

Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541-2452.

SUPPLEMENTARY INFORMATION: Section 112 of the Act requires EPA to promulgate national emission standards for sources of hazardous air pollutants (HAP). On September 1, 1995 (60 FR 45947), the Agency promulgated final standards for the aerospace manufacturing and rework industry. Among other provisions, the rule established a deadline for existing sources to submit an initial notification to the Administrator.

The submittal of an initial notification by owners or operators of existing sources affected by relevant standards is required under § 63.9(b)(2) of the General Provisions to 40 CFR part 63. Section 63.9(b)(2) requires that this initial notification be submitted to the Administrator within 120 days of the effective date of a promulgated NESHAP. In the case of the final Aerospace NESHAP, affected existing facilities would be required to submit an initial notification by December 30, 1995.

However, in paragraph V.H.(2)(a) of the preamble to the proposed aerospace manufacturing and rework NESHAP published in the Federal Register on June 6, 1994 (59 FR 29216), the Agency stated its intent to override the submittal date specified in the General Provisions and to require owners or operators of affected aerospace manufacturing and rework facilities to submit this initial notification “* * * no later than 12 months before the final compliance date [i.e., by September 1, 1997] * * *.” One comment was received concerning the submittal of the initial notification (see Docket Number A-92-20, Entry Number IV-D-31). This commenter requested that the initial notification be submitted within the 120 days specified in the General Provisions. While the Agency generally favors early interaction amongst the regulated community, permitting agencies, and the public, especially in instances where the final compliance date is less than three years from promulgation; the Agency was not compelled to alter its position from that found in the preamble to the proposed rule because of the three years allowed for existing sources to comply. Therefore, the final rule should have indicated requirements for the submittal of an initial notification within 2 years of the effective date of the final standard. However, language specifying the September 1, 1997 date for submittal of the initial notification was mistakenly omitted from the final rule published in

the Federal Register. In today’s document, the Agency has corrected this omission and has included the applicable language.

Dated: February 1, 1996.

Richard D. Wilson,
Acting Assistant Administrator for Air and Radiation.

The following corrections are being made in the regulatory text for: National Emission Standards for Hazardous Air Pollutants for Aerospace Manufacturing and Rework Facilities published in the Federal Register on September 1, 1995 (60 FR 45948):

§ 63.753 [Corrected]

1. Paragraph (a)(1) of § 63.753 on page 45979, column 1, should read as follows:

* * * * *

(a)(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, each owner or operator subject to this subpart shall fulfill the requirements contained in § 63.9 (a) through (e) and (h) through (j), Notification requirements, and § 63.10 (a), (b), (d) and (f), Recordkeeping and reporting requirements, of the General Provisions, 40 CFR part 63, subpart A, except that the initial notification requirements for new or reconstructed affected sources in § 63.9(b) (3) through (5) shall not apply. In addition to the requirements of § 63.9(h), the notification of compliance status shall include:

(i) Information detailing whether the source has operated within the specified ranges of its designated operating parameters.

(ii) For each coating line, where averaging will be used along with the types of quantities of coatings the facility expects to use in the first year of operation. Averaging scheme shall be approved by the Administrator or delegated State authority and shall be included as part of the facility’s title V or part 70 permit.

(2) The initial notification for existing sources, required in § 63.9(b)(2) shall be submitted no later than September 1, 1997. For the purpose of this subpart, a title V or part 70 permit application may be used in lieu of the initial notification required under § 63.9(b)(2), provided the same information is contained in the permit application as required by § 63.9(b)(2), and the State to which the permit application has been submitted has an approved operating permit program under part 70 of this chapter and has received delegation of authority from the EPA. Permit applications shall be submitted by the same due dates as

those specified for the initial notifications.

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40 CFR Parts 262, 264, 265, and 270

[IL-64-2-5807; FRL-5407-2]

Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: Under the authority of the Resource Conservation and Recovery Act (RCRA), as amended, the EPA has published air standards to reduce organic emissions from hazardous waste management activities (59 FR 62896, December 6, 1994). The air standards apply to owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDF) subject to RCRA subtitle C permitting requirements and to certain hazardous waste generators accumulating waste in on-site tanks and containers. This action makes clarifying amendments in the regulatory text of the final standards, corrects typographical and grammatical errors, and clarifies certain language in the preamble to the final rule.

EFFECTIVE DATE: The rule provisions clarified by this action are effective as of June 6, 1996, the effective date of the final rule.

ADDRESSES: This notice is available on the EPA’s Clean-up Information Bulletin Board (CLU-IN). To access CLU-IN with a modem of up to 28,800 baud, dial (301) 589-8366. First time users will be asked to input some initial registration information. Next, select “D” (download) from the main menu. Input the file name “RCRACLAR.ZIP” to download this notice. Follow the on-line instructions to complete the download. More information about the download procedure is located in Bulletin 104; to read this type “B 104” from the main menu. For additional help with these instructions, telephone the CLU-IN help line at (301) 589-8368.

Docket. The supporting information used for this rulemaking is available for public inspection and copying in the RCRA docket. The RCRA docket numbers pertaining to this rulemaking are F-91-CESP-FFFFF, F-92-CESA-FFFFF, F-94-CESF-FFFFF, F-94-

CE2A-FFFFF, and F-95-CE3A-FFFFF. The RCRA docket is located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. Hand delivery of items and review of docket materials are made at the Virginia address. The public must have an appointment to review docket materials. Appointments can be scheduled by calling the Docket Office at (703) 603-9230. The mailing address for the RCRA docket office is RCRA Information Center (5305W), U. S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline, toll-free at (800) 424-9346. For further information on the specific provisions to which this clarification refers, contact Ms. Michele Aston, Emission Standards Division (Mail Drop 13), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2363.

SUPPLEMENTARY INFORMATION:

Background

The EPA is today making clarifying amendments to the final subpart CC standards. Since the publication of the final rule, the EPA has published two Federal Register documents to delay the effective date of the final rule. The first (60 FR 26828, May 19, 1995) revised the effective date of the standards to be December 6, 1995. The second (60 FR 56952, November 13, 1995) subsequently revised the effective date of the standards to be June 6, 1996. The EPA has also issued a stay of the standards specific to units managing wastes produced by certain organic peroxide manufacturing processes (60 FR 50426, September 29, 1995).

On August 14, 1995, the EPA published a Federal Register document entitled, "Proposed rule; data availability" (60 FR 41870) and opened RCRA docket F-95-CE3A-FFFFF to accept comments on revisions that the EPA is considering for the final subpart CC standards. The EPA accepted public comments on the appropriateness of these revisions through October 13, 1995 and is now in the process of reviewing and evaluating the comments that were received. The EPA expects to complete its review of these public comments, and publish a Federal Register notice explaining the EPA's decision if and how to amend the rule to reflect the proposed revisions, in early 1996.

Today's action clarifies provisions of the final rule to better convey the EPA's

original intent. While today's clarifications may be applicable to certain comments submitted to docket F-95-CE3A-FFFFF, today's action is independent of those proposed revisions and the Federal Register document that EPA intends to publish in early 1996 addressing its evaluation of the proposed revisions. The information presented in this preamble is organized as follows:

1. Applicability.
2. Definitions.
3. Schedule for implementation of air emission standards.
4. Standards: General.
5. Waste determination procedures.
6. Standards: Tanks.
7. Standards: Surface impoundments.
8. Standards: Containers.
9. Closed-Vent Systems and Control Devices.
10. Inspection and Monitoring requirements.
11. Recordkeeping Requirements.
12. Reporting Requirements.
13. Alternative Control Requirements for Tanks.
14. Immediate Effective Date.

1. Applicability

The EPA deferred applicability of the final subpart CC standards to units used solely for on-site treatment or storage of hazardous waste generated in the course of certain remedial activities. Paragraph (b)(5) of § 264.1080 and § 265.1080 specified that this deferral applied to "remedial activities required under the corrective action authorities of RCRA sections 3004(u), 3004(v) or 3008(h), CERCLA authorities, or similar Federal or State authorities." However, page 62897 of the preamble to the final subpart CC standards stated that this deferral applied to "remedial activities required under RCRA corrective action or CERCLA response authorities (or similar State remediation authorities)." Consistent with the regulatory language, the EPA intended that this deferral apply to remedial activities under the authority of RCRA corrective action, CERCLA response, similar Federal authorities, or similar State authorities. An example of a similar Federal authority would be the EPA Compliance Monitoring Program (CMP) pursuant to the Toxic Substances Control Act, and a waste management unit that is used solely for on-site storage of hazardous wastes generated from remedial activities required by the CMP thus would qualify for deferral from the applicability of the final subpart CC standards.

The EPA also deferred applicability of the subpart CC standards to hazardous waste management units that are used "solely" to treat or store radioactive

mixed waste, in paragraph (b)(6) of § 264.1080 and § 265.1080. EPA is clarifying here that the use of the word "solely" does not preclude addition of other materials to a unit managing radioactive mixed waste if applicable regulations of the Atomic Energy Act or the Nuclear Waste Policy Act require that material other than radioactive mixed waste be added to the unit. Such additions would not contravene the purpose of EPA's limitation of the scope of the deferral: To prevent radioactive mixed wastes from being used to exempt other hazardous waste from the rule through mixing and to limit the volume of mixed waste that is managed, again by limiting options for exempt mixing. Thus, if any materials other than radioactive mixed waste are added after June 6, 1996 to units used to treat or store mixed waste, the regulatory deferral of the unit would not apply *unless* the addition is pursuant to a regulatory requirement imposed pursuant to the Atomic Energy Act and/or the Nuclear Waste Policy Act.

2. Definitions

The EPA is revising the definition of "cover" and adding a definition for the term "enclosure" to clarify the EPA's intended distinction between the two technologies, and to clarify the specific requirements for an enclosure. As used in the final subpart CC standards, the EPA considers a cover to be a device that is placed on or over a unit and forms a barrier between the entire waste surface and the space external to the unit. Examples of covers include a fitted lid on a drum and a roof on a tank. In contrast, the EPA considers an enclosure to be a structure that is external to a unit which surrounds the unit and some space external to the unit. An example of an enclosure would be a shed or a building within which a unit is either permanently or temporarily located. The definition for "cover" contained in the December 6, 1994 final standards listed an enclosure surrounding a container as an example of a cover, which has led to several inquiries from the public as to whether a tank located inside a building equipped with a ventilation system routed to a control device would meet the requirements for tank covers specified in § 264.1084(d) and § 265.1085(d). It is not the EPA's intent to allow an enclosure or building surrounding a tank to meet the control requirements for the final subpart CC standards; see Hazardous Waste TSDF Background Information for Promulgated Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers, EPA-

453/R-94-076b ("BID"), page 6-61. To make explicit what is already implicit in the final rule, EPA is clarifying that an enclosure surrounding a tank is not equivalent to a cover on a tank. Thus, the EPA is removing the example of an enclosure from the definition of "cover" and is creating a separate definition for the term "enclosure."

The final subpart CC standards require enclosures surrounding open fixation containers to meet airflow and pressure drop requirements, as specified in paragraph (b)(2)(ii) of § 264.1086 and § 265.1087. The EPA has received a number of requests from the public to more clearly specify these requirements. In response, the EPA is specifically defining the term "enclosure" such that an enclosure be designed and operated in accordance with the requirements of "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" contained in § 52.741, appendix B. The requirements of this procedure will provide facilities with a more clear definition of the EPA's intent for the design and operation of enclosures.

The EPA is also amending the term "waste stabilization" to specifically exclude the process of adding non-reactive absorbent material to the surface of a waste. The EPA recognizes that to meet certain criteria under the Land Disposal Restrictions, or to prevent the introduction of liquids into certain combustion devices, owners or operators apply absorbent material to the surface of wastes just prior to disposal. In such procedures, the container is opened, absorbent material is placed on the surface of the waste to absorb a relatively small amount of liquid, and the container is closed. No mixing or agitation is involved in this process. The EPA's intended definition of waste stabilization for the final subpart CC air rules does not include processes that do not include mixing or agitation, and do not involve curing (BID, p. 6-57). The EPA is amending the definition of "waste stabilization" to clarify this intent.

3. Schedule for implementation of air emission standards

The December 6, 1994 published rule establishes additional air standards for TSDF owners and operators subject to 40 CFR part 264 or 40 CFR part 265. All requirements enacted under this final action are effective as of June 6, 1996. This includes the application of the requirements of 40 CFR part 265 subparts AA, BB, and CC to 90-day accumulation units at hazardous waste generators, and the application of 40

CFR part 265 subparts AA, BB, and CC to facilities with final RCRA permits.

The final rule provides that when the required air emission control equipment cannot be operational at an existing hazardous waste generator or TSDF by June 6, 1996, an implementation schedule for installation of the equipment must be developed and placed in the facility operating records no later than June 6, 1996. In such cases, § 265.1082(a)(2)(i) states that the facility owner or operator must have all air emission controls required by the final rule in operation no later than December 8, 1997.

The EPA also recognizes that certain affected facilities may require time beyond June 6, 1996 to implement other provisions of the final standards, such as developing a facility program to perform the specified leak detection tests on tank covers. Also, generator and TSDF facilities to which the requirements of subparts AA and BB are newly applicable on the June 6, 1996 effective date may need additional time to come into compliance with all provisions of those subparts. The EPA expects such instances to be rare, but in the event a facility cannot implement any technical requirement of subparts AA, BB, or CC, it is the EPA's intent that the owner or operator document the necessity for a delay in the facility operating record. To be in compliance with the rule, the necessary documentation must be in place by the June 6, 1996 effective date. To be in compliance with the subpart CC standards, affected facilities must have all required air emission controls installed and operating no later than December 8, 1997. However, facilities newly subject to subparts AA and BB must be in compliance with all the requirements of those subparts no later than 30 months after the effective date that the facility becomes subject to those subparts. Paragraph (a)(2) in § 264.1033 and § 265.1033 is amended to clarify this intent.

In addition, the EPA is clarifying that an affected unit which the owner or operator intends to replace or remove may also be in compliance through the use of an implementation plan. The EPA recognizes that certain facilities may choose to comply with the subpart CC air rules by replacing an existing hazardous waste management unit, or by modifying their facility process such that a given waste management unit is no longer necessary. The EPA also realizes that facilities could require time beyond June 6, 1996 to complete such modifications, during which time it may be necessary for the facility to continue adding hazardous waste to the affected

unit. The EPA had therefore intended to allow the owner or operator to be in compliance with the subpart CC standards provided that sufficient documentation is entered into the facility operating record by the June 6, 1996 effective date. The facility operating record must contain sufficient information to document the necessity to continue adding hazardous waste to the unit after June 6, 1996, and document the owner or operator's schedule and plan to cease adding hazardous waste to the affected unit as soon as is feasible, but no later than December 8, 1997 (BID p. 9-6).

Paragraphs (b)(3) and (b)(4) in § 264.1080 and § 265.1080 specify that the subpart CC standards do not apply to tanks or surface impoundments for which the owner or operator has begun implementing or has completed closure pursuant to an approved closure plan, and into which the owner or operator has stopped adding hazardous waste. However, if a closure plan has not been approved for an affected unit, the final subpart CC standards are applicable to that unit. In such a case, the subpart CC standards require that on the June 6, 1996 effective date, if the affected unit is not equipped with the appropriate air emission controls, no hazardous waste may be added to that unit. In this situation, it is the EPA's intent that the owner or operator would be in compliance with the subpart CC standards provided that sufficient documentation is entered into the facility operating record by the June 6, 1996 effective date. This is consistent with the situation described in the previous paragraph where the removal of an affected unit cannot be accomplished before the June 6, 1996 effective date. As with the situation described above, the facility operating record must contain sufficient information to document the inability of the owner or operator to cease adding hazardous waste to the unit prior to June 6, 1996. The facility operating record must also include the owner or operator's schedule to obtain an approved closure plan, or to cease adding hazardous waste to that unit, no later than December 8, 1997.

The December 6, 1994 published rule allowed an extended effective date and compliance date for tanks in which stabilization operations are performed, to allow interested parties time to submit data to the EPA and to allow EPA time to review that data (59 FR at 62897). The effective date for such tanks was originally December 6, 1995. Since the publication of that final rule, the effective date of the final standards for all rule provisions has been extended

until June 6, 1996 (60 FR 56952). Therefore, the EPA no longer considers it necessary to provide a separate compliance schedule for tanks in which stabilization operations are performed, and the effective date for such tanks will be the June 6, 1996 effective date of the final rule.

4. Standards: General

The owner or operator must install and operate the specified air emission controls on every affected tank, surface impoundment, and container used in the waste management sequence from the point of waste origination through the point where the organics in the waste are removed or destroyed by a process in accordance with the requirements of the rule. The final rule provides seven options by which an owner or operator may demonstrate that the required treatment or destruction of organics has been accomplished, as specified in § 265.1083(c)(2) (i) through (vii). Depending on the nature of the affected hazardous waste, the process through which the waste has been managed, or the treatment applied to the waste, one or more of these seven demonstration options may not be appropriate for a given waste stream. In recognition of this, the EPA chose to allow seven different options to demonstrate that effective treatment has been accomplished; the EPA recognizes that not all of these seven options will be practical for demonstrations of all waste treatment scenarios. However, the EPA believes that the variety of waste treatment demonstrations allowed in the final subpart CC rules does offer at least one demonstration alternative for most, if not all, reasonable waste treatment scenarios.

Paragraph (c)(2)(iii) of §§ 264.1082 and 265.1083 is one of the seven options to demonstrate that waste has been treated to effectively reduce the organics in accordance with the requirements of the final subpart CC standards. In the December 6, 1994 published rule, this option required that the "actual organic mass removal rate (MR) for the process is greater than the required organic mass removal rate (RMR) for the process." The EPA had intended this provision to specify that the MR for the process must be greater than or equal to the RMR. The EPA is amending this provision to clarify that intent.

The seven options in § 265.1083(c)(2) refer to a waste treatment process that accomplishes specified organic destruction or removal. As the term "process" is used in these requirements, the EPA refers to either a single waste treatment unit, or a series of waste treatment units. If a facility uses a series

of waste treatment units, the applicable exemption from controls applies to units downstream of the point where the necessary removal or destruction occurs. Thus, points downstream of the unit which accomplishes the 95th percentile reduction would not be required to install and operate air emission controls.

