

determination of the effectively connected income of a banking, financing or similar business. Because those rules apply to both section 585(a)(2)(B) banks and to foreign corporations that are not regulated as banks but otherwise engage in financial services activities (See *Inverworld v. Commissioner*, T.C. Memo. 1996–301, supplemented by T.C. Memo 1997–226), the final regulations clarify that these rules are not considered “special rules applicable to banks.”

#### Effective Dates

The regulations that address the Federal tax classification of business entities wholly owned by a foreign government under § 301.7701–2 apply on or after January 14, 2002, to such business entities regardless of any prior entity classification, and the regulations that address the definition of the term entity for purposes of section 892(a)(2)(B) apply on or after January 14, 2002. The regulations relating to a nonbank entity that is wholly owned by a foreign bank apply to taxable years beginning after January 12, 2001.

#### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

#### Drafting Information

The principal author of these regulations is Camille B. Evans of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

#### List of Subjects

##### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

##### 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift Taxes, Income taxes,

Penalties, Reporting and recordkeeping requirements.

#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

#### PART 1—INCOME TAXES

1. The authority citation for part 1 is amended by removing the entry for “Sections 1.892–1T through 1.892–7T” and adding the following entries in numerical order:

**Authority:** 26 U.S.C. 7805 \* \* \*

Section 1.892–1T also issued under 26 U.S.C. 892(c).

Section 1.892–2T also issued under 26 U.S.C. 892(c).

Section 1.892–3T also issued under 26 U.S.C. 892(c).

Section 1.892–4T also issued under 26 U.S.C. 892(c).

Section 1.892–5 also issued under 26 U.S.C. 892(c).

Section 1.892–5T also issued under 26 U.S.C. 892(c).

Section 1.892–6T also issued under 26 U.S.C. 892(c).

Section 1.892–7T also issued under 26 U.S.C. 892(c). \* \* \*

2. Section 1.892–5 is added to read as follows:

##### § 1.892–5 Controlled commercial entity.

(a) through (a)(2) [Reserved]. For further information, see § 1.892–5T(a) through (a)(2).

(3) For purposes of section 892(a)(2)(B), the term *entity* means and includes a corporation, a partnership, a trust (including a pension trust described in § 1.892–2T(c)) and an estate.

(4) *Effective date.* This section applies on or after January 14, 2002. See § 1.892–5T(a) for the rules that apply before January 14, 2002.

(b) through (d) [Reserved]. For further information, see §§ 1.892–5T(b) through (d).

3. Section 1.892–5T is amended by:

1. Removing the concluding text immediately following paragraph (a)(2).
2. Adding paragraph (a)(3).

The addition reads as follows:

##### § 1.892–5T Controlled commercial entity (temporary regulations).

(a) \* \* \*

(3) [Reserved]. For further information, see § 1.892–5(a)(3).

\* \* \* \* \*

#### PART 301—PROCEDURE AND ADMINISTRATION

4. The authority citation for part 301 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

5. Section 301.7701–2 is amended by:

1. Revising paragraphs (b)(6) and (c)(2)(ii).

2. Revising the first sentence of paragraph (e).

The revisions read as follows:

##### § 301.7701–2 Business entities; definitions.

\* \* \* \* \*

(b) \* \* \*

(6) A business entity wholly owned by a State or any political subdivision thereof, or a business entity wholly owned by a foreign government or any other entity described in § 1.892–2T;

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(ii) *Special rule for certain business entities.* If the single owner of a business entity is a bank (as defined in section 581, or, in the case of a foreign bank, as defined in section 585(a)(2)(B) without regard to the second sentence thereof), then the special rules applicable to banks under the Internal Revenue Code will continue to apply to the single owner as if the wholly owned entity were a separate entity. For this purpose, the special rules applicable to banks under the Internal Revenue Code do not include the rules under sections 864(c), 882(c), and 884.

\* \* \* \* \*

(e) *Effective date.* Except as otherwise provided in this paragraph (e), the rules of this section apply as of January 1, 1997, except that paragraph (b)(6) applies on or after January 14, 2002, to a business entity wholly owned by a foreign government regardless of any prior entity classification, and paragraph (c)(2)(ii) of this section applies to taxable years beginning after January 12, 2001. \* \* \*

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

Approved: July 25, 2002.

