WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION

Form #1

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2010 JUN 14 PM 2:45

OFFICE WEST VIRGINIA SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: WV Department of Environmental Protection, DWWM TITLE NUMBER: 33 CSR 20

RULE TYPE: Legislative CITE AUTHORITY: §22-18-6

AMENDMENT TO AN EXISTING RULE: YES [X] NO [ ]

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 20

TITLE OF RULE BEING AMENDED: Hazardous Waste Management Rule

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: July 15, 2010 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Cooper's Rock Training Room
WV Department of Environmental; Protection
601 57th Street SE
Charleston, WV 25304

COMMENTS LIMITED TO: ORAL [ ] WRITTEN [ ] BOTH [X]

DATE WRITTEN COMMENT PERIOD ENDS: July 15, 2010 TIME: 7:00 p.m.

WRITTEN COMMENTS MAY BE MAILED TO:
Public Information Office
WV Department of Environmental Protection
601 57th Street SE
Charleston, WV 25304

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Authorized Signature

DEPARTMENT OF ENVIRONMENTAL PROTECTION
BRIEFING DOCUMENT

Rule Title: "Hazardous Waste Management System" 33CSR20

A. AUTHORITY: **WV Code** §22-18-6

B. SUMMARY OF RULE: This rule regulates the generation, treatment, storage and disposal of hazardous waste. The rule proposed for 2011 adopts and incorporates by reference the federal regulations set forth in 40 CFR Parts 260 through 279 that are in effect as of June 1, 2010 with the exception of two federal amendments. One federal amendment currently undergoing reconsideration is the "Revisions to the Definition of Solid Waste" (October 30, 2008, Federal Register Vol. 73, No. 211). The other federal amendment, the "Expansion to RCRA Comparable Fuel Exclusion" (December 19, 2008, Federal Register Vol. 73, No. 245), has been withdrawn. Two federal rule amendments are adopted by this rule: "Revisions to the Requirements for Transboundary Shipments of Hazardous Waste Between OECD Member Countries", (January 8, 2010, Federal Register Vol. 75 No. 5) and "Hazardous Waste Technical Corrections and Clarifications Rule", (March 18, 2010, Federal Register Vol. 75, No. 52).

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE: This rule is proposed to adopt and incorporate by reference two changes to federal regulations 40 CFR Parts 260 through 279, enabling the State hazardous waste program to maintain consistency with the federal program. The first federal rule revises the requirements for transboundary shipments of hazardous wastes between OECD Member Countries. The second rule makes technical correction and clarifications to existing hazardous waste regulations.

D. FEDERAL COUNTERPART REGULATIONS – INCORPORATION BY REFERENCE / DETERMINATION OF STRINGENCY: A federal counterpart to the proposed rule exists. Because proposed revisions are consistent with the federal counterpart regulation, no determination of stringency is required.

E. CONSTITUTIONAL TAKINGS DETERMINATION

In accordance with W. Va. Code §§ 22-1A-1 and 3(c), the Secretary has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At its meeting on [June 3, 2010], the Environmental Protection Advisory Council discussed the proposed rule. See attached minutes for Council's discussion.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 33CSR20 - "Hazardous Waste Management System"

Type of Rule: [X] Legislative [ ] Interpretive [ ] Procedural

Agency: Department of Environmental Protection DWWM

Address: 601 57th Street SE

Charleston, WV 25304

Phone Number: (304) 926-0499 Ext. 1615 Email: Kenneth.C.Holliday@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The proposed revisions to this rule should cause no additional impact on cost and revenues of state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

	FISCAL YEAR		
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: 33CSR20 - "Hazardous Waste Management System"

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

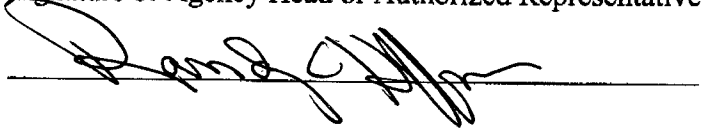
The proposed resvisions to this rule will have minimal effect on the costs to the Division of Water and Waste Management because they impose no additional requirements beyond current federal requirements. Costs are covered under previous cost estimates.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: June 14, 2010

Signature of Agency Head or Authorized Representative



TITLE 33

LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
WASTE MANAGEMENT

SERIES 20
HAZARDOUS WASTE MANAGEMENT SYSTEM

§33-20-1. General.

1.1. Scope. -- This rule establishes and adopts a program of regulation for the generation, treatment, storage, and disposal of hazardous waste to the extent necessary for the protection of the public health and safety and the environment.

1.2. Authority. -- This rule is promulgated pursuant to the West Virginia Hazardous Waste Management Act, W. Va. Code, §22-18-6.

1.3. Filing Date. -- ~~April 9, 2010~~

1.4. Effective Date. – ~~May 1, 2010~~

1.5. Incorporation by Reference. -- Whenever either federal statutes or regulations or state statutes or rules are incorporated by reference into this rule, the reference is to that statute or regulation in effect on June 1, ~~2009~~ 2010 unless otherwise noted in the text of this rule. This incorporation by reference is not intended to replace or abrogate federal authorities granted the Resource Conservation and Recovery Act of 1976.

1.5.a. In applying the federal requirements incorporated by reference throughout this rule, the following exceptions or substitutions apply, unless the context clearly requires otherwise or the referenced rule cannot be delegated to the state:

1.5.a.1. "West Virginia Department of Environmental Protection" will be substituted for "Environmental Protection Agency."

1.5.a.2. "Secretary of the West Virginia Department of Environmental Protection" will be substituted for "Administrator," "Regional Administrator," and "Director." In those sections that are not adopted by reference or that are not delegable to the state, "Administrator", "Regional Administrator", and "Director" will have the meaning defined in 40 C.F.R. §260.10.

1.5.a.3. Whenever the regulations require publication in the "Federal Register" compliance will be accomplished by publication in the "West Virginia Register," a part of the "State Register" created pursuant to the provisions of W. Va. Code, §29A-2-2 for those areas applicable and delegable to the state.

1.5.a.4. Whenever in the federal regulation reference is made to the Resource Conservation and Recovery Act of 1976 §3010, as amended (42 U.S.C. §6930), the reference is to section 4. The notification requirements of the Resource Conservation and Recovery Act of 1976 §§3010 remain in effect and will be satisfied by compliance with section 4.

1.6. Cross Reference. -- Whenever a reference is cited in a provision incorporated by reference which cross reference was not incorporated by reference, the provisions of the applicable state law and rules, if any, control to the extent of any conflict or inconsistency. Where state rules are present and there is a question, the state rules govern. Where there are no state rules present, federal regulations govern. For example, cross

reference to 40 C.F.R. part 264 subpart O -- Incinerators, which was not incorporated by reference, would need to be referenced to the applicable West Virginia Department of Environmental Protection, ~~Office~~ Division of Air Quality rule, 45CSR25, "Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities."

1.7. Inconsistencies with the West Virginia Code. -- In the event a provision of the Code of Federal Regulations incorporated by reference herein includes a section that is inconsistent with the West Virginia Code, the West Virginia Code controls to the extent federal law does not preempt the state law. In the event a provision of the Code of Federal Regulations incorporated by reference herein is beyond the scope of authority granted to the Department of Environmental Protection pursuant to statute or is in excess of the statutory authority, the provision will be and remain effective only to the extent authorized by the West Virginia Code.

1.8. Provisions Applied Prospectively. -- The provisions of this rule are to be applied prospectively. All orders, determinations, demonstrations, rules, permits, certificates, licenses, waivers, bonds, authorizations and privileges that have been issued, made, granted, approved or allowed to become effective by the Secretary, and that are in effect on the date this rule becomes effective, will continue in effect according to their terms unless modified, suspended or revoked in accordance with the law.

1.9. This rule references the provisions of the West Virginia Department of Environmental Protection, Division of Air Quality rule, 45CSR25, "Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities" that is in effect on the date that this rule becomes effective.

1.10. This rule excludes the following federal rules from incorporation by reference: "Revisions to the Definition of Solid Waste" in Federal Register Vol. 73, No. 211, dated October 30, 2008~~., and "Expansion to RCRA Comparable Fuel Exclusion" in Federal Register Vol. 73, No. 245, dated December 19, 2008.~~

§33-20-2. Hazardous Waste Management System: General.

2.1. 40 C.F.R. Part 260. -- The provisions of 40 C.F.R. §260 are hereby adopted and incorporated by reference with the modifications, exceptions, and additions set forth in this section.

2.1.a. The definitions of terms used in this rule will have the meaning ascribed to them in 40 C.F.R. §§260, 261, 262, 263, 264, 265, 266, 267, 268, 270, 273 and 279 with the exceptions, modifications and additions set forth in this section.

2.1.a.1. "Full regulation" means those rules applicable to generators of greater than one thousand (1,000) kilograms of non-acutely hazardous waste in a calendar month and/or who treat, store or dispose of hazardous waste at their facility.

2.1.a.2. "Stage" or "staging" means the temporary placement of off-site generated recyclable materials within a recycling facility for a period of time no longer than three (3) days. Placement of recyclable materials for longer than three (3) days is considered "storage."

2.1.b. This rule excludes any and all changes to 40 C.F.R. §260 resulting from Federal Rule "Revisions to the Definition of Solid Waste," in Federal Register Vol. 73, No. 211, dated October 30, 2008.

2.2. 40 C.F.R. §260.2. B -- The provisions of 40 C.F.R. §260.2 are excepted from incorporation by reference. Availability of information provided under this rule is controlled by the provisions of W. Va. Code § 22-18-12.

2.3. 40 C.F.R. §260.21(d). B -- The provisions of 40 C.F.R. §260.21(d) are excepted from incorporation by reference.

2.4. Petitions for Waste Exclusions.

2.4.a. Any person seeking to exclude a waste at a particular generating facility from 40 C.F.R. §261.3 or 40 C.F.R. part 261, subpart D, as incorporated by this rule, may petition the Secretary for an exclusion following the procedures established in 40 C.F.R. §260.20 and 40 C.F.R. §260.22. The Department of Environmental Protection will utilize EPA guidance in evaluating delisting petitions.

2.4.b. An initial non-refundable fee of one thousand dollars ($1,000.00) shall accompany all petitions submitted under this rule. The petitioner shall execute an agreement with the Secretary providing for the recovery of all reasonable costs incurred by the Department of Environmental Protection attributable to the review and investigation of the petition in excess of the initial fee submitted with the petition.

2.4.b.1. Recoverable costs will be determined by the number of hours worked under the agreement by the primary Department of Environmental Protection employee multiplied by two and one-half (2.5) times the hourly rate of that employee and then adding direct expenses incurred by that employee. Costs related to independent contractors retained by the Department of Environmental Protection to assist in the review and investigation of petitions will be included as direct expenses.

2.4.b.2. Within thirty (30) calendar days of receiving a petition under this section, the Department of Environmental Protection shall send the petitioner an itemized list of estimated costs it expects to incur as a result of reviewing and investigating the petition. The list will include anticipated outside contractor costs.

2.4.b.3. If, upon review of the itemized list of estimated costs submitted by the Department of Environmental Protection, the petitioner determines not to continue the petition process, the petitioner, if he wishes to withdraw the petition, shall submit a certified letter to the Secretary withdrawing the petition. If the letter is submitted within ten (10) days of the date of receipt of the Department of Environmental Protection's list of estimated costs, the petitioner will not be liable for any costs incurred in excess of the initial application fee.

2.4.c. Where the Administrator of the EPA has granted a petition to exclude hazardous waste from 40 C.F.R. §261.3 or 40 C.F.R. part 261, subpart D, pursuant to 40 C.F.R. §260.22, the Secretary shall accept the determination and amend this rule accordingly, provided:

2.4.c.1. Petitioner submits a copy of the petition submitted to the Administrator, including all demonstrative information, and a copy of the Administrator's approval granting the exclusion pursuant to 40 C.F.R. §260.20(e); and

2.4.c.2. No scientifically supportable reasons for denying the petition are advanced that had not been presented to the Administrator.

2.5. Petitions to amend the regulations to include additional wastes as universal wastes.

2.5.a. Persons desiring to include a waste as a universal waste shall petition the Secretary for an inclusion after having received approval from the Administrator of the Environmental Protection Agency. The petition will include:

2.5.a.1. A copy of the petition submitted to the Administrator of the Environmental Protection Agency pursuant to 40 C.F.R. §260.23, including all demonstration information;

2.5.a.2. A copy of the Administrator's approval granting the petition

under 40 C.F.R. §260.23 and 40 C.F.R. §260.20 and 40 C.F.R. part 273; and

2.5.a.3. Any additional information that may be required for the Secretary to evaluate the petition.

2.5.b. Within one hundred twenty (120) days of the filing of the petition the Secretary shall decide whether to approve or to deny the petition and so advise the petitioner. Where a decision to deny a petition is made, the Secretary shall notify the petitioner of the action in writing, setting forth the reasons therefor.

2.5.c. The Secretary shall not deny a petition to include a waste as a universal waste that has been approved by the Administrator, unless scientifically supportable reasons for the denial are advanced that had not been presented to the Administrator.

2.5.d. Any person may petition the Secretary to include a waste as a universal waste as follows:

2.5.d.1. Submit a petition to the Secretary demonstrating that regulation under the universal waste regulations of 40 C.F.R. part 273 is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the Hazardous Waste Program. The petition shall also include information required by 40 C.F.R. §260.20(b) and include as many of the factors listed in 40 C.F.R. §273.81 as are appropriate for the waste or category of waste addressed in the petition.

2.5.d.2. The Secretary shall grant or deny a petition using the factors listed in 40 C.F.R. §273.81. The decision will be based on the weight of evidence showing that regulation under 40 C.F.R. part 273 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the Hazardous Waste Program.

2.5.d.3. The decision of the Secretary will be in writing and state the reasons to either grant or deny the petition. Any petitioner aggrieved by the decision of the Secretary may appeal the decision to the Environmental Quality Board in accordance with the provisions of W. Va. Code §22-18-20.

§33-20-3. Identification and Listing of Hazardous Waste.

3.1. 40 C.F.R. Part 261. -- The provisions of 40 C.F.R. part 261 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

3.1.a. In order for a mixture of a waste and one or more hazardous wastes identified in 40 C.F.R. §261.3(a)(2)(iv) to be exempt from the definition of hazardous waste, the owner or operator shall comply with the following:

3.1.a.1. Provide a certification in writing to the Secretary that groundwater monitoring that either complies with 40 C.F.R. part 265, subpart F or that is agency approved is or will be in place at the wastewater treatment facility identified in 40 C.F.R. §261.3(a)(2)(iv). A time schedule for the installation of groundwater monitoring shall be included. This requirement does not apply to wastewater treatment units or containers.

3.1.a.2. Before claiming an exemption, the owner or operator of each wastewater treatment facility receiving mixtures of wastes under 40 C.F.R. §261.3(a)(2)(iv) shall notify the Secretary of the receipt of the wastes on a form prescribed by the Secretary.

3.1.a.3. Annually submit to the Secretary a list of hazardous wastes that are expected to be present in the mixture to be exempted.

3.2. The provisions of 40 C.F.R. §261.5

(f)(3)(iv) and (v) and 40 C.F.R. §261.5(g)(3)(iv) and (v) are excepted from incorporation by reference. Conditionally exempt small quantity generators shall notify the Secretary of their hazardous waste activity in accordance with section 4 of this rule.

3.3. This rule excludes any and all changes to 40 C.F.R. part 261 resulting from Federal Rules: "Revisions to the Definition of Solid Waste" ~~and "Expansion of RCRA Comparable Fuel Exclusion."~~

§33-20-4. Notification of Hazardous Waste Activity Regulations.

4.1. Applicability. Any person who engages in a hazardous waste activity in the State of West Virginia shall notify the Secretary of these activities when that activity begins, unless those activities are exempted from the requirements of this rule.

4.1.a. Any person as described in subsection 4.1 who has notified the EPA or is subject to the requirements to notify EPA as specified in volume 45, number 39 of the Federal Register, dated February 26, 1980, pages 12746 through 12754, is subject to the provision of section 4 of this rule.

4.1.b. The purpose of section 4 is to provide a means for the State of West Virginia to utilize the information provided by all who complied with the notification requirements of EPA as described in subdivision 4.1.a above or all who initiated hazardous waste activities subsequent to the requirements of EPA as referenced above in subdivision 4.1.a to notify the Secretary of their hazardous waste activities.

4.2. Notification. Any person who notified EPA of hazardous waste activities as referenced above in subsection 4.1 shall provide a copy of that notification to the Secretary.

4.2.a. Any person involved in hazardous waste activities who did not comply with the notification requirements of EPA, as referenced above in subsection 4.1, but is subject to those requirements shall notify the Secretary in writing of his or her hazardous waste activities within thirty (30) days of the effective date of this rule. Notification may be accomplished by the use of EPA Form 8700-12, RCRA Subtitle C Site Identification Form, or the provision of the same information in any other manner selected by the notifier.

4.2.b. Any person exempted from the federal notification requirements as specified in 40 C.F.R. §§261.6(b) and 261.5, but subject to West Virginia notification requirements, shall notify the Secretary in writing of his or her hazardous waste activities on the date of initiation of these activities. Notification may be accomplished by use of EPA Form 8700-12 or the provision of the same information in any other manner selected by the notifier.

4.2.c. One notification form is required for each generator.

4.2.d. A notification form is required for each storage, treatment, disposal, or other facility. However, if one facility site includes more than one storage, treatment, or disposal activity, only one notification form for the entire facility site is required.

4.2.e. Generators that store, treat, or dispose of hazardous waste on-site shall file a notification form for generation activities, as well as storage, treatment, and disposal activities, unless those activities are exempted from the requirements of this rule.

4.2.f. New generators and those initiating activities subsequent to the EPA notification period referenced in subsection 4.1.a shall comply with the EPA identification number requirements and shall provide a copy of their application for an EPA identification number to the Administrator.

§33-20-5. Standards Applicable to Generators of Hazardous Waste.

5.1. 40 C.F.R. Part 262. -- The

provisions of 40 C.F.R. part 262 are hereby adopted and incorporated by reference with the modifications, exceptions and additions contained in this section.

5.2. 40 C.F.R. §262.10(g). -- The provisions of 40 C.F.R. §262.10(g) will be excepted from incorporation.

5.2.a. A person who generates a hazardous waste as defined by 40 C.F.R. part 261 is subject to the compliance requirements and penalties prescribed in W. Va. Code §22-18-1 et seq. if he or she does not comply with the requirements of this rule. This rule in no way abrogates the enforcement authority of the Resource Conservation and Recovery Act of 1976 §3008.

5.2.b. All references to 40 C.F.R. §262.10(g) will be deemed references to subsection 5.2 of this rule and its subdivisions, as appropriate.

5.3. 40 C.F.R. §262.10(j). -- The provisions of 40 C.F.R. §262.10(j) (1) and (2) including Table 1 will be excepted from incorporation.

5.4. 40 C.F.R. Part 262, Subpart E. -- The provisions of 40 C.F.R. part 262, subpart E -- Exports of Hazardous Waste are hereby adopted and incorporated by reference. The substitution of terms in subdivision 1.5.a above does not apply to the provisions of this subsection. In addition to the requirements contained therein, any person subject to the provisions of subpart E shall file with the Secretary copies of all documentation, manifests, exception reports, annual reports or records submitted to EPA, the Administrator or the Regional Administrator as required by and within the time frames set forth in subpart E.

5.5. 40 C.F.R. Part 262, Subpart H. -- The provisions of 40 C.F.R. part 262, subpart H -- ~~Transfrontier Shipments~~ Transboundary Shipments of Hazardous Waste for Recovery within the OECD are hereby adopted and incorporated by reference. The substitution of terms in subdivision ~~1.6.a~~ 1.5.a above does not apply to the provisions of this subsection. In addition to the requirements contained therein, any person subject to the provisions of subpart H shall file with the Secretary copies of all documentation, manifests, exception reports, annual reports or records submitted to EPA, the Administrator or the Regional Administrator as required by and within the time frames set forth in subpart H.

5.6. 40 C.F.R. Part 262, Subpart I. -- The provisions of 40 C.F.R. part 262, subpart I -- New York State Public Utilities will be excepted from incorporation.

5.7. 40 C.F.R. Part 262, Subpart J. -- The provisions of 40 C.F.R. part 262, subpart J -- University Laboratories XL Project -- Laboratory Environmental Management Standard will be excepted from incorporation.

§33-20-6. Standards Applicable to Transporters of Hazardous Waste.

6.1. 40 C.F.R. Part 263. -- The provisions of 40 C.F.R. part 263 are hereby adopted and incorporated by reference, insofar as those regulations relate to the transportation of hazardous waste by air and water.

6.2. The use of railroads for the transportation of hazardous waste is regulated by the West Virginia Public Service Commission rules, "Rules and Regulations Governing the Transportation of Hazardous Waste by Rail," 150CSR11. The use of the state highways for the transportation of hazardous waste is regulated by the West Virginia Division of Highways at 157CSR7, "Transportation of Hazardous Wastes upon the Roads and Highways."

§33-20-7. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.

7.1. 45CSR25, Division of Air Quality, -- The standards in this section apply to owners and operators of all facilities that treat, store or dispose of hazardous waste, except as

otherwise provided by law. In addition to the standards in section 7 of this rule, 45CSR25, "Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities," applies to management facilities that may emit hazardous waste or the constituents thereof into the atmosphere, including incineration facilities, except as otherwise provided by law. For purposes of this section, the following persons are considered to be incinerating hazardous waste:

7.1.a. Owners or operators of hazardous waste incinerators; and

7.1.b. Owners or operators of boilers or industrial furnaces used to destroy wastes.

7.2. 40 C.F.R. Part 264. -- The provisions of 40 C.F.R. part 264 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

7.3. Required Receipt of Identical Notification. -- The provisions of 40 C.F.R. §§264.12(a)(1) and (2) are retained by the Environmental Protection Agency; however, the Secretary shall receive identical notification.

7.4. Releases from Solid Waste Management Unit. -- The provisions of 40 C.F.R. part 264, subpart F -- Releases from solid waste management units are incorporated by reference with the following modifications, exceptions and additions.

7.4.a. For purposes of 40 C.F.R. §264.92, reference to the "Regional Administrator" will be to the Secretary of the Department of Environmental Protection. The Secretary establishes groundwater protection standards pursuant to the authority granted to the Secretary in W. Va. Code § 22-12-4.

7.4.b. For purposes of 40 C.F.R. §264.94 and subparagraphs thereof, the agency rule on groundwater protection standards, 47CSR12, will apply as required pursuant to the authority granted the Secretary in W. Va. Code, § 22-12-4.

7.4.c. The provisions of 40 C.F.R. §264.99(g) are incorporated by reference with the following modifications:

7.4.c.1. The Secretary shall specify in the facility permit the frequencies for collecting samples required under 40 C.F.R. §264.99(g). This frequency shall not be less than once annually.

7.5. Financial Requirement. -- The provisions of 40 C.F.R. part 264, subpart H -- Financial Requirements are adopted and incorporated by reference with the following modifications:

7.5.a. The provisions of 40 C.F.R. §§264.149 and 264.150 are excepted from incorporation by reference.

7.6. Provisions Relating to Incinerators. -- The provisions of 40 C.F.R. §§264.341, 264.342, 264.343, 264.344, 264.345 and 264.347(a) relating to incinerators are excepted from incorporation by reference. Consult the rules of the Division of Air Quality regarding emissions from incinerators. The Division of Air Quality retains its authority to enforce the air monitoring items listed in 40 C.F.R. §264.347(a) related to incinerating hazardous waste. The Secretary retains authority to enforce 40 C.F.R. §§264.347(b)(c)(d).

7.6.a. Consult the Division of Air Quality, 45CSR25, "Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities."

7.7. 40 C.F.R. Part 264, Subparts AA, BB, CC and 40 C.F.R. §264.1080(f); and 40 C.F.R. §264.1080(g). -- The provisions of 40 C.F.R. §264.1080(f); and 40 C.F.R. §264.1080(g) are hereby adopted and incorporated by reference and the remaining provisions of 40 C.F.R. part 264, subparts AA, BB, and CC are excepted from incorporation by reference. Consult the rules of the Division of Air Quality regarding air emissions from

process vents, equipment leaks, tanks, surface impoundments and containers.

§33-20-8. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.

8.1. 40 C.F.R. Part 265. -- The provisions of 40 C.F.R. part 265 are adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

8.2. 40 C.F.R. §§265.12(a), 265.149 and 265.150. -- The provisions of 40 C.F.R. §§265.12(a)(1) and (2), 265.149, and 265.150 are excepted from incorporation by reference. The Secretary shall receive identical notification.

8.3. 40 C.F.R. §§265.341, 265.345, 265.347 (a), 265.352. -- The provisions of 40 C.F.R. §§265.341, 265.345, 265.347(a) and 265.352 relating to incinerators are excepted from incorporation by reference. Consult the rules of the Division of Air Quality regarding emissions from incinerators. The Division of Air Quality retains its authority to enforce the air monitoring items listed in 40 C.F.R. §265.347(a) related to incinerating hazardous waste. The Secretary retains authority to enforce 40 C.F.R. §§265.347(b)(c)(d).

8.4. Thermal Treatment. -- The provisions of 40 C.F.R. Part 265, Subpart P -- Thermal Treatment are incorporated by reference except for the provisions of 40 C.F.R. §265.375 and 40 C.F.R. §265.383 that are excepted from incorporation by reference. Consult the rules of the Division of Air Quality regarding emissions from thermal treatment units.

8.5. 40 C.F.R. Part 265 Subparts AA, BB, CC and 40 C.F.R. §265.1080(f); and 40 C.F.R. §265.1080(g). -- The provisions of 40 C.F.R. §265.1080(f); and 40 C.F.R. §265.1080(g) are hereby adopted and incorporated by reference and the remaining provisions of 40 C.F.R. part 265, subparts AA, BB, and CC are excepted from incorporation by reference. Consult the rules of the Division of Air Quality regarding air emission standards for process vents, air emission standards for equipment leaks, and air emission standards for tanks, surface impoundments and containers.

§33-20-9. Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities.

9.1 40 C.F.R. Part 266. -- The provisions of 40 C.F.R. part 266 are hereby adopted and incorporated by reference. Consult the rules of the Division of Air Quality regarding Subpart H of this part.

§33-20-10. Land Disposal Restrictions.

10.1. 40 C.F.R. Part 268. -- The provisions of 40 C.F.R. part 268 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

10.2. 40 C.F.R. §§268.5, 268.6, 268.10 - 13, 268.42(b) and 268.44. -- The provisions of 40 C.F.R. §§268.5, 268.6, 268.10, 268.11, 268.12, 268.13, 268.42(b) and 268.44 are excepted from incorporation by reference.

10.3. Definition of Administrator in 40 C.F.R. §268.40(b). The term "Administrator" in 40 C.F.R. §268.40(b) will retain its meaning as defined in 40 C.F.R. §260.10.

§33-20-11. The Hazardous Waste Permit Program and Standardized Permit.

11.1. 40 C.F.R. Part 270. -- The provisions of 40 C.F.R. part 270 and 40 C.F.R. part 267 are hereby adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

11.2. 40 C.F.R. §270.2 Definitions.

11.2.a. Definition of "RCRA permit" -- For purposes of this section, the term "RCRA permit" means "West Virginia

Hazardous Waste Management Permit." The following additional requirements will apply to obtain a Hazardous Waste Management Permit in West Virginia. All references in 40 C.F.R. part 270 and 40 C.F.R. part 267 to 40 C.F.R. part 124 will be deemed to be references to the applicable provisions of subsections 11.4 through 11.17 of this rule. To the extent of any inconsistency with 40 C.F.R. part 270 and 40 C.F.R. part 267, the specific provisions contained herein will control.

11.2.b. This rule excludes any and all changes to 40 C.F.R. part 270 resulting from Federal Rule "Revisions to the Definition of Solid Waste."

11.3. Application Fees.

11.3.a. Any person who applies for a permit for the construction or operation of a hazardous waste management facility, or both, shall submit as part of the application a money order or cashier's check payable to "The Hazardous Waste Management Fund" of the state treasury. Persons required to obtain a permit-by-rule pursuant to this rule are not required to pay a permit application fee.

11.3.b. The fee will be determined by the schedule set forth in Table 1. If the cumulative total of application fees imposed under this section equals or exceeds fifty thousand dollars ($50,000) then the person required to pay the fees may, at the person's option, elect to submit the fee payments in installments over a three (3) year period. The installments submitted to the Department of Environmental Protection may not be less frequent than annually and the amount submitted annually may not be less than one-third (1/3) of the total amount due.

11.3.c. The fee for permit renewal is the same as for an initial permit.

11.4. Pre-application Public Meeting and Notice

11.4.a. Applicability. The requirements of this subsection will apply to West Virginia Hazardous Waste Management Part B permit applicants seeking initial permits for hazardous waste management units. The requirements of this section will also apply to West Virginia Hazardous Waste Management Part B permit applicants seeking renewal of permits for those units, when the renewal application is proposing a significant change in facility operations. For the purposes of this section, a "significant change" is any change that would qualify as a Class 3 permit modification (*See* 40 C.F.R. §270.42 for a description of permit modifications). The requirements of this section do not apply to permit modifications under 40 C.F.R. §270.42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

11.4.b. Prior to the submission of a West Virginia Hazardous Waste Management Part B permit application for a facility, the applicant shall hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

11.4.c. The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under subsection 11.4.b, and copies of any written comments or materials submitted at the meeting, to the permitting agency as a part of the Part B application, in accordance with 40 C.F.R. §270.14(b).

11.4.d. The applicant shall provide public notice of the pre-application meeting at least thirty (30) days prior to the meeting. The applicant shall maintain, and provide to the permitting agency upon request, documentation of the notice.

11.4.d.1. The applicant shall

provide public notice in all of the following forms:

11.4.d.1.A. A newspaper advertisement. The applicant shall publish a notice, fulfilling the requirements in paragraph 11.4.d.2, in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the Secretary shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the Secretary determines that publication is necessary to inform the affected public. The notice shall be published as a display advertisement.

11.4.d.1.B. A visible and accessible sign. The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in paragraph 11.4.d.2. If the applicant places the sign on the facility property, then the sign shall be large enough to be readable from the nearest point where the public would pass by the site.

11.4.d.1.C. A broadcast media announcement. The applicant shall broadcast a notice, fulfilling the requirements in paragraph 11.4.d.2, at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the Secretary.

11.4.d.1.D. A notice to the permitting agency. The applicant shall send a copy of the newspaper notice to the permitting agency, and the Secretary shall forward copies to the appropriate units of State and local government having jurisdiction over the area where the facility is or is proposed to be located; and to each State agency having any authority under State law with respect to the construction or operation of the facility.

11.4.d.2. The notices required by paragraph 11.4.d.1.shall include:

11.4.d.2.A. The date, time, and location of the meeting;

11.4.d.2.B. A brief description of the purpose of the meeting;

11.4.d.2.C. A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location;

11.4.d.2.D. A statement encouraging people to contact the facility at least seventy-two (72) hours before the meeting if they need special access to participate in the meeting; and

11.4.d.2.E. The name, address, and telephone number of a contact person for the applicant.

11.5. Public Notice Requirements at the Application Stage.

11.5.a. Applicability. The requirements of this subsection apply to all West Virginia Hazardous Waste Management Part B permit applicants seeking initial permits for hazardous waste management units. The requirements of this section also apply to Hazardous Waste Management Part B permit applicants seeking renewal of permits for these units upon the expiration of the existing permit. The requirements of this section do not apply to permit modifications under 40 C.F.R. §270.42 or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

11.5.b. Notification. The Secretary shall provide public notice as required in subsection 11.5 when a Part B permit application has been submitted. The Secretary shall provide public notice to:

11.5.b.1. The applicant;

11.5.b.2. All persons on a mailing list developed pursuant to subparagraph 11.11.d.1.D; and

11.5.b.3. The appropriate units of State and local government having jurisdiction over the area where the facility is proposed to be located; and to each State agency having any authority under State law with respect to the construction or operation of the facility, that a Part B permit application has been submitted to the Secretary and is available for review.

11.5.b.4. Any person otherwise entitled to receive notice under subdivision 11.5.b may waive the right to receive notice for any classes and categories of permits.

11.5.c. The notice will be published within a reasonable period of time after the application is received by the Secretary. The notice shall include:

11.5.c.1. The name and telephone number of the applicant's contact person;

11.5.c.2. The name and telephone number of the permitting agency's contact office and a mailing address to which information, opinions, and inquiries shall be directed throughout the permit review process;

11.5.c.3. An address to which people can write in order to be put on the facility mailing list;

11.5.c.4. The location where copies of the permit application and any supporting documents can be viewed and copied;

11.5.c.5. A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location on the front page of the notice; and

11.5.c.6. The date that the application was submitted.

11.5.d. Concurrent with the notice required under subdivision 11.5.b, the Secretary shall place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the permitting agency's office.

11.6. Information Repository.

11.6.a. Applicability. The requirements of this section apply to all applicants seeking West Virginia Hazardous Waste Management Permits for hazardous waste management units.

11.6.b. The Secretary shall assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the Secretary shall consider a variety of factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity to the nearest copy of the administrative record. If the Secretary determines, at any time after submittal of a permit application, that there is a need for a repository, then the Secretary shall notify the facility that it must establish and maintain an information repository.

11.6.c. The information repository shall contain all documents, reports, data, and information deemed necessary by the Secretary to fulfill the purposes for which the repository is established. The Secretary shall have the discretion to limit the contents of the repository.

11.6.d. The information repository shall be located and maintained at a site chosen by the facility. If the Secretary finds the site unsuitable for the purposes and persons for which it was established due to problems with the location, hours of availability, access, or other relevant considerations, then the Secretary shall specify a more appropriate site.

11.6.e. The Secretary shall specify requirements for informing the public about the information repository. At a minimum, the Secretary shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

11.6.f. The facility's owner/operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Secretary. The Secretary shall close the repository at his or her discretion, based on the factors listed in subdivision 11.6.b.

11.7. Application for a Permit.

11.7.a. Any person who requires a permit under this rule shall complete, sign, and submit to the Secretary an application for each permit required under this rule. Applications are not required for hazardous waste permits by rule pursuant to 40 C.F.R. §270.60. The Secretary shall not begin processing permit until the applicant has fully complied with the application requirements for that permit. Permit applications shall comply with the signature and certification requirements of 40 C.F.R. §270.11.

11.7.b. The Secretary shall review for completeness every application. Each application submitted by a new hazardous waste management facility shall be reviewed for completeness by the Secretary within thirty (30) days of its receipt. Each application submitted by an existing hazardous waste management facility (both Part A and Part B of the application), shall be reviewed for completeness within sixty (60) days of receipt. Upon completing the review, the Secretary shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Secretary shall list the information necessary to make the application complete. When the application is for an existing hazardous waste management facility, the Secretary shall specify in the notice of deficiency a date for submitting the necessary information. The Secretary shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Secretary shall request additional information from the applicant, but only when necessary to clarify, modify or supplement previously submitted material. Request for additional information shall not render an application incomplete.

11.7.c. If the applicant fails or refuses to correct deficiencies in the application, the permit shall be denied and appropriate enforcement actions will be taken pursuant to W. Va. Code §§ 22-18-15, 22-18-16, and 22-18-17.

11.7.d. If the Secretary decides that a site visit is necessary for any reason in conjunction with the processing of an application, he or she shall notify the applicant and a date will be scheduled.

11.7.e. The effective date of an application is the date on which the Secretary notifies the applicant that the application is complete as provided for in subdivision 11.7.b above.

11.7.f. For each application, the Secretary shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the Secretary intends to:

11.7.f.1. Prepare a draft permit;

11.7.f.2. Give public notice;

11.7.f.3. Complete the public comment period, including any public hearing;

11.7.f.4. Issue a final permit.

11.8. Modification, Revocation and Reissuance, or Termination of Permits.

11.8.a. Permits shall be modified, revoked and reissued, or terminated either at the request of an interested person (including the permittee) or upon the Secretary's initiative. However, permits shall only be modified, revoked and reissued, or terminated for the reasons specified in 40 C.F.R. §§270.41 or 270.43. All requests shall be in writing and shall contain facts or reasons supporting the request.

11.8.b. If the Secretary decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment or hearings. Denials by the Secretary may be appealed to the Environmental Quality Board in accordance with section 16 of this rule.

11.8.b.1. If the Secretary initially decides to modify or revoke and reissue a permit under 40 C.F.R. §§270.41 or 270.42 (c), he or she shall prepare a draft permit pursuant to subsection 11.9 below, incorporating the proposed changes. The Secretary may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of a revoked and reissued permit, the Secretary shall require the submission of a new application.

11.8.b.2. In a permit modification under this section, only those conditions to be modified will be reopened when a new draft permit is prepared. When a permit is revoked and reissued under this section, the entire permit is reopened. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

11.8.b.3. "Classes 1 and 2 Modifications" as defined in 40 C.F.R. §§270.42 (a) and (b) are not subject to the requirements of this section.

11.8.c. If the Secretary decides to terminate a permit under 40 C.F.R. §270.43, he or she shall issue a Notice of Intent to Terminate. A Notice of Intent to Terminate is a type of draft permit that follows the same procedures as any draft permit prepared under subsection 11.9 below.

11.9. Draft Permits.

11.9.a. Once an application is complete, the Secretary shall decide whether to prepare a draft permit or to deny the application.

11.9.b. If the Secretary decides to deny the permit application, he or she shall issue a Notice of Intent to Deny. A Notice of Intent to Deny the permit application is a type of draft permit that follows the same procedures as any draft permit prepared under this section. If the Secretary's final decision is that the initial decision to deny the permit application was incorrect, he or she shall withdraw the Notice of Intent to Deny and proceed to prepare a draft permit.

11.9.c. If the Secretary decides to issue a draft permit, he or she shall prepare a draft permit that contains the following information:

11.9.c.1. All conditions under 40 C.F.R. §§270.30 and 270.32;

11.9.c.2. All compliance schedules under 40 C.F.R. §270.33;

11.9.c.3. All monitoring requirements under 40 C.F.R. §270.31; and,

11.9.c.4. Standards for treatment, storage, and/or disposal and other permit conditions under 40 C.F.R. §270.30.

11.9.d. All draft permits prepared by the Secretary under this section shall be accompanied by a fact sheet and shall be based on the administrative record, publicly noticed, and made available for public comment.

11.10. Fact Sheet

11.10.a. A fact sheet shall be prepared for every draft permit for a hazardous waste management facility that the Secretary finds is the subject of wide-spread public interest or raises major issues. The fact sheet will briefly set forth the principal facts and the significant factual, legal, and methodological and policy questions considered in preparing the draft permit. The Secretary shall send the

fact sheet to the applicant and to anyone who requests it.

11.10.b. The fact sheet shall include when applicable:

11.10.b.1. A brief description of the type of facility or activity that is the subject of the draft permit;

11.10.b.2. The type and quantity of waste, fluids, or pollutants that are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

11.10.b.3. A brief summary of the basis for the draft permit conditions, including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record;

11.10.b.4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;

11.10.b.5. A description of the process for reaching a final decision on a draft permit including:

11.10.b.5.A. The beginning and the ending dates of the comment period and the address where comments will be received;

11.10.b.5.B. Procedures for requesting a hearing and the nature of that hearing; and

11.10.b.5.C. Any other procedures by which the public participates in the final decision.

11.10.b.6. Name and telephone number of a person to contact for additional information.

11.11. Public Notice of Permit Actions and Public Comment Period.

11.11.a. Scope. The Secretary shall give public notice if the following actions have occurred:

11.11.a.1. A draft permit has been prepared; and

11.11.a.2. A hearing has been scheduled.

11.11.b. No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under subsection 11.8 above. Written notice of that denial shall be given to the requester and to the permittee.

11.11.c. Timing. Public notice of the preparation of a draft permit (including a Notice of Intent to Deny a Permit Application) required under subdivision 11.11.a will allow at least forty-five (45) days for public comment. Public notice of a public hearing shall be given at least thirty (30) days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit, and the two notices may be combined.)

11.11.d. Public notice of activities described in subdivision 11.11.a shall be given by the following methods:

11.11.d.1. By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits):

11.11.d.1.A. The applicant;

11.11.d.1.B. Any other agency that the Secretary knows has issued or is required to issue a RCRA, UIC, PSD or other permit under the Clean Air Act or West Virginia Code § 22-5-1 et. seq.; NPDES, 33 U.S.C. §1344; or sludge management permit for the same facility or activity;

11.11.d.1.C. Federal and State agencies with jurisdiction over fish, shell fish and wildlife resources and over coastal

zones management plans, the advisory council on historic preservation, and the state historic preservation office, as applicable;

11.11.d.1.D. Persons on a mailing list developed by:

11.11.d.1.D.1. Including those who request in writing to be on the list;

11.11.d.1.D.2. Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

11.11.d.1.D.3. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals. The Secretary shall update the mailing lists from time to time by requesting written indications of continued interest from those listed. The Secretary shall delete from the lists the name of any person who fails to respond to the request.