Similarly, the requirement for covers on tanks and surface impoundments do not apply to tanks or surface impoundments in which biological degradation of the organics in the hazardous waste treated in the unit is demonstrated to achieve specific performance levels. Either of the following sets of conditions, as described in paragraph (c)(2)(iv) of § 264.1082 and § 265.1083, must be demonstrated to qualify for this exemption: (1) The organic reduction efficiency for the process is equal to or greater than 95 percent, and the organic biodegradation efficiency for the process is equal to or greater than 95 percent; or (2) the total actual organic mass biodegradation rate for all hazardous waste treated by the process is equal to or greater than the required organic mass removal rate (59 FR at 62915). A biological treatment unit that is operated within a series of units would not be required to be equipped with a cover provided that series of units met one of the treatment demonstration options in § 265.1083(c)(2), and the biological treatment unit occurred in the series at the point where the necessary treatment was achieved. In the case of a treatment series that achieved a 95 percent reduction in organics by weight as demonstrated by the requirements of § 265.1083(c)(2)(ii), the biological treatment unit could operate without a cover provided that it was the unit achieving the 95th percent control for the affected waste streams. However, if the placement of the biological treatment unit in the treatment series was prior to the achievement of the 95th percent organic reduction, the biological treatment unit must operate with a cover and air emission controls.

Paragraph (d) in §§ 264.1082 and 265.1083 of the final rule indicated that certain materials that are not hazardous wastes must be controlled in accordance with the subpart CC standards. These final standards are only applicable to RCRA hazardous waste. The EPA is amending §§ 264.1082(d) and 265.1083(d) to clarify that non-hazardous wastes are not subject to the subpart CC standards. (This means, incidentally, that wastes that become exempt from RCRA subtitle C by virtue of an exemption such as the Bevill amendments (codified at 261.4(b)(7)) or

the domestic sewage exclusion (codified at 261.4(a)(1)) would not be subject to the subpart CC rules.) In making this clarification, the EPA also notes that it is not addressing here (or in any way reopening) the issue of the types of treatment standards under the Land Disposal Restriction program to which hazardous waste treatment residues could be subject before land disposal. Such treatment standards could apply to spent treatment residues that are not themselves identified or listed as a hazardous waste. See 58 FR at 29866-868 and 29871-72 (May 24, 1993) and *Chemical Waste Management v. EPA*, 976 F.2d 2, 16-18 (D.C. Cir. 1992), cert. denied 113 S. Ct. 1961 (1993). This same caveat applies with respect to the spent activated carbon residue discussed at section 9 below.

5. Waste Determination Procedures

Under the final subpart CC standards, a TSDF owner or operator is not required to determine the volatile organic concentration of the waste if it is placed in a tank, surface impoundment, or container using the required air emission controls. However, an owner or operator must perform a determination of the average volatile organic (VO) concentration for each hazardous waste placed in a waste management unit exempted from using air emission controls based on the VO concentration of the waste at its point of waste origination. The EPA is amending paragraphs (a)(1) and (b)(1) of § 264.1083 to clarify this requirement.

The determination of the volatile organic concentration of hazardous waste under the final subpart CC standards is based on the organic composition of the waste at the "point of waste origination." The "point of waste origination" is defined in § 265.1081 of the final rule with respect to the point where the TSDF owner or operator first has possession of a hazardous waste. This definition specifies that when the TSDF owner or operator is the generator of the hazardous waste, the "point of waste origination" means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as defined in 40 CFR part 261. In such a case, the owner or operator may sample the hazardous waste at its point of origination, or may sample the waste at a point downstream from the point of origination, provided the downstream sampling point provides an accurate representation of the waste volatile organic concentration as it was at the point of waste origination. Simply put, an owner or operator may sample

downstream of the point of origination provided the waste has not been altered, mixed with other materials, or allowed to release any volatile organic components prior to sampling. When neither the TSDF owner or operator is the generator of the hazardous waste, the "point of waste origination" means the point where the owner or operator accepts delivery or takes possession of the hazardous waste. The EPA considers this to be the point when and where the TSDF owner or operator accepts the waste manifest document for the hazardous waste.

The preamble to the final subpart CC rule incorrectly stated that to calculate the average of a waste stream using direct measurement, "a sufficient number of samples, but no less than four, must be collected to represent the complete range of organic compositions and organic quantities that occur in the hazardous waste stream during the entire averaging period" (59 FR at 62916). The intended rule requirement to take a minimum number of four waste samples is for the performance of one single waste determination. The requirement for four individual samples is intended to compensate for both variations in the methodology and variations within a waste stream that may be due to non-homogeneous waste mixtures. It is not acceptable to take four or more individual samples of a waste stream, mix the samples, then perform a method 25D analysis on the mixture. The requirements of § 265.1084(a)(5)(iv) specify the procedure by which the four or more samples be analyzed by method 25D individually, and the results mathematically averaged to produce one waste determination result. This process accounts for test method variability as well as variability in the waste stream and the waste samples.

The EPA recognizes that not all hazardous waste regulated by the subpart CC standards is liquid or aqueous. Therefore, § 4.1.4 of method 25D (40 CFR part 60, appendix A) includes a sampling technique for solid materials. For wastes that are solid or semi-solid, a representative sample is obtained by placing a 10 gram sample of the waste material into a vial containing the specified 30 mL of polyethylene glycol. Once the sample is obtained, the method 25D analysis is performed as it would be on any other waste sample.

To calculate an average volatile organic concentration for a waste stream that has variations in the organic concentration, the owner or operator must perform the number of waste determinations that are necessary to adequately demonstrate that the waste

stream volatile organic concentration meets the applicable criteria. An owner or operator may choose to perform a waste determination at a point where they know the waste stream is at its maximum volatile organic concentration for the averaging period. If the resulting average of the four required Method 25D sample runs yields a volatile organic concentration below 100 parts per million by weight (ppmw), the owner or operator would not need to perform additional waste determinations for that averaging period. However, if the owner or operator was not able to perform a waste determination at the point of the waste stream's maximum volatile organic concentration, they could be required to perform additional waste determinations during the averaging period to sufficiently calculate a mass-weighted average volatile organic concentration. The final subpart CC standards specify that the facility owner or operator enter into the facility record a test plan that demonstrates how they will perform a representative volatile organic concentration determination.

The final subpart CC rules require that a waste determination be performed prior to the first time a hazardous waste is placed in an affected unit on or after June 6, 1996. Section 265.1084(a)(2) (i) and (ii) specify the process to determine the average VO concentration for waste streams generated as part of a continuous process or generated as part of a batch process that is performed repeatedly but not necessarily continuously. The EPA is amending § 265.1084(a)(2) to clarify that for waste generated as part of a batch process that is not performed repeatedly, the owner or operator shall perform a waste determination of the VO concentration of the waste in the batch. The EPA is amending § 265.1084(b)(2) to clarify the similar waste determination procedures for treated hazardous waste.

The procedures in paragraphs (a)(5), (a)(6) and (b)(4) of § 265.1084 for determining the average VO concentration of a hazardous waste require that the owner or operator have sufficient knowledge of any variations in the volatile organic concentration of their affected waste streams throughout the averaging period. An owner or operator who does not have sufficient knowledge of variations in the VO concentration of their waste stream prior to June 6, 1996, may not be eligible to determine compliance with the final rule using the average VO concentration for their affected waste streams. The option to use an average volatile organic waste concentration requires sufficient knowledge of the waste stream, and if that knowledge is not available, the

option is not allowed. In such a case, the owner or operator would be required to install and operate air emission controls on each affected unit receiving hazardous waste on or after June 6, 1996 (as required by paragraph (b) of § 264.1082 and § 265.1083), or to determine that at no time waste with a VO concentration greater than or equal to 100 ppmw is placed in a unit not equipped with the required air emission controls (as required by paragraph (c) of § 264.1082 and § 265.1083). In essence, each and every portion of the hazardous waste entering the unit would be considered to be a discrete quantity that is not generated as part of a batch process; therefore, the average VO concentration of each of these discrete quantities of waste would be the same as its measured VO concentration (as described in § 265.1084(a)(2)(iii) and § 265.1084(b)(2)(iii), as amended by today's action).

In § 265.1084(a)(5)(v)(C) the equation to determine the average VO concentration of the hazardous waste at the point of waste origination was printed with an incorrect symbol representing the average VO concentration of the hazardous waste at the point of waste origination. The EPA is revising that equation to specify the correct symbol.

Section 265.1084(a)(6)(iii) of the final subpart CC standards allows an owner or operator to determine the volatile organic concentration of a hazardous waste using knowledge that is based on information supplied by the generator of the waste. The generator-prepared information can be included in manifests, shipping papers, or waste certification notices accompanying the waste shipment, as agreed upon between the waste generator and the TSDF owner or operator. The subpart CC final rules do not impose requirements for a generator to provide such documentation to a TSDF. Rather, where such information does exist, the TSDF owner or operator has the option to use that information to perform the volatile organic waste determination or the volatile organic vapor pressure determination upon accepting delivery or taking possession of the hazardous waste. The EPA is amending paragraph (b)(8) of § 264.13 and § 265.13 to clarify this intent. The validity of any information used to comply with these final standards is the responsibility of the owner or operator who has custody of the waste. Therefore, a TSDF owner or operator should rely on waste information only if it is provided by a source in whose accuracy they have confidence.

The December 6, 1994 published rule incorrectly referenced the requirements by which waste streams entering a process must be measured, at § 265.1084(b)(6)(iii)(B) and in the nomenclature for C_{Bj} at § 265.1084(b)(6)(iv). The EPA is amending these provisions to reference the requirements contained in paragraph (a)(5)(iv). The EPA is also amending the nomenclature for Q_{Aj} in § 265.1084(b)(6)(iv) to clarify that it represents the mass quantity of waste exiting the process.

To determine the maximum organic vapor pressure of a hazardous waste in a tank using Method 25E, an owner or operator shall collect a minimum of three waste samples. It was the intent of the EPA to defer to the Clean Air Act General Provisions contained in § 60.8(f) to specify the number of samples required for a Method 25E analysis. However, the subpart CC standards are not subject to § 60.8(f); therefore, this information was not referenced for the final subpart CC standards. The EPA is amending the requirements of paragraph 265.1084(c) to require that, unless otherwise specified in the method being used, a minimum of three samples shall be taken when using any of the methods listed in § 265.1084(c)(3)(ii). To perform a Method 25E analysis, each of these samples shall be analyzed separately, and the result of the analysis mathematically averaged. The requirements of Method 25E specify the procedure to analyze the samples and mathematically average the analytical results.

6. Standards: Tanks

In the final subpart CC tank standards, paragraph (b)(4) of § 264.1084 and § 265.1085 allows the use of a pressure tank to manage affected hazardous waste. The EPA did not intend to specify operating conditions or a minimum internal pressure that must be met to comply with the option. For the purpose of complying with this provision of the subpart CC standards, the EPA is clarifying that a pressure tank must be designed and operated such that the internal pressure is above atmospheric pressure and the tank operates as a closed system, with no detectable emissions occurring during routine operations including filling and emptying (BID p. 6–51). Therefore, the tank must be designed and operated to withstand the pressure of having the vapor space of the waste compressed until the tank is filled to design capacity. The EPA is amending the tank standards to clarify this requirement.

The EPA intended that the final subpart CC standards allow tanks to

operate with a fixed-roof type cover without any additional air emission controls provided certain conditions were met (59 FR at 62917). As published in the December 6, 1994 final standards, paragraph (c) of § 264.1084 and § 265.1085 did not correctly convey the EPA's intent for this provision. The EPA is revising these paragraphs of the tank standards to clarify that for the purposes of compliance with the subpart CC standards, tanks meeting the specified waste management requirements can operate fixed-roof type covers without additional air emission controls.

One of the conditions that must be met for this provision is that no turbulent agitation may occur on the surface of the waste, as described in paragraph (c)(1) of § 264.1084 and § 265.1085. Such turbulence on the surface of a waste increases emission of organics from the waste to the air. This cover-only option was provided for tanks that are used for waste storage, and in which no waste treatment is occurring. The cover-only option of paragraph (c)(1) does not provide effective emission control for waste that is managed such that there is visible turbulent flow on the surface of the waste. The EPA considers that the requirements of paragraph (c)(1) are consistent with the provisions of the New Source Performance Standard for volatile organic liquid storage vessels under 40 CFR part 60, subpart Kb, after which the technical requirements for fixed-roof covers were modelled. The EPA does not intend to specify a test to measure turbulent flow, or to otherwise narrowly define the conditions that meet this paragraph. The EPA does wish to clarify that for a tank through which the waste surface is not viewable, an owner or operator may elect to use engineering calculations and modelling to determine if the surface of the hazardous waste managed in a tank has turbulent flow that would be visible.

The EPA recognizes that, for certain hazardous wastes managed in tanks, it may be necessary to continuously mix, stir or circulate the waste inside the tank during normal storage operations. For instance, the properties of the waste may be such that it is necessary to continuously stir the waste to prevent phase separation or to prevent the waste from solidifying. Paragraph (c)(1) of § 264.1084 and § 265.1085 prohibits such activities if they result in splashing, frothing, or visible turbulent flow on the surface of the waste. However, an owner or operator may perform continuous or frequent mixing operations in a cover-only tank, provided the operation does not cause visible turbulent flow on the surface of

the waste. To be allowed under the requirements of paragraph (c)(1), such a mixing operation must be designed and performed to operate without causing visible turbulent flow on the waste surface. To design and operate a mixing system to ensure that visible turbulent flow does not occur, the owner or operator must consider all relevant factors, including mixing speed, position of the mixing apparatus, and waste level in the tank. If the mixing apparatus is positioned and designed such that visible turbulent flow occurs when the waste is below a certain level in the tank, the mixing operation must be ceased when the waste is not above that level in the tank. During such a period, visible turbulent flow on the surface of the waste would be allowed if it resulted from an intermittent required operation, such as loading waste into the tank.

The EPA recognizes that owners or operators may need to mix, stir or circulate the waste that is stored in tanks to occasionally perform certain necessary operations, and these actions may result in splashing, frothing, or visible turbulent flow. Examples of this include mixing waste contents at sample times to facilitate obtaining a representative waste sample, and causing visible turbulent flow on the waste surface during transfer of hazardous waste into or from the tank. In such a situation, there would be a mixing apparatus available to be used in the tank, but this apparatus would not be in use during normal waste storage operations. The EPA considers some degree of splashing, frothing, or visible turbulent flow to be allowable, provided that the activity causing this condition is waste sampling, waste transfer, or a similar necessary operation that is performed infrequently. The requirements of § 264.1084(c)(1) and § 265.1085(c)(1) specify that the disallowed waste management activities must not be part of the normal process operations for that tank. The EPA intends that provision to prohibit continual or usual performance of such procedures, but allow the procedure when necessary to perform intermittent operations, such as waste sampling or waste transfer (BID p. 6–54). Therefore, a tank for which the waste transfer operation is continuous or occurs frequently and causes visible turbulent flow, should be equipped with organic emission controls in accordance with paragraph (b) of § 264.1084 and § 265.1085. Similarly, the EPA intends that this clarification also apply to hazardous waste management in surface impoundments complying with the

floating membrane cover provisions of § 264.1085(c) and § 265.1086(c).

An additional condition that must be met for the fixed-roof cover control option requires that the waste managed in the unit have a volatile organic vapor pressure below certain limits based on the capacity of the tank, as described in paragraph (c)(4) of § 264.1084 and § 265.1085. The waste managed in the tank must meet the appropriate volatile organic vapor pressure limits at the highest vapor pressure that will occur under normal operating conditions. Unlike the waste volatile organic concentration determination which must represent individual waste streams prior to mixing or dilution, the waste organic vapor pressure determination must indicate the vapor pressure of the actual mixture of waste that is managed in the tank. The waste organic vapor pressure to be compared to the limits specified in § 264.1084(c)(4) and § 265.1085(c)(4) of the final rule is the highest pressure present among any temperatures at which the waste is present in the tank.

The EPA had intended the final subpart CC standards to allow fixed-roof covers on tanks to be equipped with one or more pressure relieving devices that vent directly to the atmosphere to allow for the relief of pressure or vacuum caused by normal operations (BID p. 6-47). For the purposes of this provision the EPA requires that the pressure relieving device be a normally closed device that opens only when a pressure or vacuum is created in the unit. The EPA does not intend to specify parameters for the operation or setting of such pressure relieving device, but rather has established a performance standard that the facility owner or operator design and operate the conservation vents so that emissions to the atmosphere are minimized, yet tank integrity is protected, in accordance with sound engineering design specifications and practices appropriate for the affected tank. This provision is clarified in the amendments to paragraph (c) of § 264.1084 and § 265.1085. This allowance for pressure relieving devices differs from the final rule allowance for safety devices described in paragraph (g) of § 264.1084 and § 265.1085, which are only allowed to vent to the atmosphere during unplanned events. Units not eligible to be equipped with pressure relieving devices that open during normal operations include pressure tanks, and tanks equipped with floating roofs.

7. Standards: Surface Impoundments

In the December 6, 1994 published rule, paragraph (d) of § 264.1085 and

§ 265.1086 incorrectly referenced paragraph (b)(1), which does not exist. The EPA is amending paragraph (d) of these sections to reference paragraph (b), as intended.

8. Standards: Containers

In § 264.1086 and § 265.1087, paragraph (b)(1) lists three options to demonstrate compliance for containers used to manage hazardous waste subject to subpart CC. The first option, in paragraph (b)(1)(i), specifies that the container operates with no detectable emissions as tested by Method 21 in 40 CFR part 60 appendix A. This option is appropriate for any container subject to subpart CC, including the types of containers specified in the second and third options. The second option, in paragraph (b)(1)(ii), is a container with a capacity of 0.46 cubic meters, which complies with all Department of Transportation regulations for packaging hazardous waste for transport under 40 CFR part 178. The third option, in paragraph (b)(2)(iii), is a tank truck or rail car that has been demonstrated within the previous 12 months to be organic vapor tight using the pressure test specified in Method 27 of 40 CFR part 60 appendix A. The EPA has received several questions regarding the applicability of Method 27 for use on vehicular containers that are not equipped with a vapor recovery system. This method is a pressure test procedure originally developed by the EPA for determining the vapor-leak tightness of a gasoline tank truck equipped with a vapor recovery system. The EPA also considers Method 27 appropriate on tank trucks and rail cars that are used to manage hazardous waste, regardless of whether the tank truck or rail car is equipped with a vapor recovery system. As described above, an owner or operator of a tank truck or rail car has the option to comply with paragraph (b)(1)(i), and demonstrate no detectable emissions by Method 21, as does the owner or operator of any container equal to or less than 0.46 m³ in capacity.

Paragraph (b)(2)(ii) of § 264.1086 and 265.1087 of the December 6, 1994 final standards describes the criteria for an enclosure in which stabilization operations performed in open containers must be located. In describing the requirements for the enclosure, the EPA had intended to paraphrase the specifications of Procedure T in Appendix B to § 52.741, titled "Criteria for and Verification of a Permanent or Temporary Total Enclosure." To better clarify the intended requirements for container enclosures, the EPA is revising the enclosure requirements of paragraph

(b)(2)(ii) to specifically reference Procedure T in § 52.741, Appendix B.

The waste transfer requirements specified in paragraph (b)(3) of § 264.1086 and § 265.1087 of the final rule for containers are intended to reduce exposure of hazardous waste to the atmosphere. Paragraph (b)(3)(i) specifically describes submerged-fill techniques to be used; however, the EPA does not intend that submerged-fill be performed in situations where the process of submerged-fill increases waste exposure to the atmosphere, or worker exposure to hazardous wastes. Certain splash loading operations are performed through a fitted opening in the top of a container, and the transfer line is subsequently purged with nitrogen gas to clean the interior of the line before it is removed from the container opening. This transfer practice could result in less waste exposure than a submerged-fill practice performed for the same waste and container. Another container loading practice is vapor balancing, in which the vapors displaced by transferring waste into a container are routed to the unit from which the waste was transferred. Thus, the EPA is adding clarifying language to the container transfer requirements of paragraph (b)(3) in § 264.1086 and § 265.1087 to direct owners or operators to transfer waste using the procedure that will minimize exposure of waste to the atmosphere.

The submerged filling procedure described in the final subpart CC standards is one procedure that may be appropriate for waste transfer into containers, but the EPA is amending these provisions to direct owners or operators to employ the container filling practice most appropriate for their facility operation.

The EPA originally intended the subpart CC final rules to allow containers to vent emissions directly to the atmosphere during filling operations. The December 6, 1994 final rules only allowed for venting through the opening through which waste was transferred. The EPA intended to allow venting during waste transfer operations either through the opening through which the waste is transferred, or through a second opening that would serve as a vent. In addition to the amendment to paragraph (b)(3) described above, the EPA is amending paragraph (c) of § 264.1086 and § 265.1087 to clarify this venting allowance.

9. Closed-Vent Systems and Control Devices

The final subpart CC standards added requirements for the management of

spent carbon removed from a carbon adsorption system used to comply with the subpart AA, BB, and CC standards. The EPA is clarifying that the carbon management requirements are only applicable to carbon that is hazardous waste. Spent carbon is hazardous if it exhibits a characteristic of hazardous waste or if it is listed. Spent carbon deriving from the treatment of listed hazardous waste is considered to be a type of listed waste by virtue of the derived from rule found at § 261.3(c)(2). See also 56 FR at 7200 (February 21, 1991).

The EPA is amending the spent carbon management requirements of §§ 264.1033(m) and 265.1033(l), and paragraph (c)(3)(ii) of § 264.1087 and § 265.1088 to clarify the intent described today. The EPA is also revising §§ 264.1033(m) and 265.1033(l) to allow management of affected spent carbon to be conducted in certain interim status units in addition to the permitted units specified in the December 6, 1994 published rule.

10. Inspection and Monitoring Requirements

As published in the December 6, 1994 final rule, §§ 264.1033(k)(2) and 265.1033(j)(2) allowed that after the required initial leak detection monitoring, an owner or operator is not required to conduct annual monitoring on those closed-vent system components which continuously operate in vacuum service. The EPA had intended that this allowance apply to system components continuously operating under negative pressure, because such systems would not release constituents to the atmosphere even if there were a rupture or other loss of integrity to the component (BID p. 6-100). However, the EPA specified the term "in vacuum service," which requires that a system operate at an internal pressure at least 5 kPa below ambient pressure, under the assumption that systems operating under negative pressure would meet this requirement. The use of the term "in vacuum service" has prompted several questions from the public asking EPA to clarify whether systems operated under negative pressure, but not necessarily in vacuum service, must be monitored annually after the initial leak detection monitoring. The EPA had intended to not require annual monitoring of closed-vent system components which operate under pressure such that all emissions are routed to a control device even if a leak or hole exists in the component. A component that continuously operates under negative pressure would satisfy this intent, even if the component does

not necessarily operate in vacuum service. Therefore, the EPA is amending §§ 264.1033(k)(2) and 265.1033(j)(2) to specify that, after the initial leak detection monitoring, an owner or operator is not required to monitor system components which continuously operate under negative pressure.

As published in the December 6, 1994 standards, the reference in paragraph (d) of § 264.1088 and § 265.1089 incorrectly specified that certain control devices used to comply with the subpart CC standards must be inspected and monitored in accordance with the procedures specified in § 264.1033(f). The EPA had intended that this reference should be to § 264.1033(f)(2). The EPA is amending paragraph (d) in § 264.1088 and § 265.1089 to correct this reference and to clarify the frequency of monitoring and the requirement for corrective measures.

11. Recordkeeping Requirements

The EPA is amending § 264.1089(a)(1) and § 265.1090(a)(1) such that these paragraphs correctly reference paragraph 265.1091(a) of the alternative tank control requirements. The EPA is also amending § 264.1089(e) and § 265.1090(e) such that these paragraphs correctly specify recordkeeping requirements for a hazardous waste incinerator and boiler or industrial furnace used to comply with the treatment demonstration options in § 264.1082 and § 265.1083. These amendments clarify references that were incorrectly printed in the December 6, 1994 published standards (59 FR 62896).

12. Reporting Requirements

The EPA is amending § 264.1090 (c) and (d) to clarify what noncompliance occurrences for control device operations a facility owner or operator must report to their Regional Administrator.

13. Alternative Control Requirements for Tanks

Paragraph 265.1091(a)(1)(i) of the final subpart CC standards specifies filling requirements for a tank equipped with an internal floating roof. The requirement is that when the roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be accomplished as rapidly as possible. The intent of this requirement is to minimize the time during which a vapor space exists between the floating roof and the stored waste. EPA recognizes that facility owners or operators may not have full control over the amount and handling of waste transferred into their tanks, and

this may lead to periods when the filling of a tank may not be continuous. Therefore, the EPA is clarifying this requirement to state that the process of filling shall be as continuous as possible, based on the amount of waste and the nature of the waste handling operation.

14. Immediate Effective Date

The EPA has determined to make today's action effective immediately. The EPA believes that the corrections being made in this document are either interpretations of existing regulations which do not require prior notice and opportunity for comment, or are technical corrections of obvious errors in the published rule (for example corrections of regulatory language that is inconsistent with the preamble, BID, or with otherwise clearly indicated EPA intent) for which comment is unnecessary (within the meaning of 5 USC 553(b)(3)(B)). In addition, the EPA notes that many of these clarifications result from the public comment obtained at various public meetings regarding the subpart CC standards that were held during the summer of 1995. Thus, the EPA has provided for a measure of opportunity to comment.

Docket. Five RCRA dockets contain information pertaining to today's rulemaking: (1) RCRA docket number F-91-CESP-FFFFF, which contains copies of all BID references and other information related to the development of the rule up through proposal; (2) RCRA docket number F-92-CESA-FFFFF, which contains copies of the supplemental data made available for public comment prior to promulgation; (3) RCRA docket number F-94-CESF-FFFFF, which contains copies of all BID references and other information related to development of the final rule following proposal; (4) RCRA docket number F-94-CE2A-FFFFF, which contains information pertaining to waste stabilization operations performed in tanks; and (5) RCRA docket number F-95-CE3A-FFFFF, which contains information about potential final rule revisions made available for public comment. The public may review all materials in these dockets at the EPA RCRA Docket Office.

The EPA RCRA Docket Office is located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. Hand delivery of items and review of docket materials are made at the Virginia address. The public must have an appointment to review docket materials. Appointments can be scheduled by calling the Docket Office at (703) 603-9230. The mailing address for the RCRA Docket Office is RCRA

Information Center (5305W), 401 M Street SW., Washington, DC 20460. The Docket Office is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays.

Legal Authority

These regulations are amended under the authority of sections 2002, 3001–3007, 3010, and 7004 of the Solid Waste Disposal Act of 1970, as amended by RCRA, as amended (42 U.S.C. 6921–6927, 6930, and 6974).

List of Subjects

40 CFR Part 262

Environmental protection, Accumulation time, Air pollution control, Container, Tank.

40 CFR Parts 264 and 265

Air pollution control, Container, Control device, Hazardous waste, Incorporation by reference, Inspection, Miscellaneous unit, Monitoring, Reporting and recordkeeping requirements, Standards, Surface impoundment, Tank, TSD, Waste determination.

40 CFR Part 270

Administrative practice and procedure, Air pollution control, Confidential business information, Hazardous waste, Permit, Permit modification, Reporting and recordkeeping requirements.

Dated: December 18, 1995.

Mary D. Nichols,
Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, title 40, chapter I, parts 262, 264, 265, 270, and 271 of the Code of Federal Regulations is amended as follows:

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912(a), 6922, 6923, 6924, 6925, 6937 and 6938, unless otherwise noted.

§ 262.34 [Amended]

2. Section 262.34(a)(1)(i) is amended by inserting a comma after “subparts I” to read “subparts I, AA, BB and CC”.

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

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

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

Subpart B—General Facility Standards

4. Section 264.13 is amended by revising paragraphs (b)(8) (i) and (ii) to read as follows:

§ 264.13 General waste analysis.

* * * * *

(b) * * *

(8) * * *

(i) If direct measurement is used for the waste determination, the procedures and schedules for waste sampling and analysis, and the results of the analysis of test data to verify the exemption.

(ii) If knowledge of the waste is used for the waste determination, any information prepared by the facility owner or operator or by the generator of the hazardous waste, if the waste is received from off-site, that is used as the basis for knowledge of the waste.

Subpart AA—Air Emission Standards for Process Vents

5. In § 264.1033 the second sentence of paragraph (a)(2) is revised, paragraph (k)(2) is revised, and paragraph (m) is revised to read as follows:

§ 264.1033 Standards: Closed-vent systems and control devices.

(a) * * *

(2) * * * The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this subpart for installation and startup.

* * *

* * * * *

(k) * * *

(2) Closed-vent systems shall be monitored to determine compliance with this section during the initial leak detection monitoring, which shall be conducted by the date that the facility becomes subject to the provisions of this section, annually, and at other times as requested by the Regional Administrator. For the annual leak detection monitoring after the initial leak detection monitoring, the owner or operator is not required to monitor those closed-vent system components which continuously operate under negative pressure or those closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (e.g., a welded joint between two sections of metal pipe or a bolted and gasketed pipe flange).

* * * * *

(m) The owner or operator using a carbon adsorption system shall document that all carbon removed that

is a hazardous waste and that is removed from a carbon adsorption system used to comply with § 264.1033(g) and § 264.1033(h) is managed in one of the following manners, regardless of the volatile organic concentration of that carbon:

(1) Regenerated or reactivated in a thermal treatment unit for which the owner or operator has been issued a final permit under 40 CFR part 270, and designs and operates the unit in accordance with the requirements of subpart X of this part;

(2) Incinerated in a hazardous waste incinerator for which the owner or operator either:

(i) Has been issued a final permit under 40 CFR part 270, and designs and operates the unit in accordance with the requirements of subpart O of this part; or

(ii) Has certified compliance with the interim status requirements of 40 CFR part 265, subpart O; or

(3) Burned in a boiler or industrial furnace for which the owner or operator either:

(i) Has been issued a final permit under 40 CFR part 270, and designs and operates the unit in accordance with the requirements of 40 CFR part 266, subpart H; or

(ii) Has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

* * * * *

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

§ 264.1082 [Amended]

6. In § 264.1082 paragraph (c)(2)(iii) is amended by revising “removal rate (MR) for the process is greater” to read “removal rate (MR) for the process is equal to or greater”.

7. In § 264.1082 paragraph (d) is amended by revising “that is not a hazardous waste but has an average VO concentration equal to or greater than 100 ppmw shall” to read “that is a hazardous waste shall”.

§ 264.1083 [Amended]

8. In § 264.1083 paragraph (a)(1) is amended by revising “placed in waste management units” to read “placed in a waste management unit”.

9. In § 264.1083 paragraph (b)(1) is amended by revising “placed in waste management units” to read “placed in a waste management unit”.

10. Section 264.1084 is amended by adding the following sentence to the end of paragraph (b)(4), and revising paragraph (c) to read as follows:

§ 264.1084 Standards: Tanks.

* * * * *

(b) * * *

(4) * * * To be considered a pressure tank for the purpose of compliance with this subpart, a unit must operate with no detectable emissions during filling to design capacity and the subsequent compression of the vapor headspace.

* * * * *

(c) As an alternative to complying with paragraph (b) of this section, an owner or operator may place hazardous waste in a tank equipped with a cover (e.g., a fixed roof) meeting the requirements specified in paragraph (c)(2) of this section when the hazardous waste is determined to meet the conditions specified in paragraph (c)(1) of this section.

(1) All of the following conditions shall be met at all times that hazardous waste is managed in the tank under normal process operations:

(i) The hazardous waste in the tank is neither mixed, stirred, agitated, nor circulated within the tank using a process that results in splashing, frothing, or visible turbulent flow on the waste surface during normal process operations;

(ii) The hazardous waste in the tank is not heated by the owner or operator except during conditions requiring that the waste be heated to prevent the waste from freezing or to maintain adequate waste flow conditions for continuing normal process operations;

(iii) The hazardous waste in the tank is not treated by the owner or operator using a waste stabilization process or a process that produces an exothermic reaction; and

(iv) The maximum organic vapor pressure of the hazardous waste in the tank as determined using the procedure specified in § 264.1083(c) of this subpart is less than the following applicable value:

(A) If the tank design capacity is equal to or greater than 151 m³, then the maximum organic vapor pressure shall be less than 5.2 kPa;

(B) If the tank design capacity is equal to or greater than 75 m³ but less than 151 m³, then the maximum organic vapor pressure shall be less than 27.6 kPa; or

(C) If the tank design capacity is less than 75 m³, then the maximum organic vapor pressure shall be less than 76.6 kPa.

(2) To comply with paragraph (c)(1) of this section, the owner or operator shall design, install, operate, and maintain a cover to meet the following requirements:

(i) The cover and all cover openings (e.g. access hatches, sampling ports, and

gauge wells) shall be designed to operate with no detectable organic emissions when all cover openings are secured in a closed, sealed position.

(ii) Each cover opening shall be secured in a closed, sealed position (e.g. covered by a gasketed lid or cap) at all times that hazardous waste is in the tank except as provided for in paragraphs (c)(2)(iii), (f)(1), and (f)(2) of this section.

(iii) One or more pressure relief devices which vent directly to the atmosphere may be used on the cover provided that each device remains in a closed, sealed position at all times except when tank operating conditions require that the device open for the purpose of preventing physical damage or permanent deformation of the tank or cover in accordance with good engineering design practices and the equipment manufacturer's recommendations. The device must be operated to minimize organic air emissions to the atmosphere to the extent practical, in consideration of good design and safety practices for handling hazardous materials. Examples of such devices include pressure-vacuum relief valves and conservation vents. Examples of tank operating conditions that may require the pressure relief device to open are filling and emptying of the tank, and internal pressure changes caused by diurnal temperature changes.

* * * * *

§ 264.1084 [Amended]

11. Section 264.1084(e) introductory text, is amended by revising "or other closed-systems, EPA considers a drain system that meets the requirements of 40 CFR 61.346(a)(1) or 40 CFR 61.346(b)(1) through (b)(3) to be a 'closed systems'" to read "or other closed systems for the transfer of hazardous waste as described in paragraph (e)(1) or (e)(2) of this section. The EPA considers a drain system that meets the requirements of 40 CFR 61.346(a)(1) or 40 CFR 61.346(b)(1) through (b)(3) to be a closed system."

§ 264.1085 [Amended]

12. In § 264.1085 paragraph (d) introductory text, is amended by revising "paragraph (b)(1)" to read "paragraph (b)".

13. In § 264.1085 paragraph (f) introductory text, is amended by revising "or other closed-systems, EPA considers a drain system that meets the requirements of 40 CFR 61.346(a)(1) or 40 CFR 61.346(b)(1) through (b)(3) to be a 'closed system'" to read "or other closed systems for the transfer of hazardous waste as described in

paragraph (f)(1) or (f)(2) of this section. The EPA considers a drain system that meets the requirements of 40 CFR 61.346(a)(1) or 40 CFR 61.346(b)(1) through (b)(3) to be a closed system."

§ 264.1086 [Amended]

14. Section 264.1086(b)(1) is amended by revising "as required by paragraph (b)(2) to read "in accordance with the requirements of paragraph (b)(2)".

15. Section 264.1086 is amended by revising paragraph (b)(2)(ii)(B), adding paragraph (b)(2)(ii)(C), revising paragraph (b)(3) and revising paragraph (c) introductory text, to read as follows:

§ 264.1086 Standards: Containers.

(b) * * *

(2) * * *

(ii) * * *

(B) The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or to direct airflow into the enclosure.

(C) The enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" in Appendix B of § 52.741.

* * * * *

(3) Transfer of the waste into or from a container shall be conducted in such a manner as to minimize waste exposure to the atmosphere to the extent practical, considering good engineering and safety practices for handling hazardous materials. Examples of container loading procedures that the EPA considers to meet the requirements of this paragraph include using a submerged-fill method to load liquids into the container; using a vapor-balancing or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; and transferring waste through a conveyance tube that is fitted to a container opening above the liquid level to splash-fill the material, and subsequently purging the conveyance tube with gas prior to removing it from the container opening.

(c) Each container opening shall be maintained in a closed, sealed position (e.g. covered by a gasketed lid) at all times that hazardous waste is in the container except when it is necessary to have the opening open during procedures to:

* * * * *

16. In § 264.1087 paragraph (c)(3)(ii) is revised to read as follows:

§ 264.1087 Standards: Closed-vent systems and control devices.

* * * * *

- (c) * * *
- (3) * * *

(ii) All carbon that is a hazardous waste and that is removed from the control device shall be managed in accordance with the requirements of § 264.1033(m) of this part, regardless of the VO concentration of the carbon.

* * * * *

17. Section 264.1088 is amended by revising paragraph (d) to read as follows:

§ 264.1088 Inspection and monitoring requirements.

* * * * *

(d) Each control device used in accordance with the requirements of § 264.1087 of this subpart shall be inspected and monitored by the owner or operator in accordance with the procedures specified in § 264.1033(f)(2) and § 264.1033(i) of this part. The readings from each monitoring device required by § 264.1033(f)(2) shall be inspected at least once each operating day to check control device operation. Any necessary corrective measures should be immediately implemented to ensure the control device is operated in compliance with the requirements of § 264.1087 of this subpart.

* * * * *

§ 264.1089 [Amended]

18. Section 264.1089(a)(1) is amended by revising "40 CFR 265.1091(c)" to read "40 CFR 265.1091(a)".

19. Section 264.1089(e) is amended by revising "§ 264.1082(c)(2)(v) or § 264.1082(c)(2)(vi)" to read "§ 264.1082(c)(2)(vi) or § 264.1082(c)(2)(vii)".

