

Regulatory Flexibility Act

The initial and final regulatory flexibility analyses requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601–612, are not applicable to this rule, because a notice of proposed rulemaking is not required for this rule. Even so, the Secretary of Veterans Affairs hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Individuals eligible for FMP benefits are widely dispersed geographically and any effect on a small entity from the provisions of this rule will be miniscule. Therefore, this final rule is also exempt pursuant to 5 U.S.C. 605(b) from the initial and final regulatory flexibility analyses requirements of section 603 and 604.

Paperwork Reduction Act of 1995

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any year. This rule will have no such effect on State, local, and tribal governments, or on the private sector.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a regulatory action as a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, if it is a regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise

interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Catalog of Federal Domestic Assistance

The program that this rule affects has the following Catalog of Federal Domestic Assistance number and title: 64.009, Veterans Medical Care Benefits.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: June 10, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

■ For the reasons stated in the preamble, VA amends 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. Revise the authority citation for part 17 to read as follows:

Authority: 38 U.S.C. 501, 1721, and as noted in specific sections.

§ 17.35 [Amended]

■ 2. Amend § 17.35(b) by removing “38 CFR 17.48(j)(2)” and adding in its place “§ 17.47(i)(2)”.

§ 17.125 [Amended]

■ 3. Amend § 17.125 by:

■ a. In paragraph (a), removing “, and” at the end of the paragraph and adding in its place “.”.

■ b. In paragraph (b), removing “, and” at the end of the paragraph and adding in its place “.”.

■ c. Removing paragraph (c) and redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.

■ d. In newly-redesignated paragraph (c), removing “P.O. Box 65023, Denver,

CO 80206–3023” and adding in its place “P.O. Box 469063, Denver, CO 80246–9063”.

§ 17.141 [Amended]

■ 4. Amend § 17.141 by removing “Canada which will be referred to the VA Medical Center in White River Junction, VT, and”.

[FR Doc. E9–14966 Filed 6–24–09; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 1, 40, 63, 260, 261, 262, 266, 271, 750 and 761

[FRL 8911–7]

Reorganization and Name Change for the Office of Solid Waste (OSW) Within the Office of Solid Waste and Emergency Response

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On January 18, 2009, the Office of Solid Waste (OSW) was reorganized and changed its name to the *Office of Resource Conservation and Recovery (ORCR)*. The name change reflects the breadth of the responsibilities/authorities that Congress provided to EPA under the Resource Conservation and Recovery Act (RCRA), the primary authorizing statute. ORCR has three divisions, which consolidate the operations of the six divisions under the OSW structure. This reorganization will create a more efficient structure, consistent with current program priorities and resource levels, and will enable EPA to better serve the needs of the public and its key stakeholders over the next 5–10 years. EPA has increased focus on resource conservation and materials management; it is expected that focus on this important aspect of the RCRA program will continue, while maintaining a strong waste management regulatory and implementation program. EPA is taking final action to amend the Code of Federal Regulations (CFR) to reflect the reorganization and name change of the Office of Solid Waste.

DATES: This rule is effective on June 25, 2009.

FOR FURTHER INFORMATION CONTACT: Kathy Bruneske, Office of Resource Conservation and Recovery (ORCR), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002; telephone (703) 308–0096; fax

number (703) 308-7904; e-mail address Bruneske.kathy@epa.gov. For more information regarding this rule, please visit <http://www.epa.gov/epawaste/basicinfo.htm>.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general, and has particular applicability to anyone who wants to communicate with the new Office of Resource Conservation and Recovery, or to submit information to the Office. Because this action may apply to everyone, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document or Other Related Documents?

To obtain electronic copies of this document, and certain other related documents that are available electronically, please visit <http://www.epa.gov/epawaste/basicinfo.htm>.

II. Background

A. What Action Is the Agency Taking?

In recent years, EPA has been increasing its focus on resource conservation and materials management. It is expected that this will continue; thus, the new organization increases emphasis on this important aspect of the RCRA program, while maintaining a strong waste management regulatory and implementation program.

The reorganization consolidates operations from six to three divisions and adds a program management staff to the Immediate Office. The reorganization creates a more efficient structure, consistent with current Office priorities.

