

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 268 and 271**

[EPA #F-96-P32F-FFFFF; FRL-6154-5]

RIN 2050-ZA00

**Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from Carbamate Production**

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

**SUMMARY:** Today's final rule revises the waste treatment standards applicable to 40 waste constituents associated with the production of carbamate wastes. The rule sets final alternative treatment standards for seven specific carbamate waste constituents for which there are no available analytical standards. This action, effective immediately, extends indefinitely the alternative treatment standards for the seven hazardous waste constituents and deletes the treatment standard for one additional constituent for which available analytical methods have not been shown to achieve reliable measurements. This rule also deletes these eight waste constituents as underlying hazardous constituents. In addition, because the temporary alternative standards for 40 carbamate waste constituents expire automatically on August 26, 1998, today's rule also amends the Code of Federal Regulations to clarify that numerical treatment standards for these 32 carbamate waste constituents will once again be effective.

Today's rule is necessary to allow generators the ability to identify all underlying hazardous constituents reasonably expected to be present in their wastes at the point of generation, and to allow waste treaters to certify that wastes have been treated in compliance with applicable land disposal restrictions. Faced with the inability to demonstrate waste and treatment residual content through analytical testing, these facilities face potential curtailment of operations.

Given the need for the regulated community to adjust its testing and compliance programs for the 32 constituents for which numerical treatment standards are being reinstated, the Agency is extending the current set of alternative treatment standards for these 32 constituents (and concomitantly delaying the effectiveness of the corresponding portion of today's final rule) for six months from the date of publication.

**EFFECTIVE DATE:** This rule is effective on August 26, 1998. Compliance dates:

- Treatment standards for the wastes specified in 40 CFR 261.33 as P185, P191, P192, P197, U364, U394, and U395: August 26, 1998;
- The existing alternative standards of 40 CFR 268.40 (g) continue to apply until March 4, 1999; and
- The numerical standards specified in 40 CFR 268.40 for the wastes specified in 40 CFR 261.32 as K156–K159, and K161, and in 40 CFR 261.33 as P127, P128, P185, P188–P192, P194, P196–P199, P201–P205, U271, U278–U280, U364, U367, U372, U373, U387, U389, U394–U395, U404, and U409–U411 and the numerical standards associated with the waste constituents in 40 CFR 268.48: March 4, 1999.

**ADDRESSES:** Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA. The Docket Identification Number is F-96-P32F-FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (703) 603-9230. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost \$0.15 per page.

**FOR FURTHER INFORMATION CONTACT:** For general information contact the RCRA Hotline at 800-424-9346 (toll-free) or 703-412-9810 locally. For specific information about this rule, contact Rhonda Minnick, phone 703-308-8771 or John Austin, phone 703-308-0436.

**SUPPLEMENTARY INFORMATION:**  
*Availability of Rule on the Internet:*  
Please follow these instructions to access the rule:

From the World Wide Web (WWW), type <http://www.epa.gov/fedrgstr>. For the text of the notice, choose: Year/Month/Day.

**I. Background**

The Phase III final rule established treatment standards for 64 listed hazardous wastes associated with carbamate waste production (61 FR 15583, April 8, 1996). The treatment standards were expressed as concentration limits that had to be met before land disposal could occur. All constituents were placed on the Universal Treatment Standard (UTS) list, found at 40 CFR 268.48. These regulations were corrected June 28, 1996 (61 FR 33683) in ways that are not germane to the subject of this rule. The prohibition on land disposal of

carbamate wastes and the requirement to meet the treatment limits were effective July 8, 1996.

On November 1, 1996, the United States Court of Appeals for the District of Columbia Circuit, in *Dithiocarbamate Task Force v. EPA* (98 F.3d 1394), vacated certain of the listings of carbamate wastes. Accordingly, EPA removed from the Code of Federal Regulations those listings vacated by the court and all references to those listings. A substantial portion of carbamate listing rule was unaffected by the court's opinion<sup>1</sup> and remained in effect. See 62 FR 32973, June 17, 1997.

Today's final rule applies only to 40 of the waste constituents that are the components of the carbamate wastes that remain listed as hazardous wastes.

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 laboratory standards were not available for some of the carbamate waste constituents. The Agency confirmed this assertion, and realized that the waste management industry was unintentionally left in an unacceptable compliance situation: they were required to certify compliance with the carbamate waste treatment standards, but commercial laboratories were able to perform the necessary analyses only for some of the newly regulated constituents. Thus, it was impossible to document whether the treatment standards were or were not achieved for those 40 constituents that could not be analyzed.

