

US EPA ARCHIVE DOCUMENT

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 268, 271, and 302

[EPA530-Z-97-FFF; FRL-5839-7]

RIN 2050-AD59

Hazardous Waste Management System; Carbamate Production, Identification and Listing of Hazardous Waste; Land Disposal Restrictions; Authorization of State Hazardous Waste Programs; and CERCLA Hazardous Substance Designation and Reportable Quantities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending its regulations to conform with the federal appeals court ruling in *Dithiocarbamate Task Force v. EPA*, 98 F.3d 1394 (D.C.Cir. 1996), that invalidated, in part, Agency regulations listing certain carbamate wastes as hazardous wastes under the Resource Conservation and Recovery Act (RCRA). These regulations pertain to hazardous waste management of carbamate industry wastes under RCRA, related rules affecting the list of hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and regulations issued under state programs approved by the Administrator. Under the court's decision, and amended in today's rule, the vacated federal hazardous waste listings and regulatory requirements based on those listings are to be treated as though they have never been in effect. State regulations, which may be more stringent than federal rules, were not necessarily affected by the court's ruling.

EFFECTIVE DATE: This final rule takes effect on May 29, 1997.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F-97-2CPF-FFFFF.

The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603-9230. The public may copy a maximum of 100 pages from the docket at no charge; additional copies are \$0.15 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline between 9:00a.m.-6:00 p.m. EST, toll-free, at 800-424-9346; 703-412-9810 from Government phones or if in the Washington,

DC local calling area; or 800-553-7672 for the hearing impaired. For more detailed information on specific aspects of the rulemaking, contact Caroline Gerwe by calling 703-308-3540 or by writing, to U.S. Environmental Protection Agency, Office of Solid Waste, Hazardous Waste Identification Division, 401 M St., SW., (Mailcode 5304W), Washington, DC 20460.

SUPPLEMENTARY INFORMATION: This rule is available on the Internet. Please follow these instructions to access the rule electronically: From the World Wide Web (WWW), type <http://www.epa.gov/epaoswer>, then select option for Rules and Regulations.

The official record for this action is kept in a paper format. Accordingly, EPA has transferred all comments received into paper form and placed them into the official record, with all the comments received in writing. The official record is maintained at the address in the ADDRESSES section at the beginning of this document.

Outline of Today's Rule

- I. Background
- II. Amended Regulations
- III. State Authority
- IV. Good Cause Exemption From Notice-and-Comment Rulemaking Procedures
- V. Analysis Under E.E. 12866, Unfunded Mandates Reform Act of 1995, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act of 1996 and Paperwork Reduction Act

I. Background

EPA lists wastes as hazardous wastes under section 3001 of RCRA, 42 U.S.C. 6921. Once a waste is listed as hazardous it becomes subject to federal requirements for persons who generate, transport, treat, store, or dispose of such waste. Facilities that must meet the hazardous waste management requirements, including the need to obtain permits to operate, are commonly referred to as "Subtitle C" facilities. Subtitle C is Congress' original statutory designation for that part of RCRA that directs EPA to issue regulations for hazardous wastes.

EPA standards and procedural regulations implementing Subtitle C are found generally at 40 CFR parts 260 through 272. Criteria and procedures for identifying and listing hazardous wastes are found at 40 CFR part 261.

General standards for generators of hazardous waste are found at 40 CFR part 262. General standards for transporters of hazardous waste are found at 40 CFR part 263. General standards for owners and operators of hazardous waste treatment, storage and disposal facilities--including standards for obtaining permits--are found at 40 CFR part 264.

Hazardous wastes are also subject to land disposal restrictions under 40 CFR part 268. EPA's authorizations for state hazardous waste programs are found at 40 CFR part 272. The requirements for obtaining these authorizations are found at 40 CFR part 271.

