ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 264, 265, and 270

[SWH-FRL 2756-1]

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend the definitions in 40 CFR Part 260, Subpart B, and the closure and post-closure care (40 CFR Subpart G) and financial responsibility (40 CFR Subpart H) requirements applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDFs), and the permitting standards in 40 CFR Part 270. Many of the proposed amandments conform to a settlement agreement signed by EPA and petitioners in *American Iron and Steel Institute* v. *U.S. Environmental Protection Agency* (D.C. Cir., No. 81-1357 and Consolidated Cases). The remainder of the proposed amendments are designed to clarify the regulations and to address the issues that have arisen as EPA has implemented the Subparts G and H regulations, which cover closure and post closure requirements and financial responsiblity, respectively.

DATE: Comments must be submitted on or before May 20, 1985..

ADDRESSES: Comments may be mailed to the Docket Clerk (Docket 3004, Revisd Closure/Financial Standards), Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460. Comments received by EPA, and all references used in this document, may be inspected in Room S-112-C, U.S. EPA, 401 M Street, SW, Washington, D.C. 20460 from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Carole J. Ansheles, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460, (202) 382-4761.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background

A. Subtitle C of the Resource Conservation and Recovery Act (RCRA)

Subtitle C of RCRA creates a "cradle-to-grave" management system to ensure that hazardous wastes are transported, treated, stored, and disposed in a manner that ensures the protection of human health and the environment. Section 3004 of Subtitle C requires the Administrator of EPA to promulgate

regulations establishing such performance standards, applicable to the owners and operators of hazardous waste treatment, storage, or disposal facilities (TSDFS), as may be necessary to protect human health and the environment. Section 3005 requires the Administrator to promulgate regulations requiring each person owning or operating a TDSF to have a permit, and to establish requirements for permit applications.

Under Section 3005(a), on the effective date of the Section 3004 standards, all treatment, storage and disposal of hazardous waste is prohibited except in accordance with a permit that implements the Section 3004 standards. Recognizing, however, that not all permits would be issued within six months of the promulgation of Section 3004 standards, Congress created "interim status" in Section 3005(e) of RCRA. Owners and operators of existing hazardous waste TSDFs who qualify for interim status will be treated as having been issued a permit until EPA takes final administrative action on their permit application. Interim Status does not relieve a facility owner or operator of complying with Section 30004 standards. The privilege of carrying on operations in the absence of a permit carries with it the responsibility of complying with appropriate portions of the Section 3004 standards.

B. 40 CFR Part 260, Subpart B; Parts 264 and 265, Subparts G and H

EPA has issued several sets of regulations to implement the various sections of Subtitle C. Part 160 of 40 CFR, among other provisions, includes definitions that apply to all other parts of the regulations. Part 264 provides standards for owners and operators of TSDFs that have been issued RCRA permits. Part 265 provides interim status standards for owners and operators of TSDFs. Part 270 establishes permitting standards for TSDFs. These four parts would be amended by today's proposal.

On May 19, 1980, EPA promulgated Part 265, Subpart G regulations in 45 FR 33242 specifying general standards for closure of interim status TSDFs and four post-closure care of interim status hazardous waste disposal facilities. Financial responsibility requirements for closure and post-closure care and liability coverage (Subpart H) were proposed on that date in 45 FR 33260. On January 12, 1981, EPA added Subparts G and H rules to Part 264 in 46 FR 2849. EPA also made limited changes to Part 265 on January 12, 1981, in response to public comments on subpart G, in 46 FR 2875. Subpart H requirements were subsequently amended in 47 FR 15047 (April 7, 1982) and 47 FR 16554 (April 16, 1982).

C. American Iron and Steel Institute (AISI) Litigation and Settlement

Shortly after EPA published Subpart G and H standards on January 12, 1981, individual companies and industry trade associations filed 17 separate law suits challenging those standards. These cases were consolidated as *American Iron and Steel Institute* v. *U.S. Environmental Protection Agency* (D.C. Cir., No. 81-1357 and Consolidated Cases) ("*AISI* litigation"). On August 16, 1984, the parties (with the exception of several parties who voluntarily dismissed their lawsuits) filed a settlement agreement with the Court.

Under the terms of the settlement agreement, EPA agreed to propose and take final action upon certain amendments to the closure and post-closure regulations which were promulgated on January 12, 1981. Among the regulations EPA is proposing today are those amendments to Subparts G and H required by the *AISI* settlement agreement. In addition, certain of these amendments require conforming amendments to other regulations in Subpart H. Those changes are also being proposed today.

D. Subparts G and H Implementation Experience

Since January 12, 1981, EPA and authorized States have developed considerable experience with the implementation of Subparts G and H. Based on this implementation experience, EPA is today proposing additional changes to the Subparts G and H regulations.

II. Analysis of Rules

The following sections of this preamble include discussions of the major issues and present the rationales for the specific regulations proposed today. The preamble is arranged in a section-by-section sequence for ease of reference. Because many of the regulatory amendments to Interim Status Standards (Part 265) are parallel to the Final Status Standards (Part 264), only those changes to the Part 265 Interim Status Standards that differ from the Part 264 standards are addressed independently.

A. Definitions (Part 260)

1. Active Life (§ 260.10)

Sections 264.112(b) and 265.112(b) currently define "active life" of a facility as that period during which wastes are periodically received. The Agency is proposing to redefine "active life" to extend the period from the initial receipt of hazardous wastes until the Regional Administrator has received the final closure certification.

Sections 264.90(c) and 265.90(b) specify that owners or operators must comply with the Subpart F ground-water monitoring requirements during the active life of the facility and during the post-closure care period. The proposed language clarifies that activities such as ground-water monitoring, run-on and run-off control, and leachate collection must be continued during the closure period. Similarly, cost estimates must include all activities that are required during the closure period as well as those activities conducted to shut down operations.

2. Hazardous Waste Management Unit (§ 260.10)

Section 260.10 currently defines partial closure as closure of a "discrete portion" of a facility; however, "discrete portion" is not defined. Because the Agency is proposing to require explicitly that closure regulations apply to partial closures as well as final closures (see below), the Agency is proposing to define a new term—"hazardous waste management unit"—to help clarify the concept of partial closure of a facility.

The preamble to the July 26, 1982 land disposal regulations (47 FR 32289) informally defined a waste management unit as a contiguous area of land on or in which waste is placed, or the largest area in which there is a significant likelihood of mixing of waste constituents in the same area. Today's proposed definition is consistent with the July 26, 1982 preamble language and expands the term to include tank storage/treatment and container units.

The purpose of defining "hazardous waste management unit" in today's proposal is to (1) incorporate the substance of the definition of a unit discussed in the preamble to the July 26, 1982 regulations into the regulations, and (2) clarify the applicability of the partial closure requirements. A hazardous waste management unit is the smallest area of the facility that isolates wastes within a facility. The proposed definition would define the following as hazardous waste management units: A landfill cell, surface impoundment, waste pile, land treatment area, incinerator, tank system (i.e., individual tank and its associated piping and underlying containment system), and a container storage area. Because each container at a container storage facility does not have its own underlying containment system, the hazardous waste management unit includes both

the containers and the land or pad on which they are placed. A container alone does not constitute a hazardous waste management unit.

The Agency requests comments on the adequacy of the proposed definition of hazardous waste management unit, especially with regard to landfills composed of cells, subcells, or trenches.

3. Partial Closure (§ 260.10)

Partial closure is currently defined in § 260.10 as "the closure of a discrete part of a facility in accordance with the applicable closure requirements of Parts 264 or 265 of this Chapter." Today's proposed definition of "partial closure" together with the new definition of "hazardous waste management unit" clarify the concept of a "discrete part of a facility."

A facility may be partially closed in a number of different ways. Partial closures may involve: (1) closing an entire hazardous waste management unit while another hazardous waste management unit at the facility continues operating (e.g., a surface impoundment or container storage area is closed but a landfill continues to operate), or (2) closing one or more hazardous waste management units while other associated units at the facility remain operational (e.g., one landfill cell of a ten-cell landfill is closed, one tank is removed from a tank farm).

The Agency generally encourages owners or operators to close those portions of their facilities that are no longer in operation, thus minimizing the extent of hazardous waste activities and the associated risks to human health and the environment. At the same time, however, the Agency considers it essential that all portions of a facility, whenever closed, be closed in accordance with all Subpart G and associated technical standards to ensure the continued protection of human health and the environment.

As will be discussed in subsequent sections of this preamble, the Agency is proposing to amend other portions of the Subpart G regulations to require explicitly that certain technical and procedural closure requirements apply to partial closures as well as final closure. As part of this effort, the Agency is proposing to clarify that partial closure occurs upon the closure of hazardous waste management units (discussed above).

4. Final Closure (§ 260.10)

The current regulations do not define final closure. The Agency today is proposing to define final closure to clarify the distinction between partial and final closure.

As discussed immediately above, the Agency is proposing to redefine partial closure as closure of a hazardous waste management unit. A facility is considered partially closed if at least one hazardous waste management unit at the facility continues to operate after other units have been closed in accordance with Subpart G requirements. the Agency is proposing to define *final* closure as closure of *all* hazardous waste management units not otherwise covered by the provisions of § 262.34, in accordance with Subpart G requirements.

B. Final Status Standards (Part 264) and Conforming Changes to Interim Status Standards (Part 265)

1. Closure and Post-Closure Care (Subpart G)

a. *Closure performance standard* §§ 264.111, 265.111). Sections 264.111 and 265.111 establish general closure performance standards applicable to all TSDFs that specify that a facility must be closed in a manner that (1) minimizes the need for further maintenance, and (2) controls, minimizes or eliminates, to the extent necessary to prevent threats to human health and the environment, post-closure escape of hazardous wastes, hazardous constituents, leachate, contaminated rainfall, or waste decomposition products to the ground or surface waters or to the atmosphere. (The language in §265.111 differs slightly and specifies that the facility must be closed in a manner "that * * * controls, minimizes or eliminates, to the extent necessary to *protect* human health and the environment * * *")

The Agency is proposing to amend §§ 264.111 and 265.111 in three ways. First, the amendments will incorporate into the general standard a reference to the specific closure standards included in 40 CFR §§264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, and the parallel interim status provisions. These regulations establish specific closure requirements for containers, tanks, surface impoundments, waste piles, land treatment units, landfills, and incinerators, respectively. Second, the Agency is proposing to make the language in § 265.111 parallel to that in § 264.111. Finally, the proposed rules contain a minor change to the wording of the regulation.

Incorporating references to the specific technical closure requirements is intended to ensure that the general closure performance standard in §§ 264.111 and 265.111 is not interpreted improperly as more or less stringent in particular circumstances than the process-specific standards. The amendment explicitly requires owners or operators of TSDFs to comply with both the general performance standard and the applicable process-specific standards. Owers or operators must close their facilities in a manner that complies with applicable process-specific requirements where specified; the general performance standards apply to activities that are not otherwise addressed by the process-specific standards but are necessary to ensure that the facility is closed in a manner that will ensure protection of human health and the environment.

Although the language in §§ 264.111 and 265.111 currently differs slightly, the Agency has interpreted them to have the same meaning. Nevertheless, for the sake of clarity and consistency, the Agency is proposing to amend § 265.111 to make the language parallel to that in § 264.111.

The Agency is also proposing a minor change to the wording in §§ 264.111 and 265.111. The current regulation specifies that closure must control, minimize, or eliminate the post-closure escape of contaminated rainfall. To clarify the intent of the requirement, the Agency is proposing to replace the phrase "contaminated rainfall" with "contaminated run-off."

b. *Requirement to furnish closure and post-closure plans to the Regional Administrator* (§§ 264.112(a), 264.118(a), 265.112(a), 265.118(a)). Sections 264.112(a), 264.118(a), 265.112(a), and 265.118(a) require the owner or operator of a TSDF to keep a copy of the approved closure and post-closure plan and all revisions at the facility until closure is completed and certified. Post-closure plans must be retained at the facility until the post-closure care period begins.

Petitioners in the *AISI* litigation argued that a hazardous waste management facility may not be properly equipped to maintain files and safeguard closure and post-closure plans and that the plans could be kept more efficiently and safely at nearby offices of the owner or operator of the facility. The EPA, however, was concerned that the plans be available on-site to an inspector on the day of inspection, in order to ensure that the plan is consistent with facility conditions.

Consistent with these dual concerns, the Agency is today proposing to drop the requirement that the closure and post-closure plans be kept at the facility and instead to amend §§ 264.112(a), 264.118(a), 265.112(a), and 265.118(a) to require that such plans be furnished to

the Regional Administrator upon request and also be provided during site inspections. The plan must be provided during site inspections, on the day of inspection. Moreover, the plans must be made available upon request, including request by mail. This provision is consistent with the requirements on the availability of records established in §§ 264.74 and 265.74.

Because the plans for facilities with permits are part of the permit and thus should already be in the Agency's possession, it may be unnecessary to require owners or operators of permitted facilities to make the plans available onsite on the day of inspection. The Agency is requesting comments on whether this requirement should be dropped for permitted facilties.

c. *Clarification of contents of closure plan* (§§ 264.112(b), 265.112(b)). Sections 264.112(a) and 265.112(a) specify that the closure plan must describe how and when a facility will be partially closed, if applicable, and finally closed. The Agency today proposes a number of changes that explicitly require a greater level of detail in the closure plan.

Because the closure plan is the mechanism for ensuring that an owner or operator has made adequate preparations for closing the facility in a manner that will prevent future threats to human health and the environment, it is important that the closure plan explicitly address how each partial closure will satisfy the Subpart G regulations. Moreover, the plans serve as the basis for certifying that closure activities have been conducted in accordance with the approved plan. The proposed amendments to §§ 264.112(b)(1) and 265.112(b)(1) emphasize the closure plan must address explicitly all partial as well as final closure activities. The proposed change supports the Agency's belief that partial closure activities are as important as final closure for ensuring long-term protection of human health and the environment.

The regulations do not currently specify the level of detail required in the closure plan. To eliminate potential ambiguities, the Agency is proposing to clarify the kinds of information that should be included in the closure plan. First, today's proposed rule requires the owner or operator to include in the plan not only an estimate of the maximum inventory over the life of the facility but also a detailed description of the procedures that will be used to handle the hazardous wastes during partial and final closure. For example, the plan must describe all proposed methods for removing, transporting, treating, or disposing of hazardous wastes at partial and final closure.

Second, the proposed rule clarifies that the closure plan must address not only activities required to shut down operations but also all ancillary activities necessary during the partial and final closure periods. Therefore, the Agency is proposing to add the requirement (§§ 264.112(b)(5) and 265.112(b)(5)) that the plan describe all such activities, such as ground-water monitoring, leachate collection, and run-on and run-off control, as applicable.

d. *Description of removal or decontamination of facility structures and soils in closure plan* (§§ 264.112(b)(4), 265.112(b)(4)). Sections 264.112(a)(3) and 265.112(a)(3) require owners or operators to include a description of the steps needed to decontaminate facility equipment at closure. Today's proposed regulatory amendment expands this provision to require that the closure plan also include a description of steps to decontaminate or remove contaminated facility structures and soils.

The process-specific closure regulations applicable to surface impoundments, waste piles, land treatment facilities, and landfills address decontamination of soils in Subparts K, L, M, and N, respectively, EPA is also intending to amend the technical closure standards for tanks to require soil decontamination. At present, the Subpart G regulations explicitly require that the closure plan address decontamination only of facility equipment. As a result of process residues, drips, spills, and deposition of emissions, however, facilities also may have contaminated soils and structures at closure which must be decontaminated or removed. It is, therefore, important that owners or operators prepare a comprehensive plan for decontaminating the facility at closure.

In addition, it is important that the plan describe in detail the procedures that will be used at closure to ensure that the facility is decontaminated. Therefore, the Agency is proposing to amend §§ 264.112(b)(4) and 265.112(b)(4) to specify that the plan must include a discussion of methods for decontaminating the facility, including but not limited to sampling and testing procedures and criteria to be used for evaluating soil contamination levels.

