

This technical correction 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 this action is not a significant regulatory action under Executive Order 12866.

This technical correction does not involve changes to the technical standards related to test methods or monitoring requirements; 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.

This technical correction also does not involve special consideration of environmental justice-related issues as required by Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 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 U.S. Section 808 allows the issuing Agency to make a rule effective sooner than otherwise provided by the CRA if the Agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, we have determined that there is good cause for making this technical correction final without prior proposal and opportunity for comment because only simple typographical errors are being corrected that do not substantially change the Agency actions taken in the final rule. Thus, notice and public procedure are unnecessary. EPA has therefore established an effective date of April 19, 2010. The EPA will submit a report containing this final action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of this action in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule will be effective April 19, 2010.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference,

Reporting and recordkeeping requirements.

Dated: March 11, 2010.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AAAAAAA—[Amended]

§ 63.11563 [Amended]

■ 2. Section 63.11563 is amended by redesignating paragraphs (l), (m) and (n) to become paragraphs (g), (h), and (i), respectively.

■ 3. Section 63.11564 is amended by revising paragraphs (c)(8) and (c)(9) to read as follows:

§ 63.11564 What are my notification, recordkeeping, and reporting requirements?

* * * * *

(c) * * *

(8) A copy of the site-specific monitoring plan required under § 63.11563(b) or (g).

(9) A copy of the approved alternative monitoring plan required under § 63.11563(h), if applicable.

* * * * *

[FR Doc. 2010-5964 Filed 3-17-10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 263, 264, 265, 266, 268 and 270

[EPA-RCRA-2008-0678; FRL-9127-9]

RIN 2050-AG52

Hazardous Waste Technical Corrections and Clarifications Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is taking Direct Final action on a number of technical changes that correct or clarify several parts of the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations that relate to hazardous waste identification, manifesting, the hazardous waste

generator requirements, standards for owners and operators of hazardous waste treatment, storage and disposal facilities, standards for the management of specific types of hazardous waste and specific types of hazardous waste management facilities, the land disposal restrictions program, and the hazardous waste permit program. These changes correct existing errors in the hazardous waste regulations that have occurred over time in numerous final rules published in the **Federal Register**, such as typographical errors, incorrect or outdated citations, and omissions. Some of the corrections are necessary to make conforming changes to all appropriate parts of the RCRA hazardous waste regulations for new rules that have since been promulgated. In addition, these changes clarify existing parts of the hazardous waste regulatory program and update references to Department of Transportation (DOT) regulations that have changed since the publication of various RCRA hazardous waste final rules.

DATES: This Direct Final Rule is effective on June 16, 2010 without further notice unless EPA receives adverse comments by May 3, 2010. If adverse comment is received, EPA will publish a timely withdrawal of the Direct Final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-RCRA-2008-0678 by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* rcra-docket@epa.gov and oleary.jim@epa.gov. Attention Docket ID No. EPA-HQ-RCRA-2008-0678.

- *Fax:* (202) 566-9744. Attention Docket ID No. EPA-HQ-RCRA-2008-0678.

- *Mail:* RCRA Docket (2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. EPA-HQ-RCRA-2008-0678. Please include a total of 2 copies.

- *Hand Delivery:* EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-RCRA-2008-0678. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>

www.regulations.gov, including any 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 <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means 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 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, 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 EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, 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 EPA’s public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the HQ–Docket Center, Docket ID No. EPA–HQ–RCRA–2008–0678, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For more information on this rulemaking, contact Jim O’Leary, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery (MC:5304P),

1200 Pennsylvania Avenue, NW., Washington, DC 20460, Phone: (703) 308–8827; or e-mail: oleary.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Why Is EPA Using a Direct Final Rule?

EPA is publishing this rule without prior proposal because we view this as a non-controversial action and anticipate no adverse comment. However, in the “Proposed Rules” section of today’s **Federal Register** publication, we are publishing a separate document that will serve as the proposed rule to adopt the provisions in this Direct Final rule if adverse comments are filed. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If we receive adverse comment on any individual correction, we will publish a timely withdrawal in the **Federal Register** to notify the public about a specific paragraph or amendment in the Direct Final rule that will not take effect.

II. Does This Action Apply to Me?

Entities potentially affected by this action include facilities subject to the RCRA hazardous waste regulations and States implementing the RCRA hazardous waste regulations.

III. What Should I Consider as I Prepare My Comments for EPA?

1. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.

- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

IV. Acronyms

Acronym	Definition
CFR	United States Code of Federal Regulations.
EPA	United States Environmental Protection Agency.
HSWA	Hazardous and Solid Waste Amendments.
OMB	Office of Management and Budget.
RCRA	Resource Conservation and Recovery Act.
U.S.C.	United States Code.

V. Preamble

A. What Is the Legal Authority for This Direct Final Rule?

This rule is authorized under Sections 1004, 3001, 3002, 3003, 3004 and 3005 of the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6903, 6921–6925.

B. Why Are We Amending Various Sections of Parts 260–266, 268 and 270?

In the process of publishing numerous final rules in the **Federal Register**, typographical errors, incorrect or outdated citations, and omissions have occurred. Similarly, the Agency has sometimes failed to make conforming changes to all appropriate parts of the RCRA hazardous waste regulations when new rules were promulgated. These inadvertent errors and oversights have sometimes resulted in confusion and inefficiency on the part of the regulated community and Federal and State regulators implementing the hazardous waste regulatory program.

This rule addresses these problems by correcting the RCRA hazardous waste management regulations—specifically the general requirements under 40 CFR part 260, the hazardous waste identification requirements under 40 CFR part 261, the manifesting and hazardous waste generator requirements under 40 CFR part 262, the hazardous waste transporter requirements under 40 CFR part 263, the related manifesting and emergency preparedness requirements under 40 CFR parts 264 and 265, the requirements for recycling of hazardous wastes in a manner constituting disposal under 40 CFR part 266, the land disposal restrictions requirements under 40 part 268, and the hazardous waste permit program requirements under 40 CFR part 270. Several re-designation and format corrections are also included for several

paragraphs in the permitting and interim status requirements under 40 CFR parts 264 and 265.

However, unlike most of the technical corrections and clarifications in today's rule, the changes associated with the hazardous waste manifest regulations are closely interrelated, and involve changes to several sections and paragraphs in 40 CFR parts 262, 264 and 265. Therefore, in the interest of clarity, we describe all of the changes associated with the hazardous waste manifest in Section V.C.10.

When the 40 CFR part 267 standards for owners and operators of hazardous waste facilities operating under a standardized permit were promulgated in September, 2005, EPA failed to make conforming changes to certain paragraphs in 40 CFR parts 260–263 and 266. This rule addresses that inadvertent oversight. Affected sections are identified at the end of Section V.C.7.

Today's Direct Final rule is similar to the Final rule published on July 14, 2006. See 71 FR 40254, Parts 260, 261 *et al.* Hazardous Waste and Used Oil; Corrections to Errors in the Code of Federal Regulations; Final rule. EPA continues to review its regulations for additional technical corrections or errors and will address any such edits in forthcoming rules.

Today's action makes approximately 90 changes to 40 CFR parts 260–266, 268 and 270. References to the 40 CFR sections where technical corrections are being made are organized by part. In addition, EPA provides a description and explanation of the changes in the preamble to today's Direct Final rule.

C. Description of Direct Final Amendments to Parts 260–266, 268 and 270

1. Corrections to 40 CFR Part 260 (Hazardous Waste Management System: General)

In 40 CFR part 260, EPA is amending the following sections in order to make a number of changes: Section 260.10 and Appendix I

a. 40 CFR 260.10: In 40 CFR part 260, EPA is amending 40 CFR 260.10 to correct the date cited in the definition of “*New hazardous waste management facility or new facility*.” The date is changed from “October 21, 1976” to “November 19, 1980.” This date refers to the date a facility began operation, or for which construction commenced.

A review of the May 19, 1980 preamble to the first set of RCRA hazardous waste regulations shows that EPA was aware that the October 21, 1976 date specified in the statute was an

unrealistic date to establish, and anticipated statutory amendments to correct this problem. Specifically, in May 1980, EPA wrote:

“Definition of Existing Facility”

Several commenters pointed out what they perceived as a serious fault in Section 3005(e) of RCRA, which is that the Section limits interim status to owners and operators of facilities “in existence” on or before October 21, 1976. The statute requires that, in order to operate legally, facilities which have come into existence after October 21, 1976, must obtain a permit by the effective date of the Section 3005 regulations (*i.e.*, within 180 days after the promulgation date of the regulations). Because it is unlikely that permits can be issued within 180 days for all facilities not “in-existence” by October 21, 1976, the commenters felt that the language of the statute was unfair to the owners and operators of these facilities.

“EPA agrees that the language of the statute as it now stands would make the RCRA program unworkable. However, the language of RCRA is clear and EPA has had no alternative but to follow it in the regulations. As the preamble to the Part 122 regulations discusses, EPA expects that amendments to RCRA now in conference will be passed shortly and will cure this problem.” (45 FR 33068, May 19, 1980)

RCRA Section 3005(e) related to Interim Status facilities was amended to correct this problem. Section 3005(e)(1) now reads: “Any person who—(A) owns or operates a facility required to have a permit under this section which facility—(i) was in existence on November 19, 1980, or (ii) is in existence on the effective date of statutory or regulatory changes under this Act that render the facility subject to the requirement to have a permit under this section * * * shall be treated as having been issued such permit until such time as final administrative disposition of such application is made, unless the Administrator * * *.”

Therefore, EPA is amending § 260.10 to make this conforming change by revising the date “October 21, 1976” to read “November 19, 1980.” More specifically, the regulatory citation will read as follows:

“*New hazardous waste management facility or new facility*” means a facility which began operation, or for which construction commenced after November 19, 1980.”

Note that the definition at § 260.10 for “Existing hazardous waste management facility” includes the correct date (*i.e.*, November 19, 1980), which further supports this conforming change.

b. 40 CFR part 260, Appendix I: In 40 CFR part 260, EPA is deleting the appendix entitled, Appendix I to Part 260: Overview of Subtitle C Regulations, which includes a brief discussion of the

hazardous waste regulations, along with associated Figures 1–4. This Appendix was initially developed when the hazardous waste regulations were first promulgated in May 1980. Since then, the regulations have changed a number of times and this Appendix is no longer accurate. Therefore, we are deleting it to avoid any confusion.

2. Corrections to 40 CFR Part 261 (Identification and Listing of Hazardous Waste)

In 40 CFR part 261, EPA is amending the following sections in order to correct typographical errors, include correct citations, and incorporate conforming changes: Sections 261.1, 261.2, 261.4, 261.5, 261.6, 261.7, 261.23, 261.30, 261.31, 261.32, 261.33 and Appendix VII to part 261.

a. 40 CFR 261.1(c)(10): In 40 CFR part 261, EPA is amending this paragraph to correct a citation error by revising “§ 261.4(a)(13)” to read “§ 261.4(a)(14)” in the parenthetical note at the end of paragraph (c)(10). 40 CFR 261.1(c)(10) defines “Processed scrap metal.” As part of this definition, the parenthetical note at the end of the paragraph states:

“(Note: shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (§ 261.4(a)(13)).”

