

## Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

## Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone and is therefore categorically excluded under paragraph 34(g) of the Instruction. A final environmental analysis check list and categorical exclusion determination are available in the docket where indicated under ADDRESSES.

## List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

- 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

- 2. Add § 165.T09-0453 to read as follows:

#### § 165.T09-0453 Safety Zone, Barrier Testing Operations, Chicago Sanitary and Ship Canal, Romeoville, IL.

(a) *Location.* The safety zone will encompass all U.S. navigable waters of the Chicago Sanitary and Ship Canal from Mile Marker 296.1 to Mile Marker 296.7 [DATUM: NAD 83].

(b) *Effective and enforcement periods.* This rule is effective on June 10, 2011 and will remain in effect until 5 p.m. on June 21, 2011. This rule will be enforced daily from 7 a.m. to 11 a.m. and from 1 p.m. to 5 p.m. on June 10, 11, 13, 14, 15, 16, 17, 18, 20, and 21.

(3) *Regulations.* (i) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

(ii) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

(iii) The "designated representative" of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Lake Michigan, to act on his or her behalf. The designated representative of the Captain of the Port, Sector Lake Michigan, will be aboard a Coast Guard, Coast Guard Auxiliary, or other designated vessel or will be on shore and will communicate with vessels via VHF channel 16 radio, loudhailer, or by phone. The Captain of the Port, Sector Lake Michigan, or his or her designated representative may be contacted via VHF channel 16 radio or the Coast Guard Sector Lake Michigan Command Center at 414-747-7182.

(iv) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Lake Michigan, or his or her designated representative to obtain permission to do so.

(v) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

Dated: June 3, 2011.

**L. Barndt,**

*Captain, U.S. Coast Guard, Commander, U.S. Coast Guard Sector Lake Michigan.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 268 and 271

[EPA-HQ-RCRA-2008-0332; FRL-9318-4]

RIN 2050-AG65

### Land Disposal Restrictions: Revision of the Treatment Standards for Carbamate Wastes

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct Final Rule.

**SUMMARY:** The Environmental Protection Agency (EPA or the Agency) is issuing a Direct Final Rule to revise the Land Disposal Restrictions (LDR) treatment standards for hazardous wastes from the production of carbamates and carbamate commercial chemical products, off-specification or manufacturing chemical intermediates and container residues that become hazardous wastes when they are discarded or intended to be discarded. Currently, under the LDR program, most carbamate wastes must meet numeric concentration limits before they can be land disposed. However, the lack of readily available analytical standards makes it difficult to measure whether the numeric LDR concentration limits have been met. Therefore, we are providing as an alternative standard the use of the best demonstrated available technologies (BDAT) for treating these wastes. In addition, this action removes carbamate Regulated Constituents from the table of Universal Treatment Standards.

**DATES:** This Direct Final rule will be effective August 12, 2011 without further notice, unless EPA receives adverse written comment by July 13, 2011. If adverse comments are received, EPA will publish a timely withdrawal in

the **Federal Register** informing the public that the specific amendments in this Direct Final Rule for which the Agency received adverse comments will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-RCRA-2008-0332, by one of the following methods:

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

- *E-mail:* [rcra-docket@epa.gov](mailto:rcra-docket@epa.gov) and [jackson.mary@epa.gov](mailto:jackson.mary@epa.gov). Attention Docket ID No. EPA-HQ-RCRA-2008-0332.

- *Fax:* 202-566-9744. Attention Docket ID No. EPA-HQ-RCRA-2008-0332.

- *Mail:* RCRA Docket (28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. EPA-HQ-RCRA-2008-0332. Please include a total of 2 copies.

- *Hand Delivery:* Please deliver 2 copies to the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-RCRA-2008-0332. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to

technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the HQ-Docket Center, Docket ID No. EPA-HQ-RCRA-2008-0332, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the RCRA Docket is (202) 566-0270. A reasonable fee may be charged for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:**

Mary Jackson, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. She can also be reached by telephone on 703-308-8453 or by e-mail at [jackson.mary@epa.gov](mailto:jackson.mary@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**A. Why is EPA using a Direct Final Rule?**

EPA is publishing this rule as a Direct Final Rule because we view this action as noncontroversial and we anticipate no adverse comments. In addition, we also are choosing to issue a Direct Final Rule because waste management facilities treating carbamate wastes can potentially face curtailment of operations. That is, if they cannot demonstrate waste and treatment residual concentrations meet numerical LDR treatment standards through analytical testing, these facilities can potentially be left with no other choice than to stop treating carbamate wastes. This can be a particular problem when waste management facilities treat hazardous wastes that exhibit the characteristic of ignitability, reactivity, corrosivity, or toxicity. Without an analytical standard, they cannot reliably

determine which carbamate regulated constituents are present in the characteristic waste. In addition, without a way to demonstrate waste and treatment residual carbamate concentrations through analytical testing, they cannot certify that all carbamate regulated constituents reasonably expected to be present at the point of generation of such characteristic waste, have been treated to meet all applicable treatment standards (typically numeric concentration limits appearing in the Universal Treatment Standards table found in 268.48).

