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(ii) A description of the hazardous debris as initially generated, including the applicable EPA Hazardous Waste Number(s); and

(iii) For debris excluded under § 261.3(f)(1) of this chapter, the technology from Table 1, § 268.45, used to treat the debris.

(2) The notification must be updated if the debris is shipped to a different facility, and, for debris excluded under § 261.2(f)(1) of this chapter, if a different type of debris is treated or if a different technology is used to treat the debris.

(3) For debris excluded under § 261.3(f)(1) of this chapter, the owner or operator of the treatment facility must document and certify compliance with the treatment standards of Table 1, § 268.45, as follows:

(i) Records must be kept of all inspections, evaluations, and analyses of treated debris that are made to determine compliance with the treatment standards;

(ii) Records must be kept of any data or information the treater obtains during treatment of the debris that identifies key operating parameters of the treatment unit; and

(iii) For each shipment of treated debris, a certification of compliance with the treatment standards must be signed by an authorized representative and placed in the facility's files. The certification must state the following: "I certify under penalty of law that the debris has been treated in accordance with the requirements of 40 CFR 268.45. I am aware that there are significant penalties for making a false certification, including the possibility of fine and imprisonment."

(e) Generators and treaters who first receive from EPA or an authorized state a determination that a given contaminated soil subject to LDRs as provided in § 268.49(a) no longer contains a listed hazardous waste and generators and treaters who first determine that a contaminated soil subject to LDRs as provided in § 268.49(a) no longer exhibits a characteristic of hazardous waste must:

(1) Prepare a one-time only documentation of these determinations including all supporting information; and,

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(2) Maintain that information in the facility files and other records for a minimum of three years.

[51 FR 40638, Nov. 7, 1986; 52 FR 21016, June 4, 1987]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 268.7, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 268.8 [Reserved]

§ 268.9 Special rules regarding wastes that exhibit a characteristic.

(a) The initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under subpart D of this part. This determination may be made concurrently with the hazardous waste determination required in § 262.11 of this chapter. For purposes of part 268, the waste will carry the waste code for any applicable listed waste (40 CFR part 261, subpart D). In addition, where the waste exhibits a characteristic, the waste will carry one or more of the characteristic waste codes (40 CFR part 261, subpart C), except when the treatment standard for the listed waste operates in lieu of the treatment standard for the characteristic waste, as specified in paragraph (b) of this section. If the generator determines that their waste displays a hazardous characteristic (and is not D001 nonwastewaters treated by CMBST, RORGS, OR POLYM of § 268.42, Table 1), the generator must determine the underlying hazardous constituents (as defined at § 268.2(i)) in the characteristic waste.

(b) Where a prohibited waste is both listed under 40 CFR part 261, subpart D and exhibits a characteristic under 40 CFR part 261, subpart C, the treatment standard for the waste code listed in 40 CFR part 261, subpart D will operate in lieu of the standard for the waste code under 40 CFR part 261, subpart C, provided that the treatment standard for the listed waste includes a treatment standard for the constituent that causes the waste to exhibit the characteristic. Otherwise, the waste must meet the treatment standards for all

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applicable listed and characteristic waste codes.

(c) In addition to any applicable standards determined from the initial point of generation, no prohibited waste which exhibits a characteristic under 40 CFR part 261, subpart C may be land disposed unless the waste complies with the treatment standards under subpart D of this part.

(d) Wastes that exhibit a characteristic are also subject to §268.7 requirements, except that once the waste is no longer hazardous, a one-time notification and certification must be placed in the generator's or treater's on-site files. The notification and certification must be updated if the process or operation generating the waste changes and/or if the subtitle D facility receiving the waste changes.

(1) The notification must include the following information:

(i) Name and address of the RCRA Subtitle D facility receiving the waste shipment; and

(ii) A description of the waste as initially generated, including the applicable EPA hazardous waste code(s), treatability group(s), and underlying hazardous constituents (as defined in §268.2(i)), unless the waste will be treated and monitored for all underlying hazardous constituents. If all underlying hazardous constituents will be treated and monitored, there is no requirement to list any of the underlying hazardous constituents on the notice.

(2) The certification must be signed by an authorized representative and must state the language found in §268.7(b)(4).

(i) If treatment removes the characteristic but does not meet standards applicable to underlying hazardous constituents, then the certification found in §268.7(b)(4)(iv) applies.

(ii) [Reserved]

[55 FR 22688, June 1, 1990, as amended at 56 FR 3878, Jan. 31, 1991; 57 FR 37271, Aug. 18, 1992; 58 FR 29885, May 24, 1993; 59 FR 48045, Sept. 19, 1994; 60 FR 245, Jan. 3, 1995; 61 FR 15599, 15662, Apr. 8, 1996; 62 FR 26022, May 12, 1997; 64 FR 25415, May 11, 1999; 71 FR 16913, Apr. 4, 2006]

Subpart B—Schedule for Land Disposal Prohibition and Establishment of Treatment Standards

SOURCE: 51 FR 19305, May 28, 1986, unless otherwise noted.

§§ 268.10–268.12 [Reserved]

§ 268.13 Schedule for wastes identified or listed after November 8, 1984.

In the case of any hazardous waste identified or listed under section 3001 after November 8, 1984, the Administrator shall make a land disposal prohibition determination within 6 months after the date of identification or listing.

§ 268.14 Surface impoundment exemptions.

(a) This section defines additional circumstances under which an otherwise prohibited waste may continue to be placed in a surface impoundment.

(b) Wastes which are newly identified or listed under section 3001 after November 8, 1984, and stored in a surface impoundment that is newly subject to subtitle C of RCRA as a result of the additional identification or listing, may continue to be stored in the surface impoundment for 48 months after the promulgation of the additional listing or characteristic, notwithstanding that the waste is otherwise prohibited from land disposal, provided that the surface impoundment is in compliance with the requirements of subpart F of part 265 of this chapter within 12 months after promulgation of the new listing or characteristic.

(c) Wastes which are newly identified or listed under section 3001 after November 8, 1984, and treated in a surface impoundment that is newly subject to subtitle C of RCRA as a result of the additional identification or listing, may continue to be treated in that surface impoundment, notwithstanding that the waste is otherwise prohibited from land disposal, provided that surface impoundment is in compliance with the requirements of subpart F of part 265 of this chapter within 12 months after the promulgation of the