§ 264.1090 [Amended]

20. Section 264.1090(a) is amended by revising "reoccurrence" to read "recurrence".

21. Section 264.1090 is amended by revising the second sentence of paragraph (c) and by revising paragraph (d) to read as follows:

§ 264.1090 Reporting requirements.

(a) * * *

(c) * * * The report shall describe each occurrence during the previous 6-month period when either:

(1) A control device is operated continuously for 24 hours or longer in noncompliance with the applicable operating values defined in § 264.1035(c)(4); or

(2) A flare is operated with visible emissions for 5 minutes or longer in a two-hour period, as defined in § 264.1033(d). * * *

(d) A report to the Regional Administrator in accordance with the requirements of paragraph (c) of this section is not required for a 6-month period during which all control devices subject to this subpart are operated by the owner or operator such that:

(1) During no period of 24 hours or longer did a control device operate continuously in noncompliance with the applicable operating values defined in § 264.1035(c)(4); and

(2) No flare was operated with visible emissions for 5 minutes or longer in a two-hour period, as defined in § 264.1033(d).

22. Section 264.1091 is amended by adding paragraph (a)(3) to read as follows:

§ 264.1091 Alternative control requirements for tanks.

(a) * * *

(3) The owner or operator may elect to comply with § 264.1084 (b)(2) or (b)(3) of this subpart using an alternative means of emission limitation as specified in 40 CFR 265.1091(a)(3).

* * * * *

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

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

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

Subpart B—General Facility Standards

24. Section 265.13 is amended by revising paragraph (b)(8)(i) and (ii) to read as follows:

§ 265.13 General waste analysis.

* * * * *

(b) * * *

(8) * * *

(i) If direct measurement is used for the waste determination, the procedures and schedules for waste sampling and analysis, and the results of the analysis of test data to verify the exemption.

(ii) If knowledge of the waste is used for the waste determination, any information prepared by the facility owner or operator or by the generator of the hazardous waste, if the waste is received from off-site, that is used as the basis for knowledge of the waste.

Subpart AA—Air Emission Standards for Process Vents

25. In § 265.1033 the second sentence of paragraph (a)(2) is amended, paragraph (j)(2) is revised, and

paragraph (l) is revised to read as follows:

§ 265.1033 Standards: Closed-vent systems and control devices.

* * * * *

(a) * * *

(2) * * * The controls must be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to this subpart for installation and startup.

* * * * *

(j) * * *

(2) Closed-vent systems shall be monitored to determine compliance with this section during the initial leak detection monitoring, which shall be conducted by the date that the facility becomes subject to the provisions of this section, annually, and at other times as requested by the Regional Administrator. For the annual leak detection monitoring after the initial leak detection monitoring, the closed-vent system components which continuously operate under negative pressure or those closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (e.g., a welded joint between two sections of metal pipe or a bolted and gasketed pipe flange).

* * * * *

(l) The owner or operator using a carbon adsorption system shall document that all carbon that is a hazardous waste and that is removed from the control device is managed in one of the following manners, regardless of the volatile organic concentration of the carbon:

(1) Regenerated or reactivated in a thermal treatment unit for which the owner or operator has been issued a final permit under 40 CFR part 270, and designs and operates the unit in accordance with the requirements of 40 CFR part 264 subpart X;

(2) Incinerated in a hazardous waste incinerator for which the owner or operator either:

(i) Has been issued a final permit under 40 CFR part 270, and designs and operates the unit in accordance with the requirements of 40 CFR part 264 subpart O; or

(ii) Has certified compliance with the interim status requirements of subpart O of this part; or

(3) Burned in a boiler or industrial furnace for which the owner or operator either:

(i) Has been issued a final permit under 40 CFR part 270, and designs and operates the unit in accordance with the

requirements of 40 CFR part 266, subpart H; or

(ii) Has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

* * * * *

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

26. Section 265.1081 is amended by revising the definition of *Cover*, and adding a definition for *Enclosure* to read as follows:

§ 265.1081 Definitions.

* * * * *

Cover means a device or system which is placed on or over a hazardous waste to create an air-tight barrier between the entire hazardous waste surface area and the space surrounding the unit, such that air emissions to the atmosphere are reduced. A cover may have openings such as access hatches, sampling ports, and gauge wells that are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is installed provided that each opening is closed and sealed when not in use. Examples of covers include a fixed roof installed on a tank, a floating membrane cover installed on a surface impoundment, and a lid installed on a drum.

Enclosure means a structure that: (1) Surrounds a hazardous waste management unit, captures organic vapors emitted from that unit, and vents the vapors through a closed vent system to a control device; and (2) is designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" in Appendix B of § 52.741.

§ 265.1081 [Amended]

27. In § 265.1081, the definition of *Waste determination* is amended by revising "determining the organic reduction efficiency" to read "the organic reduction efficiency" and the definition of *Waste stabilization process* is amended by adding the sentence "This does not include the adding of absorbent materials to the surface of a waste, without mixing, agitation, or subsequent curing, to absorb free liquid." to the end of the definition.

* * * * *

§ 265.1083 [Amended]

28. In § 265.1083 paragraph (c)(2)(iii) is amended by revising "removal rate (MR) for the process is greater" to read "removal rate (MR) for the process is equal to or greater".

§ 265.1083 [Amended]

29. In § 265.1083 paragraph (d) is amended by revising "that is not a hazardous waste but has an average VO concentration equal to or greater than 100 ppmw shall" to read "that is a hazardous waste shall".

30. Section 265.1084 is amended by adding paragraph (a)(2)(iii), revising paragraph (a)(5)(iv), introductory text, revising the equation and the first definition in paragraph (a)(5)(v)(C), adding paragraph (b)(2)(iii), revising paragraph (b)(4)(iv), introductory text, revising the first sentence of paragraph (b)(6)(iii)(B), revising the definitions of Q_{aj} and C_{bj} in paragraph (b)(6)(iv), and revising the first sentence of paragraph (c)(3)(i) to read as follows:

§ 265.1084 Waste determination procedures.

(a) * * *

(2) * * *

(iii) When the hazardous waste is generated as part of a batch process that is not performed repeatedly, the owner or operator shall perform a waste determination of the VO concentration of the waste in the batch. The result of this waste determination is the average VO concentration for that waste.

* * * * *

(5) * * *

(iv) The following procedure shall be used to measure the VO concentration for each discrete quantity of material identified in paragraph (a)(5)(iii) of this section:

* * * * *

(v) * * *

(C) * * *

$$\bar{C} = \frac{1}{Q_T} \times \sum_{j=1}^m (Q_j \times C_j)$$

where:

\bar{C} = Average VO concentration of the hazardous waste, at the point of waste origination, ppmw.

* * * * *

(b) * * *

(2) * * *

(iii) When the hazardous waste is treated by a batch process that is not performed repeatedly, the owner or operator shall perform a waste determination for the treated waste in the batch. The result of this waste determination is the average VO concentration for that waste.

* * * * *

(4) * * *

(iv) The following procedure shall be used to measure the VO concentration for each discrete quantity of material

identified in paragraph (b)(4)(iii) of this section:

* * * * *

(6) * * *

(iii) * * *

(B) The VO concentration of each hazardous waste stream entering the process (C_b) during the run shall be measured in accordance with the requirements of paragraph (a)(5)(iv) of this section.

(iv) * * *

Q_{aj} = Mass quantity of hazardous waste exiting process during run "j", kg/hr.

C_{bj} = Measured VO concentration of hazardous waste entering process during run "j" as determined in accordance with the requirements of § 265.1084(a)(5)(iv), ppmw.

* * * * *

(c) * * *

(3) * * *

(i) Unless otherwise specified in the methods referenced in paragraphs (c)(3)(ii) (A) through (E) of this section, a sufficient number of samples, but no less than three samples, shall be collected to represent the waste contained in the tank.

* * * * *

31. Section 265.1085 is amended by adding the following sentence to the end of paragraph (b)(4) and revising paragraph (c) to read as follows:

§ 265.1085 Standards: Tanks.

* * * * *

(b) * * *

(4) * * * To be considered a pressure tank for the purpose of compliance with this subpart, a unit must operate with no detectable emissions during filling to design capacity and the subsequent compression of the vapor headspace.

(c) As an alternative to complying with paragraph (b) of this section, an owner or operator may place hazardous waste in a tank equipped with a cover (e.g., a fixed roof) meeting the requirements specified in paragraph (c)(2) of this section when the hazardous waste is determined to meet the conditions specified in paragraph (c)(1) of this section.

(1) All of the following conditions shall be met at all times that hazardous waste is managed in the tank, during normal process operations:

(i) The hazardous waste in the tank is neither mixed, stirred, agitated, nor circulated within the tank using a process that results in splashing, frothing, or visible turbulent flow on the waste surface during normal process operations;

(ii) The hazardous waste in the tank is not heated by the owner or operator

except during conditions requiring that the waste be heated to prevent the waste from freezing or to maintain adequate waste flow conditions for continuing normal process operations;

(iii) The hazardous waste in the tank is not treated by the owner or operator using a waste stabilization process or a process that produces an exothermic reaction; and

(iv) The maximum organic vapor pressure of the hazardous waste in the tank as determined using the procedure specified in § 265.1084(c) of this subpart is less than the following applicable value:

(A) If the tank design capacity is equal to or greater than 151 m³, then the maximum organic vapor pressure shall be less than 5.2 kPa;

(B) If the tank design capacity is equal to or greater than 75 m³ but less than 151 m³, then the maximum organic vapor pressure shall be less than 27.6 kPa; or

(C) If the tank design capacity is less than 75 m³, then the maximum organic vapor pressure shall be less than 76.6 kPa.

