

Roadmap to Express Authorization

Express Authorization restructures what EPA recommends States submit to EPA in an application for revisions to their authorized program by providing new model documents for parts of the application. These new models are based on approaches that some States have successfully used. Express Authorization places more emphasis on the EPA Region and State partnership to tailor the documentation to satisfy the regulatory requirements of authorization.

EPA believes that the new model documents will help many States and Regions improve the authorization process by reducing the effort and time needed for completion. Note that if the current authorization process works well for a State and Region, there is no need to change it in order to conform with the new model documents. This roadmap and the model documents reflect recommendations based on program experience to date. These documents themselves are not regulations and do not impose requirements. However, the content of these model documents reflects the relevant regulatory requirements.

An authorization application generally contains:

- a copy of the regulations and any statutory provisions for which a State is seeking authorization,
- rule checklists, or other documents that detail the provisions in each regulation or statute,
- a statement from the State Attorney General and,
- updates to the Memorandum of Agreement and Program Description if necessary.

The main component of Express Authorization is a streamlined approach to the Attorney General's Statement (AGS), which is a major component of a State's application. This change will also affect other parts of a State's application. Instead of submitting a lengthy and complex AGS which details the State statutory authority for every rule or statutory provision in the application, and which in most cases does not provide any additional substantive discussion from the previously submitted AGS, the model AGS under Express Authorization would be one page, and consist of language which addresses the findings required by 40 CFR § 271.7 (that the laws of the State provide adequate authority to carry out the program and to meet the requirements of 40 CFR part 271, subpart A, and that the laws of the State are fully effective).

Although the model AGS has been significantly reduced in size and complexity, there are several legal requirements that should be addressed, where appropriate, within the AGS:

- The State either has made no changes to the statutes upon which the State program is based, or the changes made do not adversely affect its authority,
- The State has passed no other laws that affect the existing authorized program - e.g. an audit law,
- There have been no judicial decisions which affect the authorized program.

The new model AGS also references a Model Statutory Checklist that the State would submit or have on file with the Region (States should also send to EPA copies of the relevant statutes if it has not done so previously). The model Statutory Checklist documents the statutory authorities for the State's hazardous waste management program and provides the details absent from the existing model AGS. While the Statutory Checklist may appear to be a new component of the authorization process, it is actually a replacement for what is often a more onerous component of the existing model AGS. In addition, most States prepared a Statutory Checklist as part of their application for Base authorization. Thus, a State may be able to simply update an existing document.

The important difference between the approach in the existing AGS where the State's authority is discussed for every rule and statutory provision in an often redundant manner, and the streamlined approach in Express Authorization, is that the Statutory Checklist could be prepared only once and not be added onto with every revision application. Under the process reflected in these documents, the Model Statutory Checklist would only be amended if the State must revise its statutes or cite different authority to make the findings in 40 CFR § 271.7 regarding the program revisions being authorized, or if the State has amended or otherwise modified its authority for the existing authorized program.

There are two draft Statutory Checklist models - longer and shorter versions. States should consider which model to use based on how specific or broad their statutory authority is written. In some cases, States with very broad authority to adopt hazardous waste regulations - e.g., authority to adopt all Federal rulemakings or provisions - may not need to complete a Statutory Checklist.

Under Express Authorization, States would continue to prepare the appropriate rule checklists or other documentation that identifies the State provisions being revised, and their location in the State regulatory or statutory code. (States which incorporate federal regulations by reference generally do not include rule checklists as part of their authorization application.) Also note that the Statutory Checklists do not replace the rule checklists that may also be part of a State's application and do not authorize States for particular provisions.

Attached to this Roadmap to Express Authorization are several documents:

- 1) A Question and Answer document for State Program Revision Applications
- 2) A Model Attorney General's Statement (AGS)
- 3) Two examples of a Statutory Checklist.
- 4) A form for describing a State's Incorporation-By-Reference (IBR) for those States which adopt regulations in this manner.