11.11.d.1.E. To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

11.11.d.1.F. To each State agency having any authority under State law with respect to the construction or operation of the facility.

11.11.d.2. Publication of a notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations;

11.11.d.3. In a manner constituting legal notice to the public under State laws; and

11.11.d.4. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

11.11.e. All public notices issued under this section will contain the following minimum information:

11.11.e.1. Name and address of the office processing the permit action for which notice is being given;

11.11.e.2. Name and address of the permittee or the permit applicant and, if different, of the facility or activity regulated by the permit;

11.11.e.3. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

11.11.e.4. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, fact sheet, and the application; and

11.11.e.5. A brief description of the comment procedures required by subsections 11.12 and 11.13 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final decision.

11.11.e.6. The location of the administrative record, the times that the record will be open for public inspection; and

11.11.e.7. Any additional information considered necessary or proper.

11.11.f. Public notices for hearings. In addition to the general public notice described in subdivision 11.11.e, the public notice of a hearing will contain the following information:

11.11.f.1. Reference to the date of previous public notices relating to the permit;

11.11.f.2. Date, time, and place of the hearing; and

11.11.f.3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

11.11.g. In addition to the general public notice described in subdivision 11.11.e, all persons identified in subparagraphs 11.11.d.1.A, 11.11.d.1.B, and 11.11.d.1.C shall be mailed a copy of the fact sheet, the permit application, and the draft permit, as applicable.

11.12. Public Comments and Requests for Public Hearings.

11.12.a. During the public comment period provided under subsection 11.11, any interested person may submit written comments on the draft permit and may request a public hearing, if a hearing has not already been scheduled.

11.12.b. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in subsection 11.16 below.

11.13. Public Hearings.

11.13.a. The Secretary shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit.

11.13.b. The Secretary shall also hold a public hearing at his or her discretion, whenever, for instance, a hearing might clarify one or more issues involved in the permit decision.

11.13.c. The Secretary shall hold a public hearing whenever he or she receives written notice of opposition to a draft permit and a request for a hearing within forty-five (45) days of public notice under subdivision 11.11.c. Whenever possible, the Secretary shall schedule a hearing under this section at a location convenient to the nearest population center to the proposed facility.

11.13.d. Public notice of the hearing will be given as specified in subsection 11.11.

11.13.e. Whenever a public hearing will be held, the Secretary shall designate a presiding officer for the hearing who will be responsible for its scheduling and orderly conduct.

11.13.f. Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits shall be set upon the time allowed for oral statements, and the submission of statements in writing will be required. The public comment period under subsection 11.11 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

11.13.g. A tape recording or written transcript of the hearing shall be made available to the public.

11.14. Reopening of the Public Comment Period.

11.14.a. If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the Secretary shall take one or more of the following actions:

11.14.a.1. Prepare a new draft permit, appropriately modified, under subsection 11.9.

11.14.a.2. Prepare a revised fact sheet under subsection 11.10 and reopen the comment period.

11.14.a.3. Reopen or extend the comment period under subsection 11.11 to give interested persons an opportunity to

comment on the information or arguments submitted.

11.14.b. Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under subsection 11.11 shall define the scope of the reopening.

11.14.c. Public notice of any of the above actions will be issued subsection 11.11 above.

11.15. Issuance and Effective Date of Permit.

11.15.a. After the close of the public comment period on a draft permit, the Secretary shall issue a final permit decision. The Secretary shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. The notice shall include reference to the procedures for appealing a decision on the permit. For purposes of this section the final permit decision means a final decision to issue, deny, modify, or revoke and reissue, or terminate a permit.

11.15.b. A final permit decision will become effective thirty (30) days after the service of Notice of Decision unless:

11.15.b.1. A later effective date is specified in the decision; or

11.15.b.2. Review is requested or evidentiary hearing is requested; or

11.15.b.3. No comments requested change in the draft permit, in which case the permit will become effective immediately upon issuance.

11.16. Response to Comments.

11.16.a. At the time that any final permit decision is issued, the Secretary shall issue a response to comments. This response will:

11.16.a.1. Specify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the change; and

11.16.a.2. Briefly describe and respond to all comments on the draft permit or the permit application raised during the public comment period or during any hearing.

11.16.b. The response to comments shall be available to the public.

11.17. Administrative Record.

11.17.a. The provisions of a draft permit prepared under subsection 11.9 shall be based on the administrative records consisting of:

11.17.a.1. The application and any supporting data furnished by the applicant;

11.17.a.2. The draft permit or notice of intent to deny the application or to terminate the permit;

11.17.a.3. The fact sheet;

11.17.a.4. All documents cited in the fact sheet; and

11.17.a.5. Other documents contained in the supporting file for the draft permit.

11.17.b. The Secretary shall base final permit decisions on the administrative record consisting of:

11.17.b.1. Administrative record for the draft permit;

11.17.b.2. All comments received during the public comment period provided under subsection 11.11 (including any extension or reopening under subsection 11.14);

11.17.b.3. The tape or transcript

of any hearing(s) held under subsection 11.13;

11.17.b.4. Any written material submitted at the hearing;

11.17.b.5. The response to comments required by subsection 11.16 that identify and support any change made in the draft permit and any new material placed in the record under that subsection;

11.17.b.6. Other documents contained in the supporting file for the permit;

11.17.b.7. An addendum to the fact sheet if needed; and

11.17.b.8. The final permit.

11.17.c. The administrative record shall be complete on the date the final permit is issued.

11.17.d. Material readily available at the issuing agency office or published material that is generally available and that is included in the administrative record under subdivisions 11.17.a and 11.17.b need not be physically included with the rest of the record, as long as it is specifically referred to in the fact sheet or in the addendum to the fact sheet.

11.18. Public Access to Information.

11.18.a. Any records, reports, or information and any permit, permit applications, and related documentation within the Secretary's possession shall be available to the public for inspection and copying; provided, however, that upon a satisfactory showing to the Secretary that those records, reports, permit documentation, or information, or any part thereof would, if made public, divulge methods or processes or activities entitled to protection as trade secrets, the Secretary shall consider, treat, and protect those records as confidential.

11.18.b. It shall be the responsibility of the person claiming any information as confidential under the provisions of this subsection to clearly mark each page containing that information with the word "CONFIDENTIAL" and to submit an affidavit setting forth the reasons that the person believes that the information is entitled to protection.