However, § 261.4(a)(13) relates to excluded scrap metal, not shredded circuit boards. The correct citation for shredded circuit boards being recycled is found at § 261.4(a)(14). Thus, we are correcting this incorrect citation.

b. 40 CFR 261.2(c), Table 1: In 40 CFR part 261, EPA is amending § 261.2(c), Table 1 by removing the phrase, “Scrap metal other than excluded scrap metal (see 261.1(c)(9))” and replacing it with “Scrap metal that is not excluded under § 261.4(a)(13).” This change more concisely describes scrap metal that is subject to the RCRA Subtitle C regulations, namely regulated scrap metal. This phrase also is consistent with paragraph 40 CFR 261.6(a)(3)(ii) related to the requirements for regulated scrap metal.

c. 40 CFR 261.4(a)(17)(vi): In 40 CFR part 261, EPA is amending § 261.4(a)(17)(vi) to correct a citation error by revising the citation “paragraph (a)(7)” to read “paragraph (b)(7).”

The reference to “paragraph (a)(7),” which relates to spent sulfuric acid, was incorrectly revised in the final rule published in 67 FR 11254 (March 13, 2002) and should have properly referred to paragraph (b)(7). Thus, we are correcting this incorrect citation.

d. 40 CFR 261.5(e)(1): In 40 CFR part 261, EPA is amending this paragraph to read, "A total of one kilogram of acute hazardous wastes listed in §§ 261.31 or 261.33(e)."

This change removes a reference to acute hazardous wastes listed under "§ 261.32," because currently, there are no acute hazardous wastes listed in § 261.32.

e. 40 CFR 261.5(e)(2): In 40 CFR part 261, EPA is amending this paragraph to remove the reference to acute hazardous wastes listed under "§ 261.32," because, as noted previously, there are no acute hazardous wastes listed in § 261.32.

EPA is also amending the parenthetical comment at the end of § 261.5(e)(2) to correct the term "generators of greater than 1,000 kg" to read "generators of 1,000 kg or greater" and to eliminate the redundant term "non-acutely."

Specifically, § 261.5(e) addresses those amounts of acute hazardous waste that are subject to full regulation under 40 CFR parts 262–268, 270, and 124, and the notification requirements of Section 3010 of RCRA. At the end of § 261.5(e)(2) is a comment which reads:

[Comment: "Full regulation" means those regulations applicable to generators of greater than 1,000 kg of non-acutely hazardous waste in a calendar month.]

This comment describes full regulation as regulations applicable to generators of greater than 1,000 kg of non-acutely hazardous waste in a calendar month (a large quantity generator), but 40 CFR 262.34(d) lists conditions for facilities who generate greater than 100 kg but less than 1,000 kg of hazardous waste in a calendar month (e.g., a small quantity generator). Therefore, facilities that generate exactly 1,000 kg are not included in either range. At 40 CFR 262.34(g) and (h), we state that generators who generate 1,000 kilograms of hazardous waste per month and generators that generate greater than 1,000 kilograms of hazardous waste per calendar month (as this quantity relates to generators of wastewater treatment sludges from electroplating operations (EPA Hazardous Waste No. F006)) are subject to the same regulatory standards. Likewise, at 40 CFR 262.34(j), we state that generators who generate 1,000 kilograms of hazardous waste per calendar month and generators that generate greater than 1,000 kilograms of hazardous waste per calendar month (as this quantity relates to members of the Performance Track program) are subject to the same regulatory standards.¹

¹ EPA terminated the Performance Track Program on May 14, 2009 (74 FR 22741) and thus the

Therefore, our intent always has been to regulate facilities generating exactly 1,000 kilograms of hazardous waste in a calendar month the same as those generators who generate greater than 1,000 kilograms of hazardous waste in a calendar month (i.e., large quantity generators) rather than the requirements for facilities generating greater than 100 kilograms in a calendar month, but less than 1,000 kilograms of hazardous waste in a calendar month, (i.e., small quantity generators). Clarifying the parenthetical comment at the end of § 261.5(e)(2) resolves the inconsistency that exists between this comment and §§ 262.34(d), 262.34(g), 262.34(h) and 262.34(j).

Also, since this comment refers to non-acute hazardous wastes, use of the term "non-acutely" is redundant and unnecessary.

f. 40 CFR 261.5(f): In 40 CFR part 261, EPA is amending this paragraph to read, "In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in paragraphs (e)(1) or (e)(2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:"

This change clarifies that the relevant paragraphs of section 261.5 (e) are both (e)(1) and (e)(2). The current regulation references paragraph (e)(1) or (2).

g. 40 CFR 261.5(g): In 40 CFR part 261, EPA is amending this paragraph to read, "In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of 100 kilograms or less of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:"

This paragraph currently refers to "in quantities of less than 100 kilograms of hazardous waste" which is inconsistent with 40 CFR 261.5 (a) which describes a conditionally exempt small quantity generator as one who generates no more than 100 kilograms of hazardous waste in a calendar month (i.e., 100 kilograms or less). Thus, this change makes 40 CFR 261.5(g) consistent with 40 CFR 261.5(a).

h. 40 CFR 261.5(g)(2): In 40 CFR part 261, EPA is amending this paragraph to read, "The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time more than a total of 1,000 kilograms of his hazardous wastes, all of those accumulated wastes

program's incentives, including the hazardous waste incentives, are no longer available. EPA plans to take steps to rescind the final rules that enabled these incentives.

are subject to regulation under the special provisions of part 262 applicable to generators of greater than 100 kg and less than 1000 kg of hazardous waste in a calendar month as well as the requirements of parts 263 through 268, and parts 270 and 124 of this chapter, and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34(d) for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1000 kilograms;"

This change clarifies the amount of hazardous wastes a generator can generate in a calendar month and still be classified as a small quantity generator; e.g., greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month. Similarly, this change is consistent with paragraphs § 262.34(d)–(f).²

i. 40 CFR 261.6(a)(2): In 40 CFR part 261, EPA is making a conforming change to add "268" to § 261.6(a)(2) so that it reads "* * * and all applicable provisions in parts 268, 270, and 124 of this chapter." This change is necessary to be clear that the requirements of part 268 are applicable to the subject of this provision (recycled wastes regulated under part 266). An examination of § 261.6(a)(3) clearly shows that the Agency was aware that Part 268 is applicable to recycled wastes. Thus, the failure to cite part 268 in paragraph (a)(2) was an oversight. A December 20, 1989 memo from EPA Headquarters to EPA Region 1 (RCRA Online 11482), a copy of which is included in today's docket, explained this oversight and the need to correct this error in a future rulemaking.

j. 40 CFR 261.6(a)(2)(ii): In 40 CFR part 261, EPA is amending § 261.6(a)(2)(ii) to read "Hazardous waste burned (as defined in section 266.100(a)) in boilers and industrial furnaces that are not regulated under subpart O of part 264 or 265 of this chapter (40 CFR part 266, subpart H)."

Specifically, § 261.6(a)(2) indicates which subparts of part 266 govern the management of certain recycled materials. Paragraph § 261.6(a)(2)(ii) currently indicates that hazardous waste burned for energy recovery in boilers and industrial furnaces is covered under Subpart H of part 266. Prior to 1991, hazardous waste burned for energy recovery was subject to Subpart D of part 266, and § 261.6(a)(2)(ii) specifically referred to Subpart D. In

² The Agency is also adding part 267 to this CFR section, i.e., § 261.5(g). See discussion later in the preamble for the basis of this change.

1991, the boiler and industrial furnace rule expanded the scope of the part 266 boiler and industrial furnace regulations to address burning for both energy recovery and materials recovery, and the Subpart D regulations were replaced with regulations under Subpart H of part 266. The 1991 rule amended the reference in § 261.6(a)(2)(ii) from subpart D to subpart H of part 266, but inadvertently omitted the parallel conforming change to the text of (a)(2)(ii) to reflect the expanded scope of the regulations, which now cover both burning for energy recovery and burning for material recovery. This amendment makes that conforming change.

k. 40 CFR 261.7(a)(1), (a)(2), (b)(1) and (b)(3): In 40 CFR part 261, EPA is making conforming changes to §§ 261.7(a)(1) and (a)(2) to add “part 266.”

Specifically, an examination of the **Federal Register** from 1980 to the present reveals that §§ 261.7(a)(1) and (a)(2) have been amended several times to include additional parts to the list of applicable regulations as the RCRA regulatory program evolved. As examples, paragraphs (a)(1) and (a)(2) of § 261.7 were amended in 1983 (48 FR 14294) to remove part 122 and substitute part 270; were amended in 1986 to include part 268 (the Land Disposal Restrictions program) (51 FR 40637); and were amended again in 2005 to incorporate part 267 (the Standardized Permit program) (70 FR 53453). However, references to part 266, which addresses Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities, were not added when part 266 was promulgated. Because part 266 is one of the parts applicable to the wastes discussed in § 261.7, it should have been added to the lists of applicable parts. The Agency is now correcting this oversight.

In this section, EPA is also amending paragraphs (b)(1) and (b)(3) to remove the reference to acute hazardous wastes listed in “§ 261.32,” because currently, there are no acute hazardous wastes listed in § 261.32.

l. 40 CFR 261.23(a)(8): In 40 CFR part 261, EPA is amending this paragraph to read, “It is a forbidden explosive as defined in 49 CFR 173.54, or is a Division 1.1, 1.2 or 1.3 explosive as defined in 49 CFR 173.50 and 173.53.”

Specifically, 40 CFR 261.23(a)(8) cross-references Department of Transportation (DOT) regulations addressing forbidden explosives, Class A explosives, and Class B explosives. However, these cross-references are out of date with the current DOT regulations, and the referenced sections

either no longer exist or no longer address these explosives. This change modifies the rule to provide the correct citations.

m. 40 CFR 261.30(d). In 40 CFR part 261, EPA is amending this paragraph to read, “The following hazardous wastes listed in § 261.31 are subject to the exclusion limits for acutely hazardous wastes established in § 261.5: EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026 and F027.”

The existing paragraph indicates that acutely hazardous wastes are listed in § 261.31 and § 261.32. However, because there are no acute hazardous wastes currently listed in § 261.32, we are removing the reference to § 261.32.

n. 40 CFR 261.31: In 40 CFR part 261, EPA is amending the listing for EPA Hazardous Waste No. F037 by correcting the phrase “* * * oil cooling wastewaters” to read “* * * oily cooling wastewaters.” It is clear from the 1990 and 1998 **Federal Register** notices promulgating and subsequently revising this listing that the correct phrase is “oily cooling wastewaters” (55 FR 46396 and 63 FR 42185, respectively). This phrase is also consistent with the listing description of F037 and F038 in the table in 40 CFR 268.40 and Table 302.4—List of Hazardous Substances and Reportable Quantities.

o. 40 CFR 261.32: In 40 CFR part 261, EPA is amending the listing for K107, by correcting the misspelled chemical name “* * * carboxylic acid hydrazines” to read “* * * carboxylic acid hydrazides.” That this is a misspelling is clear from the original listing background document supporting the K107 listing which discusses “carboxylic acid hydrazides.” The proposed rule (December 20, 1984; 49 FR 49559) included this error in the listings for K107, K108, K109, and K110. The error was corrected in the final rule (May 2, 1990; 55 FR 18505) for all the listings except K107.

p. 40 CFR 261.32: In 40 CFR part 261, EPA is amending the table in this section to remove the section headings that have no waste codes included: “*Primary Copper*.”; “*Primary Lead*.”; “*Primary Zinc*.”; and “*Ferroalloys*.”