Because drips and spills should be cleaned up as they occur, many of the activities described in the closure plan for removing or decontaminating soils should be similar to those conducted during the operating life of the facility as part of routine operations. For some types of units (e.g., storage) soil testing may not be a routine operating activity and may not be conducted until closure. The Agency intends that the plan should address cleanup of the maximum amount of contaminated soil that the owner or operator expects to be on-site at closure or anytime over the operating life of the facility. Extensive cleanups that may be required at the time of closure as a result of a major contingency, however, need not be addressed in the plan unless the owner or operator is aware of the extent of contamination.

e. *Requirements to estimate the expected year of closure* (§ 264.112(b)(7)). Section 264.112(a)(4) currently requires each owner or operator of a TSDF to include in its written closure plan an estimate of the expected year of closure. Petitioners in the *AISI* litigation argued that compliance with the provision is unnecessarily burdensome for owners or operators of on-site TSDFs, such as storage and treatment facilities associated with industrial processes. In the case of those facilities, the expected date of closure may not be determined by the hazardous waste management activities but by the primary industrial activity with which the facility is associated, and therefore, in many cases, may be difficult to predict.

In the case of owners or operators using a trust fund to provide financial assurance, however, an estimate of the expected year of closure is necessary to enable both the owners or operators and EPA to determine whether appropriate payments are being made into the trust fund. Sections 264.143(a)(3) and 264.145(a)(3) currently require such payments to be made annually by the owner or operator over the term of the RCRA permit or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter. This provision could not be implemented unless the expected year of closure were specified. Therefore, the Agency is proposing to amend the regulation to retain the requirement that owners or operators estimate the expected year of closure only for owners or operators who use trust funds to establish financial assurance under § 264.143 and whose facilities are expected to close prior to permit expiration. (A discussion of proposed changes to the interim status regulations is included in Section III.C.2 of this preamble.)

f. *Modifications to closure and post-closure plans* (§§ 264.112(c), 264.118(e), 265.112(c), 265.118(g)). Sections

264.112(b) and 265.112(b) currently state that an owner or operator may amend the closure plan at any time during the active life of the facility. The Agency is proposing amendments to make this regulation consistent with other proposed regulatory amendments. In addition, the proposed amendments establish procedures and deadlines for requesting modifications to plans.

Because today's proposed definition of active life expands the period to the end of the closure period, §§ 264.112(b) and 265.112(b), as currently written, would allow owners or operators to request modifications to the closure plans *after* closure has already begun. The Agency considers it important to close facilities as quickly as possible to avoid facility deterioration and potential damage to human health and the environment. Therefore, the Agency is proposing that the language is §§ 264.112(c) and 265.112(c) be revised to retain the intent of the existing provision that the closure plans may only be modified *prior* to the notification of closure or approval of the closure plan, whichever is later. An exception is made for unexpected events that occur during the closure period that affect the closure plan (e.g., adverse weather conditions, fire, or more extensive soil contamination than anticipated resulting in the need to close the unit as a disposal rather than as a storage unit). Under these circumstances, modifications may be requested during the closure period.

A second amendment to these requirements specifies that the requirement to amend the closure plan if there is a change in the expected year of closure applies *only* to those facilities required to include an expected year of closure in the closure plan. This is consistent with the proposed amendment to §§ 264.112(b)(7) and 265.112(b)(7).

A number of procedural changes are made to the Parts 264 and 265 regulations for modifying closure and post-closure plans. First, the proposed amendments to §§ 264.112(c) and 264.118(e) clarify that an owner or operator use the permit modification procedures specified in Part 270 to apply for a change in the closure or post-closure plan. Because the approved plans are permit conditions, it has always been the Agency's intent that any change in a plan would constitute a permit modification and thus be subject to all the procedural requirements of Part 270.

Owners or operators of interim status facilities without approved closure and post-closure plans may amend their plans without receiving prior approval. No changes in the plans may be made however, that are inconsistent with the provisions of § 270.72. For example, an owner or operator cannot assume that at closure he will construct a new process type to handle his waste.

If the owner or operator of an interim status facility has an approved closure plan, then he must request the Regional Administrator to amend the plan. The Regional Administrator may, at his discretion, provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments and/or hold a public hearing on the amendment to the plan.

Second, the proposed amendments to the Parts 264 and 265 regulations specify deadlines for requesting closure and post-closure plan modifications to ensure that all requests are made in a timely fashion and that the level of financial assurance is adjusted, as necessary, to reflect any approved changes. Some modifications to the closure or post-closure plans result from planned changes in facility design or operations and thus can be predicted; others are due to unexpected events. The proposed amendments to the regulations require an owner or operator of a permitted facility and an interim status facility with an approved closure or post-closure plan to submit a written request to the Regional Administrator for approval of a closure or post-closure plan modification within 60 days prior to the change in facility design or operation, or within 60 days after an unexpected event has occurred. If an unexpected event that will affect the closure plan occurs during partial or final closure, a request to modify the closure plan must be made within 30 days. During the approval period, the owner or operator may continue those partial or final closure activities that are unaffected by the permit modification request.

g. *Notification of partial closure and final closure* (§§ 264.112(d), 265.112(d)). Sections 264.112(c) and 265.112(c) require owners or operators of TSDFs to notify the Regional Administrator at least 180 days prior to the date they expect to begin closure. Today's proposed rule first clarifies that the notification requirements apply to partial closures of hazardous waste disposal management units as well as final closure. Second, it amends the deadlines for notifying the Regional Administrator of partial and final closure. Finally, it defines the "expected date of closure."

As discussed in other sections of this preamble, the Agency wishes to encourage owners or operators to partially close their facilities during the active life so that hazardous wastes are removed as quickly as possible and thus pose a lesser threat to human health and the environment. The Agency also wants to ensure that these partial closures are conducted in accordance with an approved closure plan and all applicable closure requirements. To be consistent with the concerns expressed by the *AISI* petitioners, the Agency is limiting the notification requirement to partial closures that involve hazardous waste disposal units.

Second, the proposed rule amends the deadlines for notification of partial closure for disposal units and final closure in response to petitioners in the *AISI* litigation. They argued that because closure of a facility or unit is sometimes dictated by economic factors or production processes at associated enterprises, a 180-day notice period is unreasonable. Furthermore, they argued that a 180-day period is longer than necessary for the Agency's purposes.

EPA believes it necessary to ensure that it receives adequate advance notice so that an inspection can be made of the facility before closure activities begin. The Agency agrees with the petitioners that for facilities with approved closure plans, 180 days prior notice of closure may be unnecessary. The Agency is therefore proposing § 264.112(d), which would require the owner or operator to notify the Regional Administrator at least 60 days prior to the date he expects to begin closure of a landfill, land treatment, surface impoundment, or waste pile unit, or final closure of a facility with these types of units. An owner or operator must notify the Regional Administrator at least 45 days prior to the date he expects to begin final closure of a facility with only an incinerator, container storage, or tank units remaining to be closed. For interim status facilities with approved closure plans (i.e., those that received approval of the entire plan during a previous partial closure), the same deadlines apply as to permitted facilities.

For interim status facilities *without* approved closure plans (i.e., plans approved in accordance with the procedures established by § 265.112(d)), the Agency must have sufficient time to review the closure plan to ensure that all partial closures of land disposal units and final closure will be done in a manner that will avoid future environmental damages. The Agency is proposing to retain the 180-day notification requirement in § 265.112(d) for partial closures of a landfill, land treatment facility, surface impoundment, or waste pile unit, or final closure of a

facility with such units. The Agency believes the full 180 days is necessary to review land disposal closure plans. The Agency is also proposing that § 265.112(d) require the owner or operator to provide notice at least 45 days prior to the date he expects to begin final closure of a facility with only tanks, incinerator, or container storage remaining to be closed. This is consistent with the interim status deadlines in the *AISI* settlement agreement.

The Agency recognizes that it may not be possible to complete the public comment period and the closure plan review process in accordance with § 265.112(d) within 45 days. Because closure plans for tanks, container storage, and incinerators are less complex than those for land disposal facilities, however, the Agency anticipates that the review process may not require the total time allowed under § 265.112(d). Furthermore, because the proposed revisions in § 265.112(e), which are discussed below, allow an owner or operator to remove hazardous wastes and decontaminate or dismantle equipment prior to notification of partial or final closure, a delay in the plan approval process beyond the specified 45 days will not preclude an owner or operator from conducting these activities and minimizing the potential for damage to human health and the environment. The Agency requests comments on potential problems posed by reducing the notification period to 45 days for tanks, container storage, and incinerators.

The third proposed change clarifies the definition of the "expected date of closure." The current regulation states in a comment to §§ 264.112(c) and 265.112(c) that the expected date of closure should be interpreted as within 30 days of receipt of the "final volume of wastes". The Agency is concerned that (1) the definition of "final volume of wastes" is ambiguous, and (2) the definition may not be applicable to long-term storage units.

Because the Agency generally considers it good practice to close facilities as soon as operations cease to minimize the likehood of environmental and human health damage, the Agency is proposing to require explicitly in §§ 264.112(d)(2) and 265.112(d)(2) that an owner or operator notify the Regional Administrator within 30 days after the date on which a hazardous waste management unit received the known final volume of hazardous waste, or within one year of receipt of the most recent volume of hazardous waste. The Agency recognizes that some owners or operators may have cyclical operations which could make the one-year deadline burdensome. This is especially true for storage facilities that may only periodically add wastes. Therefore, the Agency is also proposing to allow an owner or operator the opportunity to request an extension if he can demonstrate that he will receive additional wastes and is taking all steps necessary to protect human health and the environment in the interim.

The Agency recognizes, on one hand, that this variance provision for storage facilities still may not adequately address the concerns of owners or operators of long-term storage facilities operating in compliance with all applicable regulations whose tanks are filled to capacity but who do not wish to close their facilities. On the other hand, the approach for long-term storage must also be consistent with the restrictions on storage of hazardous wastes banned from land disposal imposed by Section 3004(j) or RCRA. Under this provision, the storage of hazardous wastes banned from land disposal is prohibited unless such storage is solely for the purpose of accumulating such quantities as necessary to facilitate proper recovery, treatment, or disposal. The Agency is requesting comments on appropriate approaches for handling the concept of the "expected date of closure" for long-term storage facilities.

h. *Removal of wastes and decontamination or dismantling of equipment* (§§ 264.112(e), 265.112(e)). Sections 264.112 and 265.112 do not discuss whether activities such as removing waste and decontaminating or dismantling equipment can be undertaken prior to closure. The proposed amendment clarifies this issue.

Petitioners in the *AISI* litigation argued that requiring 180-day notification and, in the case of interim status facilities, requiring the completion of all plan approval procedures, before any hazardous wastes can be removed or facility equipment dismantled, unreasonably interferes with production processes and decisions. In particular, this requirement could be unreasonably burdensome for owners or operators who frequently replace tanks or containers as part or routine operations. In addition, the petitioners argued that postponing the removal of wastes for 180 days or until the approval of the closure plan, whichever is later, might be environmentally unsound.

The Agency agrees that removing hazardous wastes as quickly as possible will avoid potential threats to human health and the environment. Therefore, owners or operators should be allowed to remove hazardous wastes and to decontaminate and dismantle equipment prior to notification of partial or final closure. It is already clear under the current regulations that for facilities with permits, all activities, regardless of when they are undertaken, must be in accordance with all permit conditions, including the approved closure plan. Therefore, EPA is proposing to add new subsection § 264.112(e) providing that nothing in § 264.112 shall preclude the owner or operator from removing wastes and decontaminating or dismantling equipment at any time before or after notification of closure.

The Agency is also proposing to add a parallel subsection to § 265.112(e) to allow the same provisions for interim status facilities. Because it should be possible to evaluate whether the removal of hazardous wastes and decontamination or dismantling of equipment have been conducted in accordance with the subsequently approved plan, the Agency believes that the proposed amendment will not pose a threat to human health and the environment. Because of the importance of ensuring that interim status storage facilities are finally closed in accordance with approved plans, the Agency is requesting comments on the appropriateness of this provision for interim status facilities.

i. *Time allowed for closure* (§§ 264.113, 265.113). Sections 264.113(a) and 265.113(a) require the owner or operator to treat, remove from the site, or dispose of all hazardous wastes in accordance with the closure plan within 90 days after receiving the final volume of hazardous wastes. The Regional Administrator may extend the deadline if the owner or operator demonstrates, among other things, that there is a *reasonable likelihood that a person other than the owner or operator* will recommence operation of the facility and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment. Sections 264.113(b) and 265.113(b) similarly require the owner or operator to complete closure activities within 180 days after receiving the final volume of wastes unless the Regional Administrator grants a longer period. Today's proposal expands the circumstances under which the deadlines may be extended, clarifies what demonstrations must be made for an extension to be granted, and specifies deadlines for making these demonstrations.

Petitioners in the *AISI* litigation argued that the deadlines imposed by

§§ 264.113 and 265.113 may preclude the original owner or operator from temporarily suspending operations. Some facilities, especially storage and treatment facilities that are dependent on industrial operations that fluctuate due to market or economic conditions, may not receive additional wastes for indefinite periods of time, although the same owner or operator may expect to renew operations after a temporary shutdown. In addition, the petitioners argued that it may be difficult for an owner or operator to predict when operations will be reactivated and, as a result, a time extension granted by the Regional Administrator may expire before the owner or operator or another party renews operations.

The Agency agrees that the opportunity to request an extension to the deadlines for handling inventory and completing closure should be granted to an owner or operator as well as to a third party. Therefore, the Agency is proposing to amend §§ 264.113(a)(1)(ii)(B), 265.113(a)(1)(ii)(B), 264.113(b)(1)(ii)(B), and 265.113(b)(1)(ii)(B) to allow an owner or operator such an extension if he can demonstrate that there is a reasonable likelihood that "he or another person" will recommence operation of the facility and that the necessary steps will be taken to ensure protection of human health and the environment.

At this time, the Agency is not proposing standards for determining what constitutes a "reasonable likelihood." Because it may be difficult to implement this requirement, the Agency is requesting comments on the need for such standards and criteria for determining whether a facility is likely to recommence operations.

The Agency also agrees with the petitioners that, in some cases, it may be appropriate to allow owners or operators the opportunity to reapply for an extention to the 90-day deadline for handling all hazardous waste and the 180-day deadline for completing closure of a hazardous waste management unit of closure of the facility. To ensure that the facility does not remain inactive but unclosed for an extensive period of time, however, the Agency is proposing to limit the initial extension of each of these deadlines to one year. An owner or operator may, at the end of the period, request a second extension of up to one additional year under today's proposed amendment. Hazardous waste management units (or the facility) would be forced to close after the second extension.

As discussed above, these dealines may not be appropriate for long-term storage. The Agency is requesting comment on the appropriate approach to use for handling these types of facilities.

Sections 264.113 (a) and (b) and 265.113 (a) and (b) do not specify when the demonstrations must be made upon which the Regional Administrator will base his decision to extend the deadlines for handling hazardous wastes within 90 days or completing closure within 180 days. The Agency, therefore, today is proposing to add two new subsections, §§ 264.113(c) and 265.113(c), which provide that the demonstrations referred to should be made at least 30 days prior to the expiration of the 90-day period established in §§ 264.113(a) and 265.113(a) and at least 30 days prior to the 180-day period established in §§ 264.113(b) and 265.113(b), or within 90 days of the effective date of the regulation, whichever is later.

In order to assure that the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed facility, the Agency is also proposing to amend §§ 264.113(a)(2), 265.113(a)(2) 264.113(b)(2) and 265.113(b)(2) to require owners or operators to show, among other things, that they are in compliance with all applicable operating permit requirements (in the case of permitted facilities) or interim status requirements.

j. *Disposal or decontamination of equipment and soils* (§§ 264.114, 265.114). Sections 264.114 and 265.114 require owners or operators to dispose of or decontaminate all facility equipment and structures. Today's proposed rule would expand the requirement to require owners or operators to remove all contaminated soils as part of partial and final closure, as needed.

To satisfy the objectives of the closure performance standards and to prevent threats to human health and the environment, it is important that all hazardous wastes and hazardous constituents be removed at partial and final closure. It's the Agency's position that owners or operators of *all* TSDFs must remove all hazardous wastes and hazardous constituents during the partial and final closure periods. This provision does not apply to those hazardous wastes, hazardous constituents, or contaminated soils that are allowed to remain in place at closed landfills and at surface impoundments and waste piles closed as landfills.

k. *Certification of closure* (§§ 264.115, 265.115). Sections 264.115 and 265.115 currently provide that when closure is completed the owner or operator must submit certification by both the owner or operator and an independent registered professional engineer that the facility has been closed in accordance with the specifications in the approved closure plan. The purpose of today's proposal is to (1) drop the requirement that the engineer be independent, (2) extend certification requirements to the partial closure of disposal units, and (3) include deadlines for submitting certifications. In addition, the Agency is requesting comments on approaches that may be appropriate for approving closure certifications.