The reorganization consolidates complementary functions in order to achieve efficiencies in operations. The reorganization:

- Consolidates the four major areas of the Resource Conservation Challenge (RCC) under one division;
- Combines data collection and data analysis activities thus streamlining operations to better coordinate efforts to analyze and present the benefits of the RCRA program; and
- Consolidates waste-to-energy activities in one division and branch.

The three divisions in the new organization are: The Materials

Recovery and Waste Management Division; the Resource Conservation and Sustainability Division; and, the Program Implementation and Information Division.

In addition to announcing the reorganization, EPA is amending the Code of Federal Regulations to reflect the new name of the Office of Solid Waste.

B. What Is the Agency's Authority for Taking This Action?

EPA is issuing this document under its general rulemaking authority, Reorganization Plan No. 3 of 1970 (5 U.S.C. app.).

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(A), provides that "rules of agency organization, procedure, or practice" are exempt from notice and comment requirements. Accordingly, EPA is not taking comment on this action.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to OMB review. Because this action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments. This action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before certain

actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Because this final action does not contain legally binding requirements, it is not subject to the Congressional Review Act.

List of Subjects

40 CFR Part 1

Organization and functions.

40 CFR Part 40

Grants administration.

40 CFR Part 63

Environmental protection.

40 CFR Parts 260, 261, and 262

Environmental protection, Hazardous waste.

40 CFR Part 266

Environmental protection, Hazardous waste, Waste treatment and disposal.

40 CFR Part 271

Environmental protection, Hazardous waste.

40 CFR Part 750

Administrative practice and procedure.

40 CFR Part 761

Environmental protection, Hazardous waste.

Dated: May 26, 2009.

Barry N. Breen,

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

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

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

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

Authority: 5 U.S.C. 552

■ 2. Section 1.47 is amended by revising the paragraph heading and the first sentence in paragraph (b) to read as follows:

§ 1.47 Office of Solid Waste and Emergency Response.

* * * * *

(b) *Office of Resource Conservation and Recovery.* The Office of Resource Conservation and Recovery, under the supervision of a Director, is responsible

for the solid and hazardous waste activities of the Agency. * * *

PART 40—RESEARCH AND DEMONSTRATION GRANTS

■ 3. The authority citation for part 40 continues to read as follows:

Authority: 7 U.S.C. 136 et seq.; 15 U.S.C. 2609 et seq.; 33 U.S.C. 1254 et seq. and 1443; 42 U.S.C. 241 et seq., 300f et seq., 1857 et seq., 1891 et seq., and 6901 et seq.

■ 4. Section 40.135-1 is amended by revising paragraph (b) to read as follows:

§ 40.135-1 Preapplication coordination.

(b) Applications for grants for demonstration projects funded by the Office of Resource Conservation and Recovery will be solicited through the Department of Commerce Business Daily, and selections will be made on a competitive basis.

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 5. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

■ 6. Appendix D to part 63 is amended by revising Section 1. to read as follows:

Appendix D to Part 63—Alternative Validation Procedure for EPA Waste and Wastewater Methods

1. Applicability

This procedure is to be applied exclusively to Environmental Protection Agency methods developed by the Office of Water and the Office of Resource Conservation and Recovery. Alternative methods developed by any other group or agency shall be validated according to the procedures in Sections 5.1 and 5.3 of Test Method 301, 40 CFR Part 63, Appendix A. For the purposes of this appendix, "waste" means waste and wastewater.

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 7. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921-6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

■ 8. Section 260.21 is amended by revising paragraph (d) to read as follows:

§ 260.21 Petitions for equivalent testing or analytical methods.

(d) If the Administrator amends the regulations to permit use of a new testing method, the method will be incorporated by reference in § 260.11 and added to "Test Methods for Evaluating Solid Waste, Physical/ Chemical Methods," EPA Publication SW-846, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, Washington, DC 20460.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

■ 10. Appendix IX to part 261 is amended by revising entry (5) under Waste Description for Aptus, Inc. in Table 1 to read as follows:

Appendix IX to Part 261—Wastes Excluded Under Sections 260.20 and 260.22

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Table with 3 columns: Facility, Address, Waste description. Row 1: Aptus, Inc. (5) The test data from Conditions (1), (2), (3), and (4) must be kept on file by Aptus for inspection purposes and must be compiled, summarized, and submitted to the Director for the Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery, by certified mail on a monthly basis and when the treatment of the cancelled pesticides and related materials is concluded. The testing requirements for Conditions (2), (3), and (4) will continue until Aptus provides the Director with the results of four consecutive batch analyses for the petitioned wastes, none of which exceed the maximum allowable levels listed in these conditions and the Director notifies Aptus that the conditions have been lifted. All data submitted will be placed in the RCRA public docket.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

■ 11. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922-6925, 6937, and 6938.

