital Television Broadcast Signals

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission clarifies a number of existing rules relating to cable carriage of digital signals. As explained, the carriage elections that must be made by October 1, 2008, will determine a station's carriage rights throughout the entire 2009-2011 carriage election cycle. We also clarify the channel placement options applicable to digital must-carry stations, based upon the *First Report and Order* and the statute. Also, for those low-power stations that have the right to demand carriage by cable operators, we clarify that their statutory carriage rights extend to broadcasting in digital.

DATES: Effective October 29, 2008.

ADDRESSES: You may submit comments, identified by FCC 08-224, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional

information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, please contact Lyle Elder, Lyle.Elder@fcc.gov, of the Policy Division, Media Bureau, (202) 418-2120, or Eloise Gore, Eloise.Gore@fcc.gov, of the Media Bureau, (202) 418-7200.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Declaratory Ruling in FCC 08-224, adopted September 24, 2008, and released September 26, 2008. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Summary of the Final Rule

I. Introduction

1. Pursuant to section 614(b)(4)(B) of the Communications Act of 1934, as amended (the "Act"), the Commission initiated this proceeding in 1998 to address the responsibilities of cable television operators with respect to carriage of digital broadcasters in light of the significant changes to the broadcasting and cable television industries resulting from the Nation's transition to digital television. Now that Congress has established February 17, 2009, as the date certain for the end of analog broadcasts by full-power television licensees, and low-power and class A television licensees are beginning their transition to digital broadcast, we must further clarify the digital carriage responsibilities of cable operators.

2. Specifically, we clarify that the carriage elections that must be made by October 1, 2008, will determine a station's carriage rights throughout the entire 2009-2011 carriage election

cycle. We also clarify the channel placement options applicable to digital must-carry stations, based upon the *First Report and Order*, 66 FR 16533, March 26, 2001, and the statute. Low-power broadcasters, while not required to make their transition to digital by February 17, 2009, nevertheless are doing so in increasing numbers, and will continue to do so of their own volition. For those low-power stations that have the right to demand carriage by cable operators, we clarify that their statutory carriage rights extend to broadcasting in digital.

II. Background

3. Under the Act, cable systems are presumptively required to carry all local television stations in all television markets they serve. Commercial television stations may, however, choose to be carried pursuant to voluntary retransmission consent agreements rather than by mandatory carriage. Generally, every three years commercial television stations must elect to either grant retransmission consent or pursue their mandatory carriage rights. Noncommercial television stations may only elect mandatory carriage, but are nonetheless free to negotiate carriage with cable operators.

4. In this docket, the Commission has determined the broadcast signal carriage responsibilities of cable television operators during and after the transition is completed. The statutory provision triggering this rulemaking is found in section 614(b)(4)(B) of the Act, which states:

5. At such time as the Commission prescribes modifications of the standards for television broadcast signals, the Commission shall initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed to conform with such modified standards.

6. The Notice of Proposed Rulemaking ("1998 NPRM") in this proceeding sought to amend the cable television broadcast signal carriage rules, embodied in must-carry and retransmission consent, to accommodate the carriage of digital broadcast television signals.

7. The Commission's *First Report and Order and Further Notice of Proposed Rulemaking* in this proceeding adopted rules for carriage of digital broadcast signals pursuant to retransmission consent and mandatory carriage when a local television station is broadcasting only a digital signal. The Commission