Specifically, the entries for Hazardous Waste Nos. K064 (Primary Copper), K065 (Primary Lead), K066 (Primary Zinc) and K090 and K091 (Ferroalloys) were removed from the table in 1999 (64 FR 56470, October 20, 1999; see also 63 FR 28599–29600, May 26, 1998). Although these were the only waste codes listed in the sections having the same title, the section headings were inadvertently not removed with the waste codes. Thus, they are being deleted in today’s Direct Final rule.

q. 40 CFR 261.33(f): In 40 CFR part 261, EPA is amending this section to revise the listing for U239, “Benzene, dimethyl- (I,T)” to read “Benzene, dimethyl- (I).” Inclusion of the “T” (for toxicity) in the parentheses was an oversight because this chemical was listed only for ignitability (“T”) and not for toxicity (“T”). This error was first identified in 1990, but the Agency failed to correct this error in previous technical correction rules (see memo from Scarberry to Kreider (April 5, 1990, RO115020), a copy of which is included in today’s docket). This correction is also consistent with the same listing under the more common name for U239, “xylene,” which has only an “I” in the parentheses.

r. Part 261, APPENDIX VII: In 40 CFR part 261, EPA is amending this section to remove the entries “K064,” “K065,” “K066,” “K090,” and “K091.” In the final rule published in 64 FR 56470 (October 20, 1999), see also 63 FR 28599–29600, May 26, 1998, EPA removed these K-listed wastes from § 261.32, but failed to make the necessary conforming changes in Appendix VII of part 261. This amendment makes that conforming change.

3. Corrections to 40 CFR Part 262 (Standards Applicable to Generators of Hazardous Waste)

In 40 CFR part 262, EPA is amending the following sections in order to clarify regulatory citations and address incorrect citations: Sections 262.10, 262.11, 262.23,³ 262.34, 262.41, 262.42 and 262.60.⁴

a. 40 CFR 262.34(a): In 40 CFR part 262, EPA is amending this paragraph by revising 40 CFR 262.34(a) to read, “A generator who generates 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§ 261.31 or 261.33(e) in a calendar month, may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:”

Specifically, the current language in 40 CFR 262.34(a) fails to clarify that this paragraph applies to large quantity generators only—that is, generators who generate 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§ 261.31 or 261.33(e) in a calendar month. Small quantity generators can accumulate hazardous waste on site for 180 days (or 270 days

³ Discussed under section V.C.10.

⁴ Note: The changes at 40 CFR 262.10, 262.11 and 262.41 refer to the conforming change to include part 267.

if he must transport his waste or offer his waste for transportation over a distance of 200 miles or more) or less without a permit or without having interim status.

b. 40 CFR 262.34(a)(1)(iv)—as related to Closure: EPA is amending CFR 262.34(a) by moving a sentence from one portion of the regulation to another, more appropriate, portion of the regulation where it will be easier to find.

Specifically, EPA is moving the language that currently appears after 40 CFR 262.34(a)(1)(iv)(B) which states that generators accumulating hazardous waste on-site for 90 days or less without a permit or interim status are exempt from all the requirements in subparts G and H of 40 CFR part 265, except for 40 CFR 265.111 and 265.114.

This amendment is necessary because this sentence stating the requirements for large quantity generators closing their waste accumulation units is incorrectly and awkwardly found after 40 CFR 262.34 (a)(1)(iv)(B), when it should be elsewhere in the regulation. That is, this section of the regulations has no relationship to the closure requirements, but instead addresses the documentation needed by a large quantity generator accumulating hazardous waste in containment buildings to demonstrate that the unit has been emptied at least once every 90 days. Thus, requirements for large quantity generators closing their 90-day waste accumulation units should properly be located in another portion of this regulation. EPA has expressed this same intent in a Hotline document in the December 1998 Hotline Monthly Report entitled, Generator Closure Requirements, a copy of which is included in today's docket. (Also see RCRA Online 14321.⁵)

EPA is moving this sentence to a new section 40 CFR 262.34(a)(5). This new location for this long-standing closure requirement for large quantity generators will make it less likely that users of the regulations will miss the provision and thus be unaware of its existence. Putting this sentence in a new subparagraph (5) of paragraph (a) following existing subparagraphs (1) through (4) also makes it much clearer that the closure provision is one of the five existing requirements applicable to large quantity generators accumulating waste on-site.

c. 40 CFR 262.34(a)(2)—as related to *Marking*: In 40 CFR part 262, EPA is amending this paragraph by revising 40 CFR 262.34(a)(2) to read “each container and tank” instead of “each container.”

Specifically, § 262.34(a)(3) makes clear that displaying the words “Hazardous Waste” is required for both containers and tanks accumulating waste, but the words “and tank” were inadvertently omitted from the text of § 262.34(a)(2) which discusses displaying the accumulation start date. In the preamble to the March 24, 1986 **Federal Register** (51 FR 10146 and 51 FR 10160), EPA makes clear that under 40 CFR 262.34 both containers and tanks must be marked with accumulation start dates. EPA also explained that both containers and tanks must be marked with accumulation start dates in the June 2003 RCRA Call Center Monthly Report, a copy of which is included in today's docket. This amendment corrects this omission.

d. 40 CFR 262.34(a)(4) and 40 CFR 262.34(d)(4)—as related to the Land Disposal Restrictions (LDR): In 40 CFR part 262, EPA is amending these paragraphs by revising 40 CFR 262.34(a)(4) and 40 CFR 262.34(d)(4) to delete “40 CFR 268.7(a)(5)” and substitute the words “all applicable requirements under 40 CFR part 268.”

Both 40 CFR 262.34(a)(4) and 40 CFR 262.34 (d)(4) specifically state that large quantity generators and small quantity generators must comply only with 40 CFR 268.7(a)(5) of the land disposal restriction requirements. This provision addresses waste analysis plans. However, the limited reference to 40 CFR 268.7(a)(5) is in error. As stated elsewhere in the hazardous waste regulations, both small and large quantity generators are subject to the full land disposal restriction requirements program, and not just the requirement to develop waste analysis plans. For example, 40 CFR 262.11 points to the need for materials subject to the hazardous waste regulations to comply with all applicable regulations under 40 CFR part 268 (Land Disposal Restrictions). Similarly, 40 CFR 268.1(b) is clear that the LDR requirements “apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage and disposal facilities.” Thus, EPA is correcting this error by revising these paragraphs to properly conform to the requirements elsewhere for large quantity generators and small quantity generators to comply with all applicable regulations under 40 CFR part 268.

e. 40 CFR 262.34(b): Consistent with the changes being made in section 262.34(a) of today's Direct Final rule, EPA is amending 40 CFR 262.34 by revising the first sentence of 40 CFR 262.34(b) to read, “A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§ 261.31 or 261.33(e) in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264, 265 and 267 and the permit requirements of 40 CFR 270 unless he has been granted an extension to the 90-day period.” (See discussion in section V.3.a regarding paragraph 262.34(a) for explanation of change.)

f. 40 CFR 262.34(c)(1): EPA is amending 40 CFR 262.34 by revising 40 CFR 262.34(c)(1) to read: “A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in § 261.31 or § 261.33(e) in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraphs (a) or (d) of this section provided he:”

This revision clarifies that the satellite accumulation provisions for large quantity generators also are applicable to small quantity generators, and that this provision applies to acutely hazardous wastes listed under § 261.31 as well. As currently constructed, the regulatory citations at 40 CFR 262.34 associated with satellite accumulation are only found under the requirements for large quantity generators, or paragraph (a). The preamble to the final rule promulgating this provision published in the March 24, 1986 **Federal Register** makes clear that the satellite accumulation provisions also are applicable to small quantity generators. The regulatory text omitted the appropriate reference to implement this intent. See 51 FR 10162. In addition, other EPA documents state that the satellite accumulation provisions apply to small quantity generators as well. See, for example, Memorandum from Robert Springer, Director Office of Solid Waste to Regions 1–10, *Frequently Asked Questions about Satellite Accumulation Areas*, March 17, 2004 (RO 14703), a copy of which is included in today's docket.

With respect to including acutely hazardous wastes listed under § 261.31, when the dioxin listings for acutely

⁵ RCRA Online is an electronic database of selected letters, memoranda, questions and answers, publications, and other outreach materials, written by EPA's Office of Solid Waste (now the Office of Resource Conservation and Recovery) since 1980.

hazardous wastes listed under § 261.31 were promulgated in 1985 (see 50 FR 2000), we failed to make conforming changes to the satellite accumulation regulations found at 40 CFR 262.34(c)(1) and (c)(2) which were promulgated in 1984. This amendment corrects this omission.

g. 40 CFR 262.34(c)(2): EPA is amending 40 CFR 262.34 by revising 40 CFR 262.34(c)(2) to read: “A generator who accumulates either hazardous waste or acutely hazardous waste listed in § 261.31 or § 261.33(e) in excess of the amounts listed in paragraph (c)(1) of this section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with paragraph (a) of this section or other applicable provisions of this chapter.

During the three day period the generator must continue to comply with paragraphs (c)(1)(i) and (ii) of this section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.”

This amendment makes the conforming change discussed above (section V.3.f.) for 40 CFR 262.34(c)(1).

h. 40 CFR 262.42(a)(1), (a)(2), and (c)—Exception Reporting: In 40 CFR part 262, EPA is amending both 40 CFR 262.42(a)(1) and (a)(2) to read, “A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§ 261.31 or 261.33(e) in a calendar month * * *” Also, EPA is adding paragraph (c) to this section to require a generator to comply with this provision when a designated facility re-ships a generator’s hazardous waste shipment of rejected loads or container residues to an alternate facility for further hazardous waste management. This correction is discussed in Section V.C.10 below, along with other corrections and clarifications to the hazardous waste manifest regulations.

Specifically, the current language in paragraphs (a)(1) and (a)(2) at 40 CFR 262.42 incorrectly describes the exception reporting requirements as applying only to generators of “greater than 1000 kilograms of hazardous waste” in a calendar month, when it should properly address such requirements for large quantity generators (*i.e.*, those generators generating 1,000 kilograms or greater of hazardous waste or greater than 1 kg of acute hazardous waste listed in § 261.31 or § 261.33(e) in a calendar month). These amendments are further supported by the language in paragraphs

§ 262.34(d), § 262.34(g), § 262.34(h) and § 262.34(j) cited under 40 CFR 261.5(e).

i. 40 CFR 262.60(b)—Imports of Hazardous Waste: In 40 CFR part 262, EPA is amending 40 CFR 262.60(b) to replace “§ 262.20 (a)” with “§ 262.20.”