The problem was complicated by the LDR rules that pertain to meeting treatment limits for underlying hazardous constituents (UHCs) in characteristic (or formerly characteristic) hazardous wastes. Whenever a generator sends a characteristic (or formerly characteristic) waste to a treatment facility, they must identify for treatment not only the hazardous characteristic, but also all UHCs reasonably expected to be present in the waste at the point of generation. (See 40 CFR 268.2(l).) Because new carbamate constituents were added to the UTS list by the Phase

<sup>1</sup> The court vacated the listings of 24 U wastes, one K-waste (K160), and three of the K-wastes (K156, K157 and K158) only to the extent that they apply to the chemical, 3-iodo-2-propynyl n-butylcarbamate (IPBC). Twenty-three of the vacated U wastes consisted of all the dithiocarbamates and thiocarbamates. The other vacated U waste was IPBC, a carbamate. Carbamates that were regulated as UHCs were unaffected by the court's decision, because the decision did not deal with carbamate or carbamate constituents as underlying hazardous constituents.

III rule, they became potential UHCs. Because of the lack of laboratory standards for some of the carbamate constituents, generators could not in all cases identify all of the UHCs reasonably expected to be present in their wastes, nor could treatment facilities or regulatory agencies monitor compliance with the standards for the carbamate UHCs. Thus, it would have been impossible to document that the treatment standards were or were not achieved for those 40 carbamate constituents that appear in the list of UHCs in 40 CFR 268.48.

In an emergency final rule promulgated on August 26, 1996 (61 FR 43924), EPA established temporary alternative treatment standards for 40 carbamate waste constituents for a one-year period. EPA believed that one year was sufficient time for laboratory standards to be developed and for laboratories to take appropriate steps to do the necessary analyses for these wastes. The temporary alternative standards promulgated in the August 26, 1996, rule provided waste handlers a choice of meeting the original Phase III numerical concentration limits or of using a specified treatment technology (the technology upon whose performance the numerical treatment standard was based) (See 61 FR 43925). Combustion was the specified technology for nonwastewaters; combustion, biodegradation, chemical oxidation, or carbon adsorption were the specified technologies for

wastewaters. If the wastes are treated by a specified technology, the LDR rules do not require a generator or treater to measure compliance with treatment levels, thus avoiding the analytical problems for the 40 carbamate waste constituents at issue.

However, the problem was not resolved in one year and, on August 21, 1997, EPA promulgated a second emergency rule, which extended the alternative treatment standards by one additional year until August 26, 1998 (62 FR 45568, August 28, 1998). Today's rule makes a final disposition for all 40 of the carbamate waste constituents at issue.

**II. Today's Carbamate Treatment Standards**

This final rule: (1) Establishes revised treatment standards for seven problem carbamate waste constituents; (2) removes the treatment standard for one additional waste constituent; (3) reinstates numerical treatment standards for 32 other carbamate waste constituents; and (4) provides six months for the regulated community to arrange for testing and analysis of the 32 carbamate constituents for which numerical standards are being reinstated.

*Treatment Standards for 8 Problem Waste Constituents*

Since 1996, EPA and Waste Management Inc. have conducted studies to determine for which of the 40

carbamate constituents at issue there are neither analytical standards nor reliable analytical test methods. These studies have shown that seven constituents lack analytical reference standards. These constituents are A2213, Bendiocarb phenol, Diethylene glycol dicarbamate, Dimetilan, Formparanate, Isolan, and Tirpate. Therefore, EPA is promulgating alternative treatment standards for these seven constituents, and is reinstating the numerical standards for the remainder of the carbamate wastes as per the Phase III Rule. Further, these studies have shown that o-phenylenediamine was not able to be analyzed reliably by available analytical methods. For o-phenylenediamine, the constituent is being deleted as a 40 CFR 268.40 constituent of concern in K157. The Agency believes that regulation of the other carbamate waste constituents of concern should also provide adequate treatment of this constituent.

The Agency is also deleting the eight carbamate waste constituents listed below in Table 1 from the 40 CFR 268.48 Universal Treatment Standards (UTS) table. By removing these constituents from the UTS list, the need to identify and treat them is eliminated for the listed carbamate wastes. Furthermore, this removal from the UTS list eliminates the requirement to monitor compliance and to meet UTS levels when any of the eight constituents are present as UHCs in characteristic hazardous wastes.