■ 12. Section 262.21 is amended by revising paragraphs (a)(1), (b) introductory text, (b)(8), (h)(1), and (h)(2) to read as follows:

§ 262.21 Manifest tracking numbers, manifest printing, and obtaining manifest.

(a)(1) A registrant may not print, or have printed, the manifest for use of distribution unless it has received approval from the EPA Director of the Office of Resource Conservation and Recovery to do so under paragraphs (c) and (e) of this section.

(b) A registrant must submit an initial application to the EPA Director of the Office of Resource Conservation and Recovery that contains the following information:

(8) A signed certification by a duly authorized employee of the registrant that the organizations and companies in its application will comply with the procedures of its approved application and the requirements of this section and that it will notify the EPA Director of the Office of Resource Conservation and Recovery of any duplicated manifest tracking numbers on manifests that have been used or distributed to other parties as soon as this becomes known.

(h)(1) If an approved registrant would like to update any of the information provided in its application approved

under paragraph (c) of this section (e.g., to update a company phone number or name of contact person), the registrant must revise the application and submit it to the EPA Director of the Office of Resource Conservation and Recovery, along with an indication or explanation of the update, as soon as practicable after the change occurs. The Agency either will approve or deny the revision. If the Agency denies the revision, it will explain the reasons for the denial, and it will contact the registrant and request further modification before approval.

(2) If the registrant would like a new tracking number suffix, the registrant must submit a proposed suffix to the EPA Director of the Office of Resource Conservation and Recovery, along with the reason for requesting it. The Agency will either approve the suffix or deny the suffix and provide an explanation why it is not acceptable.

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PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

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

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 6905, 6906, 6912, 6921, 6922, 6924–6927, 6934, and 6937.

■ 14. Appendix IX to Part 266 is amended by revising Section 7.3 to read as follows:

Appendix IX to Part 266—Methods Manual for Compliance With the BIF Regulations

* * * * *

7.3 Normal Distribution Assumption

As noted in Section 7.2 above, this statistical approach (use of the upper tolerance limit) for calculation of the concentration in normal residue is based on the assumption that the concentration data are distributed normally. The Agency is aware that concentration data of this type may not always be distributed normally, particularly when concentrations are near the detection limits. There are a number of procedures that can be used to test the distribution of a data set. For example, the Shapiro-Wilk test, examination of a histogram or plot of the data on normal probability paper, and examination of the coefficient of skewness are methods that may be applicable, depending on the nature of the data (References 1 and 2).

If the concentration data are not adequately represented by a normal distribution, the data may be transformed to attain a near normal distribution. The Agency has found that concentration data, especially when near detection levels, often exhibit a lognormal distribution. The assumption of a lognormal distribution has been used in various programs at EPA, such as in the Office of Resource Conservation and Recovery Land Disposal Restrictions program for

determination of BDAT treatment standards. The transformed data may be tested for normality using the procedures identified above. If the transformed data are better represented by a normal distribution than the untransformed data, the transformed data should be used in determining the upper tolerance limit using the procedures in Section 7.2 above.

In all cases where the owner or operator wishes to use other than an assumption of normally distributed data or believes that use of an alternate statistical approach is appropriate to the specific data set, he/she must provide supporting rationale in the operating record that demonstrates that the data treatment is based upon sound statistical practice.

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PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

■ 15. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

■ 16. Section 271.1 is amended by revising the entry for “Office of Solid Waste Burden Reduction Project” in Table 1 to read as follows:

§ 271.1 Purpose and scope.

* * * * *

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

Promulgation date	Title of regulation	Federal Register reference	Effective date
May 4, 2006	Office of Resource Conservation and Recovery Burden Reduction Project.	71 FR 16862–16915	May 4, 2006.