Petitioners in the *AISI* litigation challenged the need for certification by an independent registered professional engineer on the grounds that an in-house engineer would be in the best position to observe the ongoing closure activities and to assure that they conformed to the approved closure plan.

EPA agrees with the petitioners that an in-house registered professional engineer may have better access to the information needed to make such a certification. Moreover, professional standards and statutory criminal penalties for false certifications should provide adequate assurance that in-house registered professional engineers will make competent and honest certifications.

The Agency is not currently proposing to specify the types of professional engineers that are allowed to certify closure. The Agency is concerned, however, that certain types or registered professional engineers may be unqualified to certify closure of a hazardous waste TSDF. For example, while the Agency would consider a civil or sanitary engineer qualified to certify closure, an electrical engineer may not be. In addition, differences among hazardous waste management units may significantly affect the types of qualifications that would be appropriate.

The Agency is currently relying on professional standards and statutory penalties to prevent inadequate certifications. The Agency is requesting comments, however, as to whether it should propose more specific requirements for professional engineer certification.

The current regulations specify that the owner or operator and a professional engineer must certify that the facility (including all partial closures) has been closed in accordance with the closure plan. The Agency is concerned that unless partial closures of landfills, surface impoundments, land treatment units, or waste piles are certified *as they are performed*, it may not be possible at final closure to

determine if they have been performed in accordance with the approved closure plan.

Therefore, the Agency is proposing that partial closures of landfill, surface impoundment, waste pile, and land treatment units must be certified as they are performed. Certification of partial closures involving other types of units (i.e., incinerators, container storage, and tank storage or treatment) may be delayed until closure of the next unit subject to the certification requirement or until final closure. If an owner or operator already has an approved closure plan under interim status (i.e., closure of the storage unit was preceded by closure of a land disposal unit), the partial closure must be in accordance with the approved closure plan but certification may be conducted at a later time.

The Agency is also proposing to require that certifications be submitted to the Regional Administrator by registered mail within 45 days of completing the partial closures, if applicable, or final closure activities. Because the existing regulation specifies no deadline for certifying closure, the proposed rule ensures that certifications are conducted and submitted to the Agency in a timely fashion.

To allow maximum flexibility to owners or operators, the Agency is not currently proposing that documentation be submitted to the Regional Administrator to support the certification of closure by the owner or operator or the registered engineer. The Agency is concerned, however, that unless inspection reports, quality assurance/quality control demonstrations, and other such documentation are available to the Agency, it will be difficult for the Regional Administrator to evaluate the accuracy of the closure certification. Therefore, the Agency is proposing that documentation supporting the certification be available upon request.

The Agency is requesting comments on the desirability of requiring supporting documentation to be submitted with closure certifications as well as the types of documentation that would be appropriate. In addition, the Agency is requesting comments on the appropriateness of requiring the Regional Administrator to approve or verify the accuracy of the closure certification.

l. *Survey plat* (§§ 264.116, 265.116). Sections 264.119 and 265.119 currently require the owner or operator of a disposal facility to submit to the local zoning authority, or the authority with jurisdiction over local land use, within 90 days after closure is completed, a survey plat indicating the location and dimensions of landfill cells or other disposal areas with respect to permanently surveyed benchmarks. (The current language in § 265.119 differs slightly by referring to the local land authority rather than to the local zoning authority or the authority with jurisdiction over local land use.) The proposed rule moved to §§ 264.116 and 265.116, would require that the survey plat be submitted no later than the submission of the certification of closure of each hazardous waste disposal unit. In addition, the proposed regulations would conform the language in § 265.119 parallel to that in § 264.119.

Because the survey plat must indicate the location and dimension of each disposal area it must be prepared prior to the completion of all closure activities. As a result, the Agency is proposing to require that the survey plat be included as a closure requirement. Therefore, the proposed rule requires the survey plat to be submitted to the appropriate local land use authority prior to the certification of closure of each hazardous waste disposal management unit.

m. *Post-closure care and use of property* (§§ 264.117(a)(1), 265.117(a)(1)). Sections 264.117(a)(1) and 265.117(a)(1) currently require post-closure care to continue for 30 years after the date of completing closure, with provisions for allowing a reduction of or extension to the period based on cause. The Agency is proposing today to clarify the applicability of the post-closure period for hazardous waste management units closed prior to final closure of the facility. The existing regulation does not explicitly state whether post-closure care activities are required after each partial closure of a hazardous waste management unit or only after final closure of the facility. In addition, the regulations do not specify whether the 30-year post-closure care period is triggered by partial closures or only by final closure of the entire facility.

Because of the importance of post-closure care activities for ensuring the long-term security of hazardous waste disposal facilities, the Agency considers it essential to conduct post-closure care activities as soon as the hazardous waste management unit has been closed. The Agency is therefore proposing to require that the post-closure care begin after the closure of each hazardous waste management unit subject to post-closure care requirements.

In determining when the 30-year post-closure care period should begin, the Agency considered triggering it with final closure or with each partial closure. The Agency is proposing to make the 30-year care period apply to each unit (i.e., partial closure) rather than to the entire facility to reduce the burden on an owner or operator who partially closes units prior to final closure.

The Agency recognizes, that in some circumstances post-closure care should continue for 30 years after closure of the entire facility rather than after closure of the individual hazardous waste management units. For example, unless separate ground-water monitoring systems can be established for each hazardous waste management unit, (e.g., each cell of a landfill) it would not necessarily be appropriate to terminate monitoring requirements 30 years after each unit was closed. Under these circumstances, the Regional Administrator still retains the authority under the proposed § §264.117 and 265.117 to extend the length of the post-closure care period as necessary to protect human health and the environment. Moreover, if the Regional Administrator extends the post-closure care period for any unit during the active life of the facility (i.e., prior to receipt of certification of final closure), the post-closure cost estimate and level of financial assurance must also be adjusted.

n. *Post-closure plan* (§§ 264.118(b), (c), 265.118(a) and (c)). Sections 264.118(a) and 265.118(a) require owners or operators of hazardous waste disposal facilities to have a post-closure plan. In addition, under §§ 264.228(c) and 264.258(c), storge surface impoundments and waste piles that do not meet the liner design standards are required to prepare post-closure plans to account for the need to close as disposal facilities. The Agency is proposing to require those storage surface impoundments and waste piles not initially required to prepare contingent closure and post-closure plans to do so at the time of closure if it is determined at that time that they will be closed as landfills. The Agency is also proposing to clarify the contents of the post-closure plan. Under §§ 264.228(c) and 265.258(c) owners or operators of storage surface impoundments and waste piles that meet the liner design standards are not required to prepare contingent post-closure plans for the possibility that they will be required to close as landfills. Under §§ 264.228(b) and 264.258(b), however, such facilities may be required by the Regional Administrator to be closed as landfills if it is not possible to remove all contaminated soils at closure. Because these facilities do not have post-closure

plans, the Agency is concerned that these owners or operators will not be adequately prepared for post-closure care activities. Similarly, interim status storage impoundments and waste piles are not required to prepare post-closure plans but may be closed as disposal facilities.

As a result, the Agency is proposing that §§ 264.118(b) and 265.118(a) explicitly require *all* facilities subject to post-closure care to have approved post-closure plans. An owner or operator who does not have an approved post-closure plan for a storage surface impoundment or waste pile that must be closed as a landfill must submit one for approval within 90 days from the date that the owner or operator or the Regional Administrator determines that it will be necessary to close the facility as a landfill.

Owners or operators of permitted facilities must comply with all Part 270 procedures applicable to modifying the conditions of their permit. Owners or operators of interim status facilities must submit their plans in accordnace with the provisions of § 265.118(e).

The current regulations specify that owners or operators of disposal facilities must have post-closure plans. Because one facility may have several hazardous waste disposal management units, the Agency is proposing to require that the post-closure plan explicitly address the post-closure care activities and the frequency of these activities applicable to each disposal unit.

o. *Post-closure notices* (§§ 264.119, 265.119). Sections 264.119 an 265.119 currently require the owner or operator of a facility subject to post-closure care to submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Regional Administrator a record of the wastes land use, and to the Regional Administrator a record of the wastes disposed of within each cell or area of a land disposal facility within 90 days after final closure. (The current language in § 265.119 differs slightly by referring to the local land authority rather than the local zoning authority or the authority with jurisdiction over local land use.) Sections 264.120 and 265.120 require that a notation be filed on the deed to the property indicating its use as a disposal facility. Section 264.120 also states that the notation on the deed must indicate that the plat and record of wastes have been filed with the appropriate local land use authority. The Agency is proposing a number of changes to clarify certain ambiguities in the provisions, to extend the requirements to partial closure activities, and to make the interim status provision parallel to the final status standards. In addition, the agency is proposing to combine both notice provisions under §§ 264.119 and 265.119. In addition, as discussed above in Section III.B.1.1, the Agency is proposing in §§ 264.116 and 265.116 to require the survey plat to be submitted during the closure rather than the post-closure period.

Currently, §§ 264.119 and 265.119 require that the survey plat and waste record be filed with the appropriate local land authority within 90 days of closure. The notice in the deed provisions in §§ 264.120 and 265.120 do not specify a deadline for filing the notice. In addition, the regulations do not provide the Agency with the opportunity to review the notice in the deed for accuracy.

The Agency considers the deed notation to be an important means of ensuring that prospective and subsequent owners of the property are informed of the presence of wastes, the existence of federal restrictions on land use, and the availability of the survey plat and waste record from the local land use authority. EPA, therefore, believes that the notation should be placed in the deed (or other appropriate title document) soon after each disposal unit has been closed. This is especially important if, prior to final closure, an owner or operator sells a closed portion of the facility on which hazardous wastes have been disposed. Moreover, the Regional Administrator should have the opportunity to review the notation to ensure that it is adequate in form and placed in the appropriate document.

The Agency is therefore proposing to require that the owner or operator record the notation and submit both a certification stating that the notation has been recorded and a copy of the recorded document to the Regional Administrator for review within 60 days after the certification of closure of each hazardous waste disposal unit subject to post-closure care. In addition, to be consistent with the Part 254 requirements, the Agency is proposing to amend the Part 265 regulations to require that the notation in the deed indicate that the survey plat and the waste record have been filed with the appropriate local land authority.

Because the deed notation must refer to the filing of the survey plat and waste record, the deadline for filing the survey plat and waste record must be consistent with the time limit for placing the notation in the deed to the facility property. As discussed above in II.B.1.1, the Agency is proposing to require that the survey plat be submitted *prior* to the certification of closure of each disposal unit, which would be consistent with the proposed deadline for the notice in the deed. The Agency is proposing to change the 90-day time limit for filing the waste record to 60 days after the certification of closure of each hazardous waste disposal unit to be the same as the proposed deadline for recording the notice in the deed. Because the owner or operator is required to maintain this information in the operating record as required by §§ 264.73 and 265.73, the Agency considers two months to be an adequate period of time for preparing the needed documents. In addition, the shorter time ensures the prompt availability of the documents to all interested parties.

Section 264.120(b) currently provides that if the owner or operator of a disposal facility subsequently removes all hazardous wastes and waste residues, the liner (if any), and all contaminated underlying and surrounding soils he may either remove the deed notation required by § 264.120(a) or add a notation indicating the removal of the wastes. Section 265.120(b) does not currently give owners or operators of interim status facilities the opportunity to remove the notice in the deed or amend it if all wastes have been removed.

For facilities with permits, any removal of hazardous waste after closure would constitute a change in the permit conditions and thus would be subject to the requirements of Part 270 for requesting modifications to the post-closure permit. The Agency is now proposing to require explicitly that an owner or operator or operator of a permitted facility request a modification to the post-closure permit in accordance with Part 270 requirements. In all cases, the owner or operator must demonstrate compliance with the criteria in § 264.117(c) for post-closure use of property. Moreover, because the owner or operator would be conducting hazardous waste management activities, he must comply with all applicable generator requirements and with the conditions of the post-closure permit.

The Agency believes owners or operators of interim status facilities also should be allowed the opportunity to remove all wastes during the post-closure care period, assuming that the Regional Administrator has a formal opportunity to review the plans for removing the hazardous wastes. Therefore, the Agency is proposing to allow owners or operators of interim status facilities to request the approval of the Regional Administrator to remove hazardous wastes, assuming the

procedures of § 265.118(g) for modifying the post-closure plan are followed.

Finally, the proposed rule requires the owner or operator to seek Regional Administrator approval before deleting the deed notation or placing a new notation in the deed regarding removal of the wastes.

The Agency is not currently proposing notice requirements that will assure that parties with rights-of-ways to property used to dispose of hazardous wastes are aware of its use. However, the Agency is concerned that because such parties are not purchasing the property, they may not refer to the notice in the deed and thus may be unaware of its previous use. The Agency requests comments on this issue and solicits possible approaches for ensuring that adequate notice is given to all potentially affected parties.

p. *Certification of completion of post-closure care* (§§ 264.120, 265.120). The existing regulations do not require that the owner or operator certify that post-closure care activities have been conducted in accordance with the approved post-closure plan. Today's proposed rule includes such a requirement.

It is especially important that the appropriate post-closure care activities have been undertaken to ensure the continued protection of human health and the environment after the termination of the post-closure care period. One way to ensure that the facility has been adequately maintained during the post-closure period is to inspect the facility prior to releasing the owner or operator from his post-closure care obligations.

As a result of these concerns, the Agency is proposing to require that an owner or operator submit to the Regional Administrator by registered mail, within 30 days after completing the established post-closure period, a certification signed by him stating that all post-closure care activities have been conducted in accordance with the approved post-closure plan. If an owner or operator partially closes disposal units prior to final closure and completes the post-closure care period at different times, he should submit certifications subsequent to the completion of each post-closure care period.

The Agency is concerned that requiring certification only after the end of the 30-year period may not provide adequate assurance that the post-closure care has been conducted properly over the entire period. Because of the importance of the post-closure care activities for ensuring long-term protection of human health and the environment, the Agency is requesting comments on the desirability of requiring post-closure certifications on an annual or periodic basis (e.g., every five years).

2. Financial Assurance Requirements (Subpart H)

a. *Cost estimates based on third-party costs* (§§ 264.142(a), 264.144(a), 265.142(a), 265.144(a)). The existing cost estimate rules in §§ 264.142(a) and 264.144(a) do not specify whether cost estimates should be based on the cost to the owner or operator of supplying his own labor and equipment (first-party costs) or the cost of hiring contractor labor and renting equipment (third-party costs). The Agency is proposing today to resolve the ambiguity by specifying that closure and post-closure cost estimates be based on the costs to the owner or operator of hiring a third party to perform closure or post-closure care activities. The Agency is also proposing to specify explicitly that salvage value may not be incorporated into the closure cost estimate.

Some members of the regulated community have argued that first-party costs should be allowable if the owner or operator has his own equipment or intends to use his own labor for closure or post-closure care activities. Some have also argued that the salvage value of hazardous wastes or facility equipment that may be resold at closure should be considered as credits when calculating the amount of the cost estimate. Owners or operators have argued that, at a minimum, they should be allowed to assume that hazardous wastes which can be resold at closure will be taken at no charge by a third party.

The Agency is concerned that if first-party costs are used and an owner or operator declares bankruptcy or abandons the facility, adequate funds will not be available to cover the costs of closure and, if applicable, post-closure care. Since the cost estimates serve as the basis for determining the amount of financial assurance needed, the Agency has decided that only third-party costs are consistent with the overall objectives of the financial assurance requirements—assurance that funds will be available to cover the costs of closure and post-closure care if an owner or operator goes bankrupt or abandons the facility.