Specifically, paragraph 262.60(b) incorrectly states that “when importing hazardous waste, a person must meet all the requirements of § 262.20(a) for the manifest except that * * *” However § 262.20(a) is only one component of the hazardous waste manifest requirements that facilities must meet in either transporting or importing hazardous wastes. To comply with this requirement only, and no other, would be a violation of the hazardous waste manifest requirements. EPA made this error in the original import regulations (see 51 FR 28685, August 8, 1986) and is now amending this section to reflect the Agency’s intent.

4. Corrections to 40 CFR Part 264 (Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities)

In 40 CFR part 264, EPA is amending the following sections in order to include correct citations, clarify regulatory requirements that are either cited elsewhere in **Federal Register** notices or documents published in RCRA Online, and incorporate conforming changes: Sections 264.52, 264.56, 264.72,⁶ 264.314, 264.316, and 264.552.

a. 40 CFR 264.52—Content of contingency plan: EPA is amending § 264.52(b) by removing the phrase “or part 1510 of chapter V,” since part 1510 of chapter V no longer exists.

b. 40 CFR 264.56—Emergency Procedures: Consistent with the change being made in 40 CFR 264.52, EPA is amending § 264.56(d)(2) by removing the parenthetical phrase “(in the applicable regional contingency plan under part 1510 of this title),” since this provision no longer exists.

c. 40 CFR 264.314(d) and 264.316(b): The Burden Reduction Rule (71 FR 16906, April 4, 2006) deleted the obsolete paragraph (a) in § 264.314 and moved up the rest of the paragraphs in that section. Thus, paragraphs (b) through (f) were re-designated paragraphs (a) through (e). In doing this, the Burden Reduction Rule failed to update the cross-references in paragraph 264.314(d) from “(e)(1)” to “(d)(1)” and “(e)(2)” to “(d)(2),” and failed to update the cross-reference in § 264.316(b) from “§ 264.314(e)” to “§ 264.314(d)”. Today’s rule corrects these errors.

⁶ Discussed under Section V.C.10.

d. 40 CFR 264.552(a)(3): As discussed under 40 CFR 264.314 (section V.4.c), the Burden Reduction Rule (71 FR 16906, April 4, 2006) deleted the obsolete paragraph 264.314(a) and moved up the rest of the paragraphs in that section. Thus, paragraphs (b) through (f) were re-designated paragraphs (a) through (e). In doing this, the Burden Reduction Rule failed to update the cross-references in § 264.552 to these re-designated paragraphs. Today’s rule corrects this as follows: Paragraph 264.552(a)(3)(ii) revises the citation “§ 264.314(d)” to read “§ 264.314(c)”; paragraph 264.552(a)(3)(iii) revises the citation “§ 264.314(f)” to read “§ 264.314(e)”; and paragraph 264.552(a)(3)(iv) revises the citation “§ 264.314(c)” to read “§ 264.314(b)” and “§ 264.314(e)” to read “§ 264.314(d).”

e. 40 CFR 264.552(e)(4)(iv)(F): Today’s rule revises the citation in § 264.552(e)(4)(iv)(F) from “260.11(a)(11)” to read “260.11(c)(3)(v).” The Corrective Action Management Units (CAMUs) final rule (67 FR 3025, January 22, 2002), in § 264.552(e)(4)(iv)(F), provided for a variance from the “Toxicity Characteristic Leaching Procedure” (TCLP), SW846 Method 1311, and incorrectly cited “40 CFR 260.11(11)” for Method 1311. This reference was an improper citation format. It should have read “40 CFR 260.11(a)(11).” EPA then significantly reorganized and revised 40 CFR 260.11 (70 FR 34538, June 14, 2005), without making the corresponding revision to the citation in § 264.552(e)(4)(iv)(F). However, the June 14, 2005 revision (at 70 FR 34560) also added a new § 260.11(c)(3)(v) referencing Method 1311. The EPA CFR Corrections rule (71 FR 40273, July 14, 2006) corrected the original § 264.552(e)(4)(iv)(F) citation to read “40 CFR 260.11(a)(11),” the paragraph that in 2002 correctly referred to SW846, which includes Method 1311. But, because of the June 14, 2005 revisions, the correct citation in the July 14, 2006 CFR corrections rule should have been “§ 260.11(c)(3)(v).”

5. Corrections to 40 CFR Part 265 (Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities)

In 40 CFR part 265, EPA is amending the following sections in order to include correct citations, clarify particular regulatory requirements that are either cited elsewhere in **Federal Register** notices or documents published in RCRA Online, and incorporate conforming changes:

Sections 265.52, 265.56, 265.72,⁷ 265.314 and 265.316.

a. 40 CFR 265.52—Content of contingency plan: EPA is amending § 265.52(b) by removing the phrase “or part 1510 of chapter V,” since part 1510 of chapter V no longer exists.

b. 40 CFR 265.56—Emergency Procedures: Consistent with the change being made in 40 CFR 265.52, EPA is amending § 265.56(d)(2) by removing the parenthetical phrase “(in the applicable regional contingency plan under part 1510 of this title),” since the provision no longer exists.

c. 40 CFR 265.314(e) and 265.316(b): As discussed under the sections on 40 CFR 264.314 and 264.316 above (section V.4.c), today’s rule corrects some errors made in the Burden Reduction Rule (71 FR 16912, April 4, 2006) in 40 CFR 264.314(e) and 264.316(b). We are also making the same corrections to the corresponding part 265 provisions, which are identical in language to the part 264 provisions. Specifically, the 2006 Burden Reduction Rule deleted obsolete paragraph (a) in § 265.314 and moved up the rest of the paragraphs in that section. Thus, paragraphs (b) through (g) became re-designated as paragraphs (a) through (f). In doing this, the Burden Reduction Rule failed to update the cross-references in paragraph 265.314(e) from “(f)(1)” to “(e)(1)” and “(f)(2)” to “(e)(2),” and failed to update the cross-reference in § 265.316(b) from “§ 265.314(f)” to “§ 265.314(e).” Today’s rule corrects these errors.

6. Corrections to 40 CFR Part 266 (Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities)

In 40 CFR part 266, EPA is amending the following section in order to make a necessary conforming change: Section 266.20.

40 CFR 266.20—Subpart C—Recyclable Materials Used in a Manner Constituting Disposal: EPA is amending § 266.20(b) by adding at the end of this paragraph the phrase, “and the recycler complies with § 268.7(b)(6).”

Specifically, when EPA promulgated § 268.7(b)(6), the Agency failed to make the conforming change at § 266.20(b) to clarify that the recycler must comply with the one-time certification requirement described at § 268.7(b)(4) for the initial shipment of the waste, and a one-time notification under paragraph § 268.7(b)(3). This correction addresses this oversight.

7. Conforming Changes To Include Reference to Part 267 in Different Sections of Parts 261, 262, 263, and 266.

In 2005, EPA promulgated 40 CFR part 267, which provides alternative management standards for owners and operators of certain types of hazardous waste treatment and storage facilities operating under a special type of permit—that is, the standardized permit. Management includes storing or non-thermally treating hazardous waste on-site in tanks, containers or containment buildings, or receiving hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then storing or non-thermally treating the hazardous waste in containers, tanks, or containment buildings. (See 40 CFR 270.255.) When EPA promulgated this rule, the Agency inadvertently failed to make a number of conforming changes to other parts of the RCRA hazardous waste regulations that were affected by this new rule. In particular, there are various paragraphs throughout parts 261, 262, 263 and 266 where the phrase, “parts 262 through 266, 268, and parts 270 and 124,” or variations appear. When part 267 was promulgated, this phrase should have been amended in the applicable paragraphs to add part 267 and reflect this change. The following paragraphs are amended to correct this oversight:

- § 261.5(b), (e) and (f)(2), and (g)(2)
- § 261.6(a)(3), (c)(1) and (d)
- § 261.7(a)(2)
- § 261.30(c)
- § 262.10(f), (j)(1) and (k).
- § 262.11(d)
- § 262.34(b), (f), and (i)
- § 262.41(b)
- § 263.12
- § 266.22, 266.70(d), 266.80(b), 266.101(c)(1) and (c)(2)

8. Corrections to Part 268 (Land Disposal Restrictions)

EPA is amending the following sections of 40 CFR part 268 in order to make a number of changes: Sections 268.40 and 268.48.

b. 40 CFR 268.40: In 40 CFR 268.40, EPA is amending the table, Treatment Standards for Hazardous Wastes, by revising the wastewater concentration associated with the regulated hazardous constituent, vinyl chloride, for F025 to read “0.27,” and by revising the wastewater concentration associated with the regulated hazardous constituent, arsenic, for K031 to read “1.4.” With respect to F025, 63 FR 28657–58 identified the wastewater concentration for vinyl chloride to be 0.27 mg/L. With respect to K031, the

preamble to the Universal Treatment Standards at 59 FR 48000, and confirmed at 59 FR 48070 for the table, Treatment Standards for Hazardous Wastes found in 40 CFR 268.40, the correct concentration for the regulated hazardous constituent, arsenic, is 1.4 mg/L for K031. Whether through a printing error, or inadvertent technical error, the concentrations for vinyl chloride and arsenic under F025 and K031 were changed in subsequent CFR publications to “0.027” and “14,” respectively. These changes correct those inadvertent errors.

In 40 CFR 268.40, EPA is also amending the table, Treatment Standards for Hazardous Wastes, for the waste codes K156, K157 and K158 by reinserting the parenthetical sentence, “(This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)” As a result of the November 1, 1996, ruling of the United States Court of Appeals for the District of Columbia Circuit in *Dithiocarbamate Task Force v. EPA*, EPA added to the 40 CFR 268.40 table “Treatment Standards for Hazardous Wastes,” at the end of the “Waste description * * *” column for the entries for K156, K157, and K158, the parenthetical sentence “(This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)” (See 62 FR 32979, June 17, 1997.) This same parenthetical sentence was also added by the June 17, 1997 **Federal Register** notice under the entries for K156, K157, and K158 in the following two tables: 40 CFR 261.32 Listed hazardous wastes from specific sources and 40 CFR Table 302.4 List of Hazardous Substances and Reportable Quantities (62 FR 32977 and 32980, respectively). This parenthetical sentence still exists in these latter two tables, but was inadvertently deleted from the § 268.40 table under all three entries (K156–158) by 63 FR 28706–8, May 26, 1998. The purpose of this section of the **Federal Register**, as discussed in the preamble at 63 FR 28623, was to modify the entry in the § 268.40 table for U108; there was no mention of any revisions to the entries for K156–158. Yet when this table was recreated to reflect the U108 revision, the parenthetical sentence at the end of K156–158 was inadvertently deleted.

b. 40 CFR 268.48: At 59 FR 48103, September 19, 1994, EPA added § 268.48 and a table containing Universal Treatment Standards, including treatment standard entries in the table for “bis(2-Ethylhexyl)phthalate” and for “Hexachloropropylene.” The entries for these two chemicals appear in the 1995–

⁷ Discussed under Section V.C.10.