■ 17. Section 271.21 is amended by revising the entry for “Office of Solid Waste Testing and Monitoring

Activities, Methods Innovation Rule” in Table 1 to read as follows:

§ 271.21 Procedures for revision of State programs.

* * * * *

TABLE 1 TO § 271.21

Title of regulation	Promulgation date	Federal Register reference
Office of Resource Conservation and Recovery Testing and Monitoring Activities, Methods Innovation Rule.	July 14, 2005	70 FR 34538, June 14, 2005.

PART 750—PROCEDURES FOR RULEMAKING UNDER SECTION 6 OF THE TOXIC SUBSTANCES CONTROL ACT

■ 18. The authority citation for part 750 continues to read as follows:

Authority: 15 U.S.C. 2605.

■ 19. Section 750.11 is amended by revising paragraph (b)(2) to read as follows:

§ 750.11 Filing of petitions for exemption.

* * * * *

(b) * * *

(2) PCB disposal, which includes cleanup, storage for disposal, processing related to disposal, distribution in commerce related to disposal or processing for disposal, and decontamination, must be submitted to: Document Control Officer, Office of Resource Conservation and Recovery (5305P), Environmental Protection Agency, 1200 Pennsylvania, NW., Washington, DC 20460-0001.

* * * * *

■ 20. Section 750.31 is amended by revising paragraph (b)(2) to read as follows:

§ 750.31 Filing of petitions for exemption.

* * * * *

(b) * * *

(2) PCB disposal, which includes cleanup, storage for disposal, processing related to disposal, distribution in commerce related to disposal or processing for disposal, and decontamination, must be submitted to: Document Control Officer, Office of Resource Conservation and Recovery (5305P), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0001.

* * * * *

PART 761—POLYCHLORINATED BIPHENYLS (PCBs) MANUFACTURING, PROCESSING, DISTRIBUTION IN COMMERCE, AND USE PROHIBITIONS

■ 21. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614, and 2616.

■ 22. Section 761.60 is amended by revising paragraph (e) to read as follows:

§ 761.60 Disposal requirements.

* * * * *

(e) Any person who is required to incinerate any PCBs and PCB items under this subpart and who can demonstrate that an alternative method of destroying PCBs and PCB items exists

and that this alternative method can achieve a level of performance equivalent to an incinerator approved under § 761.70 or a high efficiency boiler operating in compliance with § 761.71, must submit a written request to the Regional Administrator or the Director, Office of Resource Conservation and Recovery, for a waiver from the incineration requirements of § 761.70 or § 761.71. Requests for approval of alternate methods that will be operated in more than one Region must be submitted to the Director, Office of Resource Conservation and Recovery, except for research and development activities involving less than 500 pounds of PCB material (see paragraph (i)(2) of this section). Requests for approval of alternate methods that will be operated in only one Region must be submitted to the appropriate EPA Regional Administrator. The applicant must show that his or her method of destroying PCBs will not present an unreasonable risk of injury to health or the environment. On the basis of such information and any available information, EPA may, in its discretion, approve the use of the alternate method if it finds that the alternate disposal method provides PCB destruction equivalent to disposal in a § 761.60 incinerator or a § 761.61 high efficiency boiler and will not present an unreasonable risk of injury to health or the environment. Any approval must be stated in writing and may include such conditions and provisions as EPA deems appropriate. The person to whom such waiver is issued must comply with all limitations contained in such determination. No person may use the alternate method of destroying PCBs or PCB items prior to obtaining permission from the appropriate EPA official.

* * * * *

■ 23. Section 761.61 is amended by revising paragraph (c)(1) to read as follows:

§ 761.61 PCB remediation waste.

* * * * *

(c) * * * (1) Any person wishing to sample, cleanup, or dispose of PCB remediation waste in a manner other than prescribed in paragraphs (a) or (b) of this section, or store PCB remediation waste in a manner other than prescribed in § 761.65, must apply in writing to the Regional Administrator in the Region where the sampling, cleanup, disposal, or storage site is located, for sampling, cleanup, disposal, or storage occurring in a single EPA Region; or to the Director, Office of Resource Conservation and Recovery, for sampling, cleanup, disposal, or storage

occurring in more than one EPA Region. Each application must include information described in the notification required by paragraph (a)(3) of this section. EPA may request other information that it believes necessary to evaluate the application. No person may conduct cleanup activities under this paragraph prior to obtaining written approval by EPA.

