

preemption provision, the exemption procedures, and the exceptions to the provision.

Even where the express preemption provision is not applicable, implied preemption may arise. *See Geier v. American Honda Co.* 529 U.S. 861 (2000). Under the principles of implied conflict preemption, courts have found State law preempted where it is impossible to comply with both Federal and State law or where the State law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *See English v. General Electric Co.*, 496 U.S. 72, 79 (1990); *Florida Lime & Avocado Growers, Inc.*, 373 U.S. 132, 142–43 (1963); *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

This rule amends the labeling requirements for certain application OTC drug products to require the addition of a side effects statement, and to require pharmacies and authorized dispensers to distribute the side effects statement with each prescription drug approved under section 505 of the act and dispensed. This rule would have a preemptive effect to the extent that a State requires labeling that directly conflicts with, is different from, or is in addition to, the side effects statement required by this rule for certain application OTC drug products. This preemptive effect is consistent with what Congress set forth in section 751 of the act. Section 751(a) of the act displaces both State legislative requirements and State common law duties. The rule would also have a preemptive effect to the extent that a State imposes requirements on pharmacies or authorized dispensers that conflict with the requirements of this rule or frustrate the federal purpose with respect to distribution of the side effects statement. Preemption with respect to these requirements is consistent with the doctrine of implied conflict preemption. FDA believes that the preemptive effect of the final rule, if finalized as proposed, would be consistent with Executive Order 13132. Section 4(e) of the Executive order provides that "when an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings." FDA provided the States with an opportunity for appropriate participation in this rulemaking when it sought input from all stakeholders through publication of the proposed rule (69 FR 21778). FDA received no comments from any States on the proposed rulemaking. On January

3, 2008, FDA published an interim final rule codifying the proposed rule which, under FDAAA, became effective by operation of law on January 1, 2008 (73 FR 402). FDA received no comments from any State on the interim final rule.

In addition, on July 31, 2008, the FDA Division of Federal and State Relations provided notice via fax and e-mail transmission to elected officials of State governments and their representatives of national organizations. The notice provided the States with further opportunity for comment on the rule. It advised the States of the publication of the proposed rule and interim final rule and encouraged State and local governments to review the notice and interim final rule to provide any comments to Docket No. FDA–2003–N–0313 (formerly Docket No. 2003N–0342) opened in the April 22, 2004, **Federal Register** proposed rule, by a date 30 days from the date of the notice (i.e., by August 31, 2008, or to contact certain named individuals. FDA received no comments in response to this notice. The notice has been filed in Docket No. FDA–2003–N–0313.

In conclusion, FDA believes that it has complied with all of the applicable requirements under the Executive order and has determined that the preemptive effects of this rule are consistent with Executive Order 13132.

(FDA has verified all Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, the interim final rule amending 21 CFR parts 201 and 208 and adding 21 CFR part 209, which was published at 73 FR 402 (January 3, 2008), is adopted as a final rule without change.

Dated: October 21, 2008.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E8–25670 Filed 10–27–08; 8:45 am]

**BILLING CODE 4160–01–S**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 272

[EPA–R06–RCRA–2008–0753; FRL–8729–6]

#### New Mexico: Incorporation by Reference of Approved State Hazardous Waste Management Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Immediate final rule.

**SUMMARY:** 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 New Mexico's 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 this regulation 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 Director of the Federal Register approves this incorporation by reference as of December 29, 2008 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

**ADDRESSES:** Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. *E-mail:* [patterson.alima@epa.gov](mailto:patterson.alima@epa.gov).

3. *Mail:* Alima Patterson, Region 6, Regional Authorization 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, State/Tribal Oversight Section (6PD–O), Multimedia Planning

and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

**Instructions:** Direct your comments to Docket ID No. EPA–R06–RCRA–2008–0753. EPA’s policy is that all comments received will be included in the public docket without change, including personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov), or e-mail. The Federal [www.regulations.gov](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 [www.regulations.gov](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. (For additional information about the EPA’s public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>).

You can view and copy the documents that form the basis for this 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) 665–8533. 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, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, (214) 665–8533, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, and e-mail address [patterson.alima@epa.gov](mailto:patterson.alima@epa.gov).

**SUPPLEMENTARY INFORMATION:**

#### 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 Authorization and Codification of New Mexico’s Hazardous Waste Management Program?

New Mexico initially received Final authorization effective January 25, 1985 (50 FR 1515), to implement its Base Hazardous Waste Management program. Subsequently, the EPA approved additional program revision applications effective 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); July 10, 1995 (60 FR 20238); January 2, 1996 (60 FR 53708) as affirmed by the EPA in the **Federal Register** notice published on January 26, 1996 (61 FR 2450); March 10, 1997 (61 FR 67474); October 9, 2001 (66 FR 42140); and October 16, 2007 (72 FR 46165). The EPA incorporated by reference New Mexico’s then authorized hazardous waste program effective December 13, 1993 (58 FR 52677); August 21, 1995 (60 FR 32113); November 18, 1996 (61 FR 49265); July 13, 1998 (63 FR 23224); and October 27, 2003 (68 FR 51487). In this document, the EPA is revising Subpart GG of 40 CFR part 272 to include the recent authorization revision action effective October 16, 2007 (72 FR 46165).

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

The purpose of today’s **Federal Register** document is to codify New Mexico’s 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 New Mexico program, and the EPA is not now reopening the decisions, nor requesting comments, on the New Mexico authorizations as published in the **Federal Register** notices specified in Section B of this document.

This document incorporates by reference New Mexico’s hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program. By codifying New Mexico’s 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 New Mexico hazardous waste management program.

The EPA is incorporating by reference the New Mexico authorized hazardous waste program in subpart GG of 40 CFR part 272. Section 272.1601 incorporates by reference New Mexico’s authorized hazardous waste statutes and regulations. Section 272.1601 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 New Mexico’s 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 New Mexico procedural and enforcement authorities. Section 272.1601(c)(2) of 40 CFR lists the statutory 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 New Mexico's 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 New Mexico is not authorized, but which have been incorporated into the State regulations because of the way the State adopted Federal regulations by reference.

State provisions that are "broader in scope" than the Federal program are not part of the RCRA authorized program and the EPA will not enforce them. Therefore, they are not incorporated by reference in 40 CFR part 272. For reference and clarity, 40 CFR 272.1601(c)(3) lists the New Mexico 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 the EPA; the State, however, may enforce such provisions under State law.

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 the 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.

### G. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) 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 incorporates by reference New Mexico's authorized hazardous waste management regulations and imposes no additional requirements beyond those imposed by State law. 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 approved under 40 CFR part 271, and with which regulated entities must already comply, 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 authorized 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 rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

The requirements being codified are the result of New Mexico's voluntary participation in the EPA's State program authorization process under RCRA Subtitle C. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. 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 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. This 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.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended 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. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and 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). This action will be effective December 29, 2008.

**List of Subjects in 40 CFR Part 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, Water pollution control, Water supply.

**Authority:** This action 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 part 272 is amended as follows:

**PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS**

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

**Authority:** Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

■ 2. Subpart GG is amended by revising § 272.1601 to read as follows:

**§ 272.1601 New Mexico State-Administered Program: Final Authorization.**

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), the EPA granted New Mexico final authorization for the following elements as submitted to EPA in New Mexico's base program application for final authorization which was approved by EPA effective on January 25, 1985. Subsequent program revision applications were approved effective on April 10, 1990, July 25, 1990, December 4, 1992, August 23, 1994, December 21, 1994, July 10, 1995, January 2, 1996, March 10, 1997, October 9, 2001, and October 16, 2007.

(b) The State of New Mexico 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 New Mexico 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.* The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the New Mexico regulations that are incorporated by reference in this paragraph from the New Mexico Commission of Public Records, State Records Center and Archives, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507; Phone number (505) 476-7907; Web site: <http://www.nmcprr.state.nm.us/>. The statutes are available from ConwayGreene Company, 1400 East 30th Street, Suite #402, Cleveland, OH 44114; Phone number (216) 619-8091; Web site: <http://www.conwaygreene.com>. You may inspect a copy at EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202 (Phone number (214) 665-8533), or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(i) The binder entitled "EPA Approved New Mexico Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program", dated October 2007.

(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) New Mexico Rules Annotated, Rules of Civil Procedure for the District Courts, Article 4, (1995), Section 1-024.

(ii) New Mexico Statutes 1978 Annotated, Inspection of Public Records Act, Chapter 14, Article 2, (2003 Replacement Pamphlet), Sections 14-2-1 *et seq.*

(iii) New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4, (2000 Replacement Pamphlet), Sections 74-4-4.1, 74-4-4.2.C through 74-4-4.2.F, 74-4-4.2.G(1), 74-4-4.2.H, 74-4-4.2.I, 74-4-4.7.B and .C, 74-4-5, 74-4-7, 74-4-10.1 (except 74-4-10.1.C), and 74-4-14.

(iv) New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4, (2002 Cumulative Supplement), Sections 74-4-4 (except 74-4-4E), 74-4-4.3 (except 74-4-4.3.A(2) and 74-4-4.3.F), 74-4-10, 74-4-11 through 74-4-13.

(v) Title 20, Chapter 4, Part 1, New Mexico Administrative Code, effective October 1, 2003, unless otherwise indicated: Sections 20.4.1.901 (except 20.4.1.901.B.1 through 20.4.1.901.B.6, and 20.4.1.901.E), 20.4.1.1100 (June 14, 2000), 20.4.1.1104 (June 14, 2000), 20.4.1.1105 (June 14, 2000), and 20.4.1.1107.

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

(ii) New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4, (2000 Replacement Pamphlet), Sections 74-4-3.3 and 74-4-4.2.J.