TABLE 1.—PROBLEM ANALYTES

	Compound	CAS No.	Reason deleted
U394	A2213	30558-43-1	No Standard.
U364	Bendiocarb phenol	22961-82-6	No Standard.
U395	Diethylene glycol, dicarbamate	5952-26-1	No Standard.
P191	Dimetilan	644-64-4	No Standard.
P197	Formparanate	17702-57-7	No Standard.
P192	Isolan	119-38-0	No Standard.
P185	Tirpate	26419-73-8	No Standard.
	o-Phenylenediamine	95-54-5	Poor method performance.

The Phase III rule required that all carbamate wastes must meet specific numerical UTS limits prior to land disposal. The standards being promulgated today for the eight problem constituents are expressed both as numerical limits as well as specified technologies. These are alternative standards, and provide waste handlers with a choice of whether to satisfy LDR treatment standards either by meeting the Phase III numerical limits, or by using a specified treatment technology

for these constituents. EPA is choosing to express the LDR treatment standards as alternative standards because this allows for maximum flexibility for generators and treaters as future circumstances develop (e.g., where analytical standards for one or more of the problem constituents might be developed and numerical treatment standards could therefore be shown to be achieved).

In terms of the specified technologies, these are the same as were contained in the Agency's two emergency rules in

1996 and 1997. Combustion is the specified technology for nonwastewaters. Combustion, biodegradation, chemical oxidation, or carbon adsorption are the specified technologies for wastewaters. These technologies are defined at 40 CFR 268.42, Table 1 (see technology codes: BIODG, CARBN, CHOXD, and CMBST). If the wastes are treated by a specified technology, there is no requirement to measure compliance with treatment levels (thus the analytical problems are

avoided). Because the performance of these Best Demonstrated Available Technologies (BDATs) was the basis of the originally promulgated treatment levels, EPA believes that allowing the use of these BDATs—without a requirement to monitor the treatment residues—fully satisfies the core requirement of the LDR program: unless treatment levels are already met, hazardous wastes must be effectively treated to minimize threats to human health and the environment before they are land disposed.

EPA considered completely replacing the numerical LDR treatment standards for the other 32 carbamate constituents with specified treatment methods, rather than providing the alternative approach being promulgated in this rule for only the eight problem analytes. This would have departed from the long-standing architecture of the LDR treatment standards, which are always expressed as numerical performance standards unless special circumstances exist (such as the lack of analytical standards or methods). Our traditional approach of using numerical performance standards, rather than dictating a specific technology, has the advantage of maximizing the flexibility of generators and treaters to meet the LDR standards by whatever technology they might choose. It also addresses an Agency concern that it may be necessary to provide more comprehensive design and operating parameters to assure continuous effective treatment of wastes by a specified technology. In order to assure the effectiveness of treatment, we determined to follow our traditional numerical approach for all the carbamate constituents (excepting of course the seven analytes lacking standards and the one with poor method performance) and to continue to provide industry with the option of selecting an appropriate treatment technology based on site-specific and company-specific factors. However, EPA has received a number of suggestions that establishing comprehensive design and operating parameters for specific technologies is a useful alternative and technically feasible. EPA is considering the possibility of pursuing such a project for many LDR-regulated wastes, including carbamates.

Although we have some reservations about departing from our established approach for the problem analytes, we believe that the specific circumstances

of this rule justify deferring solely to the requirement of a specified technology without first evaluating the need for design and operating parameters for the technology. If EPA determines in the future that such parameters are needed, it will modify the treatment standard.

The Agency understands that, since 1996, generators and treaters have been using specified technologies to meet the LDR treatment standards for all 40 waste constituents that were the subject of both emergency rules. Today's rule will necessitate a change in approach for 32 of those 40 waste constituents, which will involve procuring the necessary sampling and analytical services so that compliance can be assured. To allow the regulated community adequate time to make arrangements to procure the necessary analytical capabilities, the Agency will extend the current emergency standards until six months after the publication of this final rule in the Federal Register. After that time, the alternative treatment standards will apply only to the eight problem carbamate constituents from wastes specified in 40 CFR 261.33 as EPA Hazardous Waste numbers P185, P191, P192, P197, U364, U394, and U395; and soil contaminated with these wastes.

#### Method Studies

For the analysis of the 32 carbamate waste constituents for which numerical standards are being reinstated by today's rule, six determinative methods have been evaluated. They are listed below. Except where noted, all of the methods are from the Third Edition of *SW-846 Test Methods for Evaluating Solid Wastes Physical/Chemical Methods*.

- Method 630 (EPA Office of Water) Total Dithiocarbamates
- Method 8260 Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS)
- Method 8141 Organophosphorus Compounds by Gas Chromatography
- Method 8270 Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS)
- Method 8318 N-Methylcarbamates by High Performance Liquid Chromatography (HPLC)
- Method 8321 Solvent Extractable Non-Volatile Compounds by High Performance Liquid Chromatography (HPLC)/Thermospray/ Mass Spectrometry (HPLC/TSP/MS) or Ultraviolet (UV) Detection.