* * * * *

■ 24. Section 761.62 is amended by revising paragraph (c)(1) to read as follows:

§ 761.62 Disposal of PCB bulk product waste.

* * * * *

(c) * * * (1) Any person wishing to sample or dispose of PCB bulk product waste in a manner other than prescribed in paragraphs (a) or (b) of this section, or store PCB bulk product waste in a manner other than prescribed in § 761.65, must apply in writing to the Regional Administrator in the Region where the sampling, disposal, or storage site is located, for sampling, disposal, or storage occurring in a single EPA Region; or to the Director, Office of Resource Conservation and Recovery, for sampling, disposal, or storage occurring in more than one EPA Region. Each application must contain information indicating that, based on technical, environmental, or waste-specific characteristics or considerations, the proposed sampling, disposal, or storage methods or locations will not pose an unreasonable risk of injury to health or the environment. EPA may request other information that it believes necessary to evaluate the application. No person may conduct sampling, disposal, or storage activities under this paragraph prior to obtaining written approval by EPA.

* * * * *

■ 25. Section 761.65 is amended as follows:

- a. By revising paragraph (d)(8).
- b. By revising paragraph (e)(4) introductory text.
- c. By revising paragraph (e)(6)(i).
- d. By revising paragraph (e)(8).
- e. By revising paragraph (g)(1)(ii).

§ 761.65 Storage for disposal.

* * * * *

(d) * * *

(8) The approval of any existing TSCA-approved disposal facility ancillary to a commercial storage facility that is deficient in any of the conditions of paragraph (d)(7)(i) through (d)(7)(v) of this section shall be called in by the Regional Administrator (or the appropriated official at EPA Headquarters, if approval was granted

by an official at EPA Headquarters). The approval shall be modified to meet the requirements of paragraph (d)(7) of this section within 180 days of the effective date of this final rule, or a separate application for approval of the storage facility may be submitted to the Regional Administrator or the Director, Office of Resource Conservation and Recovery, in the cases where an official at EPA Headquarters issued the approval.

* * * * *

(e) * * *

(4) The commercial storer of PCB waste shall submit a written request to the Regional Administrator (or the Director, Office of Resource Conservation and Recovery, if an official at EPA Headquarters approved the closure plan) for a modification to its storage approval to amend its closure plan, whenever:

* * * * *

(6) * * *

(i) The commercial storer shall notify in writing the Regional Administrator or the Director, Office of Resource Conservation and Recovery, if an official at EPA Headquarters approved the closure plan, at least 60 days prior to the date on which final closure of its PCB storage facility is expected to begin.

* * * * *

(8) Within 60 days of completion of closure of each facility for the storage of PCB waste, the commercial storer of PCB waste shall submit to the Regional Administrator (or the Director, Office of Resource Conservation and Recovery, if an official at EPA Headquarters approved the closure plan), by registered mail, a certification that the PCB storage facility has been closed in accordance with the approved closure plan. The certification shall be signed by the owner or operator and by an independent registered professional engineer.

* * * * *

(g) * * *

(1) * * *

(ii) For a new facility, the first payment into the closure trust fund shall be made before EPA grants final approval of the application and before the facility may accept the initial shipment of PCB waste for commercial storage. A receipt from the trustee shall be submitted by the owner or operator to the Regional Administrator (or the Director, Office of Resource Conservation and Recovery, if the commercial storage area is ancillary to a disposal facility approved by an official at EPA Headquarters) before this initial delivery of PCB waste. The first payment shall be at least equal to the

current closure cost estimate, divided by the number of years in the pay-in period, except as provided in paragraph (g)(7) of this section for multiple mechanisms. Subsequent payments shall be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment shall be determined by subtracting the current value of the trust fund from the current closure cost estimate, and dividing this difference by the number of years remaining in the pay-in period.

* * * * *

■ 26. Section 761.70 is amended as follows:

- a. By revising paragraph (a) introductory text.
- b. By revising paragraph (b) introductory text.
- c. By revising paragraph (d)(1) introductory text.
- d. By revising paragraph (d)(2)(ii) introductory text.
- e. By revising paragraph (d)(5).

§ 761.70 Incineration.

* * * * *

(a) *Liquid PCBs.* An incinerator used for incinerating PCBs shall be approved by EPA pursuant to paragraph (d) of this section. Requests for approval of incinerators to be used in more than one region must be submitted to the Director, Office of Resource Conservation and Recovery, except for research and development involving less than 500 pounds of PCB material (see § 761.60(i)(2)). Requests for approval of incinerators to be used in only one region must be submitted to the appropriate Regional Administrator. The incinerator shall meet all of the requirements specified in paragraphs (a)(1) through (9) of this section, unless a waiver from these requirements is obtained pursuant to paragraph (d)(5) of this section. In addition, the incinerator shall meet any other requirements which may be prescribed pursuant to paragraph (d)(4) of this section.

* * * * *

(b) *Nonliquid PCBs.* An incinerator used for incinerating nonliquid PCBs, PCB Articles, PCB Equipment, or PCB Containers shall be approved by EPA pursuant to paragraph (d) of this section. Requests for approval of incinerators to be used in more than one region must be submitted to the Director, Office of Resource Conservation and Recovery except for research and development involving less than 500 pounds of PCB material (see § 761.60(i)(2)). Requests for approval of incinerators to be used in only one region must be submitted to

the appropriate Regional Administrator. The incinerator shall meet all of the requirements specified in paragraphs (b)(1) and (2) of this section unless a waiver from these requirements is obtained pursuant to paragraph (d)(5) of this section. In addition, the incinerator shall meet any other requirements that may be prescribed pursuant to paragraph (d)(4) of this section.

* * * * *

(d) * * *

(1) *Application.* The owner or operator shall submit to the Regional Administrator or the Director, Office of Resource Conservation and Recovery an application which contains:

* * * * *

(2) * * *

(ii) If EPA determines that a trail burn must be held, the person who submitted the report described in paragraph (d)(1) of this section shall submit to the Regional Administrator or the Director, Office of Resource Conservation and Recovery a detailed plan for conducting and monitoring the trail burn. At a minimum, the plan must include:

* * * * *

(5) *Waivers.* An owner or operator of the incinerator may submit evidence to the Regional Administrator or the Director, Office of Resource Conservation and Recovery that operation of the incinerator will not present an unreasonable risk of injury to health or the environment from PCBs, when one or more of the requirements of paragraphs (a) and/or (b) of this section are not met. On the basis of such evidence and any other available information, EPA may, in its discretion, find that any requirement of paragraphs (a) and (b) of this section is not necessary to protect against such a risk, and may waive the requirements in any approval for that incinerator. Any finding and waiver under this paragraph must be stated in writing and included as part of the approval.

* * * * *

■ 27. Section 761.79 is amended by revising paragraphs (h)(1), (h)(2), and (h)(3) to read as follows:

§ 761.79 Decontamination standards and procedures.

* * * * *

(h) * * *

(1) Any person wishing to decontaminate material described in paragraph (a) of this section in a manner other than prescribed in paragraph (b) of this section must apply in writing to the Regional Administrator in the Region where the activity would take place, for decontamination activity occurring in a single EPA Region; or to the Director,

Office of Resource Conservation and Recovery, for decontamination activity occurring in more than one EPA Region. Each application must describe the material to be decontaminated and the proposed decontamination method, and must demonstrate that the proposed method is capable of decontaminating the material to the applicable level set out in paragraphs (b)(1) through (b)(4) of this section.

(2) Any person wishing to decontaminate material described in paragraph (a) of this section using a self-implementing procedure other than prescribed in paragraph (c) of this section must apply in writing to the Regional Administrator in the Region where the activity would take place, for decontamination activity occurring in a single EPA Region; or to the Director, Office of Resource Conservation and Recovery, for decontamination activity occurring in more than one EPA Region. Each application must describe the material to be decontaminated and the proposed self-implementing decontamination method and must include a proposed validation study to confirm performance of the method.

