

COLORADO.—PM—10—Continued

Designated Area	Designation		Classification	
	Date	Type	Date	Type
On the West—Beginning at the southwestern corner of section 23, T4N, R85W of the 6th P.M. North along the western border of sections 23, 14, 11, T4N, R85W. Thence, along the ridge which bisects sections 35, 36, 25, 24, 13, 14, 11, 12, 1, T5N, R85W, and sections 36, 25, 24, T6N, R85W. Thence heading northwest along the ridge which bisects sections 23, 15, 10, 9, 4, T6N, R85W of 6th P.M. Thence, heading northeast along the ridge which bisects sections 33, 34, 35, 36, 25, T7N, R85W and sections 30 and 10 of T7N, R84W. Thence, north along the N 1/2 of the western edge of section 19, to the NW corner of section 18, T7N, R84W.				
On the North—The northern boundary of sections 16, 17, 18, T7N, R84W of 6th P.M.				
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[FR Doc. 04-23840 Filed 10-22-04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 262**

[OA-2004-0004; FRL-7830-1]

RIN 2090-AA13

National Environmental Performance Track Program; Corrections**AGENCY:** Environmental Protection Agency (EPA)**ACTION:** Direct final rule; corrections.

SUMMARY: EPA is taking direct final action to revise and correct certain provisions in the Resource Conservation and Recovery Act (RCRA) program applicable only to members of the National Environmental Performance Track Program. The revisions concern the proposed rule published on August 13, 2002 (67 FR 52674), and the subsequent final rule published on April 22, 2004 (69 FR 21737). Both the proposal and the final rule contained an inconsistency between the preamble language and regulatory language. The final rule also inadvertently omitted three references to applicable regulatory provisions that were properly referenced in the proposed rule. The proposed and final rules cover provisions under both the Clean Air Act and RCRA. Today's direct final rule applies only to the RCRA provisions. The Clean Air Act provisions are unchanged.

The regulatory proposal of August 13, 2002 was published with a description in the preamble that was inconsistent with the proposed regulatory language.

EPA used the word "or" in the preamble description of the provision requiring notice when a generator accumulates hazardous waste, while the subject regulatory language used the word "and." No public comment was received during the public comment period concerning the inconsistent language, and the April 2004 rule repeated the inconsistency between the preamble and the regulatory language.

Today's rule corrects the preamble language to clarify that the rule requires notification to both the Regional Administrator and the authorized State.

In addition, the April 2004 final rule did not include three applicable regulatory provisions that were included in the original preamble of August 13, 2002 (67 FR 52674) proposal. The applicable regulatory provisions omitted from the final rule were correctly published in the proposal. Today's rule corrects the April 2004 final rule to include the applicable regulatory provisions.

EPA is publishing today's direct final rulemaking to address the inconsistency between the preamble and regulatory language, and to correct the inadvertently omitted applicable regulatory provisions. The applicable regulatory provisions corrected and finalized today are the same as the language that was proposed in August 2002 and received public comment.

Today's corrections are being published as a direct final rule because EPA believes these revisions to be non-controversial and does not anticipate any adverse comment. We are approving these revisions to correct the earlier inconsistency and omissions.

DATES: This direct final rule is effective December 27, 2004 unless EPA receives adverse comments by November 24, 2004. If the Agency receives adverse

comments it will withdraw this direct final rule by publishing a timely withdrawal in the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID No. OA-2004-0004, by one of the following methods:

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

- Agency Web site: <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- Mail: Mr. Robert D. Sachs, Environmental Protection Agency, Mail code 1807T, 1200 Pennsylvania Avenue, Washington, DC 20460 telephone number 202-566-2884; fax number 202-566-0966; e-mail address: sachs.robert@epa.gov.

- Hand Delivery: Office of Environmental Information Docket, Environmental Protection Agency, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460. 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. OA-2004-0004. 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.epa.gov/edocket>, 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 EDOCKET,

regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov websites are "anonymous access" systems, 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 EDOCKET or 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.