Method 630 determines total dithiocarbamates after conversion of the dithiocarbamates to carbon disulfide and measurement of the carbon disulfide. The method does not distinguish individual dithiocarbamate compounds and was not further evaluated in the recent studies.

The only analyte evaluated by method 8260 was triethylamine. Analysis by purge and trap failed to have adequate sensitivity to detect triethylamine at the levels of the treatment standards. Analysis by direct injection to a flame ionization detector found that levels as low 0.001 mg/L or less could be measured.

Method studies centered on the remaining carbamate waste constituents and their amenability to analysis by Methods 8141, 8270, 8318, and 8321. Because of thermal lability, carbamates and carbamoyl oximes are generally not amenable to analysis by gas chromatography except where quantitative decomposition occurs. However, thiocarbamates as a class are amenable to analysis by gas chromatographic Methods 8141 using the nitrogen/phosphorous detector and 8270 GC/MS. Method 8318 was shown to be limited to only the analysis of n-methylcarbamates. Other than dithiocarbamates and triethylamine, all other carbamate waste constituents were found to be amenable to analysis via High Performance Liquid Chromatography (HPLC)/Thermospray/Mass Spectrometry (HPLC/TSP/MS) or Ultraviolet (UV) detection using method 8321. For more detailed method performance results, the reader is directed to the study reports, "Carbamate Analysis Feasibility Study," Waste Management, 1998 and "Carbamate Method Evaluation Report," SAIC, 1998, available in the docket for today's rule. To aid laboratories conducting analysis of these constituents, Table 2 presents a summary of the analytes amenable to methods 8141, 8270, 8318, and 8321. The Agency plans in future revisions of the SW-846 methods to incorporate the additional analytes for which methods 8141, 8270, 8318, and 8321 have been demonstrated to be amenable. Furthermore, any analytical methods capable of demonstrating compliance with the new standards can be used in addition to the ones noted above which are part of SW-846.

TABLE 2.—SUMMARY OF APPLICABLE METHODS

Compound	8141	8270	8318	8321 Thermospray	8321 254nm	8321 280nm
Butylate	Y	Y		Y		
EPTC	Y	Y		Y		
Molinate	Y	Y		Y		
Pebulate	Y	Y		Y		
Propham	Y	Y		Y	Y	Y
Prosulfocarb	Y	Y		Y	Y	
Triallate	Y	Y		Y	Y	
Vernolate	Y	Y		Y		
Carbofuran phenol		Y, a			Y	Y
Aldicarb			L	L		
Aldicarb sulfone			Y, L	Y		
Bendiocarb			Y	Y, L		Y
Carbaryl			Y, L	Y, L	Y	Y
Carbofuran		a	Y, L	Y, L		Y
Carbosulfan		a	C	Y	Y	Y
m-Cumenyl methyl carbamate			Y	Y	Y	
Formetanate hydrochloride			Y	Y	Y	Y
Methiocarb			Y, L	Y	Y	Y
Methomyl			Y, L	Y, L		
Metolcarb			Y	Y		
Mexacarbate			Y	Y	Y	Y
Oxamyl			Y, L	Y, L	Y	
Promecarb			Y, L	Y	Y	
Propoxur			Y, L	Y		Y
Thiodicarb			Y	Y	Y	
Barbam				Y	Y	Y
Benomyl				Y	Y	Y
Carbendazim				Y, L	Y	Y
Physostigmine				Y	Y	Y
Physostigmine salicylate				Y		Y
Thiophanate-methyl				Y	Y	Y

a—Compounds carbofuran phenol, carbofuran, & carbosulfan can not be distinguished.  
 Y—Compound amenable to analysis.  
 L—Compound listed as a method analyte.

**III. Good Cause for Immediate Final Rule**

This final rule is being issued without notice and opportunity for public comment. Under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), an agency may forego notice and comment in promulgating a rule when the agency for good cause finds (and incorporates the finding and a brief statement of the reasons for that finding into the rule) that notice and public comments procedures are impracticable, unnecessary, or contrary to the public interest. For the reasons set forth below, EPA finds good cause to conclude that notice and comment would be unnecessary and contrary to the public interest, and therefore is not required by the APA.