1998 Code of Federal Regulations. They also appear in this same table in the 1998 Phase IV Land Disposal Restrictions (LDR) Final Rule (63 FR 28744, May 26, 1998). By mistake, these entries do not appear in the same table in the 1999 Code of Federal Regulations, or in any CFR since then. There are no FR notices removing these entries. EPA is today restoring these two entries as they first appeared in 1994, and continued unchanged through 1998.

9. Corrections to Part 270 (EPA Administered Permit Programs: The Hazardous Waste Permit Program)

EPA is amending the following section of 40 CFR part 270 in order to make a necessary change: Section 270.4.

40 CFR 270.4(a): Today's rule restores the following sentence at the end of § 270.4(a): "However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 270.41 and 270.43, or the permit may be modified upon the request of the permittee as set forth in § 270.42." (except that today's rule deletes the introductory word "However,"). The first part of this sentence was promulgated on April 1, 1983 (48 FR 14232). EPA attempted to add the last phrase of this sentence on September 28, 1988 (53 FR 37935), but was not able to because EPA had inadvertently deleted the first part of this sentence December 1, 1987 (52 FR 45799). In order to reinstate the missing sentence, EPA is today re-designating the introductory text of paragraph (a) as (a)(1); re-designating paragraphs (a)(1), (a)(2), (a)(3) and (a)(4) as paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii) and (a)(1)(iv), respectively; and reinstating the missing sentence in a new paragraph (a)(2).

10. Corrections To Manifest Regulations

Today's rule corrects certain omissions and an error in the final manifest rule that was published on March 4, 2005 (See 70 FR 10776).

The March 2005 manifest rule (manifest rule) inadvertently omitted certain requirements that were intended for inclusion, and that relate to the use of a manifest in shipments of rejected hazardous wastes or non-empty containers containing regulated residues ("container residues"). In addition, the manifest rule contained an error regarding a designated facility's preparation of a new manifest in certain returned shipment situations. Today's rule corrects these omissions and this error as follows:

1. The generator must confirm receipt of a returned shipment of rejected hazardous wastes or container residues

by sending a copy of the final hazardous waste manifest that accompanied the shipment, whether it was a new manifest or the generator's original manifest, to the designated facility. Today's rule adds a new paragraph (f) to 40 CFR 262.23 to reflect this requirement.

The preamble to the May 22, 2001 proposed manifest rule (66 FR 28240) explained the importance of ensuring that a shipment returned to the generator be verified by the designated facility. Hence, it would be necessary for the generator to send to the designated facility a copy of the final manifest. However, the March 2005 final rule regulatory text inadvertently omitted this requirement for the generator to send a final copy of the manifest to the designated facility, even though the proposed rule preamble discussion clearly intended this requirement. Today's rule corrects this inadvertent omission.

2. The generator must sign and date the manifest accompanying the returned shipment of rejected hazardous wastes or container residues, provide the transporter with a copy of the manifest, and retain a copy of the manifest for three years. New paragraph (f) to 40 CFR 262.23, described previously in item 1, reflects these requirements as well.

In the appendix to part 262, the instructions for completing the manifest require the generator to sign and date the manifest for returned shipments involving the original manifest (generator must sign and date Item 18c of the original manifest) or a new manifest (generator must sign and date Item 20 of the new manifest). Moreover, EPA intended to include all of these same requirements (which generators must currently meet under the manifest instructions) to the regulatory text of the final manifest rule for returned shipments for the purpose of completion, but inadvertently omitted these requirements. Today's rule corrects these inadvertent omissions.

3. The generator must comply with the Exception reporting requirements of 40 CFR 262.42(a) or (b) when a designated facility forwards its hazardous waste or container residues to an alternate facility under a new manifest. Today's rule adds a new paragraph (c) to 40 CFR 262.42 to reflect this requirement.

The current exception reporting requirements in 40 CFR § 262.42 require a generator to file an exception report when a copy of that signed original manifest is not received from the designated facility within the specified time frame. EPA also intended to include, but inadvertently omitted in

the 2005 final manifest rule, exception reporting for hazardous waste shipments forwarded to an alternate facility by a designated facility using a new manifest (following the procedures of CFR 264.72(e)(1)–(6)). Specifically, EPA intended to require the generator to comply with the exception reporting requirements of 40 CFR 262.42 (a) or (b) when a designated facility forwards rejected wastes or container residues to an alternate facility using a new manifest. Today's rule corrects this inadvertent omission.

4. The designated facility must mail to the generator a signed copy of the new manifest included with the shipments of rejected loads or container residues that are re-shipped to an alternate facility by the designated facility under a new manifest. Today's rule amends paragraph (e)(6) of 40 CFR 264.72 and 40 CFR 265.72 to reflect this requirement.

When a designated facility forwards to an alternate facility shipments of rejected loads or container residues under a new manifest, it is important for the designated facility also to send the generator a copy of the new manifest indicating the date on which the shipment was accepted by the initial transporter that is transporting the rejected hazardous waste or container residues to the alternate facility. Otherwise, the generator cannot reasonably determine that the alternate facility received the shipment in the appropriate time frame in order to fulfill its various obligations under the manifest regulations. EPA intended to include, but inadvertently omitted, this requirement in the manifest rule. Today's rule corrects this inadvertent omission.

5. The designated facility must enter its own information (instead of the generator's information) in Item 5 of the new manifest form when it originates the shipments of rejected hazardous waste or container residues. Today's rule amends 40 CFR 264.72(f)(1) and 265.72(f)(1) to correct this error.

This approach provides the most straightforward facility-to-generator tracking of waste shipments and was explained in the preamble to the May 22, 2001, proposed rule (66 FR 28240). In response to requests for clarification of this issue from the regulated community and State waste management officials, EPA's Office of Solid Waste (OSW) issued a memorandum (May 14, 2007) from Matt Hale, OSW Office Director, to the Regional Waste Division Directors and RCRA Enforcement Managers acknowledging this error and recommending that manifests should be

considered compliant if, in cases of rejected wastes and container residues, designated facilities entered their own information in Item 5 of the new manifest. In addition, the memo indicated that EPA would correct this error in the future. A copy of this memo is in the Docket for this rulemaking.

6. The designated facility using a new manifest to return a full load or partial load of rejected hazardous wastes, or container residues, to the generator must comply with the exception

reporting provisions of 40 CFR 262.42(a). Today's rule adds new paragraph (f)(8) to 40 CFR 264.72 and 265.72 to reflect this requirement. Today's rule also makes a necessary conforming amendment to paragraph (f)(7) to 40 CFR 264.72 and 40 CFR 265.72 to reference new paragraph (f)(8).

Under today's rule, the designated facility must file an exception report in situations when a completed copy of the manifest is not received from the generator within 35 days of the date that

the shipment was accepted by the initial transporter transporting the shipment. This requirement ensures that the shipment returned to the generator can be verified by the designated facility, as explained in the preamble to the May 22, 2001 proposed manifest rule. EPA intended to include, but inadvertently omitted, this requirement in the initial manifest rule of March 4, 2005. Today's rule corrects this inadvertent omission.

Table 1 provides a summary of the manifest technical corrections.

TABLE 1—MANIFEST RELATED OMISSIONS AND INACCURACIES CORRECTED IN TODAY'S DIRECT FINAL RULE

Citation	Action in today's final rule	Summary of added or corrected provision	Type of shipment affected (RW&CR = rejected waste and container residues)
262.23(f)	Add new paragraph (f)	Generator (recipient of shipment) must: —sign/complete the manifest. —provide a copy of the completed manifest to transporter. —send a copy of the completed manifest to the Designated Facility (originator of shipment). —keep a copy of completed manifest.	RW&CR returned from Designated Facility to Generator using a new or an original manifest.
262.42(c)	Add new paragraph (c).	Generator must file an exception report if a copy of the signed new manifest is not received from the alternate facility within a specified time frame.	RW&CR forwarded from Designated Facility to Alternate Facility using a new manifest.
264.72(e)(6) and 265.72 (e)(6).	Add new provision to existing paragraph (6).	Designated Facility must send copy of new manifest to the Generator.	RW&CR forwarded from Designated Facility to Alternate Facility using a new manifest.
264.72(f)(1) and 265.72 (f)(1).	Correct paragraph (1)	Designated Facility must enter its own information in Box 5 of the manifest.	RW&CR returned from Designated Facility to Generator using a new manifest.
264.72(f)(7) and 265.72 (f)(7).	Correct references in paragraph (7).	Designated Facility using original manifest need not comply with new paragraph (8).	RW&CR returned from Designated Facility to Generator using the original manifest.
264.72(f)(8) and 265.72 (f)(8).	Add new paragraph (8).	Designated Facility must comply with the exception reporting requirements for shipments returned to the Generator.	RW&CR returned from Designated Facility to Generator using a new manifest.

VI. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize a qualified State to administer its own hazardous waste program within the State in lieu of the Federal program. Following authorization, EPA retains enforcement authority under Sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for State authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in that State, since only the State was authorized to issue RCRA permits.

When new, more stringent Federal requirements were promulgated, the State was obligated to enact equivalent authorities within specified time frames. However, the new Federal requirements did not take effect in an authorized State until the State adopted the Federal requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed by the statute to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA related provisions as State law to retain final authorization, EPA implements the HSWA provisions in authorized States until the States do so.

Authorized States are required to modify their program only when EPA enacts Federal requirements that are

more stringent or broader in scope than the existing Federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program (see also 40 CFR 271.1). Therefore, authorized States may, but are not required to, adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous Federal regulations.

B. Effect on State Authorization

Today's Direct Final rule finalizes technical corrections to a number of the regulations in 40 CFR parts 260–266, 268 and 270 that are being promulgated in part under the authority of HSWA, and in part under non-HSWA authority. Thus, the technical corrections and clarifications finalized today under non-HSWA authority would be applicable on the effective date only in those States that do not have final authorization of their base RCRA programs. The technical corrections to regulations in part 268 are promulgated under the authority of HSWA and would be

effective on the effective date of this Direct Final rule in all States unless the State is not authorized for the underlying provisions. Moreover, authorized States are required to modify their programs only when EPA promulgates Federal regulations that are more stringent or broader in scope than the authorized State regulations. For those changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their program. This is a result of section 3009 of RCRA, which allows States to impose more stringent regulations than the Federal program. Today's Direct Final rule is considered to be neither more nor less stringent than the current standards. Therefore, authorized States would not be required to modify their programs to adopt the technical corrections promulgated today, although we would strongly urge the States to adopt these technical corrections to avoid any confusion or misunderstanding by the regulated community and the public.