In addition, hazardous wastes having the characteristics identified under, or listed pursuant to, RCRA section 3001 (except when suspended by Congress) become hazardous substances under section 101(14)(C) of CERCLA, 42 U.S.C. 9601(14)(C). A reportable quantity (RQ) of one pound for reporting environmental releases is established for each substance, as provided by section 102(b) of CERCLA, 42 U.S.C. 9602(b). The one-pound statutory RQ applies until adjusted by regulations.

On February 9, 1995, the EPA published in the Federal Register (60 FR 7824) a rule listing as hazardous wastes under RCRA various wastes from four groups of carbamate compounds--carbamates, carbamoyl oximes, thiocarbamates and dithiocarbamates. These compounds, generally, are used as pesticides, herbicides and fungicides and in the rubber, wood and textile industries. This rule became effective on August 9, 1995.

The rule added 58 specific carbamate compounds to the list of hazardous constituents upon which RCRA hazardous waste listing determinations are based. This list of constituents appears at Appendix VIII of 40 CFR part 261.

These same 58 compounds were added to the list of commercial chemical products that are hazardous wastes only when they are discarded. This list is found at 40 CFR 261.33 and is divided into acutely hazardous wastes ("P-wastes") and other toxic wastes ("U-wastes"). P-wastes are listed in subsection 261.33(e) and U-wastes are listed in subsection 261.33(f). Eighteen of the carbamates were P-wastes and 40 were U-wastes.

The rule, also, added six hazardous wastes generated from the industrial production of the carbamate chemicals to 40 CFR 261.32. These are hazardous wastes from specific sources, or "K-wastes." The carbamate wastes were given numbers K156, K157, K158, K159, K160, and K161. K159 and K160 applied to certain wastes from thiocarbamate production; K161 applied to a waste stream from dithiocarbamate production; K156, K157 and K158 applied to various waste streams from the production of carbamates, proper.

As part of the listing rule, in accordance with Agency regulations, EPA also listed in Appendix VII of 40 CFR Part 261 the hazardous constituents upon which the production waste listings were based.

The February 1995 rule also designated the carbamate wastes as CERCLA hazardous substances and added them to the hazardous substance list at 40 CFR 302.4 with statutory one-pound RQs, as required under CERCLA sections 101(14)(C) and 102.

Subsequent to the February 1995 listing rule, EPA issued land disposal restriction (LDR) regulations for the carbamate wastes. These were issued on April 8, 1996 (61 FR 15663), and corrected June 28, 1996 (61 FR 33683). The prohibition on land disposal of carbamate wastes was effective July 8, 1996 and the prohibition on radioactive waste mixed with newly listed or identified wastes, including soil and debris, is effective April 8, 1998. In addition, EPA amended its requirements for approval of state hazardous waste programs by adding the carbamate listing and LDR regulations to Tables 1 and 2 of 40 CFR part 271.1. (See 61 FR 15659-15660, April 8,

1996.) These tables list the regulations that establish the requirements and prohibitions applicable to state hazardous waste programs.

On November 1, 1996, the United States Court of Appeals for the District of Columbia Circuit, in Dithiocarbamate Task Force v. EPA, ruled that EPA failed to follow proper rulemaking procedures in making some of the carbamate listing determinations and vacated them. Accordingly, EPA is removing from the Code of Federal Regulations those listings vacated by the court and all references to those listings. EPA notes that substantial portions of the decisions made in the carbamate listing rule remain in effect and are not changed by the court's ruling.

The court vacated 24 U wastes, one K-waste (K160), and three of the K-wastes (K156, K157 and K158) only to the extent 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.

II. Amended Regulations

Table 1 lists the 24 vacated U wastes that are removed from 40 CFR 261.33(f).