**Pamela F. Olson,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 02–19349 Filed 7–31–02; 8:45 am]

BILLING CODE 4830–01–P

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 272

[FRL–7232–3]

#### New York: Incorporation by Reference of 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. 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 regulations that will be subject to EPA's inspection and enforcement. Today's rule does not incorporate by reference the New York hazardous waste statutes. The rule codifies in the regulations the prior approval of New York's hazardous waste management program and incorporates by reference authorized provisions of the State's regulations.

**DATES:** This regulation is effective September 30, 2002, unless EPA receives adverse written comment on the codification of the New York authorized RCRA program by the close of business September 3, 2002. If 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 New York regulations contained in this rule is approved by the Director of the Federal Register as of September 30, 2002 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

**ADDRESSES:** Send written comments to Michael Infurna, Division of Environmental Planning and Protection, EPA Region 2, 290 Broadway, 22nd Floor, New York, NY 10007, Phone number: (212) 637-4177. You can inspect the records related to this codification effort in the EPA Region 2 Library, 290 Broadway, 16th Floor, New York, NY 10007, Phone number: (212) 637-3185. The public is advised to call in advance to verify the business hours.

**FOR FURTHER INFORMATION CONTACT:** Michael Infurna, Division of Environmental Planning and Protection, EPA Region 2, 290 Broadway, 22nd Floor, New York, NY 10007, Phone number: (212) 637-4177.

**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. EPA codifies its authorization of State programs in 40 CFR part 272 and incorporates by reference State regulations that 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 Has New York Previously Been Authorized for?**

New York initially received Final authorization effective on May 29, 1986 (51 FR 17737, May 15, 1986) to implement its base hazardous waste management program. New York received authorization for revisions to its program effective July 3, 1989 (54 FR 19184, May 4, 1989), May 7, 1990 (55 FR 7896, March 6, 1990), October 29, 1991 (56 FR 42944, August 30, 1991), May 22, 1992 (57 FR 9978, March 23, 1992), August 28, 1995 (60 FR 33753, June 29, 1995), October 14, 1997 (62 FR 43111, August 12, 1997) and January 15, 2002 (66 FR 57679, November 16, 2001).

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

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

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

To codify EPA's approval of New York's hazardous waste management program, EPA is adding Subpart HH to 40 CFR part 272. Section 272.1651 incorporates by reference New York's authorized hazardous waste regulations. Section 272.1651 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 York's Codification on Enforcement?**

The Agency 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 Agency 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 York procedural and enforcement authorities. Section 272.1651(b)(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 York'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) Unauthorized amendments to authorized State provisions; and
- (3) 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 272.1651(b)(3) lists the New York statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not part of the authorized program being codified. "Broader in scope" provisions cannot be enforced by EPA; the State, however, may enforce such provisions under State law.

Additionally, New York's hazardous waste regulations include amendments which have not been authorized by EPA. Since 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 EPA include amendments to previously authorized State regulations as well as new State requirements.

In those instances where New York has made unauthorized amendments to previously authorized sections of State code, EPA is identifying in 40 CFR 272.1651(b)(4) any regulations which, while adopted by the State and incorporated by reference, include language not authorized by EPA. Those unauthorized portions of the State regulations are not Federally enforceable. Thus, notwithstanding the language in the New York hazardous waste regulations incorporated by reference at 40 CFR 272.1651(b)(1), EPA will only enforce those portions of the State regulations that are actually authorized by EPA. For the convenience of the regulated community, the actual State regulatory text authorized by EPA for the citations listed at 272.1651(b)(4) (*i.e.*, without the unauthorized amendments) is compiled as a separate document, Addendum to the EPA Approved New York Regulatory Requirements Applicable to the Hazardous Waste Management Program, January 2002. This document is available from EPA Region 2, EPA Region 2 Library, 290 Broadway, 16th Floor, New York, New York 10007, Phone number: (212) 637-3185.

State regulations that are not incorporated by reference in today's rule at 40 CFR 272.1651(b)(1), or that are not listed in 40 CFR 272.1651(b)(3) ("broader in scope") or 40 CFR 272.1651(b)(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, 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 Agency 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 EPA (50 FR 28702, July 15, 1985). 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), 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 EPA. However, until EPA authorizes those State requirements, EPA can only enforce the HSWA requirements and not the State analogs. EPA will not codify those State requirements until the State receives authorization for those requirements.

#### **G. Administrative Requirements**

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 York's authorized hazardous waste management regulations and does not impose 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 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). For the same reason, this action also does not have tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000). It does not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action will not have substantial direct effects on the States, on the relationship between the Federal 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 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 York's voluntary participation in 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, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for

affected conduct. 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. 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 September 30, 2002.

#### 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: May 30, 2002.

**William J. Muszynski,**

*Deputy Regional Administrator, EPA Region 2.*

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 HH is amended by adding § 272.1651 to read as follows:

#### § 272.1651 New York State-Administered Program: final authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), New York has final authorization for the following elements as submitted to EPA in New York's base program application for final authorization which was approved by EPA effective on May 29, 1986. Subsequent program revision applications were approved effective on July 3, 1989, May 7, 1990, October 29, 1991, May 22, 1992, August 28, 1995, October 14, 1997, and January 15, 2002.

(b) *State Statutes and Regulations.* (1) The New York regulations cited in paragraph (b)(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 New York regulations that are incorporated by reference in this paragraph are available from West Group, 610 Opperman Drive, Eagan, MN 55123, ATTENTION: D3-10 (Phone #: 1-800-328-9352).

(i) The Binder entitled "EPA Approved New York Regulatory Requirements Applicable to the Hazardous Waste Management Program", dated January 2002.

(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) Environmental Conservation Laws (ECL), 1997 Replacement Volume, as revised by the 1999 Cumulative Pocket Part: sections 1-0303(18), 3-0301(1) (introductory paragraph); 3-0301(1)(a) and (b); 3-0301(1)(m); 3-0301(1)(o); 3-0301(1)(w); 3-0301(1)(x); 3-0301(1)(cc); 3-0301(2)(a), (b), (d)-(j), (l), (m) and (q); 3-0301(4); 19-0301(1) (except 19-0301(c), (e) and (f)); 19-0303(1)-(3); 19-0304; 27-0105; 27-0701; 27-0703; 27-0705; 27-0707 (except 27-0707(2-c)); 27-0711; 27-0900 through 27-0908; 27-0909 (except 27-0909(5)); 27-0910 through 27-0922; 70-0101; 70-0103; 70-0105 (except 70-0105(3) and 70-0105(6)); 70-0107(1) and (2); 70-0107(3) (except 70-0107(3)(a)-(k), (m) and (n)); 70-0109; 70-0113; 70-0115 (except (2)(c) and (d)); 70-0117; 70-0119; 70-0121; 71-0301; 71-1719; 71-2705; 71-

2707; 71-2709 through 71-2715; 71-2717; 71-2720; and 71-2727.

(ii) McKinney's Consolidated Laws of New York, Book 46, Public Officers Law (POL), as amended through 1999: sections 87 and 89.

(iii) McKinney's Consolidated Laws of New York, Book 7B, Civil Practice Law and Rules (CPLR), as amended through 1999: sections 6301; 6311; and 6313.

(iv) Title 6, New York Codes, Rules and Regulations (6 NYCRR), Volume A-2A, Hazardous Waste Management System, as initially published on January 1, 1999 and amended through March 15, 1999: sections 372.1(f); 373-1.1(f) and (g); 373-1.4(b); 373-1.4(d)-(f); 373-1.6(c)(1)-(3); 373-1.9 (except (a)(2)(iii); (iv) and (vi)); 621.1 through 621.4; 621.5 (except (d)(5), (d)(6)(i), (d)(7)(i)(a), (d)(7)(i)(c) and (d)(9)); 621.6 (except (b), (d)(4) and (d)(5)); 621.7; 621.8; 621.9 (except (a)(5), (c)(2) and (e)(2)); 621.10; 621.11 (except (d)); 621.12 through 621.15; and 621.16 (except (b), (d) and (e)).

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

(i) Environmental Conservation Laws (ECL), 1997 Replacement Volume: sections 27-0301; 27-0303; 27-0305; 27-0307; 27-0909(5); 27-0923; and 27-0925.

(ii) Title 6, New York Codes, Rules and Regulations (6 NYCRR), Volume A-2A, Hazardous Waste Management System, as initially published on January 1, 1999 and amended through March 15, 1999: Section 371.4(e); 372.3(a)(1); 372.3(a)(4); 372.3(b)(6)(iv); 372.3(d)(3); 373-1.1(d)(1)(x); 373-1.4(c); and 373-2.15(a)(2).

(iii) Throughout New York's hazardous waste regulations, the State cross-references Part 364, which sets forth additional transporter requirements including permit and liability requirements (for examples, see 6 NYCRR §§ 372.2(b)(8), 373-1.7(h)(3), 374-3.3(i)(1) and (2), 374-3.4(a) and 374-3.6(a)(1)). The transporter permit and liability requirements are broader in scope than the Federal program.

(4) *Unauthorized State Amendments.* (i) The authorized provisions at sections 370.2(b)(72), 370.2(b)(184), 371.1(c)(7), 373-1.3(d)(3), 373-2.8(a)(3), 373-2.27(e)(4)(i)(c) and (e)(6), 373-2.28(n)(4)(ii), 373-3.27(e)(4)(i)(c) and (e)(6), 373-3.28(n)(4)(ii) and 374-1.8(h) of 6 NYCRR, as initially published on January 1, 1999, and amended through March 15, 1999, include amendments 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 New York hazardous waste regulations incorporated by reference at

paragraph (b)(1)(i) of this section, EPA will enforce the State regulations that are actually authorized by EPA. The effective dates of the State's authorized

provisions are listed in the following Table:

#### TITLE 6, NEW YORK CODES, RULES AND REGULATIONS (6 NYCRR)

| State citation                                                         | Description                                                                                             | Effective date |
|------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|----------------|
| 370.2(b)(72) [Authorized provision previously at 370.2(b)(54)] .....   | Definition of "Federal agency" .....                                                                    | 7/14/85        |
| 370.2(b)(184) [Authorized provision previously at 370.2(b)(137)] ..... | Definition of "Thermal treatment" .....                                                                 | 7/14/85        |
| 371.1(c)(7) .....                                                      | Definition of "Solid Waste". Documentation of claims for exemption.                                     | 7/1/86         |
| 373-1.3(d)(3) .....                                                    | Submission of applications .....                                                                        | 7/14/85        |
| 373-2.8(a)(3) .....                                                    | Financial Requirements. States and Federal government are exempt from the requirements of this section. | 7/14/85        |
| 373-2.27(e)(4)(i)(c) .....                                             | Test Methods and Procedures .....                                                                       | 1/14/95        |
| 373-2.27(e)(6) .....                                                   | Test Methods and Procedures .....                                                                       | 1/14/95        |
| 373-2.28(n)(4)(ii) .....                                               | Test Methods and Procedures .....                                                                       | 1/14/95        |
| 373-3.27(e)(4)(i)(c) .....                                             | Test Methods and Procedures .....                                                                       | 1/14/95        |
| 373-3.27(e)(6) .....                                                   | Test Methods and Procedures .....                                                                       | 1/14/95        |
| 373-3.28(n)(4)(ii) .....                                               | Test Methods and Procedures .....                                                                       | 1/14/95        |
| 374-1.8(h) .....                                                       | Standards to control hydrogen chloride (HCl) and chlorine gas "(Cl <sub>2</sub> )" emissions.           | 1/14/95        |

(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 New York Regulatory Requirements Applicable to the Hazardous Waste Management Program, January 2002. This document is available from EPA Region 2, EPA Region 2 Library, 290 Broadway, 16th Floor, New York, New York 10007, Phone number: (212) 637-3185.

(5) *Memorandum of Agreement*. The Memorandum of Agreement between EPA Region 2 and the State of New York, signed by the Commissioner of the State of New York Department of Environmental Conservation on July 20, 2001, and by the EPA Regional Administrator on January 16, 2002, 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 York in 1985 and revisions, supplements and addenda to that Statement dated August 18, 1988, July 26, 1989, August 15, 1991, October 11, 1991, July 28, 1994, May 30, 1997, and February 5, 2001, 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 adding in alphabetical order, "New York" and its listing to read as follows:

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

\* \* \* \* \*

#### New York

The regulatory provisions include: Title 6, New York Codes, Rules and Regulations (6 NYCRR), Volume A-2A, Hazardous Waste Management System, as initially published on January 1, 1999, and amended through March 15, 1999

Please note the following:

(1) For a few regulations New York State made minor changes to its regulations after March 15, 1999 and EPA authorized these changes. These regulatory changes are found in official "Supplements" dated, November 15, 1999 and January 31, 2000, filed with the New York Secretary of State. Authorized regulations that include these later changes are noted below by inclusion in parentheses of November 15, 1999 or January 31, 2000 after the regulatory citation.

(2) For a few other regulations, the authorized regulation is an earlier version of the New York State regulation. For these regulations, EPA authorized the version of the regulations that appear in the Official Compilation of Code, Rules and Regulations dated January 31, 1992 or January 14, 1995. New York State made later changes to these regulations but these changes have not been authorized by EPA. The regulations where the authorized regulation is an earlier version of the regulation are noted below by inclusion in parentheses of January 31, 1992 or January 14, 1995 after the regulatory citations.

Part 370—Hazardous Waste Management System—General: Sections 370.1(a) (except (a)(3)); 370.1(b)-(d); 370.1(e) (except (e)(1)(xv), (e)(1)(xvi) and (e)(6)(ii)-(iii)); 370.2(a); 370.2(b)(1); 370.2(b)(2) (January 31, 2000); 370.2(b)(3)-(b)(14), 370.2(b)(15)

"battery"; 370.2(b)(15) "bedrock" (January 31, 1992); 370.2(b)(17)-(b)(31); 370.2(b)(32) (January 31, 2000); 370.2(b)(33)-(b)(54); 370.2(b)(56)-(b)(63); 370.2(b)(64) (November 15, 1999); 370.2(b)(65)-(b)(74); 370.2(b)(75) (January 31, 2000); 370.2(b)(76)-(b)(91); 370.2(b)(94)-(b)(104); 370.2(b)(106)-(b)(123); 370.2(b)(125)-(b)(163); 370.2(b)(164) (January 31, 2000); 370.2(b)(165)-(b)(179); 370.2(b)(180) (January 31, 2000); 370.2(b)(181)-(b)(208); 370.2(b)(210); 370.2(b)(211); 370.2(b)(212) (except the last sentence); 370.2(b)(213)-(b)(216); 370.3 (except 370.3(c)); 370.4 (except introductory paragraphs at (a)(1) and (b)(1)); introductory paragraphs at 370.4(a)(1) and (b)(1) (January 31, 1992); and 370.5 (except (b)).

Part 371—Identification and Listing of Hazardous Waste: Sections 371.1(a)-(c); 371.1(d) (except (d)(1)(ii)(e)); 371.1(e) (except (e)(1)(iv)); 371.1(e)(1)(iv) (January 31, 2000); 371.1(f)(1)-(7); 371.1(f)(8) (except the phrase "or such mixing occurs at a facility regulated under Subpart 373-4 or permitted under Part 373 of this Title"); 371.1(f)(9) and (f)(10); 371.1(g)(1)(i); 371.1(g)(1)(ii) (except (g)(1)(ii)(c)); 371.1(g)(1)(iii) (except the phrase "as defined in section 372.5 of this Title, and provide a copy of" in (g)(1)(iii)(a); 371.1(g)(2)-(4); 371.1(h)-(j); 371.2; 371.3 (except (d)(1)(v)); 371.3(d)(1)(v) (January 31, 2000); and 371.4 (except (e)).

Part 372—Hazardous Waste Manifest System and Related Standards for Generators, Transporters and Facilities: Sections 372.1(a)-(d); 372.1(e)(2)(ii)(c) (January 31, 1992); 372.1(e)(2)(iii)(c) (January 31, 1992); 372.1(e)(3)-(e)(8); 372.1(g) and (h); 372.2 (except (a)(8)(vi)); 372.3 (except (a)(1), (a)(4), (a)(8), (b)(1)(ii), (b)(5)(ii), (b)(6)(iv), (c)(4) and (d)(3)); 372.5 (except (h) and (i)); 372.6; 372.7(a) and (b); 372.7(c) (except (c)(4)) (November 15, 1999); 372.7(c)(4); and 372.7(d) (except (d)(4)); 372.7(d)(4) (January 31, 1992).

Part 373, Subpart 373-1—Hazardous Waste Treatment, Storage and Disposal Facility Permitting Requirements: Sections 373-

1.1(a)-(c); 373-1.1(d) (except (d)(1)(iii)(b), (d)(1)(iii)(c)(6), (d)(1)(iii)(d), (d)(1)(iv)(a) and (b), (d)(1)(x), (d)(1)(xvi) and (xviii)); 373-1.1(e); 373-1.1(h) and (i); 373-1.2; 373-1.3; 373-1.4(a); 373-1.4(g) and (h); 373-1.5(a)(1) (November 15, 1999); 373-1.5(a)(2) (except (a)(2)(iii), (a)(2)(xiii), (a)(2)(xviii) and (xix)); 373-1.5(a)(2)(iii), (a)(2)(xiii), (a)(2)(xix) (January 31, 2000); 373-1.5(a)(3) and (4); 373-1.5(b) and (c); 373-1.5(d) (except (d)(3) and (d)(11)); 373-1.5(d)(11); (January 31, 2000); 373-1.5(e)-(p) (except reserved paragraphs); 373-1.6 (except (c)(1)-(4)); 373-1.7; 373-1.8; 373-1.9 (except (a)(2)(iii), (iv) and (v)); 373-1.9(a)(2)(iii), (iv) and (v) (January 31, 2000); and 373-1.10.

Part 373, Subpart 373-2—Final Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities: Sections 373-2.1 through 373-2.4; 373-2.5(a); 373-2.5(b) (except the last sentence in (b)(1)(i)(b) and the entire provision at (b)(1)(vii)); 373-2.5(c) (except (c)(2)(iv), (xi) and (xiii)); 373-2.5(c)(2)(iv) (November 15, 1999); 373-2.5(c)(2)(xi) and (xiii) (January 31, 2000); 373-2.5(d)-(g); 373-2.6; 373-2.7 (except 373-2.7(c)(2)(iv) and (c)(3)(iii)); 373-2.7(c)(2)(iv) (November 15, 1999); 373-2.7(c)(3)(iii) (January 31, 2000); 373-2.8(a)-(e); 373-2.8(f) (except (f)(1)(iii)(b)); 373-2.8(f)(1)(iii)(b) (November 15, 1999); 373-2.8(g); 373-2.8(h)(1) introductory paragraph (January 31, 2000); 373-2.8(h)(1)(i)-(vii); 373-2.8(h)(2) introductory paragraph (January 31, 2000); 373-2.8(h)(2)(i)-(vii); 373-2.8(h)(3)-(6); 373-2.8(h)(7) (except (h)(7)(i) introductory paragraph); 373-2.8(h)(7)(i) introductory paragraph (January 31, 2000); 373-2.8(h)(8)-(10); 373-2.8(i); 373-2.8(j) (except (j)(2), (j)(6)(ii) and (j)(11)-(13); 373-2.8(j)(2) (January 14, 1995); 373-2.8(j)(6)(ii) (January 14, 1995); and 373-2.8(j)(11)-(13) (January 14, 1995); 373-2.9; 373-2.10 (except last sentence in (g)(4)(i)); 373-2.11; 373-2.12 (except 373-2.12(a)(1), (b)(1)(i)(a), (d), (g)(2)) and (h)(1)); 373-2.12(a)(1) (January 31, 1992); 373-2.12(b)(1)(i)(a) (January 31, 2000); 373-2.12(g)(2) (January 31, 1992); 373-2.12(h)(1) (January 31, 2000); 373-2.13; 373-2.14 (except (c)(1)(i)); 373-2.14(c)(1)(i) (January 31, 1992); 373-2.15 (except (a)(2)); 373-2.19; 373-2.23; 373-2.24; and 373-2.27 through 373-2.31.

Part 373, Subpart 373-3—Interim Status Standards Regulations for Owners and Operators of Hazardous Waste Facilities: Sections 373-3.1 (except the phrase “or Subpart 374-2 of this Title” in 373-3.1(a)(6)); 373-3.2 through 373-3.4; 373-3.5 (except last sentence in 373-3.5(b)(1)(i)(b) and (b)(1)(vii)); 373-3.6; 373-3.7 (except (c)(3)(iv)); 373-3.7(c)(3)(iv) (November 15, 1999); 373-3.8 (except (h)(3)); 373-3.8(h)(3) (November 15, 1999); 373-3.9; 373-3.10 (except last sentence in (g)(4)(i)); 373-3.11 through 373-3.13; 373-3.14 (except (i)(5)); 373-3.14(i)(5) (November 15, 1999); 373-3.15 (except (a)(2)); 373-3.16 through 373-3.18; 373-3.23; and 373-3.27 through 373-3.31.

Part 374, Subpart 374-1—Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities: Sections 374-1.1; 374-1.3; 374-1.6 (except (a)(2)(iii)); 374-1.7; 374-1.8(a)(1); 374-1.8(a)(2) (except the

second sentence “Such used oil \* \* \* of this Title” in (a)(2)(i)); 374-1.8(a)(3); 374-1.8(b)-(d); 374-1.8(e) (except (e)(5)(i)); 374-1.8(e)(5)(i) (January 14, 1995); 374-1.8(f); 374-1.8(g) (except (g)(7)); 374-1.8(g)(7) (January 14, 1995); 374-1.8(h)-(m); and 374-1.13.

Part 374, Subpart 374-3—Standards for Universal Waste: Sections 374-3.1; 374-3.2; 374-3.3; 373-3.4 (except (a)(2)); 373-3.5; 373-3.6; and 374-3.7.

Part 376—Land Disposal Restrictions: Sections 376.1 (except (a)(5), (a)(9), (b)(1)(xi), (e), (f) and (g)(2)(v)); 376.2; 376.3 (except (b), (c) and (d)(2)); 376.4 (except (c)(2) and (e)(1)-(7)); and 376.5.

Appendices: Appendices 19 through 25; Appendices 27 through 30; Appendix 33 (January 31, 1992); Appendix 38; Appendices 40 through 48, Appendix 49 (January 14, 1995) and Appendices 51 through 55.

Copies of the New York regulations that are incorporated by reference are available from West Group, 610 Opperman Drive, Eagan, MN 55123, ATTENTION: D3-10 (Phone #: 1-800-328-9352).

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 216

[Docket No. 020326071-2166-02; I.D. 061402E]

RIN 0648-AP83

#### Taking and Importing Marine Mammals; Taking Bottlenose Dolphins and Spotted Dolphins Incidental to Oil and Gas Structure Removal Activities in the Gulf of Mexico

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS is issuing regulations authorizing and governing the taking of bottlenose and spotted dolphins incidental to the removal of oil and gas drilling and production structures in state waters and on the Outer Continental Shelf (OCS) in the Gulf of Mexico for a period not to exceed 18 months. The incidental taking of small numbers of marine mammals is authorized by the Marine Mammal Protection Act (MMPA), if certain findings are made and regulations are issued that include requirements for monitoring and reporting. These regulations do not authorize the removal of the structures as such authorization is

provided by the Minerals Management Service (MMS) and is not within the jurisdiction of NMFS. Rather, these regulations authorize the unintentional incidental take of marine mammals in connection with such activities and prescribe methods of taking and other means of effecting the least practicable adverse impact on the species and their habitat.

**DATES:** Effective August 1, 2002 through February 2, 2004.

**ADDRESSES:** Copies of the Environmental Assessment (EA), proposed rule, and application may be obtained by writing to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910-3282 or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**).

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this final rule should be sent to the Chief of the Office of Protected Resources, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, D.C. 20503.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Hollingshead, Office of Protected Resources, (301) 713-2322.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 101 of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations governing the taking are issued. Effective January 26, 1996, by Department Delegation Order 10-15, the Secretary delegated authority to perform the functions vested in the Secretary as prescribed by the MMPA to the Administrator of the National Oceanic and Atmospheric Administration (NOAA). On December 17, 1990, under NOAA Administrative Order 205-11, 7.01, the Under Secretary for Oceans and Atmosphere delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

Permission for a take shall be granted if the Secretary finds, after notice and opportunity for public comment, that the taking will involve only small