To further ensure that the cost estimate is always sufficient to cover the costs of closing the facility, the Agency is proposing to disallow explicitly salvage value as a credit when calculating the cost estimates. This in no way would prevent the owner or operator from realizing salvage value from hazardous wastes or equipment at closure; rather, it prohibits an owner or operator from deducting credits for salvage value from his estimate of the costs of closure. The Agency believes this position is consistent with the intent of the financial assurance requirements to ensure that funds are available if needed. The Agency cannot be assured that hazardous wastes will be in a saleable condition or that a third party will take the hazardous wastes at no charge at the time of closure. Therefore, the Agency is proposing to add §§ 264.142(a)(3) and 265.142(a)(3) to specify that salvage value may not be incorporated as a credit in the closure cost estimate.

b. *Anniversary date for updating cost estimates for inflation* (§§ 264.142(b), 264.144(b), 265.142(b), 265.144(b)). The existing regulations require owners or operators to update their closure and post-closure cost estimates for inflation within 30 days after the anniversary of the date that the first cost estimates were prepared. Today's proposed regulation requires owners or operators to revise their cost estimates up to 60 days prior to the anniversay date of the establishment of their financial assurance instrument. For owners or operators using the financial test, the cost estimates must be updated for inflation within 30 days of the end of the firm's fiscal year. The Agency is also making a minor change to the procedures for adjusting the cost estimates for inflation.

The Agency is concerned that allowing the cost estimates to be adjusted up to 30 days *after* the anniversary date of preparing the first cost estimate could result in the annual renewals of the financial assurance mechanisms and the financial test being based on the previous year's cost estimates. As a result, the financial assurance instrument could be inadequate.

The Agency is proposing to amend the regulation to require that cost estimates be updated within 60 days *prior* to the anniversay date of the establishment of the financial instrument to ensure that the level of financial assurance reflects a more recent cost estimate. For firms using the financial test, the cost estimate should be updated within 30 days of the end of the firm's fiscal year and before the submission of the updated information required to be submitted to the Regional Administrator within 90 days after the close of the fiscal year.

Linking the updates of cost estimates to the establishment of the financial assurance mechanism rather than to the

date that the estimate was first prepared by the owner or operator has the additional advantage that it eases verification that the estimates have been updated when required. The Agency has copies of the financial instruments used to demonstrate financial assurance and therefore can verify the date that it was established.

The Agency is also proposing to offer owners or operators an alternative to using the Implicit Price Deflator published in the *Survey of Current Business.* The Agency is proposing to allow owners or operators the option of recalculating the cost estimates based on current costs. In addition, the Agency is proposing to require that owners or operators use the most recent Implicit Price Deflator rather than the annual Implicit Price Deflator to ensure the most up-to-date estimate.

c. *Revisions to the cost estimates* (§§ 264.142(c), 264.144(c), 265.142(c), 265.144(c)). The existing regulations require owners or operators to revise their cost estimates whenever changes in the plans affect the costs of closure or post-closure care. Post-closure cost estimates do not have to be revised during the post-closure care period. The regulations do not, however, specify deadlines for updating the cost estimates. The proposed regulations would specify a deadline for revising the cost estimates if the change in plans increases the costs of closure of post-closure care.

Changes in the closure or post-closure plan could result in a dramatic inscrease in the costs of closure or post-closure care (e.g., off-site rather than on-site disposal of wastes at closure). If such changes are not incorporated into the cost estimates in a timely manner, the amount of financial assurance available could be inadequate. Therefore, the Agency s proposing to require that for permitted facilities, or interim status facilities with approved closure or post-closure plans, owners or operators increase their cost estimates within 30 days after the Regional Administrator has approved modifications to the plans, if the modifications increase the costs of closure or post-closure care. For interim status facilities without approved closure or post-closure plans, the cost estimates must be increased within 30 days of the change in the plans, if the change increases the cost of closure or post-closure care. Revisions to the post-closure cost estimates under both Parts 264 and 265 are required only during the active life of the facility.

d. *Post-closure cost estimate* (§§ 264.144(c), 265.144(c)). Sections 264.144(c) and 265.144(c) require the owner or operator to revise the post-closure cost estimates during the operating life of the facility whenever a change in the post-closure plan increases the cost of post-closure care. The regulation does not define the operating life of the facility. The proposed rule would require the cost estimate to be increased anytime during the active life of the facility.

Although the regulations do not define operating life, the Agency intended that post-closure financial assurance be adjusted as necessary until the facility was closed and post closure care had begun. As discussed in Section III.A.1 of this preamble, the Agency is proposing to define active life as the period from the initial receipt of waste until certification of final closure. Consistent with this proposed definition, the Agency is proposing to require that the post-closure cost estimate be revised as necessary during the active life of the facility.

Events that occur during the partial or final closure periods that affect the costs of post-closure care must be accounted for by increasing the post-closure cost estimate. The post-closure cost estimate must be revised within 30 days after the Regional Administrator has approved a change in the post-closure plan. For interim status facilities without approved plans, the cost estimate must be revised within 30 days of the change in the plan.

e. *Trust fund pay-in period* (§§264.143(a)(3), 265.143(a)(3)). The current Part 264 regulations require the payments to the trust fund to be made over the term of the permit or over the remaining operating life of the facility, whichever is shorter. For interim status facilities, the pay-in period is 20 years or the remaining operating life of the facility, whichever is shorter. Although the trust fund may cover a number of units with different operating lives, the current requirement ties the pay-in period to the life of the facility rather than to particular units. The Agency is considering whether it may be appropriate to adjust the pay-in period to reflect the shorter operating lives of some units covered by the requirement. The Agency is requesting comments on approaches to handling the pay-in period for multiple process facilities.

f. *Reimbursement for closure and post-closure expenditures from trust fund and insurance* (§§ 264.143(a)(10), 264.143(e)(5), 264.145(a)(11), 264.145(e)(5), 265.143(a)(10), 265.143(d)(5), 265.145(a)(11), 265.145(d)(5)). The closure/post-closure trust fund and insurance provisions allow an owner or operator or any other person authorized to conduct closure or post-closure care to request reimbursement from the trust fund or face value of the insurance policy for expenditures for final closure and post-closure care by submitting itemized bills to the Regional Administrator. The Regional Administrator will instruct the trustee or insurer to make reimbursements if the activities have been in accordance with the approved plans or otherwise justified. The Regional Administrator may withhold reimbursements if he determines that the total costs of closure will exceed the value of the trust. The proposed rule would modify procedures for reimbursing expenditures from the trust fund or insurance. In addition, it would specify provisions for handling reimbursements for partial closure activities.

Petitioners in the *AISI* litigation argued that any decision by the Regional Administrator to withhold reimbursements from the trust fund presumably is an administrative determination that the expenditures are either unjustified or not in accordance with plans, or that closure or post-closure is incomplete. They contended that such administrative determinations must be supported by a written explanation that can then serve as a record for review of the determination.

The Agency agrees that owners or operators should be provided with an explanation of why the Regional Administrator is refusing reimbursements from trust funds or from insurance. The Agency is proposing to require that the Regional Administrator provide a detailed written statement of reasons if he does not instruct the trustee or insurer to make requested reimbursements. This amendment will ensure that the owner or operator and/or other persons obtain an explanation of why the Regional Administrator did not instruct the trustee or insurer to reimburse the owner or operator or other persons for partial or final closure or post-closure expenditures.

The proposed amendment would also clarify reimbursement procedures for partial closure activities. As in the case of final closure, an owner or operator may submit itemized bills for partial closure activities to the Regional Administrator. Before allowing reimbursement for partial closure, however, the Regional Administrator must determine if the activities are in accordance with the approved partial closure plan and funds remaining after reimbursement would be sufficient to complete final closure in accordance with the approved closure plan, as indicated by the cost estimate. Because the cost estimate must be based on the

cost of performing final closure of the facility assuming the maximum extent of its operation, the Regional Administrator must not approve reimbursement for partial closure if the remaining financial assurance would be insufficient to satisfy this condition. This is consistent with the procedures currently applicable to reimbursements for final closure.

If the expenditures can be approved, the Regional Administrator must instruct the trustee or insurer to reimburse those amounts that the Regional Administrator specifies in writing. The proposed amendment retains the 60-day period for the Regional Administrator to instruct the trustee or insurer to reimburse those amounts that the Regional Administrator specifies in writing. This 60-day requirement assures owners and operators the use of these funds within a reasonable period of time, while providing adequate time in which the Regional Administrator can decide whether to approve the reimbursements.

g. *Final Order Required.* (§§ 264.143(b)(4)(ii), 264.145(b)(4)(ii), 265.143(b)(4)(ii), 265.145(b)(4)(ii). The current regulations provide that an owner or operator may satisfy the financial assurance requirements for closure and/or post-closure care by obtaining a financial guarantee surety bond. Sections 264.143(b)(4)(ii), 265.143(b)(4)(ii), 264.145(b)(4)(ii), and 265.145(b)(4)(ii) require that the surety bond guarantee that the owner or operator must fund a standby trust fund in an amount equal to the penal sum of the bond within 15 days after an order to begin closure or post-closure care is issued by the Regional Administrator or by a U.S. district court or other court of competent jurisdiction. The surety becomes liable on the bond when the owner or operator fails to perform as guaranteed by the bond.

Petitioners in the *AISI* litigation argued that expenditures of the funds cannot be compelled by law until the order to begin closure or post-closure care is a *final* order, and that there is no need to transfer money to the standby trust fund until that time. A final order is in general an order that ends the dispute on the merits and leaves nothing but execution of the decision to be done.

The Agency agrees that a *final* administrative order is required. A final administrative order refers to a final EPA determination and is not intended to include possible judicial review process. Therefore, the proposed amendment provides that the surety bond for assurance of closure or post-closure care must guarantee that the standby trust fund will be funded within 15 days after an administrative order to begin closure issued by the Regional Administrator becomes final (including any administrative review but not including possible judicial review), or within 15 days after an order to begin closure is issued by a U.S. district court or other court of competent jurisdiction. The Agency is retaining the requirement that the surety fund the standby trust fund if the owner or operator fails to provide alternative financial assurance upon receiving notice of cancellation of the bond.

h. *Final Determination Required* (§§ 264.143(c)(5) and (d)(8), 264.145(c)(5) and (d)(9), 265.143(c)(8) and (c)(9)). The existing Part 264 regulations provide that an owner or operator may demonstrate financial assurance for closure and/or post-closure care by obtaining a surety bond guaranteeing performance. Under Parts 264 and 265, an owner or operator may satisfy the financial assurance requirements by obtaining a closure letter of credit and/or a post-closure letter of credit. Under the terms of the performance bond and letter of credit, the surety or bank will become liable on the bond or letter or credit obligation when the owner or operator fails to perform closure or post-closure care as guaranteed by the bond or letter of credit.

The current regulations for permitted facilities provide that, after a determination made pursuant to Section 3008 of RCRA that the owner or operator has failed to perform final closure or post-closure care in accordance with the closure or post-closure plan and other permit requirements, under the terms of the bond the surety will perform final closure or post-closure care as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund. Similarly, following a determination pursuant to Section 3008 of RCRA that the owner or operator has failed to perform final closure or post-closure care in accordance with the relevant plan and other permit or interim status requirements, the Regional Administrator may draw on the letter of credit.

For the reasons stated above in connection with the need for a final order, EPA has concluded that a "final" determination under Section 3008 of RCRA is required before the surety must act under the Part 264 regulations or the Regional Administrator may draw on a letter or credit under both the Parts 264 and 265 regulations. The Agency is retaining the provision that the Regional Administrator will draw on the letter of credit if the owner or operator fails to establish alternative financial assurance after receiving notice of cancellation of the letter of credit.

i. *Cost estimates for owners or operators using the financial test or corporate guarantee must include UIC cost estimates for Class I wells* (§§ 264.143 (f)(1)(i) (B) and (D) and (f)(1)(ii) (B) and (D), 264.145 (f)(1)(i) (B) and (D) and (f)(1)(ii) (B)+(D), 265.143 (e)(1)(i) (B) and (D) and (e)(1)(ii) (B) and (D), 265.145(e)(1)(i) (B) and (D), and 265.145(e)(1)(ii) (B) and (D)). The current regulations specify the criteria that must be satisfied if an owner is to use the financial test to demonstrate financial responsibility. To pass this test, the owner or operator must have, among other things, net working capital and tangible net worth each at least six times the sum of the current closure and, if applicable, post-closure cost estimates. For facilities being covered by the financial test for closure and/or post-closure care and liability coverage, the owner or operator must have net working capital and tangible net worth each at least six times the sum of the closure and post-closure cost estimates and annual aggregate liability coverage requirements. The cost estimates include the costs of closing and providing post-closure care, and liability coverage, if applicable, of only those hazardous waste facilities subject to Parts 264 or 265 requirements and being covered by the test. The costs of closing a hazardous waste underground injection facility subject to the requirements of 40 CFR Part 144 *et seq.* are not included. The proposed amendment adds a requirement to include estimates of the plugging and abandonment costs of Class I underground injection control (UIC) facilities, if applicable, when calculating the sum of the closure and post-closure cost estimates for the financial test.

EPA has established in 40 CFR Part 144 financial responsibility requirements for the owners or operators of Class I UIC facilities paralleling those established in 40 CFR Parts 264 and 265, including the same set of criteria for passing the financial test. The cost estimate used for the financial test under Part 144 is the cost of plugging and abandoning the underground injection well as required under 40 CFR Part 146. Under the existing Part 264 or 265 regulations, owners or operators are not required to pass the financial test on the basis of closure and post-closure costs associated with their Part 264 or 265 facilities plus the plugging and abandonment costs of their UIC facilities subject to the financial responsibility regulations under Part 144. Because the net worth and assets

tests are applied to the UIC and RCRA financial tests separately, a firm able to pass the tests individually may not have the financial strength to pass the test if the cost estimates were combined.

Estimates of the costs of plugging and abandoning Class I UICs range from a low of $10,000 to $15,000 per well to a high of $100,000, depending on hydrogeologic factors. Large on-site facilities typically have one to five wells, and commercial off-site facilities typically have one well. Plugging and abandonment costs could therefore reach $500,000, which could considerably increase the size of the cost estimate otherwise used for the RCRA financial test. Because the objective of both regulatory programs is to ensure that funds are available to prevent threats to human health and the environment, it is especially important to ensure that a firm using the financial test and not otherwise demonstrating that funds will be available if needed is financially viable to cover liabilities under both programs. Therefore, the Agency is proposing that the cost estimates prepared as part of the Part 144 requirements be included in the total cost estimate required under 40 CFR Subpart H used to evaluate whether a firm is able to pass the financial test.

Although requiring the financial test criteria to account for the cost estimates associated with RCRA and UIC facilities could force some firms to demonstrate financial assurance by using a more costly financial instrument, the Agency does not expect this proposal to pose a significant burden on the regulated community. There are currently about 100 facilities with Class I wells. The Agency estimates that about 25 to 50 percent of the firms owning these facilities use the financial test to demonstrate financial assurance. Furthermore, data on the current owners of these facilities suggest that they are sufficiently viable to pass the financial test even when the cost of UIC facilities are included. The Agency invities comments on whether this requirement is likely to pose a significant burden on owners and operators of UIC facilities.

j. *Cost estimates must account for all facilities covered by financial test and corporate guarantee* (§§ 264.143(f)(2), 264.145(f)(2), 265.143(e)(2), 265.145(e)(2)). The current regulations specify that the phrase "current closure and post-closure cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§ 264.151(f)). The proposed amendment is a minor change to the regulatory language to include by reference the UIC cost estimates.

k. *Release of the owner or operator from the requirements of financial assurance for closure and post-closure care* (§§ 264.143(i), 264.145(i), 265.143(h), 265.145(h)). Sections 264.143(i) and 265.143(h) require the owner or operator, when closure is completed, to submit certification from himself and from an independent registered professional engineer to the Regional Administrator that closure has been accomplished in accordance with the closure plan. Within 60 days after receiving the certifications, the Regional Administrator is required to notify the owner or operator that he is no longer required to maintain financial assurance for closure of the particular facility unless the Regional Administrator has reason to believe that closure was not in accordance with the closure plan. The Agency is proposing, in order to be consistent with other proposed amendments, to drop the requirement that closure certification must be by an "independent" registered professional engineer.