First, the Agency has discovered an unanticipated and continued unavailability of analytical laboratory standards or adequate analytical method for eight of the carbamate waste constituents covered by the Phase III rule. As a practical matter, therefore, members of the regulated community cannot fully document compliance with the requirements of the treatment

standard. For the same reason, EPA cannot ascertain compliance for these constituents. The same problem exists for certifying compliance and ascertaining compliance when these carbamate constituents are underlying hazardous constituents in characteristic (and formerly characteristic) prohibited wastes.

In addition, this unavailability of analytical standards has a significant potential to create a serious disruption in the production of at least some carbamate pesticides. Although the treatment of the restricted carbamate wastes through biodegradation, carbon adsorption, chemical oxidation (for wastewaters), or combustion is both possible and highly effective, certification that the treatment actually meets the treatment standard levels may not be possible in many instances given the lack of analytical standards for eight waste constituents of concern. Without the certification, disposal of the residuals left after treatment cannot legally occur. The Agency believes that this situation may impede production of certain pesticides, since legal disposal of some carbamate wastes would no longer be available. See *Steel*

*Manufacturers Ass'n v. EPA*, 27 F.3d 642, 646-47 (D.C. Cir. 1994) (absence of a treatment standard providing a legal means of disposing of wastes from a process is equivalent to shutting down that process).

Today's rule removes an administrative hurdle that would impede sound management of these carbamate hazardous wastes. By altering the treatment standard to allow certification of compliance based on the use of specified treatment technologies without constituent-specific testing for the eight problem analytes, the Agency can ensure that effective treatment actually occurs without delay and can also assure that threats to human health and the environment are minimized.

Consequently, EPA today is preserving the core of the promulgated Phase III rule by ensuring that the restricted carbamate wastes are treated by a BDAT before they are land disposed. At the same time, EPA is eliminating the situation which could halt production of certain carbamate pesticides. The Agency concludes that this action must be taken immediately and that notice and comment would be contrary to the public interest in these

special circumstances. In addition, notice and comment are unnecessary because this emergency rule makes only conforming changes (for the 32 carbamate constituents that retain numerical standards) to the CFR needed to reflect expiration of the 1997 second emergency rule. For the seven carbamate constituents for which EPA is making permanent the technology standards, and the one constituent being deleted, EPA has had direct contact with the affected parties, and no objections were raised to these actions. For these reasons, EPA believes that there is good cause to issue this final rule immediately without prior notice and opportunity for comment.

#### **IV. Good Cause Finding for Immediate Effective Date for Eight Carbamate Constituents and 6-Month Effective Date for the Remaining 32 Carbamate Constituents**

For the eight problem analytes for which alternative treatment standards are being promulgated today, the Agency believes that the regulated community is in the untenable position of having to comply with treatment standards for which there is not an analytical way to measure compliance. Therefore, it is imperative that relief be immediately provided from the otherwise applicable treatment standards that would come into effect automatically on August 26, 1998, when the second emergency rule would expire by its own terms. In addition, today's rule does not create additional regulatory requirements; rather, it provides greater flexibility for compliance with treatment standards. For these reasons, EPA finds that good cause exists under section 3010(b)(3) of RCRA, 42 U.S.C. 6903(b)(3), to provide for an immediate effective date for the alternative standards being promulgated for the eight problem carbamate constituents. See generally 61 FR at 15662. For the same reasons, EPA finds that there is good cause under 5 U.S.C. 553(b)(3) to waive the requirement that regulations be published at least 30 days before they become effective.

For the other 32 waste constituents covered by the two emergency rules and for which the temporary alternative treatment standards expire on August 26, 1998, the Agency recognizes that today's rule will necessitate a change in approach for these 32 waste constituents. Compliance for these 32 waste constituents, as of August 27, 1998, would be based on numerical concentration limits for which sampling and analytical services will be necessary. As noted earlier, to allow the regulated community an adequate and

reasonable time to make arrangements to procure the necessary analytical capabilities, the Agency will extend the current emergency standards until six months after the publication of this final rule in the **Federal Register**. After that time, the alternative treatment standards will apply only to the eight problem carbamate constituents, and the other 32 carbamate constituents will be subject to the numerical standards set forth in 40 CFR 268.40 and 268.48.

#### **V. State Authority**

##### *A. Applicability of Rule in Authorized States*

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA 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 authorization are found in 40 CFR Part 271.

Prior to HSWA, a State with final authorization administered its hazardous waste program 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 that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so.

Today's rule is being promulgated pursuant to section 3004(m) of RCRA (42 U.S.C. 6924(m)). Therefore, the Agency is adding today's rule to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA. This rule is therefore effective in all states immediately pursuant to RCRA section 3006(g). States may apply for final authorization for the HSWA provisions in Table 1, as discussed in the following section of this preamble.