One exception to the above discussion concerns clarifications of the manifest regulations in 40 CFR 262.23. All authorized States will be required to adopt these revisions in accordance with the consistency requirements in 40 CFR 271.4(c). See 70 FR 10811, March 4, 2005 for a further discussion of this provision.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action." Accordingly, EPA did not submit this action to the Office of Management and Budget (OMB) for review under Executive Order 12866.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them. As described in the preamble, while the recordkeeping and reporting requirements related to the manifest are not considered new requirements, we nevertheless discuss the information collection burden under the provisions of the *Paperwork Reduction Act* with respect to this action.

The manifest amendments in this action impose recordkeeping and

reporting burden to generators and designated facilities subject to these manifest changes. However, EPA believes that the burden impacts are minimal since the changes apply only to rejected load shipments and container residue shipments that require the completion of a new hazardous waste manifest. EPA estimates that each manifest completed and sent off site by a generator (2,074,900) will be delivered to the designated treatment, storage or disposal facility (TSDF), minus those manifests accompanying export shipments (19,509 manifests) or lost during transport (173 manifests). Hence, USEPA estimates that 2,055,218 manifests will be delivered to the designated TSDF. EPA estimates that 3% of these shipments will be classified as rejected loads or container residue shipments, and that 50% of these shipments would be affected by the manifest regulatory amendments in this action. Approximately 99% of these shipments (30,519) will be sent to an alternate facility, and the remaining 1% (308) of these shipments will be returned to the generator. Most of the incremental burden increase will result from the proposed changes applicable to the estimated 30,519 hazardous waste shipments forwarded to an alternate facility. However, EPA expects that the total national hourly burden will be minimal (4,578) hours, since for each affected shipment the respondent activity associated with the changes should require, at most, nine minutes of clerical staff time.

EPA believes that the potential recordkeeping and reporting burden associated with hazardous waste shipments returned to the generator will be negligible since the proposed changes will only affect 308 shipments annually, and only an extremely small fraction of those returned shipments will require the completion, submission, and recordkeeping of an exception report.

As a result of a small increase in the number of burden hours, EPA has submitted a nonsubstantive change request to the Office of Management and Budget (OMB) that will modify the information collection request (ICR) entitled, "Requirements for Generators, Transporters, and Waste Management Facilities under the RCRA Hazardous Waste Manifest System" (EPA ICR #0801.16; OMB Control No. 2050-0039) to account for this overall change in manifest burden hours. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB

control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administrations' regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's Direct Final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action simply corrects typographical errors, incorrect citations, omissions provides clarifications, and makes conforming changes where they have not been made previously.

Although this Direct Final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and

tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This action contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This Direct Final rule corrects typographical errors, incorrect citations, omissions, provides clarifications, and makes conforming changes where they have not been made previously. In any event, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments because this rule corrects errors in the CFR and clarifies existing regulatory language.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It 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. This action corrects typographical errors, incorrect citations, omissions, provides clarifications, and makes conforming changes where they have not been made previously. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This action does not have tribal implications, as specified in Executive Order 13175. It will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law because this rule corrects typographical errors, incorrect citations, omissions, provides clarifications, and makes conforming changes where they have not been made previously. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because it is not based on environmental health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

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.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods,

sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this Direct Final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because this rule corrects typographical errors, incorrect citations, omissions, provides clarifications, and makes conforming changes where they have not been made previously. These types of changes to the rule do not affect the level of protection provided to human health or the environment.

K. Congressional Review Act

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. EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*, as amended) 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 is effective June 16, 2010.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 263

Environmental protection, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 266

Environmental protection, Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: March 10, 2010.

Lisa P. Jackson,
Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

§ 260.10 [Amended]

■ 2. Amend § 260.10, the definition of “*New hazardous waste management facility or new facility*” by removing the date “October 21, 1976” and adding in its place the date “November 19, 1980”.

Appendix I [Removed]

■ 3. Amend part 260 by removing Appendix I.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 4. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

§ 261.1 [Amended]

■ 5. Amend § 261.1(c)(10) by removing the citation “§ 261.4(a)(13)” and adding in its place the citation “§ 261.4(a)(14)”.

■ 6. Amend § 261.2(c), Table 1, by removing the entry for “Scrap metal other than excluded scrap metal (see 261.1(c)(9))” and adding in its place the entry “Scrap metal that is not excluded under § 261.4(a)(13)” to read as follows:

§ 261.2 Definition of Solid Waste

* * * * *
(c) * * *

TABLE 1

	Use constituting disposal (§ 261.2(c)(1))	Energy recovery/fuel (§ 261.2(c)(2))	Reclamation (261.2(c)(3)), except as provided in §§ 261.2(a)(2)(ii), 261.4(a)(17), 261.4(a)(23), 261.4(a)(24), or 261.4(a)(25)	Speculative accumulation (§ 261.2(c)(4))
	1	2	3	4
Scrap metal that is not excluded under § 261.4(a)(13)	(*)	(*)	(*)	(*)
	*	*	*	*

* * * * *

§ 261.4 [Amended]

■ 7. Amend § 261.4, paragraph (a)(17)(vi) by removing the citation “(a)(7)” and adding in its place the citation “(b)(7)”.

■ 8. Amend § 261.5 as follows:

- a. By revising paragraph (b).
- b. By revising paragraph (e).

- c. By revising paragraph (f) introductory text.
- d. By revising paragraph (f)(2).
- e. By revising paragraph (g) introductory text.
- f. By revising paragraph (g)(2)

§ 261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

* * * * *

(b) Except for those wastes identified in paragraphs (e), (f), (g), and (j) of this section, a conditionally exempt small quantity generator’s hazardous wastes are not subject to regulation under parts 262 through 268, and parts 270 and 124 of this chapter, and the notification requirements of section 3010 of RCRA, provided the generator complies with

the requirements of paragraphs (f), (g), and (j) of this section.

* * * * *

(e) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acute hazardous waste are subject to full regulation under parts 262 through 268, and parts 270 and 124 of this chapter, and the notification requirements of section 3010 of RCRA:

(1) A total of one kilogram of acute hazardous wastes listed in §§ 261.31 or 261.33(e).

(2) A total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in §§ 261.31, or 261.33(e).

Note to paragraph (e): "Full regulation" means those regulations applicable to generators of 1,000 kg or greater of hazardous waste in a calendar month.

* * * * *

(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in paragraphs (e)(1) or (e)(2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:

* * * * *

(2) The generator may accumulate acute hazardous waste on-site. If he accumulates at any time acute hazardous wastes in quantities greater than those set forth in paragraph (e)(1) or (e)(2) of this section, all of those accumulated wastes are subject to regulation under parts 262 through 268, and parts 270 and 124 of this chapter, and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34(a) of this chapter, for accumulation of wastes on-site, begins when the accumulated wastes exceed the applicable exclusion limit;

* * * * *

(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of 100 kilograms or less of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

* * * * *

(2) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time 1,000 kilograms or greater of his hazardous wastes, all of those accumulated wastes are subject to

regulation under the special provisions of part 262 applicable to generators of greater than 100 kg and less than 1000 kg of hazardous waste in a calendar month as well as the requirements of parts 263 through 268, and parts 270 and 124 of this chapter, and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34(d) for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes equal or exceed 1000 kilograms;

* * * * *

■ 9. Amend § 261.6 as follows:

■ a. By revising paragraph (a)(2) introductory text.

■ b. By revising paragraph (a)(2)(ii).

■ c. By revising paragraph (a)(3) introductory text.

■ d. By revising paragraph (c)(1).

■ e. By revising paragraph (d).

The revisions read as follows:

§ 261.6 Requirements for recyclable materials.

(a) * * *

(2) The following recyclable materials are not subject to the requirements of this section but are regulated under subparts C through N of part 266 of this chapter and all applicable provisions in parts 268, 270, and 124 of this chapter.

* * * * *

(ii) Hazardous wastes burned (as defined in section 266.100(a)) in boilers and industrial furnaces that are not regulated under subpart O of part 264 or 265 of this chapter (40 CFR part 266, subpart H);

* * * * *

(3) The following recyclable materials are not subject to regulation under parts 262 through parts 268, 270 or 124 of this chapter, and are not subject to the notification requirements of section 3010 of RCRA:

* * * * *

(c) (1) Owners and operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of subparts A through L, AA, BB, and CC of parts 264 and 265, and under parts 124, 266, 267, 268, and 270 of this chapter and the notification requirements under section 3010 of RCRA, except as provided in paragraph (a) of this section. (The recycling process itself is exempt from regulation except as provided in § 261.6(d).)

* * * * *

(d) Owners or operators of facilities subject to RCRA permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the

requirements of subparts AA and BB of part 264, 265 or 267 of this chapter.

■ 10. Amend § 261.7 as follows:

■ a. By revising paragraph (a).

■ b. By revising paragraph (b)(1) introductory text.

■ c. By revising paragraph (b)(3) introductory text.

The revisions read as follows:

§ 261.7 Residues of hazardous waste in empty containers.

(a)(1) Any hazardous waste remaining in either: an empty container; or an inner liner removed from an empty container, as defined in paragraph (b) of this section, is not subject to regulation under parts 261 through 268, 270, or 124 this chapter or to the notification requirements of section 3010 of RCRA.

(2) Any hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty, as defined in paragraph (b) of this section, is subject to regulation under parts 261 through 268, 270 and 124 of this chapter and to the notification requirements of section 3010 of RCRA.

(b)(1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in §§ 261.31 or 261.33(e) of this chapter is empty if:

* * * * *

(3) A container or an inner liner removed from a container that has held an acute hazardous waste listed in §§ 261.31 or 261.33(e) is empty if:

* * * * *

■ 11. Amend § 261.23 by revising paragraph (a)(8) to read as follows:

§ 261.23 Characteristic of reactivity.

(a) * * *

(8) It is a forbidden explosive as defined in 49 CFR 173.54, or is a Division 1.1, 1.2 or 1.3 explosive as defined in 49 CFR 173.50 and 173.53.

* * * * *

■ 12. Amend § 261.30 by revising paragraphs (c) and (d) to read as follows:

§ 261.30 General.

* * * * *

(c) Each hazardous waste listed in this subpart is assigned an EPA Hazardous Waste Number which precedes the name of the waste. This number must be used in complying with the notification requirements of Section 3010 of the Act and certain recordkeeping and reporting requirements under parts 262 through 265, 267, 268, and 270 of this chapter.

(d) The following hazardous wastes listed in § 261.31 are subject to the

exclusion limits for acutely hazardous wastes established in § 261.5: EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026 and F027.

■ 13. In § 261.31(a), the table is amended by revising the entry for F037 to read as follows:

§ 261.31 Hazardous wastes from non-specific sources.
* * * * *
(a) * * *

Table with 3 columns: Industry and EPA hazardous waste No., Hazardous waste, Hazard code. Row for F037: Petroleum refinery primary oil/water/solids separation sludge—Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing. This listing does include residuals generated from processing or recycling oil-bearing hazardous secondary materials excluded under § 261.4(a)(12)(i), if those residuals are to be disposed of. (T)

■ 14. In § 261.32(a), the table is amended as follows:
■ a. Under the heading “organic chemicals”, revise the entry for “K107”.

