**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 110, 259, 261, 266, 267, 270, 271, 300 and 373**

**[FRL–5224–1]**

## Solid Waste, Hazardous Waste, Oil Discharge and Superfund Programs; Removal of Legally Obsolete Rules

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is removing from the Code of Federal Regulations (CFR) several sections of the CFR pertaining to solid waste, hazardous waste, oil discharges and EPA's Superfund program which are no longer legally in effect. Deleting these sections from the CFR will clarify the legal status of the Agency's regulations for both the regulated community and the public.

**EFFECTIVE DATE:** This final rule takes effect on June 29, 1995.

**FOR FURTHER INFORMATION CONTACT:** Jim O'Leary (202–260–0724), Office of Solid Waste, or Jim Fary (703–603–8899), Office of Emergency and Remedial Response, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or the RCRA/Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

On March 4, 1995 the President directed all Federal agencies and departments to conduct a comprehensive review of the regulations they administer and, by June 1, 1995 to identify those rules that are obsolete or unduly burdensome. EPA has conducted a review of all of its rules, including rules issued under the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 et seq.), and the Deepwater Ports Act (DWPA) (33 U.S.C. 1501 et seq.). Based on this review, EPA is eliminating the following obsolete RCRA, CERCLA and DWPA rules from the CFR. These rules are no longer legally in effect because (1) they implement statutory provisions which have been repealed, (2) they have expired by their own terms or by the terms of the statute, or (3) they have been vacated (i.e., declared void and of no effect) by a court.

The removal of these rules from the CFR because they are no longer legally in effect is not intended to affect the status of any civil or criminal actions that were initiated prior to June 29, 1995 or which may be initiated in the future to redress violations of the rules that occurred when the rules were still legally in effect.

### II. Obsolete Rules

*Section 110.11 Discharge at Deepwater Ports*

Section 18 of the DWPA prohibits the discharge of oil from a deepwater port and establishes liability for the clean-up of oil discharges. On April 2, 1987, EPA issued a regulation defining the term ''discharge of oil'' for purposes of Section 18.

On August 18, 1990, Section 18 was repealed by Section 2003(a)(3) of the Oil Pollution Act of 1990. Accordingly, EPA is removing from the CFR its definition of ''discharge of oil'' under Section 18.

*Part 259—Standards for the Tracking and Management of Medical Waste*

The Medical Waste Tracking Act of 1988 (Subchapter J of RCRA) required EPA to promulgate regulations for tracking and managing medical waste as part of a two-year Federal demonstration program under the Act. The required regulations were issued by EPA on March 24, 1989, and became effective on July 22, 1989.

On July 22, 1991, in accordance with both the Act and the regulations issued by EPA, the two-year demonstration program expired. See RCRA §§ 11001(d) and 40 CFR 259.2(a). All Federal medical waste regulations also expired at that time, with the exception of recordkeeping provisions; those provisions required regulated entities to retain certain records for three years (or longer, if EPA or a State has initiated an enforcement action). See 40 CFR 259.2(b), § 259.54, § 259.77, and § 259.83. This three-year record retention period has now also expired, and EPA is unaware of any pending Federal or State enforcement action regarding Federal medical waste requirements. Accordingly, EPA is removing these medical waste regulations from the CFR.

*Section 261.31 Hazardous Wastes From Non-Specific Sources*

On February 6, 1991, EPA issued regulations listing certain wood preserving wastes as hazardous wastes. The Agency was sued on these listings, and in response, temporarily stayed the effective date of its listing decision. See § 261.31(a), footnote 1. This stay expired on May 6, 1992. Accordingly, EPA is removing all references to this stay from the CFR.

*Section 266.104(f) Alternative HC [hydrocarbon] Limit for Furnaces With Organic Matter in Raw Material*

On February 21, 1991, EPA issued standards for boilers and industrial furnaces (BIFs) burning hazardous wastes. Among other things, these standards required BIFs to meet one of three alternative emission standards for carbon monoxide. One of these alternative standards—set forth in 40 CFR 266.104(f)—was designed to address situations where organic matter in the non-waste feed to an industrial furnace made it difficult for the facility to meet one of the other two alternatives.

On February 22, 1994, in *Horsehead Resource Development Co.* v. *Browner*, 16 F.3d 1246 (D.C. Cir. 1994), *cert. denied sub nom. Cement Kiln Recycling Coalition* v. *Browner*, 115 U.S. 72 (1994), a Federal appeals court ruled that EPA had failed to follow proper rulemaking procedures in issuing this standard and vacated it. Accordingly, EPA is removing this standard and all references to this standard from the CFR.

*Part 267—Interim Standards for Owners and Operators of New Hazardous Waste Land Disposal Facilities.*

RCRA prohibits the treatment, storage or disposal of hazardous waste without a permit or interim status. RCRA §§ 3005(a) and 3005(e). Prior to 1984, permits could not be issued for a particular management practice unless EPA had promulgated permitting standards for that activity. RCRA § 3005(c)(1).

At the end of 1980, EPA had not yet issued final standards for permitting hazardous waste land disposal facilities. This meant that new land disposal facilities, which could not qualify for interim status [1], could not be authorized to operate. To address this problem, on February 13, 1981, EPA issued interim permitting standards for new land disposal facilities that could be used to permit new facilities pending the development of final standards.

By their own terms, these interim standards expired on January 26, 1983, when final permitting standards for land disposal facilities (contained in 40 CFR Part 264, Subparts K–N) became effective. See 40 CFR 267.3.

[1] ''Interim status'' allows *existing* facilities that make appropriate filings to continue to operate pending a final permit decision. See RCRA § 3005(e).

Accordingly, EPA is removing these regulations from the CFR.

*Various Provisions in Parts 270 and 271 Relating to Interim Authorization of State Hazardous Waste Programs.*

Under RCRA § 3006, States can be authorized to administer the RCRA hazardous waste program in lieu of EPA. As originally enacted in 1976, RCRA provided for two types of State authorization—interim authorization and final authorization. RCRA §§ 3006(b) and (c). Interim authorization is a temporary authorization and requires that States demonstrate that their program is ''substantially equivalent'' to EPA's; final authorization is a permanent authorization and requires that States show that their program is ''equivalent'' to the Federal program and meets other requirements.

In 1984 Congress amended RCRA to limit the availability of interim authorization after January 26, 1986 to requirements and prohibitions mandated by the Hazardous and Solid Waste Amendments of 1984 (HSWA). RCRA § 3006(c)(1). Accordingly, EPA is removing from the CFR all references to interim authorization for non-HSWA requirements (including references to ''Phase I'' and ''Phase II'' non-HSWA interim authorization).

*Part 300—National Oil and Hazardous Substances Pollution Contingency Plan; Subpart L—Lender Liability Under CERCLA.*

On April 29, 1992, EPA issued a rule defining when banks and other secured creditors would be liable as ''owners'' of contaminated property under CERCLA. In *Kelley* v. *EPA*, 15 F.3d 1100 (D.C. Cir. 1993), *reh. denied*, 25 F.3d. 1088 (D.C. Cir. 1994), *cert. denied*, 115 S. Ct. 900 (1995), a Federal court of appeals ruled that EPA did not have statutory authority to issue the rule and vacated it. Accordingly, EPA is removing this rule from the CFR.

*Section 373.1 (General Requirement)*

Section 120(h)(1) of CERCLA requires Federal agencies that own property where hazardous substances have been stored or are known to have been released to notify buyers and lessees of the property. On April 16, 1990, EPA issued a rule under this section which limited the notification requirement to situations where the storage or release took place during the period the property was owned by the Federal agency.

On July 12, 1991, in *Hercules Inc.* v. *EPA*, 938 F.2d 276 (D.C. Cir. 1991), a Federal appeals court held that the Agency had no authority to impose this limitation and vacated it. Accordingly, EPA is removing this provision from the rule.

## III. Good Cause Exemption from Notice-and-Comment Rulemaking Procedures.

The Administrative Procedure Act generally requires agencies to provide prior notice and opportunity for public comment before issuing a final rule. 5 U.S.C. 553(b). Rules are exempt from this requirement if the issuing agency finds for good cause that notice and comment are unnecessary. 5 U.S.C. 553(b)(3)(B).

EPA has determined that providing prior notice and opportunity for comment on the deletion of these rules from the CFR is unnecessary. For the reasons discussed in Sections I and II, these rules are no longer legally in effect; thus, withdrawing them from the CFR has no legal impact and merely codifies the current legal status of the rules.