Table 1.--Vacated U Wastes

Hazardous waste No.	Common name	Chemical abstracts name	Chemical abstracts No.
U277	Sulfallate	Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester .	95-06-7
U365	Molinate	1H-Azepine-1-carbothioic acid, hexahydro-, S-ethyl ester .	2212-67-1
U366	Dazomet	2H-1,3,5-thiadiazine-2-thione, tetrahydro-3,5-dimethyl-. .	533-74-4
U375	3-Iodo-2-propynyl n-butylcarbamate.	Carbamic acid, butyl-,3-iodo-2-propynyl ester.	55406-53-6
U376	Selenium tetrakis (dimethyl-dithiocarbamate). ..	Carbamodithioic acid, dimethyl-, tetraanhydro-sulfide with orthothio-selenious acid.	144-34-3
U377	Potassium n-methyl-dithiocarbamate.	Carbamodithioic acid, methyl-, monopotassium salt.	137-41-7
U378	Potassium n-hydroxymethyl -n-methyl-dithiocarbamate.	Carbamodithioic acid, (hydroxymethyl)methyl-, monopotassium salt.	51026-28-9
U379	Sodium dibutyl-dithiocarbamate.	Carbamodithioic acid, dibutyl, sodium salt.	136-30-1
U381	Sodium diethyl-dithiocarbamate.	Carbamodithioic acid, diethyl-, sodium salt.	148-18-5
U382	Sodium dimethyl-dithiocarbamate.	Carbamodithioic acid, dimethyl-, sodium salt.	128-04-1
U383	Potassium dimethyl-dithiocarbamate.	Carbamodithioic acid, dimethyl-, potassium salt.	128-03-0
U384	Metam Sodium	Carbamodithioic acid, methyl-, monosodium salt.	137-42-8
U385	Vernolate	Carbamothioic acid, dipropyl-,S-propyl ester.	1929-77-7
U386	Cycloate	Carbamothioic acid, cyclohexylethyl-, S-ethyl ester.	1134-23-2
U390	EPTC	Carbamothioic acid, dipropyl-, S-ethyl ester.	759-94-4
U391	Pebulate	Carbamothioic acid, butylethyl-, S-propyl ester.	1114-71-2
U392	Butylate	Carbamothioic acid, bis(2-methylpropyl)-,S-ethyl ester. ..	2008-41-5
U393	Copper dimethyl-dithiocarbamate.	Copper, bis(dimethylcarbamo-dithioato-S,S'),.	137-29-1

U396	Ferbam	Iron, tris(dimethylcarbamo-dithioato-S,S')-.	14484-64-1
U400	Bis(penta-methylene) - thiuram tetrasulfide.	Piperidine, 1,1'- (tetrathio-dicarbonothioyl)-bis-.	120-54-7
U401	Tetramethylthiuram monosulfide.	Bis(dimethylthiocarbamoyl) sulfide.	97-74-5
U402	Tetrabutylthiuram disulfide.	Thioperoxydicarbonic diamide, tetrabutyl-.	1634-02-2
U403	Disulfiram	Thioperoxydicarbonic diamide, tetraethyl.	97-77-8
U407	Ethyl Ziram	Zinc, bis(diethylcarbamo-dithioato-S,S')-.	14324-55-1

In 40 CFR 261.31, the following K-waste listing is deleted:

K160: Solids (including filter wastes, separation solids, and spent catalysts) from the production of thiocarbamates and solids from the treatment of thiocarbamate wastes.

In addition, the hazardous waste listings for K156, K157, and K158 are amended. Originally, they read as follows:

K156: Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes.

K157: Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes.

K158: Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes.

EPA is modifying each of these three listing descriptions to include the following limitation: (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)

EPA is not deleting any constituents in the Appendix VIII hazardous constituent list of 40 CFR part 261, since the Dithiocarbamate Task Force ruling did not affect those listings. The Agency is, however, deleting any mention of the associated vacated hazardous waste codes in Appendix VIII. While the regulations for waste management at 40 CFR parts 262 through 264 are not affected by the court's ruling, it is clear that they are not applicable to any of the vacated hazardous waste listings (unless those wastes exhibit a hazardous waste characteristic described under 40 CFR 261.20 to 261.24). However, to the extent that the wastes described in the vacated listings were included in federal permits before the ruling, appropriate action may need to be taken by permittees and permitting authorities to amend the permits. Any need to revise state permits will depend on state law. Since state law may be more stringent than federal law (see RCRA section 3009) there may be circumstances in which carbamate listings would be required to remain in the permits.