■ b. Remove the heading “Primary copper:”.
■ c. Remove the heading “Primary lead:”.
■ d. Remove the heading “Primary zinc:”.
■ e. Remove the heading “Ferroalloys:”.

The revision reads as follows:
§ 261.32 Hazardous wastes from specific sources
* * * * *
(a)* * *

Table with 3 columns: Industry and EPA hazardous waste No., Hazardous waste, Hazard code. Row for K107: Column bottoms from product separation from the production of 1,1 dimethylhydrazine (UDMH) from carboxylic hydrazides. (C,T)

■ 15. In § 261.33(f), the table is amended by revising the entry for U239 to read as follows:

§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.
* * * * *

Table with 3 columns: Hazardous waste No., Chemical abstracts No., Substance. Row for U239: 1330-20-7 Benzene, dimethyl- (I)

Appendix VII [Amended]

■ 16. Section 261, Appendix VII is amended by removing in its entirety the entries for EPA Hazardous Waste Nos. “K064,” “K065,” “K066,” “K090,” and “K091”.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

■ 17. The authority citation for part 262 continues to read as follows:
Authority: 42 U.S.C. 6906, 6912, 6922-6925, 6937, and 6938.

■ 18. Amend § 262.10 as follows:
■ a. By revising paragraph (f).
■ b. By revising paragraph (j)(1) introductory text (table remains unchanged).
■ c. By revising paragraph (k).
§ 262.10 Purpose, scope and applicability.
* * * * *

(f) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of § 262.70 is not required to comply with other standards in this part or 40 CFR parts 270, 264, 265, 267, or 268 with respect to such pesticides.

(j)(1) Universities that are participating in the Laboratory XL project are the University of Massachusetts Boston in Boston, Massachusetts, Boston College in Chestnut Hill, Massachusetts, and the University of Vermont in Burlington, Vermont ("Universities"). The Universities generate laboratory wastes (as defined in § 262.102), some of which will be hazardous wastes. As long as the Universities comply with all the requirements of subpart J of this part the Universities' laboratories that are participating in the University Laboratories XL Project as identified in Table 1 of this section, are not subject to the provisions of §§ 262.11, 262.34(c), 40 CFR parts 264 and 265, 267, and the permit requirements of 40 CFR part 270 with respect to said laboratory wastes.

(k) Generators in the Commonwealth of Massachusetts may comply with the State regulations regarding Class A recyclable materials in 310 C.M.R. 30.200, when authorized by the EPA under 40 CFR part 271, with respect to those recyclable materials and matters covered by the authorization, instead of complying with the hazardous waste accumulation requirements of § 262.34, the reporting requirements of § 262.41, the storage facility operator requirements of 40 CFR parts 264, 265 and 267, and the permitting requirements of 40 CFR part 270. Such generators must also comply with any other applicable requirements, including any applicable authorized State regulations governing hazardous wastes not being recycled and any applicable Federal requirements which are being directly implemented by the EPA within Massachusetts pursuant to the Hazardous and Solid Waste Amendments of 1984.

■ 19. Amend § 262.11 by revising paragraph (d) to read as follows:

§ 262.11 Hazardous waste determination.

(d) If the waste is determined to be hazardous, the generator must refer to parts 261, 264, 265, 266, 267, 268, and 273 of this chapter for possible exclusions or restrictions pertaining to management of the specific waste.

■ 20. Amend § 262.23 by adding paragraph (f) to read as follows:

§ 262.23 Use of the manifest.

(f) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are returned to the generator by the designated facility (following the procedures of 40 CFR 264.72(f) or 265.72(f)), the generator must:

- (1) Sign either:
 - (i) Item 20 of the new manifest if a new manifest is used for the returned shipment; or
 - (ii) Item 18c of the original manifest if the original manifest is used for the returned shipment;
- (2) Provide the transporter a copy of the manifest;
- (3) Within 30 days of delivery of the rejected shipment or container residues contained in non-empty containers, send a copy of the manifest to the designated facility that returned the shipment to the generator; and
- (4) Retain at the generator's site a copy of each manifest for at least three years from the date of delivery.

■ 21. Amend § 262.34 as follows:

- a. By revising paragraph (a) introductory text.
- b. By removing the undesignated sentence after paragraph (a)(1)(iv)(B).
- c. By revising paragraph (a)(2).
- d. By revising paragraph (a)(4).
- e. By adding paragraph (a)(5)
- f. By revising paragraph (b).
- g. By revising paragraph (c)(1) introductory text.
- h. By revising paragraph (c)(2).
- i. By revising paragraph (d)(4).
- j. By revising paragraph (f).
- k. By revising paragraph (i).

The revisions and addition read as follows:

§ 262.34 Accumulation time.

(a) A generator who generates 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§ 261.31 or 261.33(e) in a calendar month, may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:

(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container and tank;

(4) The generator complies with the requirements for owners or operators in subparts C and D in 40 CFR part 265, with § 265.16, and with all applicable requirements under 40 CFR part 268.

(5) Generators accumulating hazardous waste on-site for 90 days or less without a permit or without having interim status are exempt from all the requirements in subparts G and H of 40 CFR part 265, except for 40 CFR 265.111 and 265.114.

(b) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§ 261.31 or 261.33(e) in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264, 265, and 267 and the permit requirements of 40 CFR part 270 unless he has been granted an extension to the 90-day period. Such extension may be granted by EPA if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis.

(c)(1) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in § 261.31 or § 261.33(e) in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) or (d) of this section provided he:

(2) A generator who accumulates either hazardous waste or acutely hazardous waste listed in § 261.31 or § 261.33(e) in excess of the amounts listed in paragraph (c)(1) of this section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with paragraph (a) of this section or other applicable provisions of this chapter. During the three day period the generator must continue to comply with paragraphs (c)(1)(i) and (ii) of this section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

(d) * * *

(4) The generator complies with the requirements of paragraphs (a)(2) and (a)(3) of this section, the requirements of subpart C of part 265, with all applicable requirements under 40 CFR part 268; and

(f) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6000 kg or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264, 265 and 267, and the permit requirements of 40 CFR part 270 unless he has been granted an extension to the 180-day (or 270-day if applicable) period. Such extension may be granted by EPA if hazardous wastes must remain on-site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis.

* * * * *

(i) A generator accumulating F006 in accordance with paragraphs (g) and (h) of this section who accumulates F006 waste on-site for more than 180 days (or for more than 270 days if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more), or who accumulates more than 20,000 kilograms of F006 waste on-site is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264, 265 and 267, and the permit requirements of 40 CFR part 270 unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by EPA if F006 waste must remain on-site for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste must remain on-site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the Regional Administrator on a case-by-case basis.

* * * * *

■ 22. Amend § 262.41 by revising paragraph (b) to read as follows:

§ 262.41 Biennial report.

* * * * *

(b) Any generator who treats, stores, or disposes of hazardous waste on-site must submit a biennial report covering those wastes in accordance with the provisions of 40 CFR parts 270, 264, 265, 266, and 267. Reporting for exports

of hazardous waste is not required on the Biennial Report form. A separate annual report requirement is set forth at 40 CFR 262.56.

* * * * *

■ 23. Amend § 262.42 as follows:

■ a. By revising paragraph (a)(1).

■ b. By revising paragraph (a)(2) introductory text.

■ c. By adding paragraph (c).

The revisions and addition read as follows:

§ 262.42 Exception reporting.

(a)(1) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in § 261.31 or § 261.33(e) in a calendar month, who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

(2) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in § 261.31 or § 261.33(e) in a calendar month, must submit an Exception Report to the EPA Regional Administrator for the Region in which the generator is located if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The Exception Report must include:

* * * * *

(c) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are forwarded to an alternate facility by a designated facility using a new manifest (following the procedures of 40 CFR 264.72(e)(1) through (6) or 40 CFR 265.72(e)(1) through (6)), the generator must comply with the requirements of paragraph (a) or (b) of this section, as applicable, for the shipment forwarding the material from the designated facility to the alternate facility instead of for the shipment from the generator to the designated facility. For purposes of paragraph (a) or (b) of this section for a shipment forwarding such waste to an alternate facility by a designated facility:

(1) The copy of the manifest received by the generator must have the handwritten signature of the owner or operator of the alternate facility in place of the signature of the owner or operator of the designated facility, and

(2) The 35/45/60-day timeframes begin the date the waste was accepted by the initial transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility.

§ 262.60 [Amended]

■ 24. Amend § 262.60(b) introductory text by removing the citation “§ 262.20(a)” and adding in its place “§ 262.20”.

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

■ 25. The authority citation for part 263 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924 and 6925.

■ 26. Revise § 263.12 to read as follows:

§ 263.12 Transfer facility requirements.

A transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of § 262.30 at a transfer facility for a period of ten days or less is not subject to regulation under parts 270, 264, 265, 267, and 268 of this chapter with respect to the storage of those wastes.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 27. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924 and 6925.

§ 264.52 [Amended]

■ 28. Amend § 264.52(b) in the first sentence by removing the words “, or part 1510 of chapter V”.

§ 264.56 [Amended]

■ 29. Amend paragraph § 264.56(d)(2) introductory text by removing the parenthetical phrase “(in the applicable regional contingency plan under part 1510 of this title)”.

■ 30. Amend § 264.72 as follows:

■ a. By revising paragraph (e)(6).

■ b. By revising paragraph (f)(1).

■ c. By revising paragraph (f)(7).

■ d. By adding paragraph (f)(8).

The revisions and addition read as follows:

§ 264.72 Manifest discrepancies.

* * * * *

(e) * * *

(6) Sign the Generator's/Offerrer's Certification to certify, as the offeror of the shipment, that the waste has been

properly packaged, marked and labeled and is in proper condition for transportation, and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

* * * * *

(f) * * *

(1) Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the facility's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the facility's site address, then write the facility's site address in the designated space for Item 5 of the new manifest.

* * * * *

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility must retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (f)(1), (2), (3), (4), (5), (6), and (8) of this section.

(8) For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in § 262.42(a).

* * * * *

§ 264.314 [Amended]

■ 31. In § 264.314, amend paragraph (d) introductory text by revising "(e)(1)" to read "(d)(1)" and by revising "(e)(2)" to read "(d)(2)".

§ 264.316 [Amended]

■ 32. In § 264.316, amend paragraph (b) by removing the citation "§ 264.314(e)" and adding in its place "§ 264.314(d)".

§ 264.552 [Amended]

■ 33. Amend § 264.552 as follows:

- a. In paragraph (a)(3)(ii), remove the citation "§ 264.314(d)" and add in its place "§ 264.314(c)";
■ b. In paragraph (a)(3)(iii), remove the citation "§ 264.314(f)" and add in its place "§ 264.314(e)";
■ c. In paragraph (a)(3)(iv), remove the citation "§ 264.314(c)" and add in its place "§ 264.314(b)" and remove the citation "§ 264.314(e)" and add in its place "§ 264.314(d)"; and
■ d. In paragraph (e)(4)(iv)(F), remove the citation "260.11(a)(11)" and add in its place "260.11(c)(3)(v)".