In addition, the proposed regulation adds the requirement that the Regional Administrator shall provide a detailed written statement of any reasons to believe that closure or post-closure care has not been in accordance with the approved plans. This amendment would ensure that the owner or operator will be provided with necessary information to correct deficiencies in the closure or post-closure process.

l. *Period of liability coverage* (§§ 264.147(e), 265.147(e)). Sections 264.147(e) and 265.147(e) require owners or operators to provide sudden accidental and, if applicable, nonsudden accidental liability coverage until closure of the facility has been certified. Today's proposal clarifies that sudden and nonsudden liability coverage is required until *final* closure of the facility has been certified.

Financial assurance for liability is required on a firm level rather than on a per-facility basis. As a result, the amount of liability coverage required does not vary by the number of hazardous waste management units at the facility. Therefore, the Agency does not consider it appropriate to alter the amount of financial assurance required for sudden or nonsudden accidental liability coverage as a result of partial closures. The Agency is proposing to clarify this intent by specifying in (§§ 264.147(e) and 265.147(e) that an owner or operator must provide coverage continuously as required until the certification of *final* closure has been received by the Regional Administrator.

m. *Wording of instruments* (§ 264.151). Section 264.151 includes the wording of the instruments allowed under §§ 264.143, 264.145, 265.143, and 265.145. Two changes are proposed to ensure consistency with the other amendments in today's proposal.

The first change amends § 264.151(b) to specify that the surety is responsible for funding the standby trust fund under a final order to begin closure. The Agency is also proposing to amend § 264.151(f) by adding an additional paragraph requiring owners or operators using the financial test to list the cost estimates associated with their Class I U1C facilities as required by the Part 144 financial responsibility requirements.

C. Interim Status Standards (Part 265)

1. Waste Pile Closure Requirements Included by Reference in the Closure Performance Standard (§ 265.112(a)(1))

Section 265.112(a)(1) requires the closure plan to include a description of how and when the facility will be partially closed, if applicable, and finally closed. The description must include how the applicable requirements of the process-specific regulations will be met. Today's rule proposes to incorporate these technical standards into the closure performance standard in § 265.111 and to require that the closure plan address procedures for satisfying the standards in § 265.111. The Agency is also proposing to revise § 265.111 to include reference to § 265.258, which establishes closure requirements for waste piles. Closure requirements specific to waste pile facilities had not been promulgated prior to the promulgation of the Subpart G regulations, and thus were not previously referenced.

2. Requirement to Estimate the Expected Year of Closure (§ 265.112(b)(7))

Section 265.112(a)(4) requires that the closure plan include an estimate of the expected year of closure. Today's proposal retains this requirement in § 265.112(b)(7) only for facilities without approved closure plans and for all interim status facilities using trust funds to demonstrate financial assurance if the remaining operating life of the facility is less than twenty years. Petitioners in the *AISI* litigation argued that under Part 264, closure plans have already been approved and thus an estimated year of closure is unnecessary and imposes an unnecessary burden. In the case of interim status facilities, however, many facilities may not have

approved closure plans prior to closure. An estimate of the year of closure is therefore important to allow the Agency the opportunity to conduct facility inspections near the end of the facility's life and ensure that closure will be performed in a manner that will protect human health and the environment.

In addition, for facilities using trust funds, it is important that an estimate of the expected year of closure be included in the closure plan if the remaining operating life is less than twenty years. Although under interim status the closure plan may not be reviewed until final closure (i.e., if there were no partial closures), the owner or operator must accelerate the payments to the trust fund if he reduces the expected operating life of the facility.

For the reasons discussed in Section III.B.1.e., the Agency agrees that for facilities with approved closure plans that do not use trust funds to demonstrate financial assurance for closure or post-closure care (or use trust funds but will remain operating for at least twenty years), an estimated year of closure is unnecessary. The Agency is therefore proposing to revise § 265.112(b) to require an estimate of the expected year of closure only for (1) interim status facilities without approved closure plans and (2) interim status facilities using trust funds to demonstrate financial assurance that will remain open for less than twenty years.

3. Submission of Interim Status Closure and Post-Closure Plans (§§ 265.112(d), 265.118(e))

Sections 265.112(c) and 265.118(c) require owners or operators to submit their closure and post-closure plans 180 days prior to final closure. Similarly, the closure notification requirements apply to final closure. Today's regulatory amendment revises the requirements to make them applicable to certain partial closures.

As discussed above in other sections of this preamble, the Agency is committed to ensuring that partial closures of TSDFs are conducted in a manner that will prevent future threats to human health and the environment. The Agency is particularly concerned that if closure plans are not reviewed and approved prior to partial closures of landfills, surface impoundments, waste piles, and land treatment units, partial closure activities may not be adequate.

As a result of this concern, the Agency is requiring that the closure and post-closure plans applicable to the entire facility be submitted for review and approval 180 days prior to the first partial closure of a landfill, surface impoundment, waste pile, or land treatment unit undertaken after the effective date of these proposed regulations. If no partial closures of such units are undertaken after the effective date of these regulations, then the owner or operator must submit the closure and post-closure plans for approval 180 days prior to final closure. For facilities with only container storage, tank storage or treatment, or incinerators, the closure plan may be submitted 45 days prior to final closure. The owner or operator who closes such a hazardous waste management unit prior to final closure may choose to submit the closure plan for review and approval in order to be reimbursed for the partial closure in accordance with the reimbursement provisions of §§ 265.143 and 265.145. As part of the reimbursement provisions, the Regional Administrator must determine that the expenditures are in accordance with the approved closure plan or otherwise justified.

After the closure plan has been approved, and owner or operator is required to notify the Regional Administrator prior to all closures of landfills, surface impoundments, waste piles, and land treatment units and final closure in accordance with the notification requirements discussed above in Section III.B.1.g. Unless changes are made to the approved closure plan, however, the owner or operator is not required to seek reapproval of the closure plan for each subsequent partial closure or final closure.

The Agency recognizes that reguiring the entire closure plan to be submitted for approval prior to the first partial closure may not be necessary for ensuring protection of human health and the environment and may pose a burden on the Agency to review the entire plan within the specified deadlines. For example, an interim status facility with a landfill may have inadequate monitoring data to evaluate the closure plan. If such a facility wishes to close its storage tanks but the lack of data for the landfill makes it impossible to complete the review process for the entire closure plan within the allotted time, the Regional Administrator should use his discretion and approve that portion of the plan applicable to the partial closure. This will help to minimize the burden on the Agency and owners or operators and retain the incentive to perform partial closures.

4. Written Statement by Regional Administrator of Reasons for Refusing to Approve or Reasons for Modifying Closure or Post-Closure Plan (§§ 265.112(d)(4), 265.118(f))

Sections 265.112(d) and 265.118(d) provide that the Regional Administrator will approve, modify, or disapprove the closure plan and, if applicable, post-closure plan within 90 days of their receipt from the owner or operator. If the Regional Administrator does not approve the plan, the owner or operator must modify the plan or submit a new plan for approval within 60 days. If the Regional Administrator modifies the plan, this modified plan becomes the approved closure and post-closure plan.

Petitioners in the *AISI* litigation argued that this procedure provided undue discretion to the Regional Administrator to disapprove or modify the closure or post-closure plan without sufficient explanation of the reasons underlying the disapproval or modification.

The Agency is proposing today in §§ 265.112(d) and 265.118(f) to require the Regional Administrator to provide a detailed written statement of reasons for refusing to approve or reasons for modifying a closure or post-closure plan within 90 days of its receipt. A written statement submitted to the owner or operator should assist him to modify the plan appropriately.

In addition, the Agency is proposing a minor technical correction to § 265.118 which outlines procedures for approving the post-closure plan. The regulation currently provides that the Regional Administrator *may* in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a closure or, if applicable, post-closure plan. The Agency is proposing to amend § 265.118(f) to provide that the Regional Administrator hold such a hearing to be consistent with the parallel language in Section 265.112(d) applicable to approving the closure plan.

D. Typographical Errors

A number of changes are proposed in Part 265 to correct typographical errors. Most of the errors involve references to other sections of the regulations. The changes are made to §§ 265.118(c), 265.140, 265.147(b), and 265.113.

E. Permitting Standards (Part 270)

1. Contents of Part B : General Requirements (§§ 270.14(b)(15) and (16))

Section 270.14 specifies that the Part B application must include a copy of the

financial assurance mechanism used for closure and post-closure care in accordance with the requirements of §§ 264.143 and 264.145, if applicable. The Agency is proposing to revise this section to make it consistent with other provisions in Part 264 Subpart H.

Sections 264.143 and 264.145 specify that demonstration of financial assurance must be made at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. Because an owner or operator may submit the Part B application more than 60 days prior to the first receipt of hazardous wastes, the Agency is proposing to amend §§ 270.14 (15) and (16) to specify that a copy of the demonstration of financial assurance must be included with the submission of the Part B application or at least 60 days prior to the initial receipt of hazardous wastes, whichever is later.

2. Minor Modifications of Permits (§ 270.41(d))

Section 270.42(d) states that a change in ownership or operational control of a facility may be considered a minor permit modification provided that the Director determines that no other change is necessary in the permit and that a written agreement has been submitted to the Director which specifies the date for transfer or permit responsibility, coverage, and liability between the current and new permittees. The Agency wishes to ensure that facilities are transferred to financially viable firms and thus proposes to require that the new owner must demonstrate compliance with the Subpart H regulations within six months of the transfer of ownership.

3. Changes During Interim Status (§ 270.72(d))

Section 270.72(d) states that when there is a transfer of ownership or operational control, the old owner or operator is responsible for complying with the Subpart H requirements until the new owner or operator demonstrates compliance with the financial responsibility requirements. The Agency is proposing to require that the new owner or operator must demonstrate financial assurance within three months of the transfer of ownership.

The current regulations require the old owner or operator to retain responsibility for demonstrating financial assurance until the new owner or operator does so. No deadlines, however, are imposed on the new owner or operator for taking over the Subpart H obligations. Because the Agency wishes to ensure that any new owner or operator of a TSDF has the financial capabilities to cover the costs of closure and post-closure care, today's proposal would require the new owner or operator to demonstrate compliance with the Subpart H requirements within three months of the transfer of ownership.

III. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA) amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgatd or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirments as State law.

In contrast, under newly enacted Section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

B. Effect on State Authorizations

Today's announcement proposes standards that will not be effective in authorized States since the requirements will not be imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. Thus, the requirements will be applicable only in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

40 CFR 261.21(e)(2) requires that States that have final authorization must revise their programs to include equivalent standards within a year of promulgation of these standards if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)). Once EPA approves the revision, the State requirements become Subtitle C RCRA requirements.

States that submit official applications for final authorization less than 12 months after promulgation of these standards may be approved without including equivalent standards. However, once authorized, a State must revise its program to include equivalent standards within the time period discussed above. The process and schedule for revision of State programs is described in amendments to 40 CFR 271.21 published on May 22, 1984. (See 49 FR 21678).

It should be noted that authorized States are only required to revise their programs when EPA promulgates standards more stringent than the existing standards. Under Section 3009 of RCRA, States are allowed to impose standards which are more stringent than those in the Federal program. Some of the standards proposed today are considered to be less stringent than the existing Federal requirements. Those less stringent provisions appear in Sections: 264.112(a), 264.118(a), 265.112(a), 265.118(a), 264.112(b)(7), 264.112(e), 265.112(e), 264.113, 265.113, 264.115, 265.115, 264.143(a)(10), 264.143(e)(5), 264.145(a)(11), 265.145(e)(5), 265.143(a)(10), 265.143(d)(5), 265.145(a)(11), 265.145(d)(5), 264.143(b)(4)(ii), 264.145(b)(4)(ii), 265.143(b)(4)(ii), 265.145(b)(4)(ii), 264.143(c)(5), 264.143(d)(8), 264.145(c)(5), 264.145(d)(9), 265.143(c)(8), 265.143(c)(9), 265.112(b)(7), 265.112(d), 265.118(e), 265.112(d), and 265.118(f). Authorized States will not be required to revise their programs to adopt requirements equivalent or substantially equivalent to those less stringent standards which may ultimately be promulgated.

IV. Executive Order 12291

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. The regulatory amendments being proposed today to Subparts G and H are not "major rules". Some of the

amendments are technical corrections designed to clarify the intent of the regulations issued January 12, 1981. The changes are not likely to result in a significant increase in costs and thus are not a major rule, no Regulatory Impact Analysis has been prepared.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), Federal agencies must, in developing regulations, analyze their impact on small entities (small businesses, small government jurisdictions, and small organizations). Many of the proposed changes clarify the existing regulations and thus result in no additional costs. For those proposed amendments that will result in an increase in costs, the costs are not significant enough to impact adversely the viability of small entities.

Accordingly, I certify that this proposed regulation will not have a significant impact on a substantial number of small entities.

VII. Supporting Documents

A background was prepared for the Subpart G closure and post-closure care regulations and for the financial assurance regulations promulgated January 12, 1981. In addition, background documents were prepared for the financial assurance regulations published on April 7, 1982. Supporting materials discussing the most significant issues raised by the amendments proposed today have been prepared and are included in the docket for these regulations.

The supporting materials are available for review in the EPA headquarters library, Room 2404 Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460.

EPA will prepare guidance manuals to assist owners or operators and regulatory officials and will make them available from EPA Headquarters and the Regional Offices.

Dated: March 8, 1985.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal regulations is proposed to be amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

40 CFR Part 260 is amended as follows:

Authority: Sections 1006, 2002(a), 3001 through 3007, 3010, 3014, 3015, 3017, 3018, and 3019 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938 and 6939).

Subpart B—Definitions

§ 260.10 [Amended]

1. In 40 CFR Part 260 Subpart B, § 260.10 is amended by adding the following terms alphabetically to the existing list of terms:

"Active life of the facility" means the period from the initial receipt of hazardous waste at the facility until the Regional Administrator receives certification of final closure. "Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Parts 264 and 265 of this chapter are no longer conducted at the facility unless subject to the provisions in § 264.34.

"Hazardous waste management unit" means the smallest area of land on or in which hazardous waste is placed, or the smallest structure on or in which hazardous waste is placed, that isolates hazardous waste within a facility. Examples of hazardous waste management units include a tank system, a surface impoundment, a waste pile, a land treatment unit, a landfill cell, an incinerator and container areas. Containers alone do not constitute units; the unit includes the container and the land or pad upon which they are placed. Closure of a hazardous waste management unit is a partial closure. "Partial closure" means the closure of a hazardous waste management unit at a facility that contains other active hazardous waste management units in accordance with the applicable closure requirements of Parts 264 and 265 of this chapter. For example, partial closure may include the closure of a tank system, landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

40 CFR Part 264 is amended as follows:

Authority: Sections 1006, 2002(a), 3004 and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended.

Subpart G—Closure and Post-Closure

1. In 40 CFR Part 264 Subpart G, §§ 264.110–264.120 are revised to read as follows:

§ 264.110 Applicability.

Except as § 264.1 provides otherwise:

(a) Sections 264.111–264.115 (which concern closure) apply to the owners and operators of all hazardous waste management facilities; and

(b) Sections 264.117–264.120 (which concern post-closure care) apply to the owners and operators of:

(1) All hazardous waste disposal facilities; and

(2) Piles and surface impoundments from which the owner or operator intends to remove the wastes at closure to the extent that these sections are made applicable to such facilities in §§ 264.228 or 264.258.

§ 264.111 Closure performance standard.

The owner or operator must close the facility in a manner that:

(a) Minimizes the need for further maintenance, and

(b) Controls, minimizes or eliminates, to the extent necessary to prevent threats to human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere; and

(c) Complies with the closure requirements of this subpart including, but not limited to, the requirements of §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310 and 264.351.

§ 264.112 Closure plan; amendment of plan.

(a) *Written plan.* The owner or operator of a hazardous waste management facility must have a written closure plan. The plan must be submitted with the permit application, in accordance with § 270.14(b)(13) of this chapter, and approved by the Regional Administrator as part of the permit issuance proceeding under Part 124 of this chapter. In accordance with § 270.32 of this chapter, the approved closure plan will become a condition of any RCRA permit. The Regional Administrator's decision must assure that the approved closure plan is consistent with §§ 264.111–264.115 and the applicable requirements of §§ 264.90 *et seq.*, 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, and 264.351. Until final closure is completed and certified in accordance with § 264.115, a copy of the approved plan must be furnished to the

Regional Administrator upon request, including request by mail, and must also be provided during site inspections, on the day of inspection, to any officer, employee or representative of the Agency who is duly designated by the Administrator..

(b) *Content of plan.* The plan must identify steps necessary to perform partial and/or final closure of the facility at any point during its active live. The closure plan must include, at least:

(1) A description of how each hazardous waste management unit at the facility will be closed in accordance with § 264.111; and

(2) A description of how final closure of the facility will be conducted in accordance with § 264.111. The description must identify the maximum extent of the operations which will be unclosed during the active life of the facility; and

(3) An estimate of the maximum inventory of hazardous wastes ever on-site over the active life of the facility, and a detailed description of the methods to be used during partial closures and final closure, including, but not limited to, methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and the type(s) of off-site hazardous waste management units to be used, if applicable; and

(4) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure, including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standards; and

(5) A detailed description of other activities necessary during the closure period to insure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, ground-water monitoring, leachate collection, and run-on and run-off control; and

(6) A schedule for closure of each hazardous waste management until and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure. (For example, in the case of a landfill unit, estimates of the time required to treat and dispose of all hazardous waste inventory and of the time required to place a final cover must be included.)

(7) For facilities that use trust funds to establish financial assurance under §§ 264.143 or 264.145 and that are expected to close prior to permit expiration, the closure plan must include an estimate of the expected year of final closure.

(c) *Amendment of plan.* The owner of operator must request a permit modification to authorize a change in operating plans, facility design, or the approved closure plan in accordance with the procedures in Parts 124 and 270.

(1) The owner or operator may submit a written request to the Regional Administrator to modify the closure plan at any time prior to the notification of partial or final closure or the facility.

(2) The owner or operator must submit a written request for a permit modification to amend the approved closure plan whenever:

(i) Changes in operating plans or facility design affect the closure plan, or

(ii) There is a change in the expected year of closure, if applicable, or

(iii) In conducting partial or final closure activities, unexpected occurrences require a modification of the approved closure plan.

(3) The owner or operator must submit a written request for a permit modification within 60 days prior to the proposed change in facility design or operation, or within 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must request a permit modification within 30 days of the unexpected event.

(d) *Notification of closure.* (1) The owner or operator must notify the Regional Administrator in writing at least 60 days prior to the date on which he expects to begin closure of a surface impoundment, waste pile, land treatment or landfill unit, or final closure of a facility with such a unit. The owner or operator must notify the Regional Administrator in writing at least 45 days prior to the date on which he expects to begin final closure of a facility with only treatment or storage tanks, container storage, or incinerator units to be closed.

(2) The date when he "expects to begin closure" must be either within 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a tank or container storage facility can demonstrate to the Regional Administrator that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the Regional Administrator may approve an extension to this one-year limit.

(3) If the facility's permit is terminated, or if the facility is otherwise ordered, by judicial decree or final order under section 3008 of RCRA, to cease receiving hazardous wastes or to close, then the requirements of this paragraph do not apply. However, the owner or operator must close the facility in accordance with the deadlines established in § 264.113.

(e) Nothing in this section shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

§ 264.113 Closure; time allowed for closure.

(a) Within 90 days after receiving the final volume of hazardous wastes at a hazardous waste management unit or facility, the owner or operator must treat, remove from the site, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Regional Administrator may approve an extension of up to one year (or, upon reapplication, approve an additional one-year period) if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

(1)(i) The activities required to comply with this paragraph will, of necessity, take longer than 90 days to complete; or

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes; and

(B) There is a reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

(C) Closure of the Hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(2) He has taken and will continue to take all steps to prevent threats to

human health and the environment, including compliance with all applicable permit requirements.

(b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes at the hazardous waste management unit or facility. The Regional Administrator may approve an extension to the closure period of up to one year (or, upon reapplication, approve an additional one-year period) if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

(1)(i) The partial or final closure activities will, of necessary, take longer than 180 days to complete; or

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes; and

(B) There is reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

(C) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(2) He has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including compliance with all applicable permit requirements.

(c) The demonstrations referred to above must be made (1) at least 30 days prior to the expiration of the 90-day period in paragraph (a) of this section or the 180-day period in paragraph (b) of this section, or (2) within 90 days after the effective date of this regulation, whichever is later.

§ 264.114 Disposal or decontamination of equipment, structures and soils.

During the partial and final closure periods, all contaminated equipment, structures and soils must be properly disposed of, or decontaminated unless otherwise specified in §§ 266.228, 264.258, 264.280, or 264.310. By removing all hazardous wastes and hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that waste in accordance with all applicable requirements of Part 262 of this chapter.

§ 264.115 Certification of closure.

Within 45 days after completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 30 days of the completion of final closure, the owner or operator must submit to the Regional Administrator, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by a registered professional engineer. Documentation supporting the registered professional engineer's certification must be furnished to the Regional Administrator upon request.

§ 264.116 Survey plat.

No later than the submission of the certification of closure of each hazardous waste disposal management unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Regional Administrator, a survey plat indicating the location and dimensions of landfill cells or other hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use, must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal management unit in accordance with the applicable Subpart G regulations.

§ 264.117 Post-closure care and use of property.

(a)(1) Post-closure care for each hazardous waste management unit subject to the requirements of §§ 264.117–.120 must continue for 30 years after the date that the hazardous waste management unit was closed, and must consist of at least the following:

(i) Monitoring and reporting in accordance with the requirements of Subparts F, K, L, M, and N of this Part; and

(ii) Maintenance and monitoring of waste containment systems in accordance with the requirements of Subparts F, K, L, M, and N of this part.

(2) During the 60-day period preceding partial closure of a hazardous waste management unit subject to post-closure care requirements or final closure, or any time during the post-closure period for a particular unit, the Regional Administrator may, in accordance with the permit modification procedures in § 270.41:

(i) Shorten the post-closure care period applicable to the hazardous waste management unit, or facility, if all disposal units have been closed, if he finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or ground-water monitoring results, characteristics of the hazardous wastes, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure), or

(ii) Extend the post-closure care period applicable to the hazardous waste management unit or facility if he finds that the extended period is necessary to protect human health and the environment (e.g., leachate or ground-water monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(b) The Regional Administrator may require, at partial and final closure, continuation of any of the security requirements of § 264.14 during part or all of the post-closure period when:

(1) Hazardous wastes may remain exposed after completion of partial or final closure; or

(2) Access by the public or domestic livestock may pose a hazard to human health.

(c) Post-closure use of property on or in which hazardous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the facility's monitoring system, unless the Regional Administrator finds that the disturbance:

(1) Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(2) Is necessary to reduce a threat to human health or the environment.

(d) All post-closure care activities must be in accordance with the provisions of the approved post-closure plan as specified in § 264.118.

§ 264.118 Post-closure plan; amendment of plan.

(a) The owner or operator of a hazardous waste disposal management unit must have a written post-closure plan. In addition, certain surface impoundments and waste piles from which the owner or operator intends to remove or decontaminate the hazardous wastes at partial or final closure are required by §§ 264.228(c)(1)(ii)and

264.258(c)(1)(ii) to have post-closure plans. The plan must be submitted with a permit application, in accordance with § 270.14(b)(13) of this chapter, and approved by the Regional Administrator as part of the permit issuance proceeding under Part 124 of this chapter. In accordance with § 270.32 of this chapter, the approved post-closure plan will become a condition of any permit issued.

(b) Owners or operators of storage surface impoundments and waste piles not otherwise required to prepare contingent post-closure plans under §§ 264.228(c)(1)(ii) and 264.258(c)(1)(ii) must submit a post-closure plan to the Regional Administrator within 90 days from the date that the owner or operator or Regional Administrator determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of §§ 264.117–.120. The post-closure plan must be submitted with a post-closure permit application in acordance with the requirements of § 270.14 of this chapter, and approved by the Regional Administrator as part of the permit issuance proceeding under Part 124 of this chapter. In accordance with § 270.32 of this chapter, the approved post-closure plan will become a permit condition.

(c) For each hazardous waste management unit subject to the requirements of this section, the post-closure plan must idenfity the activities that will be carried on after closure and the frequency of these activities, and include at least:

(1) A description of the planned monitoring activities and frequencies at which they will be performed to comply with Subparts F, K, L, M, and N of this part during the post-closure care period; and

(2) A description of the planned maintenance activities, and frequencies at which they will be performed, to ensure:

(i) The integrity of the cap and final cover or other containment systems in accordance with the requirements of Subparts K, L, M, and N of this Part; and

(ii) The function of the monitoring equipment in accordance with the requirements of Subparts, F, K, L, M, and N of this Part; and

(3) The name, address, and phone number of the person or office to contact about the hazardous waste management unit or facility during the post-closure care period.

(d) Until final closure of the facility, a copy of the approved post-closure plan must be furnished to the Regional Administrator upon request, including request by mail, and must also be provided during site inspections, on the day of inspection, to any officer, employee or representative of the Agency who is duly designated by the Administrator. After final closure has been certified, the person of office specified in § 264.118(d)(3) must keep the approved post-closure plan during the reminder of the post-closure period.

(e) An owner or operator that seeks to change the approved post-closure plan must request a permit modification in accordance with the applicable requirements of Part 270.

(1) The owner or operator may submit a request to the Regional Administrator to modify the post-closure plan at any time during the active life of the facility or during the post-closure care period.

(2) The owner or operator must request a permit modification to authorize a change in the approved post-closure plan whenever:

(i) Changes in operating plans or facility design affect the approved post-closure plan, or

(ii) There is a change in the expected year of final closure, if applicable, or

(iii) Events which occur during the active life of the facility, including partial and final closures, affect the approved post-closure plan.

(3) The owner or operator must submit a written request for a permit modification within 60 days prior to the proposed change in facility design or operation, or within 60 days after an unexpected event has occurred which has affected the post-closure plan.

§ 264.119 Post-closure notices.

(a) Within 60 days after closure of each hazardous waste disposal management unit is completed, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Regional Administrator a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator must identify the type, location, and quantity of the hazardous wastes to the best of his knowledge and in accordance with any records he has kept.

(b) Within 60 days after closure of each hazardous waste disposal management unit is completed, the owner or operator must:

(1) Record, in accordance with State law, a notation on the deed to the facility property—or on some other instrument which is normally examined during title search—that will in perpetuity notify any potential purchaser of the property that:

(i) The land has been used to manage hazardous wastes; and

(ii) Its use is restricted under 40 CFR Subpart G regulations; and

(iii) The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by § 264.116 and § 264.119(a) have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Regional Administrator; and

(2) Submit a certification, including a copy of the document in which the notation has been placed, to the Regional Administrator that he has recorded the notation specified in paragraph (b)(i) of this section.

(c) If the owner or operator or any subsequent owner or operator of the land upon which a hazardous waste disposal management unit is located wishes to remove the hazardous wastes and hazardous waste residues, the liner, if any, and all contaminated soils, he must request a modification to the post-closure permit in accordance with the applicable requirements in Part 270. The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of § 264.117(c). By removing hazardous waste, the owner or operator may become a generator of hazardous waste and must manage it in accordance with all applicable requirements of this Chapter. If he is granted a permit modification or otherwise granted approval to conduct such removal activities, he may request that the Regional Administrator approve either:

(1) The removal of the notation on the deed to the facility property or other instrument normally examined during title search, or

(2) The addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

§ 264.120 Certification of completion of post-closure care.

Within 30 days after completion of the established post-closure care period for each hazardous waste disposal management unit, the owner or operator must submit to the Regional Administrator a certification that the post-closure care for the disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator.

Subpart H—Financial Requirements

40 CFR Part 264, Subpart H, is amended as follows:

§ 264.141 [Amended]

1. In § 264.141, the following term is to be added to the end of the section:

"Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with §144.62 (a), (b), and (c) of this title.

2. In § 264.142, paragraphs (a), (b) introductory text and (c) are revised to read as follows:

§ 264.142 Cost estimate for closure.

(a) The owner or operator must have a written estimate, in the current dollars, of the cost of closing the facility in accordance with the requirements in §§ 264.111–264.115 and applicable closure requirements of §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, and 264.351.

(1) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see § 264.112(a)); and

(2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the maximum extent of operation ever open over the life of the facility.

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(b) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 264.143. For owners or operators using the financial test, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Regional Administrator as specified in § 264.143(f)(3). The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its *Survey of Current Business*, as specified in paragraphs (b)(1) and (b)(2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

* * * * *

(c) The owner or operator must revise the closure cost estimate within 30 days after the Regional Administrator has approved the request to modify the closure plan, if the change in the closure plan affects the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in § 264.142(b).

* * * * *

3. In § 264.143, paragraphs (a)(10), (b)(4)(ii), (c)(5), (d)(8), (e)(5), (f)(1)i)(B), (f)(1)(i)(D), (f)(1)(ii)(B), (f)(1)(ii)(D), (f)(2), and (i) are revised to read as follows:

§ 264.143 Financial assurance for closure.

* * * * *

(a) *Closure Trust fund.* * * *

(10) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursement for partial or final closure expenditures by submitted itemized bills to the Regional Administrator. The owner or operator may request reimbursements for partial closure only if the partial closure reduces the maximum extent of operation of the facility. Within 60 days after receiving bills for partial or final closure activities, the Regional Administrator will instruct the trustee to make reimbursement in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the closure expenditures are in accordance with the closure plan, or otherwise justified. If the Regional Administrator does not instruct the trustee to make such reimbursements, he will provide the owner or operator with a detailed written statement or reasons. If the Regional Administrator has reason to believe that the cost of closure will be significantly greater than the value of the trust fund, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with § 264.143(i) that the owner or operator is no longer required to maintain financial assurance for final closure of the facility.

* * * * *

(b) *Surety bond guaranteeing payment into a closure trust fund.* * * *

(4) * * *

(ii) Fund the standby trust fund in amount equal to the panel sum within 15 days after an administrative order to begin final closure issued by the Regional Administrator becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

* * * * *

(c) *Surety bond guaranteeing performance of closure.* * * *

(5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final determination pursuant to Section 3008 of RCRA that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, under the terms of the bond the surety will perform final closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.

* * * * *

(d) *Closure letter of credit.* * * *

(8) Following a final determination pursuant to Section 3008 of RCRA that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, the Regional Administrator may draw on the letter of credit.

* * * * *

(e) *Closure insurance.* * * *

(5) After beginning partial or fianl closure, an owner or operator or any other person authorized to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the Regional Administrator. The owner or operator may request reimbursements for partial closure only if the partial closure reduces the maximum extent of operation of the facility. Within 60 days after receiving bills for closure activities, the Regional Administrator will determine whether the partial or final closure expenditures are in accordance with the closure plan or otherwise justified, and if so, he will instruct the insurer to make reimbursements in such amounts as the Regional Administrator specifies in writing. If the Regional Administrator has reason to believe that the cost of final closure will be significantly greater than the face amount of the policy, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with § 264.143(i), that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Regional Administrator does not instruct the insurer to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

* * * * *

(f) *Financial test and corporate guarantee for closure.* (1) * * * (i) * * *

(B) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current

plugging and abandonment cost estimates; and

* * * * *

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(ii) * * *

(B) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

* * * * *

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and post-closure cost estimates" as used in paragraph (f)(l) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§ 264.151(f)). The phrase "current plugging and abandonment cost estimates" as used in paragraph (f)(l) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§ 144.70(f) of this title).

* * * * *

(i) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and a registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Regional Administrator has reason to believe that final closure has not been in accordance with the approved closure plan. The Regional Administrator shall provide a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

4. In § 264.144, paragraphs (a), (b) introductory text, and (c) are revised to read as follows:

§ 264.144 Cost estimate for post-closure care.

(a) The owner or operator of a disposal surface impoundment, land treatment, or landfill unit, or of a storage surface impoundment or waste pile required under §§ 264.228 and 264.258 to prepare a contingent closure and post-closure plan, must have a written estimate, in current dollars, of the annual cost of post-closure minitoring and maintenance of the facility in accordance with the applicable post-closure regulations in §§ 264.117–264.120, 264.228, 264.258, 264.280, and 264.310.

(1) The post-closure estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities.

(2) The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under Subpart G of Part 264.

