

reasonable time frame for keeping records. This is consistent with other Agency programs, such as the Toxics Substance Control Act and the Toxic Chemical Release Reporting Community Right to Know programs, that impose a three year record retention time in their regulations. Therefore, we proposed to modify the §§ 264.73 and 265.73 operating record requirements to require only a three-year limit for keeping certain information.

In response to this proposal, we received a comment that for §§ 264.73(b)(8) and 265.73(b)(8) closure and post-closure cost estimates, we should only require current estimates to be kept at the facility. In fact, the commenter argues that 264.142(d) and 264.144(d) only requires the facility to “keep . . . at the facility during the operating life of the facility (t)he latest” closure and post-closure cost estimates. We agree with the commenter that there is an apparent inconsistency in the rules and thus request comment on the merits of this change.

We also received a request for clarification of the operating record requirements for incinerators. The commenter pointed out that for incinerators, voluminous data is produced and is required to be kept for the life of the facility, which is burdensome to maintain. Specifically, data that is required to be collected and maintained include continuous monitoring of combustion temperature, waste feed rate, the indicator of combustion gas velocity specified in the facility permit, and other operating parameters. At the commenter's facilities, monitoring is done at 75 points, some instantaneously (every 15 seconds), but all requiring maintenance of 15-second data, minute averages and rolling hourly averages. This is a large volume of data that is generated annually. We are requesting comment on requiring a three year retention for these records instead of for the life of the facility.

F. Groundwater Monitoring Requirements

Treatment, storage, and disposal facilities must implement a groundwater monitoring system for hazardous waste land disposal units to detect the presence of contaminants in groundwater. If contamination is detected, more extensive monitoring must be performed. If the level of contamination exceeds the groundwater protection standard, corrective action must be undertaken.

We proposed allowing owners/operators of facilities to report on the effectiveness of corrective action on an

annual basis instead of the current semi-annual basis. In combination with other forms of oversight by regulatory agencies, we suggested that annual reporting will provide adequate information to ensure compliance.

In addition, we proposed modifying the § 264.99(g) requirement that facilities who are undertaking compliance monitoring also conduct an annual Appendix IX analysis of all monitoring wells. Specifically, we proposed allowing, on a case-by-case basis, sampling in a subset of the wells.

We received a comment asking that we clarify an inconsistency in our groundwater regulations. Specifically, we were asked to revise the § 264.98(d) detection monitoring requirements, which say that a facility must collect at least four samples from each well at least semi-annually. Elsewhere in our groundwater regulations—§ 264.97(g)(2) (the general groundwater monitoring requirements) we allow facilities to propose (with the Regional Administrator's approval) alternate sampling procedures. The commenter would like us to extend this flexibility to the detection monitoring requirements. This appears to be a reasonable request.

Another commenter suggested that we provide flexibility in another part of both the groundwater detection and compliance monitoring requirements. Currently, facilities that find appendix IX compounds in the groundwater may resample within a month to check again for the compounds. If found again, the constituents will form the basis for compliance monitoring (and for detection monitoring, any new constituents that are found are added to the monitoring list). The commenter asked that we add language saying that the resampling may occur within a different time frame, upon approval by the State or EPA. This also appears to be a reasonable request. This change would increase the flexibility facilities have in complying with our regulations, without impacting protections for human health and the environment.

Finally, we received a comment asking us to change § 264.100(g) to maintain consistency with our change to 264.113(e)(5)—requiring an annual instead of semi-annual corrective action report. We inadvertently omitted this change despite it being consistent with our preamble discussion. We solicit comment on the merits of this change.

G. Military Munitions

We currently require conditionally exempt munitions to be transported under shipping controls specified in § 266.203(c). This section (266.203(c))

requires all shipments to be accompanied by 5 specific forms (the regulations currently lists the name of each form, as well as the accompanying form identification number). The problem, according to a commenter, is that every time the name of one of these forms, or the form identification number changes, the Department of Defense must publish a **Federal Register** notice announcing the change. It was not our intent for this type of minor, administrative action to require public notification. We believe that reasonable streamlining can be achieved by eliminating the requirement for a **Federal Register** notice and replacing it with a requirement for written notification to the Director of EPA's Office of Federal Facilities Enforcement. We request comment on this potential change.

H. Permit Modifications

Several commenters pointed out that implementing many of the changes in the proposed rule will require a Class 2 Permit modification for facilities with permits (see the following Web site for information about Permit modifications: <http://www.epa.gov/epaoswer/hotline/training/perm.pdf>). We believe the changes represented in this notice will provide no significant threat to human health or the environment. Therefore, our intention is to allow these changes, if finalized, to be made as quickly as possible as opposed to making a change on paper, but not being able to implement it quickly. Because of the magnitude of the savings represented by these changes, delaying implementation would be costly for no apparent gain in environmental protection. Due to an oversight on our part, we did not address this issue in the proposed rule. Therefore, we are requesting comment today on allowing permitted facilities to use the Class 1 permit modification procedure, with prior Agency approval, to implement the changes arising from this rulemaking. However, we also request comment on whether the Class 1 permit modifications should be without prior Agency approval. Where States have an authorized RCRA program, the “Agency approval” refers to approval by the State.

IV. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency