

dispose of these hazardous wastes within 90 days after the effective date.

Note that under this proposal, nonwastewaters would not become newly listed K181 waste if the constituent mass loadings do not meet the levels in § 261.32(c)(1); the wastes would also not be listed if the constituent mass loadings are below the less stringent levels in § 261.32(c)(2) and if the nonwastewaters are disposed in a landfill that meets or exceeds the design criteria in § 258.40 or in a Subtitle C landfill cell subject to either § 264.301 or § 265.301. Persons who generate only wastes that meet these conditions need not notify EPA or obtain an identification number.

#### *D. What Would Generators and Transporters Have To Do?*

Once a final rule is promulgated, persons that generate the newly listed hazardous wastes may be required to obtain an EPA identification number if they do not already have one (as discussed above). In order to be able to generate or transport these wastes after the effective date of this rule, generators of the wastes listed today would be subject to the generator requirements set forth in 40 CFR part 262. These requirements include standards for hazardous waste determination (40 CFR 262.11), compliance with the manifest (40 CFR 262.20 to 262.23), pretransport procedures (40 CFR 262.30 to 262.34), generator accumulation (40 CFR 262.34), record keeping and reporting (40 CFR 262.40 to 262.44), and import/export procedures (40 CFR 262.50 to 262.60). The generator accumulation provisions of 40 CFR 262.34 allow generators to accumulate hazardous wastes without obtaining interim status or a permit in units that are container storage units, tank systems, or containment buildings. These existing regulations also place a limit on the maximum amount of time that wastes can be accumulated in these units. If, however, the wastes covered in today's proposed rule are managed in units that are not tank systems, containers, or containment buildings, then these units would be subject to the permitting requirements of 40 CFR parts 264 and 265, and the generator is required to obtain interim status and seek a permit (or modify interim status or a permit, as appropriate).

Also, current regulations require that persons who transport newly identified hazardous wastes to obtain an EPA identification number as described above; such transporters will be subject to the transporter requirements set forth in 40 CFR part 263.

#### *E. Which Facilities Would Be Subject to Permitting?*

##### **1. Facilities Newly Subject to RCRA Permit Requirements**

Facilities that treat, store, or dispose of wastes that are subject to RCRA regulation for the first time by this proposed rule (that is, facilities that have not previously received a permit pursuant to section 3005 of RCRA and are not currently operating pursuant to interim status), could be eligible for interim status (see section 3005(e)(1)(A)(ii) of RCRA). To obtain interim status based on treatment, storage, or disposal of such newly identified wastes, eligible facilities would be required to comply with 40 CFR 270.70(a) and 270.10(e) by providing notice under section 3010 and submitting a Part A permit application no later than 6 months after date of publication in the **Federal Register** of the final rule. Such facilities would be subject to regulation under 40 CFR part 265 pending final administrative disposition of the permit application (e.g., until a permit is issued).

In addition, under section 3005(e)(3) and 40 CFR 270.73(d), not later than 6 months after date of publication of the final rule, land disposal facilities newly qualifying for interim status under section 3005(e)(1)(A)(ii) would also need to submit a Part B permit application and certify that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements. If the facility fails to submit these certifications and a permit application, then interim status would terminate on that date.

##### **2. Existing Interim Status Facilities**

Pursuant to 40 CFR 270.72(a)(1), all existing hazardous waste management facilities (as defined in 40 CFR 270.2) that treat, store, or dispose of the newly listed hazardous wastes and are currently operating pursuant to interim status under section 3005(e) of RCRA, would need to file an amended Part A permit application with EPA no later than six months after the date of publication of a final rule. By doing this, the facility could continue managing the newly listed wastes pending final disposition of the permit application. If the facility fails to file an amended Part A application by that date, the facility would not receive interim status for management of the newly listed hazardous wastes and may not manage those wastes until the facility receives either a permit or a change in interim status allowing such activity (40 CFR 270.1(b); 270.10(g)).

##### **3. Permitted Facilities**

Facilities that already have RCRA permits would need to request permit modifications if they want to continue managing the newly listed wastes (see 40 CFR 270.42(g)). This provision states that a permittee may continue managing the newly listed wastes by following certain requirements, including submitting a Class 1 permit modification request by the date on which the waste or unit becomes subject to the new regulatory requirements (*i.e.*, the effective date of a final rule), complying with the applicable standards of 40 CFR parts 265 and 266 and submitting a Class 2 or 3 permit modification request within 180 days of the effective date. Generally, a Class 2 modification is appropriate if the newly listed wastes will be managed in existing permitted units or in newly regulated tanks, container units or containment buildings and will not require additional or different management practices than those authorized in the permit.

A Class 2 modification requires the facility owner to provide public notice of the modification request, a 60-day public comment period, and an informal meeting between the owner and the public within the 60-day period. The Class 2 process includes a "default provision," which provides that if the Agency does not reach a decision within 120 days, the modification is automatically authorized for 180 days. If the Agency does not reach a decision by the end of that period, the modification is authorized for the life of the permit (see 40 CFR 270.42(b)).

A Class 3 modification is generally appropriate if management of the newly listed wastes requires additional or different management practices than those authorized in the permit or if newly regulated land-based units are involved. The initial public notification and public meeting requirements are the same as for Class 2 modifications. However, after the end of the 60-day public comment period, the Agency will grant or deny the permit modification request according to the more extensive procedures of 40 CFR part 124. There is no default provision for Class 3 modifications (see 40 CFR 270.42(c)).

Under 40 CFR 270.42(g)(1)(v), for newly regulated land disposal units, permitted facilities must certify that the facility is in compliance with all applicable 40 CFR part 265 groundwater monitoring and financial responsibility requirements no later than 6 months after the date of publication of a final rule. If the facility fails to submit these certifications, authority to manage the