Docket: All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Office of Environmental Information Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public

Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Office of Environmental Information Docket is (202) 566-1752.

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Sachs, Performance Incentives Division, Office of Business and Community Innovation, Office of Policy, Economics and Innovation, Office of Administrator, Mail Code 1807T, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460, telephone number 202-566-2884; fax number 202-566-0966; e-mail address: sachs.robert@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Is There a Parallel Proposal to Today's Action?

There is a parallel proposal to today's action. EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment, since these provisions were previously proposed, the Agency accepted public comment, and no comments were received concerning the subject issues today's action addresses. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to revise the RCRA provisions described in this action if adverse comments are filed. This rule will be effective on December 27, 2004 without further notice unless we receive adverse comment by

November 24, 2004. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

B. Does This Action Apply to Me?

Categories and entities potentially regulated by this action include all entities regulated by EPA, pursuant to its authority under the various environmental statutes, who voluntarily decide to join the Performance Track Program. Thus, potential respondents may fall under any North American Industry Classification System (NAICS) Code. The following table lists the Primary NAICS Codes for all current Performance Track members.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is eligible to be regulated by this action, you should carefully examine the qualifying criteria for the Performance Track Program at <http://www.epa.gov/performance-track>. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

PRIMARY NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS) CODES OF CURRENT PERFORMANCE TRACK MEMBERS

Industry group	SIC	NAICS
Surgical Appliance and Supplies Manufacturing	339113
Laboratory Apparatus and Furniture Manufacturing	339111
Pharmaceutical Preparation Manufacturing	325412
All Other Miscellaneous Chemical Product and Preparation Manufacturing	325998
Fossil Fuel Electric Power Generation	221112
Dry Cleaning and Laundry Services (except Coin-Operated)	812320
Heating Oil Dealers	454311
Paper (except Newsprint) Mills	322121
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing	334220
Surgical and Appliance and Supplies Manufacturing	339113
Research and Development in the Physical, Engineering, and Life Sciences	541710
Plastics Material and Resin Manufacturing	325211
Wood Preservation	321114
All Other Basic Organic Chemical Manufacturing	325199
Ball and Roller Bearing Manufacturing	332991
Tire Manufacturing (except Retreading)	326211
Semiconductor and Related Device Manufacturing	334413
All Other Motor Vehicle Parts Manufacturing	336399
Fruit and Vegetable Canning	311421
Paperboard Mills	322130
Commercial Screen Printing	323113

PRIMARY NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS) CODES OF CURRENT PERFORMANCE TRACK
MEMBERS—Continued