(3) Any person wishing to sample decontaminated material in a manner other than prescribed in paragraph (f) of this section must apply in writing to the Regional Administrator in the Region where the activity would take place, for decontamination activity occurring in a single EPA Region; or to the Director, Office of Resource Conservation and Recovery, for decontamination activity occurring in more than one EPA Region. Each application must contain a description of the material to be decontaminated, the nature and PCB concentration of the contaminating material (if known), the decontamination method, the proposed sampling procedure, and a justification for how the proposed sampling is equivalent to or more comprehensive than the sampling procedure required under paragraph (f) of this section.

* * * * *

■ 28. Section 761.120 is amended as follows:

- a. By revising paragraph (a)(3).
- b. By revising paragraph (b) introductory text.
- c. By revising paragraph (b)(2).
- d. By revising paragraph (c).

§ 761.120 Scope.

(a) * * *

(3) For all other spills, EPA generally expects the decontamination standards of this policy to apply. Occasionally, some small percentage of spills covered by this policy may warrant more

stringent cleanup requirements because of additional routes of exposure or significantly greater exposures than those assumed in developing the final cleanup standards of this policy. While the EPA regional offices have the authority to require additional cleanup in these circumstances, the Regional Administrator must first make a finding based on the specific facts of a spill that additional cleanup must occur to prevent unreasonable risk. In addition, before a final decision is made to require additional cleanup, the Regional Administrator must notify the Director, Office of Resource Conservation and Recovery of his/her finding and the basis for the finding.

* * * * *

(b) *Spills that may require more stringent cleanup levels.* For spills within the scope of this policy, EPA generally retains, under § 761.135, the authority to require additional cleanup upon finding that, despite good faith efforts by the responsible party, the numerical decontamination levels in the policy have not been met. In addition, EPA foresees the possibility of exceptional spill situations in which site-specific risk factors may warrant additional cleanup to more stringent numerical decontamination levels than are required by the policy. In these situations, the Regional Administrator has the authority to require cleanup to levels lower than those included in this policy upon finding that further cleanup must occur to prevent unreasonable risk. The Regional Administrator will consult with the Director, Office of Resource Conservation and Recovery, prior to making such a finding.

* * * * *

(2) In those situations, the Regional Administrator may require cleanup in addition to that required under § 761.125(b) and (c). However, the Regional Administrator must first make a finding, based on the specific facts of a spill, that additional cleanup is necessary to prevent unreasonable risk. In addition, before making a final decision on additional cleanup, the Regional Administrator must notify the Director, Office of Resource Conservation and Recovery of his finding and the basis for the finding.

(c) *Flexibility to allow less stringent or alternative requirements.* EPA retains the flexibility to allow less stringent or alternative decontamination measures based upon site-specific considerations. EPA will exercise this flexibility if the responsible party demonstrates that cleanup to the numerical decontamination levels is clearly unwarranted because of risk-mitigating

factors, that compliance with the procedural requirements or numerical standards in the policy is impracticable at a particular site, or that site-specific characteristics make the costs of cleanup prohibitive. The Regional Administrator will notify the Director, Office of Resource Conservation and Recovery of any decision and the basis for the decision to allow less stringent cleanup. The purpose of this notification is to enable the Director, Office of Resource Conservation and Recovery to ensure consistency of spill cleanup standards under special circumstances across the regions.

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■ 29. Section 761.130 is amended by revising paragraph (e) to read as follows:

§ 761.130 Sampling requirements.

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(e) EPA recommends the use of a sampling scheme developed by the Midwest Research Institute (MRI) for use in enforcement inspections: "Verification of PCB Spill Cleanup by Sampling and Analysis." Guidance for the use of this sampling scheme is available in the MRI report "Field Manual for Grid Sampling of PCB Spill Sites to Verify Cleanup." Both the MRI sampling scheme and the guidance document are available on EPA's PCB Web site at <http://www.epa.gov/pcb>, or from the Program Management, Communications, and Analysis Office, Office of Resource Conservation and Recovery (5305P), 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. The major advantage of this sampling scheme is that it is designed to characterize the degree of contamination within the entire sampling area with a high degree of confidence while using fewer samples than any other grid or random sampling scheme. This sampling scheme also allows some sites to be characterized on the basis of composite samples.

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■ 30. Section 761.205 is amended by revising paragraphs (a)(3) and (d) to read as follows:

§ 761.205 Notification of PCB waste activity (EPA Form 7710-53).

(a) * * *

(3) Any person required to notify EPA under this section shall file with EPA Form 7710-53. Copies of EPA Form 7710-53 are available on EPA's Web site at <http://www.epa.gov/pcb>, or from the Program Management, Communications, and Analysis Office, Office of Resource Conservation and Recovery (5305P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington,

DC 20460-0001. Descriptive information and instructions for filling in the form are included in paragraphs (a)(4)(i) through (vii) of this section.

* * * * *

(d) Persons required to notify under this section shall file EPA Form 7710-53 with EPA by mailing the form to the following address: Document Control Officer, Office of Resource Conservation and Recovery (5305P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

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■ 31. Section 761.243 is amended by revising paragraph (a) to read as follows:

§ 761.243 Standard wipe sample method and size.

(a) Collect a surface sample from a natural gas pipe segment or pipeline section using a standard wipe test as defined in § 761.123. Detailed guidance for the entire wipe sampling process appears in the document entitled, "Wipe Sampling and Double Wash/Rinse Cleanup as Recommended by the Environmental Protection Agency PCB Spill Cleanup Policy," dated June 23, 1987 and revised on April 18, 1991. This document is available on EPA's Web site at <http://www.epa.gov/pcb>, or from the Program Management, Communications, and Analysis Office, Office of Resource Conservation and Recovery (5305P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

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■ 32. Section 761.386 is amended by revising paragraph (e) to read as follows:

§ 761.386 Required experimental conditions for the validation study and subsequent use during decontamination.

* * * * *

(e) *Confirmatory sampling for the validation study.* Select surface sample locations using representative sampling or a census. Sample a minimum area of 100 cm² on each individual surface in the validation study. Measure surface concentrations using the standard wipe test, as defined in § 761.123, from which a standard wipe sample is generated for chemical analysis. Guidance for wipe sampling appears in the document entitled "Wipe Sampling and Double Wash/Rinse Cleanup as Recommended by the Environmental Protection Agency PCB Spill Cleanup Policy," available on EPA's Web site at <http://www.epa.gov/pcb>, or from the Program Management, Communications, and Analysis Office, Office of Resource Conservation and Recovery (5305P), Environmental

Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

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■ 33. Section 761.398 is amended by revising paragraph (a) to read as follows:

§ 761.398 Reporting and recordkeeping.

(a) Submit validation study results to the Director, Office of Resource Conservation and Recovery (5301P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, prior to the first use of a new solvent for alternate decontamination under § 761.79(d)(4). The use of a new solvent is not TSCA Confidential Business Information (CBI). From time to time, EPA will confirm the use of validated new decontamination solvents and publish the new solvents and validated decontamination procedures in the **Federal Register**.

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[FR Doc. E9-14859 Filed 6-24-09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2008-0676-200820(a); FRL-8903-6]

Approval and Promulgation of Air Quality Implementation Plans; Tennessee; Approval of Revisions to the Knox County Portion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Knox County portion of the Tennessee State Implementation Plan (SIP) submitted by the State of Tennessee on April 21, 2008. The revision pertains to the Knox County Department of Air Quality Management (KCDAQM) Regulation, Section 25.0 "Permits," specifically subsection 25.6—Exemptions. This revision removes "mobile sources" from the list of exempted air contaminant sources, with respect to operating permits and reserves subsection 25.6.A. This revision is part of KCDAQM strategy to attain and maintain the National Ambient Air Quality Standards for 8-hour ozone, particulate matter (PM)_{2.5} and PM₁₀. This revision was certified by the Tennessee Department of Environment and Conservation to be at least as stringent as the State of Tennessee's existing requirements in Chapter 1200-3-9-.04 "Exemptions,"

and is being approved pursuant to section 110 of the Clean Air Act (CAA).

DATES: This direct final rule is effective August 24, 2009 without further notice, unless EPA receives adverse comment by July 27, 2009. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No EPA-R04-OAR-2008-0676, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *E-mail*: benjamin.lynora@epa.gov.

3. *Fax*: (404) 562-9019.

4. *Mail*: "EPA-R04-OAR-2008-0676," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier*: Ms. Lynora Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA-R04-OAR-2008-0676." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you