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 34. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6922–6925, 6935–6937, unless otherwise noted.

§ 265.52 [Amended]

■ 35. Amend paragraph § 265.52(b) in the first sentence by removing the words "or part 1510 of chapter V".

§ 265.56 [Amended]

■ 36. Amend § 265.56(d)(2) by removing the parenthetical phrase "(in the applicable regional contingency plan under part 1510 of this title)".

■ 37. Amend § 265.72 as follows:

- a. By revising paragraph (e)(6).
■ b. By revising paragraph (f)(1).
■ c. By revising paragraph (f)(7).
■ d. By adding paragraph (f)(8).

The revisions and addition read as follows:

§ 265.72 Manifest discrepancies.

* * * * *

(e) * * *

(6) Sign the Generator's/Offendor's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation, and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

* * * * *

(f) * * *

(1) Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the facility's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the facility's site address, then write the facility's site address in the designated space for Item 5 of the new manifest.

* * * * *

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility must retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (f)(1), (2), (3), (4), (5), (6), and (8) of this section.

(8) For full or partial load rejections and container residues contained in

non-empty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in § 262.42(a).

* * * * *

§ 265.314 [Amended]

■ 38. In § 265.314, amend paragraph (e) introductory text by removing the citation "(f)(1)" and adding in its place "(e)(1)" and by removing the citation "(f)(2)" and adding in its place "(e)(2)".

§ 265.316 [Amended]

■ 39. In § 265.316, amend paragraph (b) by removing the citation "§ 265.314(f)" and adding in its place "§ 265.314(e)".

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

■ 40. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6922–6925, 6935–6937, unless otherwise noted.

■ 41. Amend § 266.20 by revising paragraph (b) to read as follows:

§ 266.20 Applicability.

* * * * *

(b) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a chemical reaction in the course of producing the products so as to become inseparable by physical means and if such products meet the applicable treatment standards in subpart D of part 268 (or applicable prohibition levels in § 268.32 of this chapter or RCRA section 3004(d), where no treatment standards have been established) for each recyclable material (i.e., hazardous waste) that they contain, and the recycler complies with § 268.7(b)(6) of this chapter.

* * * * *

■ 42. Revise § 266.22 to read as follows:

§ 266.22 Standards applicable to storers of materials that are to be used in a manner that constitutes disposal who are not the ultimate users.

Owners or operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal, but who are not the ultimate users of the materials, are regulated under all applicable provisions of subparts A through L of parts 264, 265 and 267, and parts 270 and 124 of this chapter and the notification requirement under section 3010 of RCRA.

■ 43. Amend § 266.70 by revising paragraph (d) to read as follows:

§ 266.70 Applicability and requirements.

* * * * *

(d) Recyclable materials that are regulated under this subpart that are accumulated speculatively (as defined in § 261.1(c) of this chapter) are subject to all applicable provisions of parts 262 through 265, 267, 270, and 124 of this chapter.

§ 266.80 [Amended]

■ 44. Amend § 266.80 by adding paragraphs (b)(1)(viii) and (b)(2)(viii) to read as follows:

§ 266.80 Applicability and requirements.

* * * * *

(b) * * *

(1) * * *

(viii) All applicable provisions in part 267 of this chapter.

(2) * * *

(viii) All applicable provisions in part 267 of this chapter.

■ 45. Amend § 266.101 by revising paragraph (c) to read as follows:

§ 266.101 Management prior to burning.

* * * * *

(c) *Storage and treatment facilities.* (1) Owners and operators of facilities that store or treat hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provisions of parts 264, 265, 267 and 270 of this chapter, except as provided by paragraph (c)(2) of this section. These standards apply to storage and treatment by the burner as well as to storage and treatment facilities operated by intermediaries (processors, blenders, distributors, etc.) between the generator and the burner.

(2) Owners and operators of facilities that burn, in an onsite boiler or industrial furnace exempt from regulation under the small quantity burner provisions of § 266.108, hazardous waste that they generate are exempt from the regulations of parts 264, 265, 267 and 270 of this chapter applicable to storage units for those storage units that store mixtures of hazardous waste and the primary fuel to the boiler or industrial furnace in tanks

that feed the fuel mixture directly to the burner. Storage of hazardous waste prior to mixing with the primary fuel is subject to regulation as prescribed in paragraph (c)(1) of this section.

PART 268—LAND DISPOSAL RESTRICTIONS

■ 46. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

■ 47. In § 268.40(j), the table “Treatment Standards for Hazardous Wastes,” is amended as follows:

■ a. By revising the entry for F025.

■ b. By revising the entry for K031.

■ c. By revising the entry for K156.

■ d. By revising the entry for K157.

■ e. By revising the entry for K158.

§ 268.40 Applicability of treatment standards.

* * * * *

(j) * * *

TREATMENT STANDARDS FOR HAZARDOUS WASTES

[Note: NA means not applicable]

Waste code	Waste description and treatment/regulatory subcategory ¹	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS ² No.	Concentration ³ in mg/L; or technology code ⁴	Concentration ⁵ in mg/kg unless noted as “mg/L TCLP”; or technology code ⁴
F025 ...	Condensed light ends from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. F025—Light Ends Subcategory.	Carbon tetrachloride	56–23–5	0.057	6.0
		Chloroform	67–66–3	0.046	6.0
		1,2-Dichloroethane	107–06–2	0.21	6.0
		1,1-Dichloroethylene	75–35–4	0.025	6.0
		Methylene chloride	75–9–2	0.089	30
		1,1,2-Trichloroethane	79–00–5	0.054	6.0
		Trichloroethylene	79–01–6	0.054	6.0
		Vinyl chloride	75–01–4	0.27	6.0
	Spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. F025—Spent Filters/Aids and Desiccants Subcategory.	Carbon tetrachloride	56–23–5	0.057	6.0
		Chloroform	67–66–3	0.046	6.0
		Hexachlorobenzene	118–74–1	0.055	10
		Hexachlorobutadiene	87–68–3	0.055	5.6
		Hexachloroethane	67–72–1	0.055	30
		Methylene chloride	75–9–2	0.089	30
		1,1,2-Trichloroethane	79–00–5	0.054	6.0
		Trichloroethylene	79–01–6	0.054	6.0
		Vinyl chloride	75–01–4	0.27	6.0
K031 ...	By-product salts generated in the production of MSMA and cacodylic acid.	Arsenic	7440–38–2	1.4	5.0 mg/L TCLP.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

[Note: NA means not applicable]

Waste code	Waste description and treatment/regulatory subcategory ¹	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS ² No.	Concentration ³ in mg/L; or technology code ⁴	Concentration ⁵ in mg/kg unless noted as “mg/L TCLP”; or technology code ⁴
* * * * *					
K156 ...	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.).	Acetonitrile	75-05-8	5.6	1.8
		Acetophenone	98-86-2	0.010	9.7
		Aniline	62-53-3	0.81	14
		Benomyl	17804-35-2	0.056	1.4
		Benzene	71-43-2	0.14	10
		Carbaryl	63-25-2	0.006	0.14
		Carbenzadim	10605-21-7	0.056	1.4
		Carbofuran	1563-66-2	0.006	0.14
		Carbosulfan	55285-14-8	0.028	1.4
		Chlorobenzene	108-90-7	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		o-Dichlorobenzene	95-50-1	0.088	6.0
		Methomyl	16752-77-5	0.028	0.14
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Naphthalene	91-20-3	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyridine	110-86-1	0.014	16
		Toluene	108-88-3	0.080	10
		Triethylamine	121-44-8	0.081	1.5
K157 ...	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.).	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Chloromethane	74-87-3	0.19	30
		Methomyl	16752-77-5	0.028	0.14
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Pyridine	110-86-1	0.014	16
		Triethylamine	121-44-8	0.081	1.5
K158 ...	Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.).	Benomyl	17804-35-2	0.056	1.4
		Benzene	71-43-2	0.14	10
		Carbenzadim	10605-21-7	0.056	1.4
		Carbofuran	1563-66-2	0.006	0.14
		Carbosulfan	55285-14-8	0.028	1.4
		Chloroform	67-66-3	0.046	6.0
		Methylene chloride	75-09-2	0.089	30
		Phenol	108-95-2	0.039	6.2
* * * * *					

* * * * *

Footnotes to Treatment Standard Table 268.40

1. The waste descriptions provided in this table do not replace waste descriptions in 40 CFR 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

2. CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

3. Concentration standards for wastewaters are expressed in mg/L and are based on analysis of composite samples.

4. All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42 Table 1—Technology Codes and Descriptions of Technology-Based Standards.

5. Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR Part 264 Subpart O or Part 265 Subpart O, or based upon combustion in fuel substitution units

operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

* * * * *

■ 48. In § 268.48(a), the table “Universal Treatment Standards,” is amended by adding the specific entries, “bis(2-Ethylhexyl)phthalate” and for “Hexachloropropylene” in alphabetical order:

§ 268.48 Universal Treatment Standards. (a) * * *

UNIVERSAL TREATMENT STANDARDS

[Note: NA means not applicable]

Regulated constituent common name	CAS ¹ No.	Wastewater standard concentration ² in mg/l	Nonwastewater standard concentration ³ in mg/kg unless noted as "mg/l TCLP"
Organic Constituents			
Ethyl ether	60-29-7	0.12	160
bis(2-Ethylhexyl)phthalate	117-81-7	0.28	28
Hexachloroethane	67-72-1	0.055	30
Hexachloropropylene	1888-71-7	0.035	30

* * * * *

Footnotes to Table UTS

1. CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

2. Concentration standards for wastewaters are expressed in mg/l and are based on analysis of composite samples.

3. Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O or 40 CFR part 265, subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

■ 49. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

■ 50. Amend § 270.4 as follows:

■ a. By redesignating paragraph (a)(1) as paragraph (a)(1)(i).

■ b. By redesignating paragraph (a)(2) as paragraph (a)(1)(ii).

■ c. By redesignating paragraph (a)(3) as paragraph (a)(1)(iii).

■ d. By redesignating paragraph (a)(4) as paragraph (a)(1)(iv).

■ e. By redesignating paragraph (a) as introductory text (a)(1).

■ f. By adding paragraph (a)(2) to read as follows:

§ 270.4 Effect of a permit.

(a) * * *

(2) A permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 270.41 and 270.43, or the permit may be modified upon the request of the permittee as set forth in § 270.42.

* * * * *

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket DOT-OST-2008-0088]

RIN OST 2105-AD84

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

Correction

In rule document 2010-3731 beginning on page 8528 in the issue of Thursday, February 25, 2010, make the following corrections:

§40.225 [Corrected]

1. On page 8529, in §40.225, in the first column, amendatory instructions 2 and 3 are corrected to read as follows:

■ 2. Section 40.225 (a) is amended by removing the words "beginning February 1, 2002".

■ 3. Appendix G is revised to read as follows:

Appendix G to Part 40 [Corrected]

2. On page 8530 and 8531, in Appendix G to Part 40, the graphics are reprinted to read as follows: