

commenter are summarized and responded to as follows.

B. What Were the Comments and Responses to EPA's Proposal?

The commenter argued that Region VII's process for authorizing revisions to Nebraska's program should require a public hearing, which, the commenter believed, is required by 40 CFR 271.20. EPA disagrees. 40 CFR 271.21 applies only to initial program authorization, and not, as in the instant matter, to program revisions. For this program revision, EPA has proceeded in accordance with 40 CFR 271.21, pursuant to which public hearings are not required. On March 4, 1986, at 51 FR 07540, EPA promulgated amendments to 40 CFR 271.21 that eliminated public hearing requirements for program revisions. In this March 4, 1986 *Federal Register*, EPA stated: "As discussed in the proposal, the new procedures do not require public hearings to be held in conjunction with EPA's authorization decisions. Since there is no legal requirement to provide for hearings on revision decisions and little public interest has been shown to date in attending hearings on initial authorization of State programs, we think the opportunity to provide written comments is adequate. Only one comment was received on the elimination of routine public hearings, and that comment favored the rule change. However, while the regulatory requirement is deleted, a Regional Administrator, in his discretion, could decide to hold a hearing." (51 FR 07541).

Consequently, EPA Region VII believes it adhered to the governing regulations regarding opportunities for public hearings during the EPA approval process for State program revisions. EPA Region VII also believes that due to the nature and limited number of comments received, the opportunity to provide for written comments, in lieu of a public hearing, was an adequate process to obtain public comment.

The commenter expressed a concern about Nebraska's adoption of the provisions of 40 CFR part 266, subpart C. EPA understands this comment to state concerns about the provisions of the Nebraska regulations (which incorporate the Federal rules by reference) that allow, under certain conditions, "hazardous wastes," like lime-based slag, to be used as a "fertilizer." This comment addresses an issue which is not part of the referenced revision application. Specifically, with regard to the provisions of 40 CFR part 266, subpart C, in the context of

fertilizer applications, these provisions in Nebraska's program were authorized by EPA as part of Nebraska's first program revision, which took effect on December 3, 1989—over thirteen years ago. Nebraska's current revision application, for which EPA recently published its tentative approval, with an opportunity for public comment, does not include any regulatory revisions to 40 CFR part 266, subpart C. Since the comment EPA has received on "use constituting disposal" is not part of Nebraska's most recent program revision application, EPA believes the public comments on "use constituting disposal" are not within the scope of this Agency action. The commenter expressed further concern regarding "EPA's failure to require the Nebraska Attorney General to review Nebraska's statutes based on rule-by-rule authority as required under 40 CFR 271.7." The commenter asserts that "checklists do not provide for as comprehensive a review." EPA uses checklists to review State rules in detail. 40 CFR 271.7 requires the State Attorney General to submit a statement that the laws of the State provide adequate authority to carry out the program described under 40 CFR 271.6. This statement should include citations to the specific statutes, administrative regulations and, where appropriate, judicial decisions which demonstrate adequate authority. The State of Nebraska has done this. 40 CFR 271.7 further requires that the State statutes and regulations cited by the State Attorney General shall be in the form of lawfully adopted State statutes and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. Nebraska's Attorney General has submitted a statement which satisfies this requirement.

C. What Decisions Have We Made in This Rule?

Based on EPA's response to public comments, the Agency has determined that approval of Nebraska's RCRA program revisions should proceed. EPA has made a final determination that Nebraska's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Nebraska Final authorization to operate its hazardous waste program with the changes described in its application for program revisions. Nebraska has responsibility for carrying out the aspects of the RCRA program described in its approved program applications, 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, EPA will implement any such HSWA requirements and prohibitions in Nebraska, including issuing HSWA permits, until the State is granted authorization to do so. For further background on the scope and effect of today's action to approve Nebraska's RCRA program revisions, please refer to the preambles of EPA's April 10, 2003, Proposed and Immediate Final Rules at 68 FR 17576 and 68 FR 17553, respectively.

D. Administrative Requirements

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 action authorizes State requirements for the purpose of RCRA 3006 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 action authorizes pre-existing requirements under State law 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). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). 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 authorizes State requirements as part of the State RCRA hazardous waste program 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