The land disposal restriction (LDR) regulations for hazardous wastes are amended to remove the U and K wastes vacated by the court. Specifically the Agency is amending 40 CFR

268.39 to remove LDRs for K160, U277, U365, U366, U375, U376, U377, U378, U379, U381, U382, U383, U384, U385, U386, U390, U391, U392, U393, U396, U400, U401, U402, U403, and U407.

In addition, the description of the K156, K157 and K158 wastes in 40 CFR 268.40 are amended to reflect the fact that they do not apply to wastes from production of IPBC.

In a recent action to correct tables applicable to the LDR regulations (62 FR 7501, February 19, 1997), the Agency removed the vacated carbamate hazardous waste codes from the list of treatment standards contained in section 268.40 and removed Cycloate and IPBC from the Universal Treatment Standards (UTS) table in 40 CFR 268.48. The hazardous waste listings based on these two constituents were vacated by the Dithiocarbamate Task Force ruling and these constituents have not been cited as the basis for listing any other hazardous waste in Appendix VII of part 261. EPA notes these constituents are still listed in Appendix VIII of 40 CFR part 261 as hazardous constituents upon which EPA may base listings.

All other constituents on the Universal Treatment Standards table are being retained. This is because they remain the basis for listed hazardous wastes that have not been affected by the Dithiocarbamate Task Force ruling. Accordingly, the UTS standards for the following constituents which are part of the basis for K159 are retained: Butylate, EPTC, Molinate, Pebulate, and Vernolate. Also retained is Dithiocarbamates (total). The determination of total dithiocarbamates is part of the basis for listing of K161, which was not invalidated by the court ruling.

Today's final rule also removes the vacated U and K wastes from CERCLA designation as hazardous substances. Accordingly, all these wastes are removed from the list of CERCLA hazardous substances at 40 CFR 302.4.

III. State Authority

The tables in 40 CFR 271.1 are amended to reflect the issuance of this notice so that States will understand they are not required by the federal Resource Conservation and Recovery Act to adopt the hazardous waste listings vacated by the Dithiocarbamate Task Force ruling. Since today's rule does not establish any new regulation, no additional requirements or obligations are imposed on the States by its promulgation. RCRA section 3009 provides that States may not issue regulations less stringent than those authorized under Subtitle C of RCRA. However, section 3009 of RCRA also provides that States may impose more stringent requirements than those regulations promulgated by EPA under Subtitle C. Thus, regulations vacated by the Dithiocarbamate Task Force ruling may be permissible under state law.

IV. Good Cause Exemption From Notice-and-Comment Rulemaking Procedures

The Administrative Procedure Act generally requires agencies to provide prior notice and opportunity for public comment before issuing a final rule. 5 U.S.C. 553(b). Rules are exempt

from this requirement if the issuing agency finds for good cause that notice and comment are unnecessary. 5 U.S.C. 553(b)(3)(B).

EPA has determined that providing prior notice and opportunity for comment on the amending of these carbamate regulations is unnecessary. These regulations are no longer legally in effect by order of the federal appeals court. Thus, amending them has no legal impact and only states the current legal status of the rules.

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

V. Analyses Under E.O. 12866, Unfunded Mandates Reform Act of 1995, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act of 1996 and Paperwork Reduction Act

The amending of the carbamate regulations only reflects their current legal status and has no regulatory impact, therefore, this action is not a "significant" regulatory action by E.O. 12866. This action is not a significant regulatory action and is therefore not subject to review by the Office of Management and Budget. 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. Moreover, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to sections 603 or 604 of the Regulatory Flexibility Act.

Under 5 U.S.C. 801(a)(1)(A), added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Lastly, the removal of these regulations from the Code of Federal Regulations does not affect requirements under the Paperwork Reduction Act since they are no longer legally in effect.

List of Subjects

40 CFR Part 261

Environmental protection, Hazardous materials, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians--lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: May 29, 1997.

Timothy Fields, Jr.,

Acting Assistant Administrator.