##### *B. Effect on State Authorization*

As noted above, EPA will implement today's rule in authorized States until they modify their programs to adopt these rules and the modification is approved by EPA. Because today's rule is promulgated pursuant to HSWA, a State submitting a program modification may apply to receive interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for final authorization are described in 40 CFR 271.21. All HSWA interim authorizations will expire January 1, 2003. (See § 271.24 and 57 FR 60132, December 18, 1992.)

#### **VI. Regulatory Requirements**

*Analysis Under Executive Order 12866, Executive Order 12875, the Regulatory Flexibility Act, the Unfunded Mandates Reform Act, the Paperwork Reduction Act, National Technology Transfer and Advancement Act of 1995, Executive Order 13045, and Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

Today's rule reinstates the regulatory text that existed prior to the August 26, 1996, emergency final rule (61 FR 43924), and extends indefinitely the alternative standards applicable to the seven constituents identified as lacking analytical standards. Today's action has been deemed by the Agency as being a "significant regulatory action" for the purposes of Executive Order 12866, and has been reviewed by the Office of Management and Budget. This is not an economically significant regulatory action. Today's rule does not, however, impose obligations on State, local or tribal governments for the purposes of Executive Order 12875. In addition, this action does not impose annual costs of \$100 million or more, will not significantly or uniquely affect small governments, and is not a significant federal intergovernmental mandate. The Agency thus has no obligations under sections 202, 203, 204 and 205 of the Unfunded Mandates Reform Act. Furthermore, this action is not subject to the Regulatory Flexibility Act since this rule is exempt from notice and comment rulemaking requirements for good cause which is explained in Section IV. The Administrator is, therefore, not required to certify under the RFA.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. No. 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus

standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking involves environmental monitoring or measurement. Consistent with the Agency's Performance Based Measurement System (PBMS), EPA has decided not to require the use of specific, prescribed analytic methods. Rather, the rule will allow the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

Today's rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because this action is not an economically significant rule, and it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children. Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This rule will not impose any new information collection requirements.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the

regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule revises waste treatment standards applicable to 40 waste constituents associated with the production of carbamate wastes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### *Submission to Congress and the General Accounting Office*

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. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor. 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**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

#### **VII. Immediate Effective Date**

The final alternative treatment standards for the seven carbamate waste constituents are effective upon publication of this final rule. Also effective upon publication is the deletion of the one constituent for which the method performance is poor. Because the regulated community does not need 6 months to come into compliance with these portions of the rule, EPA finds, pursuant to RCRA section 3010(b)(1), that these actions can be made effective in less than six months.

The reinstatement of treatment standards for the 32 carbamate waste constituents are effective 6 months after publication of this final rule. Also, EPA finds that good cause exists under 5

U.S.C. 553(d)(3) to waive the requirement that regulations be published at least 30 days before they become effective, for the reasons discussed earlier in section IV of this preamble.

#### **List of Subjects**

##### *40 CFR Part 268*

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

##### *40 CFR Part 271*

Administrative practice and procedure, Hazardous materials transportation, Hazardous waste, Penalties, Reporting and recordkeeping requirements.

Dated: August 26, 1998.

**Carol M. Browner,**  
*Administrator.*

For the reasons set forth 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.

#### **Subpart D—Treatment Standards**

2. Section 268.40 is amended in paragraph (g) by revising "August 26, 1997 and August 26, 1998" to read "August 26, 1996 and March 4, 1999"; by adding paragraph (i); by revising in the table "Treatment Standards for Hazardous Wastes" the entries for K156–K159, K161, P127, P128, P185, P188–P192, P194, P196–P199, P201–P205, U271, U278–U280, U364, U367, U372, U373, U387, U389, U394–U395, U404, and U409–U411; and by revising footnote 10 to read as follows:

#### **§ 268.40 Applicability of treatment standards.**

\* \* \* \* \*

(i) Effective September 4, 1998, the treatment standards for the wastes specified in 40 CFR 261.33 as EPA Hazardous Waste numbers P185, P191, P192, P197, U364, U394, and U395 may be satisfied by either meeting the constituent concentrations presented in the table "Treatment Standards for Hazardous Wastes" in this section, or by treating the waste by the following 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.  
\* \* \* \* \*

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste code	Waste description and treatment/regulatory/subcategory <sup>1</sup>	Regulated hazardous constituent		Wastewaters Concentration in mg/L; <sup>3</sup> or technology code <sup>4</sup>	Nonwastewaters Concentration in mg/kg <sup>5</sup> unless noted as "mg/L TCLP" or technology code
		Common name	CAS <sup>2</sup> No.		
* 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	96-86-2	0.010	9.7
		Aniline	62-53-3	0.81	14
		Benomyl	17804-35-2	0.056	1.4
		Benzene	71-43-2	0.14	10
		Carbaryl	63-25-2	0.006	0.14
		Carbenzadim	10605-21-7	0.056	1.4
		Carbofuran	1563-66-2	0.006	0.14
		Carbosulfan	55285-14-8	0.028	1.4
		Chlorobenzene	108-90-7	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		o-Dichlorobenzene	95-50-1	0.088	6.0
		Methomyl	16752-77-5	0.028	0.14
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Naphthalene	91-20-3	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyridine	110-86-1	0.014	16
		Toluene	108-88-3	0.080	10
		Triethylamine	121-44-8	0.081	1.5
* K157	* Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes.	* Carbon tetrachloride	* 56-23-5	* 0.057	* 6.0
		Chloroform	67-66-3	0.046	6.0
		Chloromethane	74-87-3	0.19	30
		Methomyl	16752-77-5	0.028	0.14
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Pyridine	110-86-1	0.014	16
		Triethylamine	121-44-8	0.081	1.5
* K158	* Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes.	* Benomyl	* 17804-35-2	* 0.056	* 1.4
		Benzene	71-43-2	0.14	10
		Carbenzadim	10605-21-7	0.056	1.4
		Carbofuran	1563-66-2	0.006	0.14
		Carbosulfan	55285-14-8	0.028	1.4
		Chloroform	67-66-3	0.046	6.0
		Methylene chloride	75-09-2	0.089	30
		Phenol	108-95-2	0.039	6.2
* K159	* Organics from the treatment of thiocarbamate wastes.	* Benzene	* 71-43-2	* 0.14	* 10
		Butylate	2008-41-5	0.003	1.5
		EPTC (Eptam)	759-94-4	0.003	1.4
		Molinate	2212-67-1	0.003	1.4
		Pebulate	1114-71-2	0.003	1.4
		Vernolate	1929-77-7	0.003	1.4
* 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	* <sup>11</sup> 1.15
		Arsenic	7440-38-2	1.4	<sup>11</sup> 5.0
		Carbon disulfide	75-15-0	3.8	<sup>11</sup> 4.8
		Dithiocarbamates (total)	137-30-4	0.028	28
		Lead	7439-92-1	0.69	<sup>11</sup> 0.75
		Nickel	7440-02-0	3.98	<sup>11</sup> 11.0
		Selenium	7782-49-2	0.82	<sup>11</sup> 5.7
* P127	* Carbofuran	* Carbofuran	* 1563-66-2	* 0.006	* 0.14
* P128	* Mexacarbate	* Mexacarbate	* 315-18-4	* 0.056	* 1.4
* P185	* Tirpate <sup>10</sup>	* Tirpate	* 26419-73-8	* 0.056	* 0.28
* P188	* Physostigmine salicylate	* Physostigmine salicylate	* 57-64-7	* 0.056	* 1.4
* P189	* Carbosulfan	* Carbosulfan	* 55285-14-8	* 0.028	* 1.4
* P190	* Metolcarb	* Metolcarb	* 1129-41-5	* 0.056	* 1.4
* P191	* Dimetilan <sup>10</sup>	* Dimetilan	* 644-64-4	* 0.056	* 1.4
* P192	* Isolan <sup>10</sup>	* Isolan	* 119-38-0	* 0.056	* 1.4
* P194	* Oxamyl	* Oxamyl	* 23135-22-0	* 0.056	* 0.028