(b) During the active life of the facility, the owner or operator must adjust the post-closure cost estimate for inflation 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 264.145. For owners or operators using the financial test, the post-closure care cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before the submission of updated information to the Regional Administrator as specified in § 264.145(f)(5). The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its *Survey of Current Business* as specified in § 264.145(b)(1) and (b)(2). The inflation factor is the result of dividing the latest published Deflator by the Deflator for the previous year.

* * * * *

(c) During the active life of the facility, the owner or operator must revise the post-closure cost estimate within 30 days after the Regional Administrator has approved the request to modify the post-closure plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in § 264.144(b).

* * * * *

5. In § 264.145 the introductory text, paragraphs (a)(11), (b)(4)(ii), (c)(5), (d)(9), (e)(5), (f)(1)(i)(B), (f)(1)(i)(D), (f)(1)(ii)(B), (f)(1)(ii)(D), (f)(2), and (i) are revised to read as follows:

§ 264.145 Financial assurance for post-closure care.

The owner or operator of a hazardous waste management unit subject to the requirements of § 264.144 must establish financial assurance for post-closure care in accordance with the approved post-closure plan for the facility 60 days prior to the initial receipt of hazardous waste or the effective date of the regulation, whichever is later.

(a) *Post-closure trust fund.* * * *

(11) An owner or operator or any other person authorized to conduct post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the Regional Administrator. Within 60 days after receiving bills for post-closure activities, the Regional Administrator will instruct the trustee to make reimbursement in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the post-closure expenditures are in accordance with the post-closure plan or otherwise justified. If the Regional Administrator does not instruct the trustee to make such reimbursements, he will provide the owner or operator with a detailed written statement of reason.

* * * * *

(b) *Surety bond guaranteeing payment into a post-closure trust fund.* * * *

(4) * * *

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Regional Administrator becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

* * * * *

(c) *Surety bond guaranteeing performance of post-closure care.* * * *

(5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final determination pursuant to Section 3008 of RCRA that the owner or operator has failed to perform post-closure care in accordance with the post-closure plan and other permit requirements, under the terms of the bond the surety will perform post-closure care in accordance with the post-closure plan and other permit requirements or will deposit the amount of the penal sum into the standby trust fund.

* * * * *

(d) *Post-closure letter of credit.* * * *

(9) Following a final determination pursuant to Section 3008 of RCRA that the owner or operator has failed to perform post-closure care in accordance with the post-closure plan and other permit requirements, the Regional

Administrator may draw on the letter of credit.

* * * * *

(e) *Post-Closure Insurance.* * * *

(5) An owner or operator or any other person authorized to conduct post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the Regional Administrator. Within 60 days after receiving bills for post-closure activities, the Regional Administrator will instruct the insurer to make reimbursement in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the post-closure expenditures are in accordance with the post-closure plan or otherwise justified. If the Regional Administrator does not instruct the insurer to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

* * * * *

(f) *Financial test and corporate guarantee for post-closure care.* (1)

* * *

(i) * * *

(B) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

* * * * *

(D) Assets in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(ii) * * *

(B) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

* * * * *

(D) Assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and post-closure cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§§ 264.151(f)). The phrase "current plugging and abandonment cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§§ 144.70(f) of this title).

* * * * *

(i) *Release of the owner or operator from the requirements of this section.* When an owner or operator has completed, to the satisfaction of the Regional Administrator, all post-closure care requirements for the period of post-closure specified in the permit for the facility, the Regional Administrator will, at the request of the owner or operator, notify him in writing that he is no longer required by this section to maintain financial assurance for post-closure care of the facility. If the Regional Administrator does not provide such notification, he will provide the owner or operator with a detailed written statement of his reasons.

6. In § 264.147, paragraph (e) is revised to read as follows:

§ 264.147 Liability Requirements.

* * * * *

(e) *Period of coverage.* An owner or operator must continuously provide liability coverage for a facility as required by this section until certifications of final closure of the facility, as specified in § 264.115, are received by the Regional Administrator.

* * * * *

7. In § 264.151 paragraph (b) is revised and paragraph (f)(5) is added to read as follows:

§ 264.151 Wording of the instruments.

* * * * *

(b) A surety bond guaranteeing payment into a trust fund, as specified in § 264.143(b) or § 264.145(b) or § 265.145(b) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Financial Guarantee Bond

Date bond executed:

Effective date:

Principal: [legal name and business address of owner or operator] Type of Organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: _____

Surety(ies): [name(s) and business address(es)]

EPA Identification Number, name, address and closure and/or post-closure amount(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]: _____

Total penal sum of bond: $_____ _____

Surety's bond number: _____ _____

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the U.S. Environmental Protection Agency (hereinafter called EPA), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount ofthe penal sum.

Whereas said Principal is required, under the Resource Conservation and Recovery Act as amended (RCRA), to have a permit or interim status in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit or interim status, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin closure is issued by an EPA Regional Administrator or a U.S. district court or other court of competent jurisdiction,

* * * * *

(f) * * *

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under Part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility:

PART 265—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

40 CFR Part 265 is amended as follows:

Authority: Sections 1006, 2002(a), 3004 and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended.

Subpart G—Closure and Post-Closure

1. In 40 CFR Part 265 Subpart G, §§ 265.110—265.119 are revised as follows:

§ 265.110 Applicability.

Except as § 265.1 provides otherwise:

(a) Sections 265.111–265.115 (which concern closure) apply to the owners and operators of all hazardous waste management facilities; and

(b) Sections 265.117–265.120 (which concern post-closure care apply to the owners and operators of:

(1) All hazardous waste disposal facilities; and

(2) Piles and surface impoundments for which the owner or operator intends to remove the wastes at closure to the extent that these sections are made applicable to such facilities in §§ 265.228 or 265.258.

§ 265.111 Closure performance standard.

The owner or operator must close the facility in a manner that:

(a) Minimizes the need for further maintenance, and

(b) Controls, minimizes or eliminates, to the extent necessary to prevent threats to human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off or hazardous waste decomposition products to the ground or surface waters or to the atmosphere; and

(c) Complies with the closure requirements of this Subpart including, but not limited to, the requirements of §§ 265.178, 265.197, 265.228, 265.258, 265.280, 265.310 and 265.351.

§265.112 Closure plan; amendment of plan.

(a) *Written plan.* By May 19, 1981, the owner or operator of a hazardous waste management facility must have a written closure plan. Until final closure is completed and certified in accordance with § 265.115, a copy of the most current closure plan must be furnished to the Regional Administrator upon request, including request by mail, and must also be provided during site inspections, on the day of inspection, to any officer, employee or representative of the Agency who is duly designated by the Administrator.

(b) *Content of plan.* The plan must identify steps necessary to perform partial and/or final closure of the facility at any point during its active life. The closure plan must include, at least:

(1) A description of how each hazardous waste management unit at the facility will be closed in accordance with § 265.111; and

(2) A description of how final closure of the facility will be conducted in accordance with § 265.111. The description must identify the maximum extent of the operation which will be unclosed during the active life of the facility; and

(3) An estimate of the maximum inventory of hazardous wastes ever on-site over the active life of the facility and a description of the methods to be used during partial and final closure, including, but not limited to methods for removing, transporting, treating, storing or disposal of all hazardous waste, and the type(s) of offsite hazardous waste management unit(s) to be used, if applicable; and

(4) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to satisfy the closure performance standard; and

(5) A detailed description of other activities necessary during the closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, ground-water monitoring, leachate collection, and run-on and run-off control; and

(6) A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure. (For example, in the case of a landfill unit, estimates of the time required to treat and dispose of all hazardous waste inventory and of the time required to place a final cover must be included.); and

(7) An estimate of the expected year of final closure for facilities that use trust funds to demonstrate financial assurance under §§265.143 or 265.145 and whose remaining operating life is less than twenty years, and for facilities without approved closure plans.

(c) *Amendment of plan.* The owner or operator may amend the closure plan at any time prior to the notification of partial or final closure of the facility. The owner or operator must amend the closure plan whenever:

(1) Changes in operating plans or facility design affect the closure plan, or

(2) There is a change in the expected year of closure, if applicable, or

(3) In conducting partial or final closure activities, unexpected occurrences require a modification of the closure plan.

(4) The owner or operator must amend the closure plan within 60 days prior to the proposed change in facility design or operation, or within 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must amend the closure plan within 30 days of the unexpected event.

(5) An owner or operator with an approved closure plan must submit a request to modify the closure plan in accordance with the deadlines in §265.112(c)(4) to authorize such a change. The Regional Administrator may, at this discretion, provide public notice and comment and/or hold a public hearing.

(d) *Notification of closure.* (1) The owner or operator must submit the closure plan to the Regional Administrator at least 180 days prior to the date on which he expects to begin closure of the first surface impoundment, waste pile, land treatment, o ndfill unit, or final closure if it involves such a unit, whichever is earlier. The owner or operator must submit the closure plan to the Regional Administrator at least 45 days prior to the date on which he expects to begin final closure of a facility with only tanks, container storage, or incinerator units. Owners or operators with approved closure plans must notify the Regional Administrator in writing at least 60 days prior to the date on which he expects to begin closure of a surface impoundment, waste pile, landfill, or land treatment unit, or final closure of a facility involving such a unit.

(2) The date when he "expects to begin closure" must be either within 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a tank or container storage facility can demonstrate to the Regional Administrator that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all interim status requirements, the Regional Administrator may approve an extension to this one-year limit.

(3) The owner or operator must submit his closure plan to the Regional Administrator no later than 15 days after:

(i) Termination of interim status except when a permit is issued simultaneously with termination of interim status; or

(ii) Issuance of a judicial decree or final orders under Section 3008 of RCRA to cease receiving wastes or close.

(4) The Regional Administrator will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications to the plan within 30 days of the date of the notice. He will also in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a closure plan. The Regional Administrator will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Regional Administrator will approve, modify, or disapprove the plan within 90 days of its receipt. If the Regional Administrator does not approve the plan, he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The Regional Administrator will approve or modify this plan in writing within 60 days. If the Regional Administrator modifies the plan, this modified plan becomes the approved closure plan. The Regional Administrator must assure that the approved plan is consistent with §§ 265.111, 265.113, 265.114, and 265.115 and the applicable requirements of §§ 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, and 265.404. A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

(e) Nothing in this section shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

§ 265.113 Closure; time allowed for closure.

(a) Within 90 days after receiving the final volume of hazardous wastes at a hazardous waste management unit or facility, the owner or operator must treat, remove from the site, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Regional Administrator may approve an extension of up to one year (or, upon reapplication, approve an additional one-year period) using the procedures of § 265.112(d) if the owner or operator demonstrates that:

(1)(i) The activities required to comply with this paragraph will, of necessity, take longer than 90 days to complete; or

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes; and

(B) There is reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

(C) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(2) He has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements.

(b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes at the hazardous waste management unit or facility, or 90 days after approval of the closure plan, if that is later. The Regional Administrator may approve an extension to the closure period of up to one year (or, upon reapplication, approve an additional one-year period) using the procedures under § 265.112(d) if the owner or operator demonstrates that:

(1)(i) The partial or final closure activities will, of necessity, take longer than 180 days to complete; or

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes; and

(B) There is reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

(C) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(2) He has taken and will continue to take all steps to prevent threats to human health and the environment from the enclosed but not operating hazardous waste management unit or facility, including compliance with all applicable interim status requirements.

(c) The demonstrations referred to above must be made (1) at least 30 days prior to the expiration of the 90-day period in paragraph (a) of this section or the 180-day period in paragraph (b) of this section, or (2) within 90 days after the effective date of this regulation, whichever is later.

§265.114 Disposal or decontamination of equipment, structures and soils.

During the partial and final closure periods, all contaminated equipment, structures and soils must be properly disposed of, or decontaminated unless specified otherwise in §§ 265.228, 265.258, 265.280, or 265.310. By removing all hazardous wastes and hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that waste in accordance with all applicable requirements of Part 262 of this chapter.

§265.115 Certification of closure.

Within 45 days after completion of closure of each surface impoundment, waste pile, land treatment, and landfill hazardous waste management unit, and within 30 days after completion of final closure, the owner or operator must submit to the Regional Administrator, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by a registered professional engineer. Documentation supporting the registered professional engineer's certification must be furnished to the Regional Administrator upon request.

§ 265.116 Survey plat.

No later than the submission of the certification of closure of each hazardous waste disposal management unit, an owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Regional Administrator, a survey plat indicating the location and dimensions of landfill cells or other hazardous wate disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal management unit in

accordance with the applicable Subpart G regulations.

§ 265.117 Post-closure care and use of property.

(a) (1) Post-closure care of each hazardous waste management unit subject to the requirements of §§ 265.117–265.120 must continue for 30 years after the date that the hazardous waste management unit was closed, and must consist of at least the following:

(i) Monitoring and reporting in accordance with the requirements of Subparts F, K, L, M, and N of this part; and

(ii) Maintenance and monitoring of waste containment systems in accordance with the requirements of Subparts F, K, L, M, and N of this part.

(2) During the 180-day period preceding closure of a hazardous waste management unit subject to post-closure care requirements or final closure, or during the post-closure period applicable to the hazardous waste management unit, the Regional Administrator may:

(i) Shorten the post-closure care period applicable to the hazardous waste management unit, or facility, if all disposal units have been closed, if he finds that the reduced period is sufficient to proterct human health and the environment (e.g., leachate or ground-water monitoring results, characteristics of the hazardous waste, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure), or

(ii) Extend the post-closure care period applicable to the hazardous waste management unit or facility, if he finds that the extended period is necessary to protect human health and the environment (e.g., leachate or ground-water monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(b) The Regional Administrator may require, at partial and final closure, continuation of any of the security requirements of § 265.14 during part or all of the post-closure period when:

(1) Hazardous wastes may remain exposed after completion of partial or final closure; or

(2) Access by the public or domestic livestock may pose a hazard to huan health.

(c) Post-closure use of property on or in which hazardous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the facility's monitoring systems, unless the Regional Administrator finds that the disturbance:

(1) Is necessary to the proposed use of the property and will not increase the potential hazard to human health or the environment; or

(2) Is necessary to reduce a threat to human health or the environement.

(d) All post-closure care activities must be in acordance with the provisions of the approved post-clousre plan as specified in § 265.118.

§ 265.118 Post-closure plan; amendment of plan.

(a) By May 19, 1981, the owner or operator of a hazardous waste disposal management unit must have a written post-closurue plan. In addition, certain surface impoundments and waste piles from which the owner or operator intends to remove or decontainmenate the hazardous wastes at partial or final closure are required by §§ 264.228(c)(1)(ii) and 264.258(c)(1)(ii) to have post-closure plans. An owner or operator of a storage surface impoundment or waste pile not otherwise required to prepare a contingent post-closure plan under §§ 264.228(c)(1)(ii) and 265.58(c)(1)(ii) must submit a post-closure plan to the Regional Administrator within 90 days of the date that the owner or operator or Regional Administrator determines that the hazardous waste management unit or facility must be closed as a landfill, subject to the requirments of §§ 265.117–265.120.

(b) Until final closure of the facility, a copy of the most current post-closure plan must be furnished to the Regional Administrator upon request, including request by mail, and must also be provided during site inspsections, on the day of inspection, to any officer, employee or representative of the agency who is duly designated by the Administrator. After final closure has been certified, the person or office spescified in § 265.118(d)(3) must keep the approved post-closure plan during the post-closure period.

(c) For each hazardous waste management unit subject to the requirements of this section, the post-closure plan must identify the activities that will be carried on after closure of each disposal unit and the frequency of these activities, and include at least:

(1) A description of the planned monitoring activites and frequencies at which they will be performed to comply with Subparts F, K, L, M, and N of this part during the post-closure care period; and

(2) A description of the planned maintenance activities, and frequencies at which they will be performed, to ensure:

(i) The integrity of the cap and final cover or other containment systems in accordance with the requirements of Subparts K, L, M, and N of this part; and

(ii) The function of the monitoring equipment in accordance with the requirements of Subparts F, K, L, M, and N of this part; and

(3) The name, address, and phone number of the person of office to contact about the disposl facility during the post-closure care period.

(d) The owner or operator may amend the post-closure plan any time during the active life of the facility or during the post-closure care period. The owner or operator must amend the post-closure plan whenever:

(1) Changes in operating plans or facility design affect the approved post-closure plan, or

(2) Events which occur during the active life of the facility including partial and final closures, affect the approved post-closure plan.