Based on information we have collected and on previous LDR rulemakings pertaining to carbamate wastes, which raised identical issues and did not generate adverse comment, we do not believe that there will be adverse comments on this action. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as a proposed rule should we receive adverse comments on this action. We will not institute a second proposal or allow for another comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that those specific amendments in this Direct Final Rule for which the Agency received adverse comment will not take effect, and the reason for such withdrawal. We would address all public comments in any subsequent final rule based on the proposed rule being concurrently published today.

If we do not receive adverse comment, the rule will take effect on August 12, 2011. Section 3010 (b) of RCRA states that rules implementing subtitle C of RCRA normally take effect six months after promulgation, but that EPA may provide for a shorter effective date for rules with which the regulated community does not need six months to come into compliance. This is such a rule, as the regulated community is able immediately to treat carbamate wastes using the designated methods of treatment.

**B. Does this action apply to me?**

This action applies to generators and treatment, storage and disposal facilities (TSDFs) managing EPA hazardous waste codes:

K156	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes.
K157	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes.
K158	Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes.
K159	Organics from the treatment of thiocarbamate wastes.
K161	Purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust and floor sweepings from the production of dithiocarbamate acids and their salts.
P127	Carbofuran
P128	Mexacarbate
P185	Tirpate
P188	Physostigmine salicylate
P189	Carbosulfan
P190	Metolcarb
P191	Dimetilan
P192	Isolan
P194	Oxamyl
P196	Manganese dimethyldithiocarbamate
P197	Formparanate
P198	Formetanate hydrochloride
P199	Methiocarb
P201	Promecarb
P202	m-Cumenyl methylcarbamate
P203	Aldicarb sulfone
P204	Physostigmine
P205	Ziram
U271	Benomyl
U278	Bendiocarb
U279	Carbaryl
U280	Barban
U364	Bendiocarb phenol
U367	Carbofuran phenol
U372	Carbendazim
U373	Propham
U387	Prosulfocarb
U389	Triallate
U394	A221310
U395	Diethylene glycol, dicarbamate
U404	Triethylamine
U409	Thiophanate-methyl
U410	Thiodicarb
U411	Propoxur

It also applies to generators and TSDFs of ignitable, corrosive, reactive and toxic hazardous wastes that are reasonably expected to contain one or more of the carbamate constituents listed above as underlying hazardous constituents at the point of the waste's generation.

### C. Table of Contents

- I. Summary of This Action.
- II. Background.
- III. What are the Alternative Treatment Standards?
- IV. Why are we removing these wastes from the Universal Treatment Standards?
- V. State Authority
  - A. How are states authorized under RCRA?
  - B. How does this rule affect state authorization?
- VI. Statutory and Executive Orders.
  - A. Regulatory Flexibility Act.
  - B. Congressional Review Act.

### I. Summary of This Action

We are taking direct final action to provide alternative LDR treatment standards for hazardous wastes from the production of carbamates and carbamate

commercial chemical products, off-specification or manufacturing chemical intermediates and container residues that become hazardous waste when they are discarded or intended to be discarded. The current LDR treatment standards for these wastes are set as numeric concentration limits that must be achieved before the waste is land disposed (see 40 CFR 268.40). Today's Direct Final Rule amends the existing treatment standards by allowing carbamate wastewaters to be treated using combustion, chemical oxidation, biodegradation or carbon adsorption (CMBST, CHOXD, BIODG or CARBN; see descriptions in the table found at 40 CFR 268.42); and allowing carbamate nonwastewaters to be treated by combustion ((CMBST); see description in the table at 40 CFR 268.42) as legally permissible alternatives to the numeric concentration limits. In addition, today's Direct Final Rule removes carbamates from the Table of Universal Treatment Standards (UTS) (40 CFR 268.48), thus eliminating the obligation

to treat carbamate regulated constituents to meet numeric concentration limits in order to comply with rules requiring the treatment of underlying hazardous constituents ((UHCs), see 268.40(a)(2)(i)) that are reasonably expected to be present in a waste which exhibits a hazardous waste characteristic at the point of the waste's generation.