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory/subcategory <sup>1</sup>	Regulated hazardous constituent		Wastewaters Concentration in mg/L; <sup>3</sup> or technology code <sup>4</sup>	Nonwastewaters Concentration in mg/kg <sup>5</sup> unless noted as "mg/L TCLP" or technology code
		Common name	CAS <sup>2</sup> No.		
P196	Manganese dimethyldithiocarbamate.	Dithiocarbamates (total)	NA	0.028	28
P197	Formparanate <sup>10</sup>	Formparanate	17702-57-7	0.056	1.4
P198	Formetanate hydrochloride	Formetanate hydrochloride	23422-53-9	0.056	1.4
P199	Methiocarb	Methiocarb	2032-65-7	0.056	1.4
P201	Promecarb	Promecarb	2631-37-0	0.056	1.4
P202	m-Cumenyl methylcarbamate	m-Cumenyl methylcarbamate	64-00-6	0.056	1.4
P203	Aldicarb sulfone	Aldicarb sulfone	1646-88-4	0.056	0.28
P204	Physostigmine	Physostigmine	57-47-6	0.056	1.4
P205	Ziram	Dithiocarbamates (total)	NA	0.028	28
	*	*	*	*	*
U271	Benomyl	Benomyl	17804-35-2	0.056	1.4
U278	Bendiocarb	Bendiocarb	22781-23-3	0.056	1.4
U279	Carbaryl	Carbaryl	63-25-2	0.006	0.14
U280	Barban	Barban	101-27-9	0.056	1.4
	*	*	*	*	*
U364	Bendiocarb phenol <sup>10</sup>	Bendiocarb phenol	22961-82-6	0.056	1.4
U367	Carbofuran phenol	Carbofuran phenol	1563-38-8	0.056	1.4
U372	Carbendazim	Carbendazim	10605-21-7	0.056	1.4
U373	Propham	Propham	122-42-9	0.056	1.4
U387	Prosulfocarb	Prosulfocarb	52888-80-9	0.042	1.4
U389	Triallate	Triallate	2303-17-5	0.042	1.4
U394	A2213 <sup>10</sup>	A2213	30558-43-1	0.042	1.4
U395	Diethylene glycol, dicarbamate <sup>10</sup>	Diethylene glycol, dicarbamate	5952-26-1	0.056	1.4
U404	Triethylamine	Triethylamine	101-44-8	0.081	1.5
U409	Thiophanate-methyl	Thiophanate-methyl	23564-05-8	0.056	1.4
U410	Thiodicarb	Thiodicarb	59669-26-0	0.019	1.4
U411	Propoxur	Propoxur	114-26-1	0.056	1.4
	*	*	*	*	*

Notes to the table:

<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>6</sup> Where an alternate treatment standard or set of alternate standards has been indicated, a facility may comply with this alternate standard, but only for the Treatment/Regulatory Subcategory or physical form (i.e., wastewater and/or nonwastewater) specified for that alternate standard.

<sup>7</sup> Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

<sup>8</sup> These wastes, when rendered nonhazardous and then subsequently managed in CWA, CWA-equivalent, or Class I SDWA systems are not subject to treatment standards. (See § 148.1(d) and § 268.1(c)(3) and (4)).

<sup>9</sup> These wastes, when rendered nonhazardous and then subsequently injected in a Class I SDWA well are not subject to treatment standards. (See § 148.1(d)).

<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.

<sup>11</sup> "mg/L TCLP".

4. In § 268.48, the table in paragraph (a) is revised by deleting the entries for: "A2213," "Bendiocarb phenol," "Diethylene glycol, dicarbamate," "Dimetilan," "Formparanate," "Isolan," "o-Phenylenediamine," and "Tirpate;" ;

by removing footnote number "6" in column one, under the heading *Regulated Constituents/Common Name*, after the following chemical names: "Aldicarb sulfone," "Barban," "Bendiocarb," "Benomyl," "Butylate,"

"Carbaryl," "Carbenzadim," "Carbofuran," "Carbofuran phenol," "Carbosulfan," "m-Cumenyl methylcarbamate," "Dithiocarbamates (total)," "EPTC," "Formetanate hydrochloride," "Methiocarb,"



“Methomyl,” “Metolcarb,”  
 “Mexacarb,” “Molinate,” “Oxamyl,”  
 “Pebulate,” “o-Phenylenediamine,”  
 “Physostigmine,” “Physostigmine  
 salicylate,” “Promecarb,” “Propham,”  
 “Propoxur,” “Prosulfocarb,”  
 “Thiodicarb,” “Thiophanate-methyl,”  
 “Triallate,” “Triethylamine,” and  
 “Vernolate,” and by removing footnote  
 6.

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

5. 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**

6. 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 entries 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
* * * * *	* * * * *	* * * * *	* * * * *
September 4, 1998 .....	Emergency Revision of the Land Disposal Restrictions (LDR) Phase III Treatment Standards for Listed Hazardous Wastes from Carbamate Production.	63 FR [Insert page numbers]	September 4, 1998.
* * * * *	* * * * *	* * * * *	* * * * *

\* \* \* \* \*

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

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
* * * * *	* * * * *	* * * * *	* * * * *
September 4, 1998 .....	Emergency Revision of the Land Disposal Restrictions (LDR) Phase III Treatment Standards for Listed Hazardous Wastes from Carbamate Production.	3004(m) .....	63 FR [Insert page numbers].
* * * * *	* * * * *	* * * * *	* * * * *