(2) To comply with paragraph (c)(1) of this section, the owner or operator shall design, install, operate, and maintain a cover to meet the following requirements:

(i) The cover and all cover openings (e.g. access hatches, sampling ports, and gauge wells) shall be designed to operate with no detectable organic emissions when all cover openings are secured in a closed, sealed position.

(ii) Each cover opening shall be secured in a closed, sealed position (e.g., covered by a gasketed lid or cap) at all times that hazardous waste is in the tank except as provided for in paragraphs (c)(2)(iii), (f)(1), and (f)(2) of this section.

(iii) One or more pressure relief devices which vent directly to the atmosphere may be used on the cover provided that each device remains in a closed, sealed position at all times except when tank operating conditions require that the device open for the purpose of preventing physical damage or permanent deformation of the tank or cover in accordance with good engineering design practices and manufacturers recommendations. The device must be operated to minimize organic air emissions to the atmosphere to the extent practical, in consideration of good design and safety practices for handling hazardous materials. Examples of such devices include pressure-vacuum relief valves and conservation vents. Examples of tank operating conditions that may require the pressure relief device to open are filling and

emptying of the tank, and internal pressure changes caused by diurnal temperature changes.

§ 265.1086 [Amended]

32. Section 265.1086(d) is amended by revising "paragraph (b)(1)" to read "paragraph (b)".

§ 265.1087 [Amended]

33. Section 265.1087(b)(1) is amended by revising "as required by paragraph (b)(2)" to read "in accordance with the requirements of paragraph (b)(2)".

34. Section 265.1087 is amended by revising paragraph (b)(2)(ii)(B), adding paragraph (b)(2)(ii)(C), revising paragraph (b)(3) and revising paragraph (c), introductory text, to read as follows:

§ 265.1087 Standards: Containers.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or to direct airflow into the enclosure.

(C) The enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent of Temporary Total Enclosure" in Appendix B of Section 52.741.

* * * * *

(3) Transfer of the waste into or from a container shall be conducted in such a manner as to minimize waste exposure to the atmosphere to the extent practical, considering good engineering and safety practices for handling hazardous materials. Examples of container loading procedures that the EPA considers to meet the requirements of this paragraph include using a submerged-fill method to load liquids into the container; using a vapor-balancing or a vapor-recover system to collect and control the vapors displaced from the container during filling operations; and transferring waste through a conveyance tube that is fitted to a container opening above the liquid level to splash-fill the material, and subsequently purging the conveyance tube with gas prior to removing it from the container opening.

(c) Each container opening shall be maintained in a closed, sealed position (e.g. covered by a gasketed lid) at all times that hazardous waste is in the container except when it is necessary to

have the opening open during procedures to:

* * * * *

35. In § 265.1088 paragraph (c)(3)(ii) is revised to read as follows:

§ 265.1088 Standards: Closed-vent systems and control devices.

* * * * *

(c) * * *

(3) * * *

(ii) All carbon that is a hazardous waste and that is removed from the control device shall be managed in accordance with the requirements of § 264.1033(m) of this part, regardless of the VO concentration of the carbon.

* * * * *

36. In § 265.1089 paragraph (d) is revised to read as follows:

§ 265.1089 Inspection and monitoring requirements.

* * * * *

(d) Each control device used in accordance with the requirements of § 265.1088 of this subpart shall be inspected and monitored by the owner or operator in accordance with the procedures specified in § 265.1033(f)(2). The readings from each monitoring device required by § 265.1033(f)(2) shall be inspected at least once each operating day to check control device operation. Any necessary corrective measures should be immediately implemented to ensure the control device is operated in compliance with the requirements of § 265.1088 of this subpart.

* * * * *

§ 265.1090 [Amended]

37. Section 265.1090(a)(1) is amended by revising "as listed in § 265.1091(c)" to read "as listed in § 265.1091(a)".

§ 265.1090 [Amended]

38. Section 265.1090(e) is amended by revising "in accordance with § 265.1083(c)(2)(vi) or § 265.1083(c)(2)(v)" to read "in accordance with § 265.1083(c)(2)(vi) or § 265.1083(c)(2)(vii)".

39. In § 265.1091 paragraph (a)(1)(i) is revised to read as follows:

§ 265.1091 Alternative tank control requirements.

(a) * * *

(1) * * *

(i) The fixed roof shall comply with the requirements of § 265.1085(d)(1) of this subpart. The internal floating roof shall rest or float on the waste surface (but not necessarily in complete contact with it) inside a tank that has a fixed roof. The internal floating roof shall be floating on the waste surface at all

times, except during initial fill and during those intervals when the tank is completely emptied or subsequently emptied and refilled. When the roof is resting on the leg supports, the process of filling, emptying, or refilling shall be as continuous as possible, based on the amount of waste and the nature of the waste handling operation, and shall be accomplished as rapidly as possible.

* * * * *

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

40. The authority citation for Part 270 continues to read as follows:

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

Subpart B—Permit Application

§ 270.27 [Amended]

41. Section 270.27(a)(1) is amended by revising “as listed in § 265.1091(c)” to read “as listed in § 265.1091(a)”.

§ 270.27 [Amended]

42. Section 270.27(a)(3) is amended by revising “the specification listed in § 265.1087(b)(2)(ii)” to read “the specifications listed in § 264.1086(b)(2)(ii).”

* * * * *

[FR Doc. 96-1713 Filed 2-8-96; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[ET Docket No. 93-266; FCC 95-493]

Review of the Pioneer's Preference Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this *Memorandum Opinion and Order (MO&O)*, the Commission denies the petition for reconsideration filed by Qualcomm Incorporated (Qualcomm) to the *Second Report and Order (Second R&O)* in this proceeding, and grants the petition for reconsideration filed by Celsat America, Inc. (Celsat) to the *Third Report and Order (Third R&O)*. The Commission finds that there is no need to reconsider its determination of what constitutes innovative technology, as requested by Qualcomm; and finds that it is desirable to reconsider its decision to apply certain new pioneer's preference

regulations to pioneer's preference requests accepted for filing on or before September 1, 1994, as requested by Celsat. This action is intended to affirm the Commission's pioneer's preference policies, consistent with Congressional directives.

EFFECTIVE DATE: March 11, 1996.

FOR FURTHER INFORMATION CONTACT:

Rodney Small, (202) 418-2452, Office of Engineering and Technology, Federal Communications Commission, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *MO&O* adopted December 8, 1995, and released January 30, 1996. This action will not add to or decrease the public reporting burden. The full text of the Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Summary of MO&O

1. The pioneer's preference program provides preferential treatment in the Commission's licensing processes for parties that make significant contributions to the development of a new service or to the development of a new technology that substantially enhances an existing service. The program was established to foster new communications services and technologies and to encourage parties to submit innovative proposals in a timely manner. Under the pioneer's preference rules, a necessary condition for the award of a preference is that an applicant demonstrate that it has developed the capabilities or possibilities of a new technology or service, or has brought the technology or service to a more advanced or effective state. The applicant must also demonstrate that the new service or technology is technically feasible by submitting either the summarized results of an experiment or a technical showing. Finally, a preference is granted only if the service rules adopted are a reasonable outgrowth of the applicant's proposal and lend themselves to grant of a preference. A pioneer's preference recipient's license application is not subject to mutually exclusive applications.

2. The *Second R&O*, 60 FR 13636 (March 14, 1995), addressed proposals set forth in the *Notice of Proposed Rule Making*, 58 FR 57578 (October 26,

1993), in this proceeding and modified certain rules regarding the Commission's pioneer's preference program. Specifically, the *Second R&O* provided pioneers with a discount on license charges in services in which licenses are awarded by competitive bidding, and it also modified several administrative rules. In addition, the *Second R&O* also held that, where an “innovative technology” has developed or enhanced more than one service, the grant of a pioneer's preference in only one such service is sufficient incentive to encourage pioneering proposals to be submitted.

3. Qualcomm states that the Commission should reconsider its determination of what constitutes “innovative technology.” Qualcomm contends that four aspects of the *Second R&O* are not clearly defined. First, Qualcomm maintains that a technology should not be considered ineligible for a pioneer's preference merely because that technology could be used in an existing service; second, it requests that the Commission clarify that an innovative technology that can be applied to more than one new service should be eligible for a preference in all services that are not existing services; third, it requests that an innovator who develops a new technology that both significantly improves an existing service and that may also be used to provide a new service in a different band be eligible for a preference in the new service; and fourth, it requests that the Commission clarify what it means by a “new service” operating in a higher band. Qualcomm states that there may be some confusion on this point with respect to broadband Personal Communications Services (PCS). No party filed comments on Qualcomm's petition.

4. Legislation implementing domestically the General Agreement on Tariffs and Trade (GATT) was enacted on December 8, 1994, and contained an amendment to the Communications Act relating to the pioneer's preference program. Included in this amendment was Section 309(j)(13)(D), which specified new requirements regarding criteria, peer review, and unjust enrichment for pioneer's preference requests that were accepted for filing after September 1, 1994. In the *Third R&O*, 60 FR 32116 (June 20, 1995), the Commission implemented the new requirements specified in Section 309(j)(13)(D) and extended them to pioneer's preference requests filed on or before September 1, 1994 in proceedings that have not reached the tentative decision stage. The Commission stated that such action would further its