(4) *Unauthorized State Amendments.* The State's adoption of the Federal rules listed in the following table is not approved by the EPA and are, therefore, not enforceable:

Federal requirement	Federal Register reference	Publication date
Biennial Report .....	48 FR 3977 .....	01/28/83
Permit Rules; Settlement Agreement .....	48 FR 39611 .....	09/01/83
Interim Status Standards; Applicability .....	48 FR 52718 .....	11/22/83
Chlorinated Aliphatic Hydrocarbon Listing (F024) .....	49 FR 5308 .....	02/10/84
National Uniform Manifest .....	49 FR 10490 .....	03/20/84
Recycled Used Oil Management Standards .....	57 FR 41566: Amendments to 40 CFR Parts 260, 261 and 266 .....	09/10/92
	58 FR 26420: Amendments to 40 CFR Parts 261, 264 and 265 .....	05/03/93
	58 FR 33341: Amendments to 40 CFR Parts 261, 264 and 265 .....	06/17/93
	63 FR 24963: Amendments to 40 CFR Part 261 .....	05/06/98

Federal requirement	Federal Register reference	Publication date
Mineral Processing Secondary Materials	63 FR 28556; Amendments to 40 CFR Part 261 .....	05/26/98

(5) *Memorandum of Agreement*. The Memorandum of Agreement between EPA Region 6 and the State of New Mexico, signed by the EPA Regional Administrator on July 25, 2007, 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 New Mexico January 1985, and revisions, supplements and addenda to that Statement dated April 13, 1988; September 14, 1988; July 19, 1989; July 23, 1992; February 14, 1994; July 18, 1994; July 20, 1994; August 11, 1994; November 28, 1994; August 24, 1995; January 12, 1996; June 14, 2000, and August 3, 2006, 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 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 is amended by revising the listing for "New Mexico" to read as follows:

#### Appendix A to Part 272—State Requirements

\* \* \* \* \*

#### New Mexico

The statutory provisions include:

New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4 (2000 Replacement Pamphlet). Please note that for a few provisions the version found in the 2002 Cumulative Supplement to NMSA 74-4 is the approved version of the statutes.

Chapter 74, Article 4, Sections 74-4-2, 74-4-3 (except 74-4-3.A, 74-4-3.N, 74-4-3.R, and 74-4-3.V) (2002 Cumulative Supplement), 74-4-3.1, 74-4-4.2.A, 74-4-4.2.B, 74-4-4.2.G introductory paragraph, 74-4-4.2.G(2), 74-4-4.3.F (2002 Cumulative Supplement), 74-4-4.7 (except 74-4-4.7.B and 74-4-4.7.C), 74-4-9, and 74-4-10.1.C, as published by ConwayGreene Company, 1400 East 30th Street, Suite #402, Cleveland, OH 44114; Phone number (216) 619-8091; Web site: <http://www.conwaygreene.com>.

The regulatory provisions include:

Title 20, Chapter 4, Part 1, New Mexico Annotated Code, effective October 1, 2003, unless otherwise indicated, Sections 20.4.100, 20.4.1.101, 20.4.1.200, 20.4.1.300,

20.4.1.400, 20.4.1.401, 20.4.1.500, 20.4.1.501, 20.4.1.600, 20.4.1.601, 20.4.1.700, 20.4.1.800, 20.4.801, 20.4.1.900, 20.4.1.901.B.1 through 20.4.1.901.B.6, 20.4.1.901.E, 20.4.1.1000, 20.4.1.1001 (June 14, 2000), 20.4.1.1102 (June 14, 2000), and 20.4.1.1103. Copies of the New Mexico regulations can be obtained from the New Mexico Commission of Public Records, State Records Center and Archives, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507; Phone number (505) 476-7907; Web site: <http://www.nmcpr.state.nm.us/>.

[FR Doc. E8-25533 Filed 10-27-08; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 08-2276; MB Docket No. 07-182; RM-11393; MB Docket No. 07-194; RM-11397]

### Radio Broadcasting Services; Antlers, OK; Hico, TX, and Hugo, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** The Audio Division, at the request of Liberman Broadcasting of Dallas License LLC, allots FM Channel 293A in lieu of vacant FM Channel 285A at Hico, Texas. Channel 293A can be allotted at Hico, Texas, in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 km (3.4 miles) south of Hico at the following reference coordinates: 31-56-00 North Latitude and 98-02-00 West Longitude. The Audio Division further amends the reference coordinates of vacant FM Channel 285A at Broken Bow, Oklahoma, to reflect a site restriction of 12.8 km (7.9 miles) northeast of Broken Bow at the following reference coordinates: 34-06-21 North Latitude and 94-38-09 West Longitude.

**DATES:** Effective November 24, 2008.

**ADDRESSES:** Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Deborah Dupont, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MB Docket Nos. 07-182 and 07-194, adopted October 8, 2008, and released October 10, 2008. The full text

of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, (800) 378-3160, or via the company's Web site, <http://www.bcpweb.com>. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

### PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

#### § 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 285A and adding Channel 293A at Hico.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E8-25726 Filed 10-27-08; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 224

[Docket No. 080320453-8705-01]

RIN 0648-XG60

### Endangered and Threatened Species; Final Rule to Remove the Caribbean Monk Seal From the Federal List of Endangered and Threatened Wildlife

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and