Industry group	SIC	NAICS
Unlaminated Plastics Film and Sheet (except Packaging) Manufacturing		326113
Electronic Computer Manufacturing		334111
Other Motor Vehicle Electrical and Electronic Equipment Manufacturing		336322
Surgical and Medical Instrument Manufacturing		339112
Ophthalmic Goods Manufacturing		339115
All Other Miscellaneous Manufacturing		339999
Hydroelectric Power Generation		221111
Electric Bulk Power Transmission and Control		221121
Electric Power Distribution		221122
Medicinal and Botanical Manufacturing		325411
All Other Miscellaneous Nonmetallic Mineral Product Manufacturing		327999
Printed Circuit Assembly (Electronic Assembly) Manufacturing		334418
Motor Vehicle Body Manufacturing		336211
Dry, Condensed, and Evaporated Dairy Product Manufacturing		311514
Carpet and Rug Mills		314110
Cut Stock, Re-sawing Lumber, and Planing		321912
All Other Basic Inorganic Chemical Manufacturing		325188
Soap and Other Detergent Manufacturing		325611
Custom Compounding of Purchased Resins		325991
All Other Plastics Product Manufacturing		326199
Concrete Block and Brick Manufacturing		327331
Iron and Steel Mills		331111
Aluminum Die-Casting Foundries		331521
Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers		332812
Farm Machinery and Equipment Manufacturing		333111
Office Machinery Manufacturing		333313
Pump and Pumping Equipment Manufacturing		333911
Electron Tube Manufacturing		334411
Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing		334511
Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals		334515
Prerecorded Compact Disc (except Software), Tape, and Record Reproducing		334612
Magnetic and Optical Recording Media Manufacturing		334613
Motor and Generator Manufacturing		335312
Motor Vehicle Transmission and Power Train Parts Manufacturing		336350
Aircraft Manufacturing		336411
Guided Missile and Space Vehicle Manufacturing		336414
Sporting and Athletic Goods Manufacturing		339920
Solid Waste Combustors and Incinerators		562213
National Security		928110
Potash, Soda, and Borate Mineral Mining		212391
Malt Manufacturing		311213
Cigarette Manufacturing		312221
Canvas and Related Product Mills		314912
Reconstituted Wood Product Manufacturing		321219
Wood Window and Door Manufacturing		321911
Pulp Mills		322110
Nonfolding Sanitary Food Container Manufacturing		322215
Synthetic Organic Dye and Pigment Manufacturing		325132
Synthetic Rubber Manufacturing		325212
Noncellulosic Organic Fiber Manufacturing		325222
In-Vitro Diagnostic Substance Manufacturing		325413
Adhesive Manufacturing		325520
Polish and Other Sanitation Good Manufacturing		325612
Surface Active Agent Manufacturing		325613
Printing Ink Manufacturing		325910
Rubber Product Manufacturing for Mechanical Use		326291
All Other Rubber Product Manufacturing		326299
Plate Work Manufacturing		332313
Metal Can Manufacturing		332431
Other Ordnance and Accessories Manufacturing		332995
Printing Machinery and Equipment Manufacturing		333293
Food Product Machinery Manufacturing		333294
Optical Instrument and Lens Manufacturing		333314
Photographic and Photocopying Equipment Manufacturing		333315
Turbine and Turbine Generator Set Units Manufacturing		333611
Bare Printed Circuit Board Manufacturing		334412
Electronic Capacitor Manufacturing		334414
Automatic Environmental Control Manufacturing for Residential, Commercial, and Appliance Use		334512
Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling Industrial Process Variables.		334513
Other Communication and Energy Wire Manufacturing		335929

PRIMARY NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS) CODES OF CURRENT PERFORMANCE TRACK MEMBERS—Continued

Industry group	SIC	NAICS
Current-Carrying Wiring Device Manufacturing	335931
Automobile Manufacturing	336111
Truck Trailer Manufacturing	336212
Gasoline Engine and Engine Parts Manufacturing	336312
Motor Vehicle Air Conditioning Manufacturing	336391
Dental Equipment and Supplies Manufacturing	339114
Musical Instrument Manufacturing	339992
Other Nonhazardous Waste Treatment and Disposal	562219
Industrial Launderers	812332
Regulation and Administration of Transportation Programs	926120
Space Research and Technology	927110

Entities potentially affected by this final action also include state, local, and Tribal governments that have been authorized to implement these regulations.

Outline. The information presented in this preamble is organized as follows:

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- III. Final Rulemaking Changes to 180-Day accumulation time for Performance Track hazardous waste generators
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 - 2. Standards for waste management in containers
 - 3. Standards for waste management in tanks
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 - 5. Typographical corrections to the 2004 preamble at 69 FR 21737
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- IV. Summary of Environmental, Energy, and Economic Impacts
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 - G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks

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

- I. National Technology Transfer Advancement Act
- J. Congressional Review Act
- VII. Statutory Authority
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II. Overview

A. What is the National Environmental Performance Track Program?

The National Environmental Performance Track Program is a voluntary EPA program that recognizes and rewards private and public facilities that demonstrate strong environmental performance beyond current requirements. The program is based on the premise that government should complement existing programs with new tools and strategies that not only protect people and the environment, but also capture opportunities for reducing cost and spurring technological innovation.

Since the program's inception in June 2000, Performance Track membership has grown and has produced solid results. Performance Track encourages participation by small, medium, and large facilities, and its members are located throughout the United States, including Puerto Rico. A broad range of industries are represented, with manufacturers of chemical, electronic and electrical, and medical equipment comprising nearly 40 percent of the members, and both large and small facilities. Over the last three years, Performance Track has received 508 applications and accepted 409. Currently there are 304 members.

Performance Track also provides recognition, regulatory flexibility, and other incentives that promote high levels of environmental performance and provides a learning network where best practices can be shared. In addition, the program encourages continuous environmental improvement

through the use of environmental management systems, and fosters public outreach, community involvement, and performance measurement.

Once accepted, members remain in the program for three years, as long as they continue to meet the program criteria. After three years they may apply to renew their membership through a streamlined application process. Facilities applying to Performance Track must have: (1) An Environmental Management System in place for at least one full cycle that has been assessed by an independent party; (2) a history of sustained compliance; (3) past environmental achievements and a commitment to continuous environmental improvement; and (4) community outreach and annual reporting.

For a closer look at the activities and accomplishments of Performance Track members to date, as well as member's goals for future achievements, please refer to the program Web site at <http://www.epa.gov/performance-track>.

B. What Is the History of This Action?

The revisions EPA is finalizing today concern the August 13, 2002 proposed rule (67 FR 52674), and April 22, 2004 final rule (69 FR 21737) that include provisions under both the Clean Air Act and RCRA. However, today's action applies only to the RCRA provisions. The provisions under the MACT program finalized at 69 FR 21737 are unchanged by today's action.

Today's action revises RCRA regulations to allow hazardous waste generators who are members of Performance Track to extend on-site storage of hazardous waste. Performance Track members may extend storage time to 180 days, and in certain cases 270 days, to accumulate their hazardous waste without a RCRA permit or interim status.

EPA is issuing today's direct final rule to correct one inconsistency and three omissions that were published in the

April 2004 final rule. Since there was a proposed rule on August 13, 2002 during which the Agency accepted public comment, and no comments were received with regard to the subject provisions being corrected today, EPA believes this to be a non-controversial revision and anticipates no adverse comments as a result of today's action.

C. What Is EPA's Rationale for This Rule?

EPA is publishing today's direct final rule solely to revise the inconsistency and omissions from the proposed rule (67 FR 52674), and final rule (69 FR 21737).

III. Final Rulemaking Changes: 180-Day Accumulation Time for Performance Track Hazardous Waste Generators

There are four provisions in today's direct final rule, and three corrections of typographical errors from the rule finalized on April 22, 2004 (69 FR 21737). The preamble section describing § 262.34(j)(2) is corrected, and the regulatory language in §§ 262.34(j)(3)(i), 262.34(j)(3)(ii), and 262.34(j)(7) are corrected to include applicable regulatory provisions that were unintentionally omitted from the April 22, 2004 final rule. There were also three typographical errors on 69 FR page 21748; these are corrected today as described below in section III A 5.

A. What are the Current Requirements for Large Quantity Generator Accumulation, and What Is in Today's Final Rule?

1. Standards for Facilities To Notify States and EPA

Section 262.34(j)(2), facility notification. The April 2004 preamble description of § 262.34(j)(2) is inconsistent with the regulatory language as finalized. Section 262.24(j)(2) requires a facility to submit a notification to the authorized State and the EPA. However, the preamble incorrectly described this notification to be submitted to the authorized State or EPA. The following paragraph replaces the April 22, 2004 preamble section at 69 FR 21747. The description of this section is entitled "Initial Notice."

The revised preamble section now reads as follows: "Initial Notice. Under § 262.34(j)(2), Performance Track generators need to give prior notice to EPA and the authorized State agency of their intent to accumulate hazardous waste in excess of 90 days in accordance with this rule. These notices will assist EPA and state agencies in monitoring implementation of this incentive. Public comments to the proposal expressed

concern that such notifications may place an additional waste burden on facilities with dynamic waste streams if re-notifications are required for each new waste stream. EPA acknowledges this concern, clarifies that notifications are generally one-time events, and estimates that this burden will be of minimal impact to member facilities."

2. Standards for Waste Management in Containers

Section 262.34(j)(3)(i) of the regulatory language in the April 2004 final rule (69 FR 21754) inadvertently omitted a reference for compliance with subparts AA, BB, and CC of 40 CFR part 265 and 40 CFR 264.175 that was included in the preamble of the August 2002 proposal. The reference to subpart I remained in that section of the final rule. The omitted applicable regulatory provisions refer to compliance with RCRA secondary containment standards, and air emission standards for process vents; equipment leaks; and tanks, surface impoundments, and containers. This reference was included at the proposal stage (67 FR 52674), and inadvertently omitted from the final rule. Therefore, the regulatory language in Section 262.34(j)(3)(i) is amended today to read: "Containers, in accordance with the applicable requirements of subparts I, AA, BB, and CC of 40 CFR part 265 and 40 CFR 264.175; or * * *"

3. Standards for Waste Management in Tanks

Section 262.34(j)(3)(ii) of the regulatory language in the April 2004 final rule at 69 FR 21754 omitted the reference to comply with sections AA, BB, and CC of 40 CFR part 265, and omitted an exception to compliance with 40 CFR 265.197(c). The reference to subpart J remained in that section of the final rule. Subparts AA, BB, and CC of 40 CFR part 265 refer to compliance with air emission standards for process vents; equipment leaks; and tanks, surface impoundments, and containers; 40 CFR 265.197(c) refers to interim status standards for closure and post-closure care for tanks. These applicable regulatory provisions were included at the proposal stage (67 FR 52674), and inadvertently omitted from the final rule.

Also in section 262.34(j)(3)(ii), the reference to § 265.200 remained, but the clause "except for § 265.197(c)" was omitted. The effect of omitting § 265.197(c) is that it inadvertently required compliance with § 265.200 (waste analysis and trial tests for tanks), rather than waive the requirement to comply with § 265.200.

Therefore, the regulatory language in § 262.34(j)(3)(ii) is amended today to read: "Tanks, in accordance with the applicable requirements of subparts J, AA, BB, and CC of 40 CFR part 265 except for §§ 265.197(c) and 265.200; or * * *"

When EPA finalized the rule in April 2004, the **Federal Register** preamble section on pages 69 FR 21747–8 correctly described §§ 262.34(j)(3)(i) and 262.34(j)(3)(ii). Since EPA is today correcting the regulatory language, we are repeating the description of that preamble language for clarity.

The preamble section describing §§ 262.34(j)(3)(i) and 262.34(j)(3)(ii) continues to read as follows: "Standards for Accumulation Units. Condition (§ 262.34(j)(3)) in today's rule requires Performance Track generators to accumulate hazardous wastes in storage units (such as containers, tanks, drip pads, and containment buildings) that meet the standards for storing hazardous wastes at RCRA interim status facilities (see subparts I, J, W, and DD of 40 CFR part 265, respectively). These are standard requirements for large quantity generators.

If Performance Track facilities use containers for extended accumulation of hazardous wastes, today's rule additionally requires secondary containment systems for containers to prevent releases into the environment that might be caused by handling accidents, deterioration, or other circumstances. Secondary containment is a standard requirement for RCRA-permitted facilities that use containers to store hazardous wastes containing free liquids and certain listed hazardous wastes (*i.e.*, F020, F021, F023, F026, and F027). It is not, however, typically required for hazardous waste generators or interim status facilities. Public comments (received on the initial proposal 67 FR 52674) on the secondary containment requirement included support for the proposal, concerns about the costs of secondary containment, and recommendations for more stringent requirements. EPA believes that requiring secondary containment in the context of this rule is a reasonable, common-sense precaution to take in exchange for extending accumulation time limits and increasing the volume limit."