(3) The owner or operator must amend the post-closure plan 60 days prior to the proposed change in facility design or operation, or within 60 days after an unexpected event has occurred which has affected the post-closure plan.

(e) The owner or operator of a facility with hazardous waste management units subject to these requirements must submit his post-closure plan to the Regional Administrator at least 180 days before the date he expects to begin partial or fianl closure of the first hazardous waste disposl management unit. The date he "expects to begin closure" of the first hazardous waste disposal management unit must be either within 30 days after the date on which the hazardous waste management unit receives the known final volume of hazardous waste or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous wastes. The owner or operator must submit the post-closure plan to the Regional Administrator no later than 15 days after:

(1) Termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status); or

(2) Issuance of a judicial decree or final orders under Section 3008 of RCRA to cease receiving wastes or close.

(f) The Regional Administrator will provide the owner or operator and the

public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications to the plan within 30 days of the date of the notice. He will also, in response to a request or at his own discretion, hold public hearing whenever such a hearing might clarify one or more issues concerning a closure plan. The Regional Administrator will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined). The Regional Administrator will approve, modify, or disapprove the pan within 90 days of its receipt. If the Regional Administrator does not approve the plan, he shall provide the onwer or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The Regional Administrator will approve or modify this plan in writing within 60 days. If the Regional Administrator modifies the plan, this modified plan becomes the approved post-closure plan. The Regional Administrator must base his decision upon the criteria required of petitions in paragraph (g) of this section. A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator. If the owner or operator plans to begin closure before November 19, 1981 he must submit the closure plan by May 19, 1981.

(g) An owner or operator with an approved post-closure plan must request a modification to the approved post-closure plan in accordance with the deadlines in § 265.118(d)(3) to authorize such a change. An owner or operator may make a request at any time prior to the beginning of the post-closure care period. The Regional Administrator may, at his discretion, provide public notice and comment and/or hold a public hearing. The post-closure plan and length of the post-closure care period may be modified during the post-closure care period or at the end of the post-closure care period in either of the following two ways:

(1) The owner or operator or any member of the public may petition the Regional Administrator to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility based on cause, or alter the requirements of the post-closure care period based on cause.

(i) The petition must include evidence demonstrating that:

(A) The secure nature of the hazardous waste management unit or facility makes the post-closure care requirement(s) unnecessary or supports reduction of the post-closure care period specified in the post-closure plan (e.g., leachate or ground-water monitoring results, characteristics of the wastes, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the facility is secure), or

(B) The requested extension in the post-closure care period or alteration of post-closure care requirements is necessary to prevent threats to human health and the environment (e.g., leachate or ground-water monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(ii) These petitions will be considered by the Regional Administrator only when they present new and relevant information not previously considered by the Regional Administrator. Whenever the Regional Administrator is considering a petition, he will provide the owner or operator and the public, through a newspaper notic, the opportunity to submit written comments within 30 days of the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the post-closure plan. The Regional Administrator will give the public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments, and the two notices may be combined.) After considering the comments, he will issue a final determination, based upon the criteria set forth in subparagraph (1).

(iii) If the Regional Administrator denies the petition, he will send the petitioner a brief written response giving a reason for the denial.

(2) The Regional Administrator may tentatively decide to modify the post-closure plan if he deems it necessary to prevent threats to human health and the environment. He may propose to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility based on cause or alter the requirements of the post-closure care period based on cause.

(i) The Regional Administrator will provide the owner or operator and the affected public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice and the opportunity for a public hearing as in subparagraph (g)(1)(ii) of this section. After considering the comments, he will issue a final determination.

(ii) The Regional Administrator will base his final determination upon the same criteria as required for petitions under paragraph (g)(1)(i) of this section. A modification of the post-closure plan may include, where appropriate, the temporary suspension rather than permanent deletion of one or more post-closure care requirements. At the end of the specified period of suspension, the Regional Administrator would then determine whether the requirement(s) should be permanently discontinued or reinstated to prevent threats to human health and the environment.

§ 265.119 Post-closure notices.

(a) Within 60 days after closure of each hazardous waste disposal management unit is completed, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Regional Administrator, a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator must identify the type, location and quantity of the hazardous wastes to the best of his knowledge and in accordance with any records he has kept.

(b) Within 60 days after closure of each hazardous waste management disposal unit is completed, the owner or operator must:

(1) Record, in accordance with State law, a notation on the deed to the facility property—or on some other instrument which is normally examined during title search—that will in perpetuity notify any potential purchaser of the property that:

(i) The land has been used to manage hazardous wastes; and

(ii) Its use is restricted under 40 CFR Subpart G regulations; and

(iii) The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by § 265.116 and § 265.119(a) have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Regional Administrator; and

(2) Submit a certification, including a copy of the document in which the notation has been placed, to the Regional Administrator that he has

recorded the notation specified in paragraph (b)(1)(i) of this section.

(c) If the owner or operator or any subsequent owner of the land upon which a hazardous waste disposal management unit was located wishes to remove the hazardous wastes and hazardous waste residues, the liner, if any, and all contaminated structures, equipment, and soils, he must request a modification to the approved post-closure plan in accordance with the requirements of § 265.118(g). The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of § 265.117(c). By removing hazardous waste, the owner or operator may become a generator of hazardous waste and must manage it in accordance with all applicable requirements of this chapter. If the owner or operator is granted approval to conduct the removal activities, the owner or operator may request that the Regional Administrator approve either:

(1) The removal of the notation on the deed to the facility property or other instrument normally examined during title search, or

(2) The addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

§ 265.120 Certification of completion of post-closure care.

Within 30 days after completion of the established post-closure care period for each hazardous waste disposal management unit, the owner or operator must submit to the Regional Administrator a certification that the post-closure care for the disposal units was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator.

Subpart H—Financial Requirements

40 CFR Part 265 Subpart H is amended as follows:

§ 265.140 [Amended]

1. In § 265.140, paragraph (a) is revised as follows:

(a) The requirements of §§ 265.142, 265.143, and 265.147 through 265.150 apply to owners or operators of all hazardous waste facilities, except as provided otherwise in this section or in § 265.1.

* * * * *

§ 265.141 [Amended]

2. In § 265.141 the following term is to be added to the end of the section:

"Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with § 144.62(a), (b), and (c) of this title.

3. In § 265.142, paragraphs (a), (b) introductory text, and (c) are revised to read as follows:

§ 265.142 Cost estimate for closure.

(a) The owner or operator must have a written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in §§ 265.111–265.115 and applicable closure requirements of §§ 265.178, 265.197, 265.228, 265.258, 265.280, 265.310, and 265.351.

(1) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see § 265.112(a)); and

(2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the maximum extent of operation ever open over the life of the facility.

(3) The closure cost estimate may not incorporate any salvage value that may be realized by the sale of hazardous wastes, facility structures or equipment, land or other facility assets at the time of partial or final closures.

(b) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 265.143. For owners and operators using the financial test, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Regional Administrator as specified in § 265.143(e)(3). The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its *Survey of Current Business*, as specified in paragraphs (b)(1) and (b)(2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

* * * * *

(c) The owner or operator must revise the closure cost estimate within 30 days after a revision has been made to the closure plan which increases the cost of closure. If the owner or operator has an approved closure plan, the closure cost estimate must be revised within 30 days after the Regional Administrator has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in § 265.142(b).

* * * * *

4. In § 265.143, paragraphs (a)(10), (b)(4)(ii), (c)(8), (d)(5), (e)(1)(i)(B), (e)(1)(i)(D), (e)(1)(ii)(B), (e)(1)(ii)(D), (e)(2), and (h) are revised as follows:

§ 265.143 Financial assurance for closure.

* * * * *

(a) *Closure trust fund.* * * *

(10) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursement for partial or final closure expenditures by submitting itemized bills to the Regional Administrator. The owner or operator may only request reimbursements for partial closure if the partial closure reduces the maximum extent of operation of the facility. Within 60 days after receiving bills for partial or final closure activities, the Regional Administrator will instruct the trustee to make reimbursement in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Regional Administrator does not instruct the trustee to make such reimbursements, he will provide to the owner or operator a detailed written statement of reasons. If the Regional Adminstrator has reason to believe that the cost of closure will be significantly greater than the value of the trust fund, he may withhold reimbusements of such amounts as he deems prudent until he determines, in accordance with § 265.143(h) that the owner or operator is no longer required to maintain financial assurance for final closure of the facility.

* * * * *

(b) *Surety bond guaranteeing payment into a closure trust fund.* * * *

(4) * * *

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Regional Administrator becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

* * * * *

(c) *Closure letter of credit.* * * *

(8) Following a final determination pursuant to Section 3008 of RCRA that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so,

the Regional Administrator may draw on the letter of credit.

* * * * *

(d) *Closure insurance.* * * *

(5) After beginning partial or final closure, an owner or operator or any other person authorized to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the Regional Administrator. The owner or operator may request reimbursements for partial closure only if the partial closure reduces the maximum extent of operation of the facility. Within 60 days after receiving bills for closure activities, the Regional Administrator will determine whether the partial or final closure expenditures are in accordance with the closure plan or othewise justified, and if so, he will instruct the insurer to make reimbursements in such amounts as the Regional Administrator specifies in writing. If the Regional Administrator has reason to believe that the cost of final closure will be significantly greater than the face amount of the policy, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with § 265.143(h), that the owner or operator is no longer required to maintain financial assurance for final closure of the particular facility. If the Regional Administrator does not instruct the insurer to make such reimbursements, he will provide to the owner or operator a detailed written statement of reasons.

* * * * *

(e) *Financial test and corporate guarantee for closure.*

(1) * * *

(i) * * *

(B) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

* * * * *

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

* * * * *

(ii) * * *

(B) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

* * * * *

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and post-closure cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§ 264.151(f)). The phrase "current plugging and abandonment cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimate required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§ 144.70(f) of this Title).

* * * * *

(h) *Release of the owner or operator from the requirements of this section.*

Within 60 days after receiving certifications from the owner or operator and a registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Regional Administrator has reason to believe that final closure has not been in accordance with the approved closure plan. The Regional Administrator shall provide a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

5. In § 265.144, paragraphs (a), (b) introductory text and (c) are revised to read as follows:

§ 265.144 Cost estimate for post-closure care.

(a) The owner or operator of a hazardous waste disposal management unit must have a written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in §§ 265.117–265.120, 265.228, 265.258, 265.280, and 265.310.

(1) The post-closure estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities.

(2) The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under Subpart G of Part 265.

(b) During the active life of the facility, the owner or operator must adjust the post-closure cost estimate for inflation 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 265.145. For owners or operators using the financial test, the post-closure care cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year. The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most current Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its *Survey of Current Business* as specified in § 265.145 (b)(1) and (b)(2). The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

* * * * *

(c) During the active life of the facility, the owner or operator must revise the post-closure cost estimate within 30 days of a revision to the post-closure plan which increases the cost of post-closure care. If the owner or operator has an approved post-closure plan, the post-closure cost estimate must be revised within 30 days after the Regional Administrator has approved the request to modify the plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in § 265.144(b).

* * * * *

6. In § 265.145, The introductory text, paragraphs (a)(11), (b)(4)(ii), (b)(5), (c)(9), (d)(5), (e)(1)(i)(B), (e)(1)(i)(D), (e)(1)(ii)(B), (e)(1)(ii)(D), (e)(2), and (h) are revised as follows:

§ 265.145 Financial assurance for post-closure care.

By the effective date of these regulations, an owner or operator of a facility with a hazardous waste disposal management unit must establish financial assurance for post-closure care of the disposal unit(s).

(a) *Post-closure trust fund.* * * *

(11) An owner or operator or any other person authorized to conduct post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the Regional Administrator. Within 60 days after receiving bills for post-closure activities, the Regional Administrator will instruct the trustee to make reimbursement in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the post-closure expenditures are in accordance with the post-closure plan or otherwise justified. If the Regional Administrator does not instruct the trustee to make such reimbursements, he

will provide the owner or operator with a detailed written statement of reasons.

* * * * *

(b) *Surety bond guaranteeing payment into a post-closure trust fund.* * * *

(4) * * *

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Regional Administrator becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

* * * * *

(5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final determination pursuant to Section 3008 of RCRA that the owner or operator has failed to perform post-closure care in accordance with the post-closure plan and other permit requirements, under the terms of the bond, the surety will perform post-closure care in accordance with the post-closure plan and other permit requirements or will deposit the amount of the penal sum into the standby trust fund.

* * * * *

(c) *Post-closure letter of credit.* * * *

(9) Following a final determination pursuant to Section 3008 of RCRA that the owner or operator has failed to perform post-closure care in accordance with the post-closure plan and other permit requirements, the Regional Administrator may draw on the letter of credit.

* * * * *

(d) *Post-Closure Insurance.* * * *

(5) An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the Regional Administrator. Within 60 days after receiving bills for post-closure activities the Regional Administrator will instruct the insurer to make reimbursements in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the post-closure expenditures are in accordance with the post-closure plan or otherwise justified. If the Regional Administrator does not instruct the insurer to make such reimbursement, he will provide a detailed written statement of reasons.

* * * * *

(e) *Financial test and corporate guarantee for post-closure care.*

(1) * * *

(i) * * *

(B) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates, and

* * * * *

(D) Assets in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

* * * * *

(ii) * * *

(B) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

(D) Assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates

(2) The phrase "current closure and post-closure cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§264.151(f))

The phrase "current plugging and abandonment cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraph 1–4 of the letter from the owner's or operator's chief financial officer (§ 144.70(f) of this title).

* * * * *

(h) *Release of the owner or operator from the requirements of this section.* When an owner or operator has completed, to the satisfaction of the Regional Administrator, all post-closure care requirements in accordance with the approved post-closure plan, the Regional Administrator will, at the request of the owner or operator, notify him in writing that he is no longer required by this section to maintain financial assurance for post-closure care of the particular facility. If the Regional Administrator does not provide such notification, he will provide to the owner or operator a detailed written statement of his reasons.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

Authority: Sections 1006, 2002, 3005, 3007, 3019, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6925, 6927, 6939 and 6974).

Subpart B—Permit Application

40 CFR Part 270 Subpart B is amended as follows:

1. In § 270.14, paragraphs (b)(14), (15) and (16) are revised to read as follows:

§ 270.14 Contents of Part B Application: General Requirements.

* * * * *

(b) * * *

(14) For hazardous waste disposal management units that have been closed, documentation that notices required under § 264.119 have been filed.

(15) The most recent closure cost estimate for the facility prepared in accordance with § 264.142 and a copy of the documentation required to demonstrate financial assurance under § 264.142. For a new facility, a copy of the required documentation may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the Part B.

(16) Where applicable, the most recent post-closure cost estimate for the facility prepared in accordance with § 264.144 plus a copy of the documentation required to demonstrate financial assurance under § 264.145. For a new facility, a copy of the required documentation may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the Part B.

* * * * *

2. In § 270.42, paragraph (d) is revised to read as follows:

§ 270.42 Minor Modificiation of Permits.

* * * * *

(d) Allow for a change in ownership or operational control of a facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility between the current and new permittees, and demonstration of compliance with the requirements of § 270.72(d) has been submitted to the Director.

* * * * *

3. In § 270.72, paragraph (d) is revised to read as follows:

§ 270.72 Changes during interim status.

* * * * *

(d) Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised Part A permit application no later than 90 days prior to the scheduled change. When a transfer of ownership or operational control of a

facility occurs, the old owner or operator shall comply with the requirements of 40 CFR 265, Subpart H (financial requirements), until the new owner or operator has demonstrated to the Director that he is complying with the requirements of that Subpart. The new owner or operator must demonstrate compliance with Subpart H requirements with three months of the date of the change in the ownership or operational control of the facility. Upon demonstration to the Director by the new owner or operator of compliance with Subpart H, the Director shall notify the older owner or operator in writing that he no longer needs to comply with Subpart H as of the date of demonstration. All other interim status duties are transferred effective immediately upon the date of the change of ownership or operational control of the facility.

* * * * *

[FR Doc. 85-6180 Filed 3-18-85; 8:45 am]

BILLING CODE 6560-50-M