### II. Background

Under sections 3004(d) through (g) of the Resource Conservation and Recovery Act (RCRA), the land disposal of hazardous wastes is prohibited unless the wastes meet the treatment standards, as generated, or are treated to meet the treatment standards established by EPA, or otherwise meet those standards. Section 3004(m) of RCRA requires EPA to set numeric concentration limits or methods of treatment that substantially diminish the hazardous waste's toxicity or substantially reduce the likelihood of hazardous constituents migrating from the waste such that short-term and long-term threats to human health and the environment posed by the waste's land

disposal are minimized. EPA interprets this language to authorize treatment standards based on the performance of the best demonstrated available technology(ies) (BDAT) for treating hazardous wastes. This interpretation was upheld by the DC Circuit Court of Appeals in *Hazardous Waste Treatment Council v. EPA*, 886 F.2d 355 (DC Cir. 1989).

EPA promulgated the LDR "Phase III" final rule on April 8, 1996 that established treatment standards for 64 listed hazardous wastes associated with the production of a number of carbamates (61 FR 15583). These treatment standards were based on data for similar wastes for which EPA promulgated UTS in 1994 (59 FR 47982) and on analytical detection limits compiled from sampling and analysis reports prepared to support the proposed listing of carbamate wastes as hazardous wastes on February 9, 1995. The treatment standards are expressed as numeric concentration limits that have to be met before land disposal can occur. All the carbamate waste constituents were added to the UTS table found at 40 CFR 268.48. EPA promulgated numeric treatment standards for these carbamate wastes in 1994 (59 FR 47982), and again in 1996 (61 FR 15583), because performance using BDAT for these wastes resulted in concentration levels that could be measured in the waste residue (and thus became the numeric treatment standard), or because after BDAT treatment, the carbamate constituent(s) could no longer be detected in the treatment residue (and thus the detection limit was set by EPA as the numeric treatment standard).

After promulgation of the Phase III rule on April 8 1996, but shortly before the treatment standards took effect on July 8, 1996, several companies in the waste management industry contacted EPA, reporting that analytical standards were not readily available for some of the carbamate constituents. An analytical standard is a standard reference material that is used to calibrate analytical instruments in order to confirm detection and quantification of a particular constituent. The Agency was unaware of the lack of analytical standards because the treatment standards were primarily based on analytical detection limits. We confirmed that analytical standards were not readily available for these carbamate constituents and realized that the waste management industry was unintentionally left in an unacceptable compliance situation: they were required to certify compliance with numeric LDR treatment standards, but

commercial laboratories were not able to perform the necessary analyses for some of the newly regulated carbamate constituents. Thus, it was impossible to reliably document whether the LDR treatment standards were achieved for some carbamate wastes.

The problem was complicated when the LDR rules that pertain to meeting the treatment standards for UHCs in hazardous wastes exhibiting the characteristic of ignitability, corrosivity, reactivity, and/or toxicity were promulgated. Specifically, for characteristic wastes (or waste that at point of generation exhibited a characteristic, but that have been treated so that they no longer do so), all UHCs reasonably expected to be present in the waste at the point of generation must meet the numeric concentration limits in the 268.48 UTS table. Because of the lack of analytical standards for some of the carbamate constituents, it was impossible to identify in all cases the UHCs reasonably expected to be present in the characteristic waste at the point of generation. Likewise, treatment facilities and regulatory agencies were unable to monitor compliance with numeric LDR treatment standards for UHC carbamates.

As a result, EPA promulgated an emergency rule in 1996 (61 FR 43924, August 26, 1996) to establish temporary alternative treatment standards for several carbamate waste constituents for a one-year period, which we believed would provide sufficient time for analytical standards to be developed. The temporary alternative standards promulgated on August 26, 1996, provided the waste industry with the option of meeting the original numerical concentration limits or treating the waste by required methods of BDAT treatment: combustion for nonwastewaters, and combustion, chemical oxidation, biodegradation or carbon adsorption for wastewaters. The numeric treatment standard concentration limits were based upon the performance of these BDAT technologies, so we asserted that they would be adequate to meet the LDR treatment requirements, while avoiding the analytical problems associated with some of the carbamate constituents.

However, analytical standards were not developed as we expected during the year. Thus, in August, 1997, EPA promulgated a second emergency Direct Final Rule that extended the alternative treatment standards for one additional year (62 FR 45568, August 28, 1997). At the end of that year, the analytic problems remained unsolved so in September, 1998, we promulgated a final rule that established

technology(ies) as alternative LDR treatment standards for seven carbamate wastes for which there were no analytical standards. (The rule also removed the treatment standard for one carbamate constituent (o-phenylenediamine, because it was not able to be analyzed reliably by available analytical methods), reinstated the LDR treatment standards expressed as numerical concentration limits for 32 carbamate constituents, and provided six months for the regulated community to arrange for analysis of the 32 waste constituents that were reinstated in that rule (63 FR 47410)).

In late 2007, we also became aware of the lack of an analytical standard for yet another carbamate isomer, m-cumenyl methylcarbamate (see e-mail record from Nancy Paddock, Environmental Engineering Specialist, Veolia ES Technical Solutions to Jan Young, EPA, in RCRA Docket No. HQ-RCRA-2008-0332). An analytical standard once existed for this carbamate isomer, but it is now generally unavailable, and is too costly to specially produce. Moreover, the Agency speculates that this constituent may be phased out of production and it is neither economical nor technically feasible to continue to make an analytical standard for a constituent that soon may no longer be produced.

Given our history of promulgating alternative treatment methods for specific carbamate wastes over the years and their projected phasing out, we are convinced that the lack of analytical standards with which to calibrate analytical instruments will continue to be an endemic problem. Therefore, the Agency believes it appropriate to promulgate additional rules and provide certainty to the regulated community, and thus, are extending the alternative BDAT treatment methods to all carbamate hazardous wastes and waste constituents in today's rule. These alternative standards will apply to soil contaminated with these wastes as well. If there is no analytical standard available, then the Agency would consider that constituent "non-analyzable" and the provisions of 268.49(c)(3) would apply to the soil.

It should be noted that some of the K-listed carbamate wastes have numeric treatment standards for constituents which are not carbamates. For example, there is a numeric standard for benzene in K156 (see 268.40). Those treatment standards are unaffected by today's action. Nor is EPA reconsidering or otherwise reopening those standards for public comment.

### III. What are the alternative treatment standards?

This Direct Final Rule establishes alternative BDAT treatment standards for carbamate wastes. Because the alternative treatment standards are expressed as specified technologies, they eliminate the need for analytical testing to measure compliance with the existing numeric concentration limits for the carbamate waste constituents (*i.e.* carbamates). However, we are retaining the numeric concentration limits for carbamates in the 268.40 Treatment Standard Table because allowing both specified treatment methods and numeric concentration limits provides maximum flexibility in the choice of treatment for these wastes. Thus, any treatment technology that is not considered impermissible dilution may be used to treat carbamate wastes to achieve the numeric treatment standards. We do not believe that there are many treatment technologies other than the ones we are promulgating as alternative treatment standards that are available for treatment of these wastes, but we are retaining the option of meeting the numeric standards should new treatment technologies be developed and/or analytical standards become available.

The alternative treatment standards promulgated today are: combustion ((CMBST), see description in the table 40 CFR 268.42) for nonwastewaters; and, combustion, chemical oxidation, biodegradation or carbon adsorption ((CMBST, CHOXD, BIODG or CARBN), see description in the table found at 40 CFR 268.42) for wastewaters. Because the numerical concentration limits were based upon these BDATs for treatment of carbamate wastes, we believe that they fully satisfy the core requirement of the LDR program that hazardous wastes be effectively treated to minimize short and long-term threats to human health and the environment before they are land disposed. This is the same justification for EPA's prior actions establishing these methods of treatment as alternative treatment standards for certain of the carbamate wastes, and has not been challenged or otherwise disputed.

### IV. Why are we removing carbamates from the Universal Treatment standards?

Underlying hazardous constituents are defined in 268.40(a)(2)(i) as any constituent listed in Section 268.48, Table UTS—Universal Treatment Standards, except fluoride, selenium, sulfides, vanadium, and zinc, which can reasonably be expected to be present at

the point of generation of the hazardous waste at a concentration above the constituent-specific UTS treatment standards. Hazardous waste constituents that are UHCs must be treated to meet the concentration limits specified in the UTS table. For hazardous wastes that are ignitable, corrosive, reactive, and/or toxic (*i.e.*, wastes that exhibit a characteristic of hazardous waste) or wastes that at point of generation exhibit a characteristic, but that have been treated so that they no longer exhibit the characteristic, all UHCs reasonably expected to be present in the waste at the point of generation must be treated to meet the numeric concentration limits in the UTS table.

Because of the current lack of analytical standards, it is not possible to definitely determine whether carbamate constituents are reasonably expected to be present in a characteristic waste at the point of generation. Likewise, treatment facilities and regulatory agencies are unable to monitor compliance with the UTS for these constituents. To prevent situations where the generator may not realize that his characteristic waste contains carbamates as UHCs or where the treatment facility cannot certify compliance with the UTS for carbamate wastes, it is necessary to remove the carbamate constituents from the UTS table. However, because BDATs for organic wastes are generally the same as those promulgated in today's rule as alternative treatment standards for carbamate hazardous wastes, we believe that treatment of other organic wastes, if they are present in the characteristic waste, will adequately treat the carbamate constituents in the wastes.

We are also making a conforming change to the UTS table by removing footnote 6 for several hazardous waste constituents. Footnote 6 refers to the status of certain wastes during the period of August 26, 1996 to March 4, 1998, which obviously no longer applies.

### V. State Authority

#### A. How are states authorized under RCRA?

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

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that state. The Federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in that state, since only the state was authorized to issue RCRA permits. When new, more stringent Federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new Federal requirements did not take effect in an authorized state until the state adopted the Federal requirements as state law.

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

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

#### B. How does this rule affect state authorization?

Today's rule is promulgated pursuant to HSWA authority and is neither more nor less stringent. Because RCRA section 3009 allows states to be more stringent, they do not have to adopt this provision. Today's addition of alternate treatment standards for carbamate wastes is promulgated pursuant to RCRA section 3004(m), a HSWA provision. Therefore, we are adding this rule to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of their authorization

status. The land disposal restrictions for carbamate wastes are promulgated pursuant to RCRA section 3004(g) and (m), also HSWA provisions. Table 2 in 40 CFR 271.1(j) is modified to indicate that these requirements are self-implementing.

States may apply for final authorization for the HSWA provisions in 40 CFR 271.1(j), as discussed below. Until the States receive authorization for these HSWA provisions, EPA would implement them. The procedures and schedule for final authorization of State program modifications are described in 40 CFR 271.21.

Section 271.21(e)(2) of EPA's State authorization regulations (40 CFR part 271) requires that States with final authorization to modify their programs to reflect Federal program changes and submit the modifications to EPA for approval. The deadline by which the States would need to modify their programs to adopt this regulation is determined by the date of promulgation of a final rule in accordance with section 271.21(e)(2). Once EPA approves the modification, the State requirements would become RCRA Subtitle C requirements.

States with authorized RCRA programs already may have regulations similar to those in this final rule. These State regulations have not been assessed against the Federal regulations finalized today. Thus, a State would not be authorized to implement these regulations as RCRA requirements until State program modifications are submitted to EPA and approved, pursuant to 40 CFR 271.21. Of course, States with existing regulations that are similar to those promulgated today may continue to administer and enforce their regulations as a matter of State law. In implementing the HSWA requirements, EPA will work with the States under agreements to avoid duplication of effort.

## VI. Statutory and Executive Order Reviews

As explained above, this action augments existing LDRs by establishing alternative treatment standards expressed as technologies that may be used to treat the carbamate hazardous waste under the LDR program. For that reason, this action:

- Is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132: Federalism (64 FR 43255, August 10, 1999);
- Does not have Tribal implications as specified by Executive Order 13175: Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000), because, as the rule does not make any substantive changes, it will not impose substantial direct costs on Tribal governments or preempt Tribal law;
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045: Protection of Children from Environmental Health and Safety Risks (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001);
- Does not involve technical standards; thus the requirements of § 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply; and
- Does not have disproportionately high and adverse human health or environmental effects on minority or low-income populations under Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994) because it does not affect the level of protection provided to human health or the environment.

### A. Regulatory Flexibility Act

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

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as (1) a small business that is primarily engaged in hazardous waste treatment and disposal as defined by NAICS code 562211 with annual receipts of less than 12.5 million dollars

(based on Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This rule will not have a significant economic impact on a substantial number of small entities because it merely establishes alternative treatment standards expressed as technologies that may be used to treat the carbamate hazardous waste under the LDR program. These carbamate hazardous wastes already are subject to numeric treatment standards under the LDR program, and thus, this rule will have no new impacts. Therefore, we hereby certify that this rule will not add any new regulatory requirements to small entities, and does not require a regulatory flexibility analysis.

### B. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this Direct Final Rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

### List of Subjects

#### 40 CFR Part 268

Environmental protection, Hazardous waste, Land disposal restrictions.

#### 40 CFR Part 271

Environmental protection, Hazardous waste.

Dated: June 7, 2011.

**Lisa P. Jackson,**  
Administrator.

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

**PART 268—LAND DISPOSAL RESTRICTIONS**

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

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

■ 2. Section 268.40, the Table of Treatment Standards in paragraph (b) is amended by revising the entries for “K156”, “K157”, “K158”, “K159”, “K161”, “P127”, “P128”, “P185”, “P188”, “P189”, “P190”, “P191”, “P192”, “P194h”, “P196”, “P197”, “P198”, “P199”, “P201”, “P202”,

“P203”, “P204”, “P205”, “U271”, “U278”, “U279”, “U280”, “U364”, “U367”, “U372”, “U373”, “U387”, “U389”, “U394”, “U395”, “U404”, “U409”, “U410”, and “U411” to read as follows:

**TREATMENT STANDARDS FOR HAZARDOUS WASTES**

[Note: NA means not applicable]

Waste code	Waste description and treatment/Regulatory subcategory <sup>1</sup>	Regulated hazardous constituent		Wastewaters concentration <sup>3</sup> in mg/L; or technology code <sup>4</sup>	Nonwastewaters concentration <sup>5</sup> in mg/kg unless noted as “mg/L TCLP”; or technology code <sup>4</sup>
		Common name	CAS <sup>2</sup> number		
K156	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes.	Acetonitrile .....	75-05-8	5.6	1.8
		Acetophenone .....	98-86-2	0.010	9.7
		Aniline .....	62-53-3	0.81	14
		Benomyl <sup>10</sup> .....	17804-35-2	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
		Benzene .....	71-43-2	0.14	10
		Carbaryl <sup>10</sup> .....	63-25-2	0.006; or CMBST, CHOXD, BIODG or CARBN	0.14; or CMBST
		Carbenzadim <sup>10</sup> .....	10605-21-7	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
		Carbofuran <sup>10</sup> .....	1563-66-2	0.006; or CMBST, CHOXD, BIODG or CARBN	0.14; or CMBST
		Carbosulfan <sup>10</sup> .....	55285-14-8	0.028; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
		Chlorobenzene .....	108-90-7	0.057	6.0
		Chloroform .....	67-66-3	0.046	6.0
		o-Dichlorobenzene ..	95-50-1	0.088	6.0
		Methomyl <sup>10</sup> .....	16752-77-5	0.028; or CMBST, CHOXD, BIODG or CARBN	0.14; or CMBST
		Methylene chloride ..	75-09-2	0.089	30
		Methyl ethyl ketone ..	78-93-3	0.28	36
		Naphthalene .....	91-20-3	0.059	5.6
		Phenol .....	108-95-2	0.039	6.2
		Pyridine .....	110-86-1	0.014	16
		Toluene .....	108-88-3	0.080	10
		Triethylamine .....	121-44-8	0.081; or CMBST, CHOXD, BIODG or CARBN	1.5; or CMBST
K157	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes.	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform .....	67-66-3	0.046	6.0
		Chloromethane .....	74-87-3	0.19	30
		Methomyl <sup>10</sup> .....	16752-77-5	0.028; or CMBST, CHOXD, BIODG or CARBN	0.14; or CMBST
		Methylene chloride ..	75-09-2	0.089	30
		Methylethyl ketone ..	78-93-3	0.28	36
		Pyridine .....	110-86-1	0.014	16
		Triethylamine .....	121-44-8	0.081 or CMBST, CHOXD, BIODG or CARBN	1.5; or CMBST
K158	Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes.	Benzene .....	71-43-2	0.14	10

## TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

[Note: NA means not applicable]

Waste code	Waste description and treatment/Regulatory subcategory <sup>1</sup>	Regulated hazardous constituent		Wastewaters concentration <sup>3</sup> in mg/L; or technology code <sup>4</sup>	Nonwastewaters concentration <sup>5</sup> in mg/kg unless noted as "mg/L TCLP"; or technology code <sup>4</sup>
		Common name	CAS <sup>2</sup> number		
K159	Organics from the treatment of thiocarbamate wastes.	Carbenzadim <sup>10</sup> .....	10605-21-7	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
		Carbofuran <sup>10</sup> .....	1563-66-2	0.006; or CMBST, CHOXD, BIODG or CARBN	0.14; or CMBST
		Carbosulfan <sup>10</sup> .....	55285-14-8	0.028; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
		Chloroform .....	67-66-3	0.046	6.0
		Methylene chloride ..	75-09-2	0.089	30
		Phenol .....	108-95-2	0.039	6.2
		Benzene .....	71-43-2	0.14	10
		Butylate <sup>10</sup> .....	2008-41-5	0.042; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
		EPTC (Eptam) <sup>10</sup> .....	759-94-4	0.042; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
		Molinate <sup>10</sup> .....	2212-67-1	0.042; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
K161	Purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust and floor sweepings from the production of dithiocarbamate acids and their salts.	Antimony .....	7440-36-0	1.9	1.15 mg/L TCLP
		Arsenic .....	7440-38-2	1.4	5.0 mg/L TCLP
		Carbon disulfide .....	75-15-0	3.8	4.8 mg/L TCLP
		Dithiocarbamates (total) <sup>10</sup> .	NA	0.028; or CMBST, CHOXD, BIODG or CARBN	28; or CMBST
		Lead .....	7439-92-1	0.69	0.75 mg/L TCLP
		Nickel .....	7440-02-0	3.98	11.0 mg/L TCLP
		Selenium .....	7782-49-2	0.82	5.7 mg/L TCLP
P127	* Carbofuran <sup>10</sup> .....	* Carbofuran .....	* 1563-66-2	* 0.006; or CMBST, CHOXD, BIODG or CARBN	* 0.14; or CMBST
P128	Mexacarbate <sup>10</sup> .....	Mexacarbate .....	315-18-4	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
P185	Tirpate <sup>10</sup> .....	Tirpate .....	26419-73-8	0.056; or CMBST, CHOXD, BIODG or CARBN	0.28; or CMBST
P188	Physostigmine salicylate <sup>10</sup> .....	Physostigmine salicylate.	57-64-7	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
P189	Carbosulfan <sup>10</sup> .....	Carbosulfan .....	55285-14-8	0.028; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
P190	Metolcarb <sup>10</sup> .....	Metolcarb .....	1129-41-5	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
P191	Dimetilan <sup>10</sup> .....	Dimetilan .....	644-64-4	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST



## TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

[Note: NA means not applicable]

Waste code	Waste description and treatment/Regulatory subcategory <sup>1</sup>	Regulated hazardous constituent		Wastewaters concentration <sup>3</sup> in mg/L; or technology code <sup>4</sup>	Nonwastewaters concentration <sup>5</sup> in mg/kg unless noted as "mg/L TCLP"; or technology code <sup>4</sup>
		Common name	CAS <sup>2</sup> number		
P192	Isolan <sup>10</sup> .....	Isolan .....	119-38-0	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
P194	Oxamyl <sup>10</sup> .....	Oxamyl .....	23135-22-0	0.056; or CMBST, CHOXD, BIODG or CARBN	0.28; or CMBST
P196	Manganese dimethyldithio-carbamate <sup>10</sup> ..	Dithiocarbamates (total).	NA	0.028; or CMBST, CHOXD, BIODG or CARBN	28; or CMBST
P197	Formparanate <sup>10</sup> .....	Formparante .....	17702-57-7	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
P198	Formetanate hydrochloride <sup>10</sup> .....	Formetanate hydrochloride.	23422-53-9	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
P199	Methiocarb <sup>10</sup> .....	Methiocarb .....	2032-65-7	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
P201	Promecarb <sup>10</sup> .....	Promecarb .....	2631-37-0	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
P202	m-Cumenyl methylcarbamate <sup>10</sup> .....	m-Cumenyl methylcarbamate.	64-00-6	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
P203	Aldicarb sulfone <sup>10</sup> .....	Aldicarb sulfone .....	1646-88-4	0.056; or CMBST, CHOXD, BIODG or CARBN	0.28; or CMBST
P204	Physostigmine <sup>10</sup> .....	Physostigmine .....	57-47-6	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
P205	Ziram <sup>10</sup> .....	Dithiocarbamates (total).	NA	0.028; or CMBST, CHOXD, BIODG or CARBN	28; or CMBST
	* .....	* .....	* .....	* .....	* .....
U271	Benomyl <sup>10</sup> .....	Benomyl .....	17804-35-2	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
U278	Bendiocarb <sup>10</sup> .....	Bendiocarb .....	22781-23-3	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
U279	Carbaryl <sup>10</sup> .....	Carbaryl .....	63-25-2	0.006; or CMBST, CHOXD, BIODG or CARBN	0.14; or CMBST
U280	Barban <sup>10</sup> .....	Barban .....	101-27-9	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
	* .....	* .....	* .....	* .....	* .....
U364	Bendiocarb phenol <sup>10</sup> .....	Bendiocarb phenol ..	22961-82-6	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
U367	Carbofuran phenol <sup>10</sup> .....	Carbofuran phenol ..	1563-38-8	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
U372	Carbendazim <sup>10</sup> .....	Carbendazim .....	10605-21-7	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
U373	Propham <sup>10</sup> .....	Propham .....	122-42-9	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
U387	Prosulfocarb <sup>10</sup> .....	Prosulfocarb .....	52888-80-9	0.042; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
U389	Triallate <sup>10</sup> .....	Triallate .....	2303-17-5	0.042; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

[Note: NA means not applicable]