For the same reasons, EPA believes there is good cause for making the removal of these rules from the CFR immediately effective. See 5 U.S.C. 553(d).

## IV. Analyses under E.O. 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act and the Paperwork Reduction Act

Because the withdrawal of these rules from the CFR merely reflects their current legal status and thus has no regulatory impact, this action is not a ''significant'' regulatory action within the meaning of E.O. 12866, and does not impose any Federal mandate on State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995. For the same reasons, pursuant to the Regulatory Flexibility Act, I certify that this action would not have a significant economic impact on a substantial number of small entities. Finally, because these rules are no longer legally in effect, their deletion from the CFR does not affect requirements under the Paperwork Reduction Act.

**List of Subjects**

*40 CFR Part 110*

Environmental protection, Deepwater ports, Oil pollution.

*40 CFR Part 259*

Hazardous materials transportation, Hazardous waste, Intergovernmental relations, Labeling, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements, Waste treatment and disposal.

*40 CFR Part 261*

Hazardous waste, Wood preserving wastes.

*40 CFR Part 266*

Boilers and industrial furnaces, Hazardous waste.

*40 CFR Part 267*

Air pollution control, Hazardous waste, Water supply.

*40 CFR Parts 270 and 271*

Hazardous waste, Intergovernmental relations, Interim authorization.

*40 CFR Part 300*

Hazardous substances, Lender liability, Superfund.

*40 CFR Part 373*

Federal buildings and facilities, Hazardous substances, Reporting and recordkeeping requirements, Superfund.

Dated: June 14, 1995.

**Elliott P. Laws,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

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

## PART 110—[AMENDED]

1. The authority citation for part 110 is amended to read as follows:

**Authority:** 33 U.S.C. 1321(b)(3) and (b)(4) and 1361(a); E.O. 11735, 38 FR 21243, 3 CFR Parts 1971–1975 Comp., p. 793.

### § 110.11 [Removed]

2. Section 110.11 is removed.

## PART 259—[REMOVED]

3. Part 259 is removed.

## PART 261—[AMENDED]

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

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

### § 261.31 [Amended]

5. In § 261.31(a), footnote 1 is removed.

## PART 266—[AMENDED]

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

**Authority:** 42 U.S.C. 6905, 6912(a), 6924 and 6934.

7. In § 266.103, paragraph (c)(5) is revised to read as follows:

### § 266.103 Interim status standards for burners.

* * * * *

(c) * * *

(5) *Special requirements for HC monitoring systems.* When an owner or operator is required to comply with the hydrocarbon (HC) controls provided by § 266.104(c) or paragraph (a)(5)(i)(D) of this section, a conditioned gas monitoring system may be used in conformance with specifications provided in appendix IX of this part provided that the owner or operator submits a certification of compliance without using extensions of time provided by paragraph (c)(7) of this section.

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**§ 266.104 [Amended]**

8. In § 266.104 paragraph (f) is removed, and paragraphs (g), (h) and (i) are redesignated as paragraphs (f), (g) and (h), respectively.

## PART 267—[REMOVED]

9. Part 267 is removed.

## PART 270—[AMENDED]

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

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

11. In § 270.2, the definitions of ''Phase I'' and ''Phase II'' are removed and the definition of ''Interim Authorization'' is revised to read as follows:

**§ 270.2 Definitions.**

* * * * *

*Interim authorization* means approval by EPA of a State hazardous waste program which has met the requirements of section 3006(g)(2) of RCRA and applicable requirements of part 271, subpart B.

* * * * *

12. In § 270.10, paragraphs (e)(4), (f)(2) and (g)(1) are revised to read as follows:

**§ 270.10 General application requirements.**

* * * * *

(e) * * *

(4) The owner or operator of an existing hazardous waste management facility may be required to submit part B of their permit application. The State Director may require submission of part B (or equivalent completion of the State RCRA application process) if the State in which the facility is located has received interim or final authorization; if not, the Regional Administrator may require submission of Part B. Any owner or operator shall be allowed at least six months from the date of request to submit part B of the application. Any owner or operator of an existing hazardous waste management facility may voluntarily submit part B of the application at any time. Notwithstanding the above, any owner or operator of an existing hazardous waste management facility must submit a part B permit application in accordance with the dates specified in § 270.73. Any owner or operator of a land disposal facility in existence on the effective date of statutory or regulatory amendments under this Act that render the facility subject to the requirement to have a RCRA permit must submit a part B application in accordance with the dates specified in § 270.73.

* * * * *

(f) * * *

(2) An application for a permit for a new hazardous waste management facility (including both Parts A and B) may be filed any time after promulgation of those standards in part 264, subpart I *et seq.* applicable to such facility. The application shall be filed with the Regional Administrator if at the time of application the State in which the new hazardous waste management facility is proposed to be located has not received interim or final authorization for permitting such facility; otherwise it shall be filed with the State Director. Except as provided in paragraph (f)(3) of this section, all applications must be submitted at least 180 days before physical construction is expected to commence.

* * * * *

(g) *Updating permit applications.* (1) If any owner or operator of a hazardous waste management facility has filed Part A of a permit application and has not yet filed part B, the owner or operator shall file an amended part A application:

(i) With the Regional Administrator if the facility is located in a State which has not obtained interim authorization or final authorization, within six months after the promulgation of revised regulations under part 261 listing or identifying additional hazardous wastes, if the facility is treating, storing or disposing of any of those newly listed or identified wastes.

(ii) With the State Director, if the facility is located in a State which has obtained interim authorization or final authorization, no later than the effective date of regulatory provisions listing or designating wastes as hazardous in that State in addition to those listed or designated under the previously approved State program, if the facility is treating, storing or disposing of any of those newly listed or designated wastes; or

(iii) As necessary to comply with provisions of § 270.72 for changes during interim status or with the analogous provisions of a State program approved for final authorization or interim authorization. Revised Part A applications necessary to comply with the provisions of § 270.72 shall be filed with the Regional Administrator if the State in which the facility in question is located does not have interim authorization or final authorization; otherwise it shall be filed with the State Director (if the State has an analogous provision).

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## PART 271—[AMENDED]

13. The authority citation for part 271 is amended to read as follows:

**Authority:** 42 U.S.C. 6905, 6912 and 6926.

**§ 271.3 [Amended]**

14. In § 271.3, paragraphs (c), (d) and (e) are removed, and paragraph (f) is redesignated as paragraph (c).

15. In § 271.20, paragraph (e) is revised to read as follows:

**§ 271.20 Approval process.**

* * * * *

(e) Within 90 days of the notice given pursuant to paragraph (d) of this section, the Administrator shall make a final determination whether or not to approve the State's program, taking into account any comments submitted. The Administrator shall give notice of this final determination in the **Federal Register** and in accordance with paragraph (a)(1) of this section. The notification shall include a concise statement of the reasons for this determination, and a response to significant comments received.

**§§ 271.121–271.138 [Removed]**

16. Subpart B (§§ 271.121 through 271.138) is removed.

## PART 300—[AMENDED]

17. The authority citation for part 300 continues to read as follows:

**Authority:** 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR 187 Comp., p. 193.

**§§ 300.1100 and 300.1105 [Removed]**

18. Subpart L (§§ 300.1100 and 300.1105) is removed.

## PART 373—[AMENDED]

19. The authority citation for part 373 is revised to read as follows:

**Authority:** 42 U.S.C. 9620.

20. Section 373.1 is revised to read as follows:

**§ 373.1 General requirement.**

After the last day of the six-month period beginning on April 16, 1990, whenever any department, agency or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and at which any hazardous substance was stored for one year or more, known to have been released, or disposed of, the head of such department, agency or instrumentality must include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release or disposal took place, to the extent such information is available on the basis of a complete search of agency files.

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## 40 CFR Parts 51, 52, 60, 65, 85, 86

**[FRL–5224–5]**

## Control of Air Pollution; Removal of Legally Obsolete Rules

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is today removing from the Code of Federal Regulations (CFR) more than 200 rules pertaining to air pollution which are no longer legally in effect. Deleting these rules from the CFR will clarify the legal status of these rules for both the regulated community and the public.

**EFFECTIVE DATE:** This final rule takes effect on June 29, 1995.

**FOR FURTHER INFORMATION CONTACT:** Maureen Delaney, Office of Air and Radiation, Office of Policy Analysis and Review, (202) 260–7431.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

On March 4, 1995 the President directed all Federal agencies and departments to conduct a comprehensive review of the regulations they administer and, by June 1, 1995, to identify those rules that are obsolete or unduly burdensome. EPA has conducted a review of all of its rules, including rules issued under the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.). Based on this review, EPA is today eliminating the following obsolete CAA rules from the CFR. These rules are no longer legally in effect because (1) they implement statutory provisions which have been repealed, (2) they have expired by their own terms or by the terms of the statute or (3) they have been vacated (i.e., declared void and of no effect) by a court.

The removal of these rules from the CFR because they are no longer legally in effect is not intended to affect the status of any civil or criminal actions that were initiated prior to June 29, 1995 or which may be initiated in the future to redress violations of the rules that occurred when the rules were still legally in effect.

### II. Obsolete Rules

*A. Portions of Parts 51 and 52*

The following deletions have been divided into three basic types of regulations found in 40 CFR parts 51 and 52: (1) Rules applicable on a national basis, without state-specific counterparts; (2) rules applicable on a national basis, supplemented by state-specific rules that implement them; and (3) rules applicable to a specific state, without national counterparts. This notice looks at each of these types in turn, setting forth the reasons that EPA seeks today to remove them from the CFR.

Any deletion of provisions that state plans currently reference is not intended to disturb those references, and EPA interprets those references to be to the version that was in the CFR when the state adopted the reference, unless the state subsequently provides otherwise.

1. National Rules Without State-Specific Counterparts

The following sets of regulations apply on a national basis, and are not further applied or implemented by any state-specific regulations. EPA has reviewed these rules and found them legally obsolete or superseded for the reasons set forth below. EPA in this notice therefore is removing them from the CFR.

*40 CFR 51.105 Approval of plans: first sentence only.* The first sentence of § 51.105 provides that the Administrator will approve any state implementation plan (SIP) or portion thereof if she determines that it meets the requirements of the Act. This provision has been superseded by the 1990 CAA provisions under Sections 110 (k) and (l). Accordingly, EPA is removing the first sentence of this section from the CFR.

*40 CFR 51.111(a)–(c) Description of control measures.* Section 51.111(a)–(c) describes what a control strategy must include, including a description of control measures, schedule for implementation, and copies of laws and a description of administrative procedures used to implement each control measure. These provisions have been superseded by the substantive provisions of Part D of Title I of the CAA, Sections 171 et seq., in conjunction with the completeness criteria in 40 CFR part 51, Appendix V. Accordingly, EPA is removing paragraphs (a), (b), and (c) of § 51.111 from the CFR.

*40 CFR 51.113 Time period for demonstration of adequacy.* Section 51.113 provides the time periods for a demonstration of the adequacy of a control strategy to attain the primary national ambient air quality standard. This provision has been superseded by the 1977 and the 1990 amendments to the CAA, Sections 110, 172, 177, 181 and 182. These Sections include the details of how nonattainment areas are established, what strategies should be included in plans to show attainment in these areas, and when the plans must be submitted. Accordingly, EPA is removing § 51.113 from the CFR.

*40 CFR 51.213(b) Transportation control measures, emission data maintenance.* Section 51.213(b) provides that for measures involving inspection, maintenance, or retrofit, data must include the results of an emission surveillance program designed to determine actual average per vehicle emissions reductions attributable to an I/M or retrofit measure. This regulation has been superseded by the I/M rules issued under the 1990 amendments to the CAA, Section 182(a)(2)(B)(2), and EPA regulations at § 51.350 et seq.

*40 CFR 51.241(a) Nonattainment areas for carbon monoxide (CO) and ozone: last two sentences only.* The last two sentences in § 51.241(a) provide that, in determining the organization responsible for developing a revised SIP for nonattainment areas for ozone and CO, the procedures described in the Section 174 Guidelines issued in December, 1977, and published as appendix U to part 51, shall be consulted. These sentences have been superseded by the 1990 CAA amendments to Section 174, and by new Section 174 guidance, including Transportation & Air Quality Planning Guidelines, July 1992. Accordingly, EPA is removing the last two sentences of § 51.241(a) from the CFR.

*40 CFR Part 51 Appendix U CAA Section 174 Guidelines, Guidance on designation of lead planning organizations.* 40 CFR part 51, appendix U, contains Guidance on the Designation of Lead Planning