4. Standards for Preparedness and Prevention; and Contingency Plan and Emergency Procedures

Section 262.34(j)(7) of the regulatory language at 69 FR 21754 of the April 2004 final rule omitted a reference to comply with subparts C and D of Part 265. The second sentence of the

regulatory language was correct as published. Subparts C and D of 40 CFR Part 265 are provisions for preparedness and prevention, and contingency plan and emergency procedures. The reference to subparts C and D was included in the regulatory language at the proposal stage (67 FR 52674), and inadvertently omitted from the final rule. EPA is amending § 262.34(j)(7) today by correcting the omission that occurred in the final rule. To remain consistent with **Federal Register** publication guidelines, EPA is publishing both sentences of § 262.34(j)(7), even though the second sentence is unchanged from the April 2004 final rule. Therefore, the regulatory language in § 262.34(j)(7) is amended today to read: "The generator complies with the requirements for owners and operators in subparts C & D in 40 CFR part 265, and with §§ 265.16, and 268.7(a)(5). In addition, such a generator is exempt from all the requirements in Subparts G and H of part 265 of this chapter, except for §§ 265.111 and 265.114; and * * *

The preamble section from the final rule at 69 FR 21737 that described § 262.34(j)(7) was correct as published. EPA repeats the preamble language here.

General Facility Standards. Under current regulations, all hazardous waste generators are subject to certain general facility standards relating to personnel training, preparedness and prevention, and contingency plans and emergency procedures.

These general facility requirements also apply to Performance Track generators, and have been included in this rule for the sake of clarity.

5. Typographical Corrections to the 2004 Preamble at 69 FR 21737

69 FR 21748, middle column, third line. This preamble paragraph as published refers to "§ 262.24(j)(6)." EPA clarifies that it should refer to § 262.34(j)(6).

69 FR 21748, middle column, the first paragraph under Pollution Prevention refers to § 262.34(j)(7), but should refer to § 262.34(j)(8).

69 FR 21748, middle column, the third paragraph under Pollution Prevention refers to § 262.34(8), but should refer to § 262.34(j)(8).

B. How Will Today's Final Rule Affect Applicability of RCRA Rules in Authorized States?

Under section 3006 of RCRA, EPA may authorize a qualified State to administer and enforce a hazardous waste program within the State in lieu of the Federal program, and to issue and

enforce permits in the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, a State continues to have enforcement responsibilities under its law to pursue violations of its hazardous waste program. EPA continues to have independent authority under RCRA sections 3007, 3008, 3013, and 7003.

After authorization, Federal rules written under RCRA provisions that predate the Hazardous and Solid Waste Amendments of 1984 (HSWA) no longer apply in the authorized state. New Federal requirements imposed by those rules that predate HSWA do not take effect in an authorized State until the State adopts the requirements as State law.

In contrast, under section 3006(g) of RCRA, new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time they take effect in non-authorized States. EPA is directed to carry out HSWA requirements and prohibitions in authorized States until the State is granted authorization to do so.

Today's final rule is not promulgated under HSWA authorities. Consequently, it does not amend the authorized program for states upon promulgation, as EPA does not implement the rule. The authorized RCRA program will change when EPA approves a State's application for a revision to its RCRA program.

For today's Performance Track rule, EPA encourages States to expeditiously adopt Performance Track regulations and begin program implementation. To revise the Federally-authorized RCRA program, States need to seek formal authorization for the Performance Track rule after program implementation. EPA encourages States to begin implementing this incentive as soon as it is allowable under State law, while the RCRA authorization process proceeds.¹

IV. Summary of Environmental, Energy, and Economic Impacts

Today's direct final rule corrects provisions finalized on April 22, 2004 (69 FR 21737). The economic impact of RCRA § 262.34(j) is not changed by today's rulemaking. That is, the economic analysis conducted by EPA for the Performance Track Rule published in April 2004 at 69 FR 21737

¹EPA encourages States to take this approach for less stringent Federal requirements where rapid implementation is important. For example, EPA encouraged States to implement State Corrective Action Management Unit Regulations, once adopted as a matter of State law, prior to authorization (see 58 FR 8677, February 16, 1993).

addresses completely the changes being made today.

A. What Are the Cost and Economic Impacts?

There are no cost or economic impacts as a result of today's rulemaking.

B. What Are the Health, Environmental, and Energy Impacts?

There are no health, environmental, or energy impacts to today's rulemaking. Today's changes do not loosen the underlying environmental obligations of Performance Track facilities.

V. Effective Date for Today's Requirements

The changes contained in this final rule will take effect on December 27, 2004. These rule changes apply only to members of the Performance Track, which is a voluntary program. The changes are intended to provide regulatory relief and do not impose new requirements.

VI. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Today's direct final rule corrects provisions finalized on April 22, 2004 (69 FR 21737). The economic impact of RCRA § 262.34(j) is not changed by today's rulemaking. That is, the economic analysis conducted by EPA for the Performance Track Rule published in April 2004 at 69 FR 21737 addresses completely the changes being made today.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This rule makes corrections to a rule published in April 2004 (69 FR 21737), and requires no additional information collection requirements. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2010-0032, and EPA ICR number 1949.04. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566-1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rule 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 final rule on small entities, small entity is defined as: (1) A small business according to the Small Business Administration definition for the business's NAICS code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. Today's direct final rule corrects provisions finalized on April 22, 2004 (69 FR 21737) in 40 CFR § 262.34(j). The economic impact of RCRA § 262.34(j) is not changed by today's rulemaking. That is, the economic analysis conducted by EPA for the Performance

Track rule published in April 2004 at 69 FR 21737 addresses completely the changes being made today.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 04-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written Statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written Statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or to the private sector in any one year. Participation by facilities in the Performance Track is voluntary, and so is participation by State or local government agencies. There are no significant or unique effects on State, local, or Tribal governments. Today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule makes minor corrections to a final rule published in April 2004 at 69 FR 21737. Executive Order 13132 does not apply to this rule.

Stakeholders, including many States, were consulted during the development of the Performance Track Program. Many suggestions and ideas generated by States and other stakeholders provided the basis for some of the provisions in the performance track program. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically sought comment on the 2002 proposed rule from State and local officials.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." "Policies that have Tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have Tribal implications. It will not have substantial

direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Tribal governments, EPA specifically sought additional comment on the 2002 proposed rule from Tribal officials.

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

Executive Order 13045: "Protection of Children From Environmental Health & Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, EPA has concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus standards instead

of government-unique standards in their regulatory and procurement activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an Agency does not use available and applicable voluntary consensus standards.

This final rule does not involve technical standards. Thus, the provisions of NTTAA do not apply to this rule and EPA is not considering the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other 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). This final rule is effective on December 27, 2004.

VII. Statutory Authority

The statutory authority for this action is provided by sections 2002 and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. 6912 and 6922).

VIII. Judicial Review

Under section 6976(a) of the Resource Conservation and Recovery Act, judicial review of the RCRA-portion of this final rule is available only by the filing of a petition for review in the U.S. Court of

Appeals for the District of Columbia Circuit by December 27, 2004. Under this same section 6976(a) of RCRA, the requirements that are the subject of this final rule may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

List of Subjects in 40 CFR Part 262

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

Dated: October 19, 2004.

Michael O. Leavitt,
Administrator.

■ 40 CFR part 262 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, 6922-6925, 6937, and 6938.

Subpart C—[Amended]

■ 2. Section 262.34 is amended by revising paragraphs (j)(3)(i), (j)(3)(ii), and (j)(7) to read as follows:

§ 262.34 Accumulation time.

* * * * *

(j) * * *

(3) * * *

(i) Containers, in accordance with the applicable requirements of subparts I, AA, BB, and CC of 40 CFR part 265 and 40 CFR 264.175; or

(ii) Tanks, in accordance with the applicable requirements of subparts J, AA, BB, and CC of 40 CFR part 265, except for §§ 265.197(c) and 265.200; or

* * * * *

(7) The generator complies with the requirements for owners and operators in subparts C and D in 40 CFR part 265, with § 265.16, and with § 268.7(a)(5). In addition, such a generator is exempt from all the requirements in subparts G and H of part 265 of this chapter, except for §§ 265.111 and 265.114; and

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[FR Doc. 04-23842 Filed 10-22-04; 8:45 am]

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