Waste code	Waste description and treatment/Regulatory subcategory <sup>1</sup>	Regulated hazardous constituent		Wastewaters concentration <sup>3</sup> in mg/L; or technology code <sup>4</sup>	Nonwastewaters concentration <sup>5</sup> in mg/kg unless noted as “mg/L TCLP”; or technology code <sup>4</sup>
		Common name	CAS <sup>2</sup> number		
U394	A2213 <sup>10</sup> .....	A2213 .....	30558–43–1	0.042; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
U395	Diethylene glycol, dicarbamate <sup>10</sup> .....	Diethylene glycol, dicarbamate.	5952–26–1	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
U404	Triethylamine <sup>10</sup> .....	Triethylamine .....	121–44–8	0.081; or CMBST, CHOXD, BIODG or CARBN	1.5; or CMBST
U409	Thiophanate-methyl <sup>10</sup> .....	Thiophanate-methyl	23564–05–8	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
U410	Thiodicarb <sup>10</sup> .....	Thiodicarb .....	59669–26–0	0.019; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST
U411	Propoxur <sup>10</sup> .....	Propoxur .....	114–26–1	0.056; or CMBST, CHOXD, BIODG or CARBN	1.4; or CMBST

FOOTNOTES TO TREATMENT STANDARD TABLE 268.40

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

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

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

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

<sup>5</sup> Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR Part 264 Subpart O or Part 265 Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

<sup>10</sup> The treatment standard for this waste may be satisfied by either meeting the constituent concentrations in this table or by treating the waste by the specified technologies: combustion, as defined by the technology code CMBST at § 268.42 Table 1 of this Part for nonwastewaters; and biodegradation as defined by the technology code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined as technology code CMBST at § 268.42 Table 1 of this Part, for wastewaters.

■ 3. Section 268.48, the Table of UTS—Universal Treatment Standards is amended by

- a. Removing the entries for Aldicarb sulfone, Barban, Bendiocarb, Benomyl, Butylate, Carbaryl, Carbenzadim, Carbofuran, Carbofuran phenol, Carbosulfan, m-Cumenyl methylcarbamate, Dithiocarbamates (total), EPTC (Eptam), Formetanate hydrochloride, Methiocarb, Methomyl, Metolcarb, Mexacarbate, Molinate, Oxamyl, Pebulate, Physostigmine, Physostigmine salicylate, Promecarb,

Propham, Propoxur, Prosulfocarb, Thiodicarb, Thiophanate-methyl, Triallate, Triethylamin, and Vemolate; and

- b. Removing and reserving footnote 6.

**PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS**

- 4. The authority citation for part 271 continues to read as follows:

**Authority:** 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

**Subpart A—Requirements for Final Authorization**

- 5. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by promulgation date in the **Federal Register**, and by adding the following entry to Table 2 in chronological order by effective date in the **Federal Register**, to read as follows:

**§ 271.1 Purpose and scope.**

\* \* \* \* \*  
(j) \* \* \*

TABLE 1—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
June 13, 2011	Land Disposal Restrictions: Revision of the Treatment Standards for Carbamate Hazardous Wastes.	76 FR [Insert page number]	8/12/11.

TABLE 2—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
August 12, 2011	Land Disposal Restrictions: Revision of the Treatment Standards for Carbamate Hazardous Wastes.	3004(m)	76 FR [Insert Page Numbers]

\* \* \* \* \*

[FR Doc. 2011-14594 Filed 6-10-11; 8:45 am]  
 BILLING CODE 6560-50-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 217**

[Docket No. 0808041026-1295-02]

RIN 0648-AX09

**Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Operation and Maintenance of the Neptune Liquefied Natural Gas Facility off Massachusetts**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS, upon application from Neptune LNG LLC (Neptune), is issuing regulations pursuant to the Marine Mammal Protection Act (MMPA) to govern the unintentional taking of marine mammals, by harassment, incidental to port commissioning and operations, including maintenance and repair activities, at the Neptune Deepwater Port (the Port) in Massachusetts Bay for the period of July 2011 through July 2016. These regulations, which allow for the issuance of Letters of Authorization (LOAs) for the incidental take of marine mammals during the described activities

and specified timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

**DATES:** Effective from July 11, 2011, through August 10, 2016.

**ADDRESSES:** A copy of Neptune’s application may be obtained by writing to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East West Highway, Silver Spring, MD 20910, calling the contact listed under **FOR FURTHER INFORMATION CONTACT**, or visiting the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. Documents cited in this final rule may also be viewed, by appointment, during regular business hours at the above address.

The Final Environmental Impact Statement (Final EIS) on the Neptune Deepwater Port License Application authored by the Maritime Administration (MARAD) and U.S. Coast Guard (USCG) is available for viewing at <http://www.regulations.gov> by entering the search words “Neptune LNG.”

**FOR FURTHER INFORMATION CONTACT:** Candace Nachman, Office of Protected Resources, NMFS, (301) 713-2289, ext 156.

**SUPPLEMENTARY INFORMATION:**

**Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow,

upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined “negligible impact” in 50 CFR 216.103 as “\* \* \* an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.”

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [“Level A harassment”]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [“Level B harassment”].