11.18.c. Any document submitted to the Secretary that contains information for which claim of confidentiality is made must be submitted in a sealed envelope marked "CONFIDENTIAL" and addressed to the Secretary. The document shall be submitted in two (2) separate parts. The first part shall contain all information that is not deemed by the person preparing the report as confidential and shall include appropriate cross-references to the second part, which contains data, words, phrases, paragraphs or pages and appropriate affidavits containing or relating to information that is claimed to be confidential.

11.18.d. No information shall be protected as confidential information by the Secretary unless it is submitted in accordance with the provisions of subdivision 11.18.c above, and no information that is submitted in accordance with the provision of subdivision 11.18.c shall be afforded protection as confidential information unless the Secretary finds that the protection is necessary to protect trade secrets. The person who submits information claimed to be confidential shall receive written notice from the Secretary as to whether the information has been accepted as confidential or not.

11.18.e. All information that meets the tests of subdivision 11.18.d shall be marked with the term "ACCEPTED" and shall be protected as confidential information. If the person fails to satisfactorily demonstrate to the Secretary that information in the form presented meets the criteria of subdivision 11.18.d, the Secretary shall mark the information "REJECTED" and promptly return it to the person who submitted the information. The Secretary shall retain a copy of the information for reference.

11.18.f. Nothing contained herein

shall be construed to restrict the release of relevant confidential information during situations declared to be emergencies by the Secretary.

11.18.g. Nothing in subsection 11.18 shall be construed as limiting the disclosure of information by the Department to any officer, employee or authorized representative of State or Federal government concerned with effecting the purposes of this subsection.

11.18.h. Persons interested in obtaining information pursuant to this subsection shall submit a request in accordance with the Freedom of Information Act, W. Va. Code § 29B-1-1, et seq.

11.19. 40 C.F.R. §270.12. The provisions of 40 C.F.R. §270.12 are excepted from incorporation by reference. Availability of information provided under this rule is controlled by the provision of W. Va. Code, § 22-18-12 and subsection 11.18 of this rule.

11.20. 40 C.F.R. §270.24. The provisions of 40 C.F.R. §270.24 are excepted from incorporation by reference. Consult the rules of the Division of Air Quality regarding emissions from process vents.

11.21. 40 C.F.R. §§270.60(b) and 270.64. The provisions of 40 C.F.R. §§270.60(b) and 270.64 are hereby adopted and incorporated by reference. Consult the rules of the Division of Water and Waste Management regarding additional requirements for underground injection wells.

11.22. 40 C.F.R. §270.155. The provisions of 40 C.F.R. §270.155 relating to the administrative appeal of a decision to approve or deny a Remedial Action Plan (RAP) application are hereby modified for the purposes of this rule as follows: Any commenter on the draft RAP or notice of intent to deny, or any participant in any public hearing(s) on the draft RAP, may appeal the Secretary's decision to approve or deny the RAP application to the Environmental Quality Board pursuant to W. Va. Code § 22-18-20. Any person who did not file comments or did not participate in any public hearing(s) on the draft RAP may petition for administrative review only to the extent of the changes from the draft to the final RAP decision. Appeals of a RAP may be made to the same extent as for final permit decisions under section 11 of this rule. The Secretary shall give public notice of any grant of review of a RAP by the Environmental Quality Board through the same means used to provide notice under subsections 11.4 through 11.17 above.

§33-20-12. Deed and Lease Disclosure; Notice in Deed to Property.

12.1. Recording Requirement. -- The owner of the property on which a hazardous waste management facility is located shall record, in accordance with State law, a notation on the deed or lease to the facility property -- or on some other instrument that is normally examined during title search -- that will in perpetuity notify any potential purchaser of the property that:

12.1.a. The land has been used to manage hazardous wastes; and

12.1.b. Its use is restricted under 40 C.F.R. §264.117(c).

12.2. Upon actual transfer of property that contains hazardous wastes that have been stored, treated, or disposed of, the previous owner shall notify the Secretary in writing of the transfer.

12.3. Other Requirements. -- Nothing contained in this section will relieve any person from complying with the requirements on deed and lease disclosures set forth in W. Va. Code § 22-18-21.

§33-20-13. Universal Waste Rule.

13.1. 40 C.F.R. Part 273. -- The provisions of 40 C.F.R. part 273 are hereby adopted and incorporated by reference with the modifications, exceptions and additions contained in this section.

13.2. 40 C.F.R. §§273.20, 273.40, 273.56 -- The provisions of 40 C.F.R. §§273.20, 273.40, and 273.56 relating to exports are hereby adopted and incorporated by reference. The substitution of terms in subdivision 1.6.a does not apply to the provisions of this subsection. In addition to the requirements contained therein, any person subject to the provisions of 40 C.F.R. part 273 shall file with the Secretary copies of all documentation, manifests, exception reports, annual reports or records submitted to EPA, the Administrator or the Regional Administrator as required by 40 C.F.R. part 273.

13.3. 40 C.F.R. §273.70 -- The provisions of 40 C.F.R. §273.70 "Imports" are hereby adopted and incorporated by reference. Persons managing universal waste that is imported to West Virginia are subject to the requirements of this rule.

13.4. 40 C.F.R. §§273.80 and 273.81 -- The provisions of 40 C.F.R. §§273.80 and 273.81 are excepted from incorporation by reference. Consult the provisions of subdivision 2.5.d above to petition to include a waste as a universal waste.

§33-20-14. Standards for the Management of Used Oil.

14.1. 40 C.F.R. Part 279. -- The provisions of 40 C.F.R. part 279 are hereby adopted and incorporated by reference, with the exception contained in this section. Consult the rules of the Division of Air Quality regarding the burning of used oil.

14.2. 40 C.F.R. §279.82(b). -- The term "EPA" at 40 C.F.R. §279.82(b) will mean United States Environmental Protection Agency.

§33-20-15. Standards for Hazardous Waste Recycling.

15.1 The provisions of 40 C.F.R. §261.6 are hereby adopted and incorporated by reference, with the modifications contained in this section.

15.2 Standards Applicable To All Hazardous Waste Recycling Activities.

15.2.a Any residual material resulting from a recycling process shall be evaluated in accordance with section 3 of this rule to determine whether it is subject to regulation as a hazardous waste.

15.2.b Any facility that treats hazardous waste without recycling it, or that treats hazardous waste prior to recycling it, is subject to regulation under section 11 above. Generators that treat hazardous waste in containers or tanks in compliance with 40 C.F.R. §262.34 are exempt from regulation under section 11 for that treatment activity.

15.2.c Owners or operators of facilities with hazardous waste management units that recycle hazardous wastes are subject to section 7 of this rule.

15.3 Hazardous Waste Recycling At Off-Site Facilities.

15.3.a. Owners or operators of facilities that receive recyclable materials, stage recyclable materials, and recycle them without storing them before they are recycled are subject to:

15.3.a.1. The requirements of subsection 15.2 of this rule;

15.3.a.2. The generator requirements of section 5 of this rule; and

15.3.a.3. Financial Requirements -- Prior to staging any material, owners or operators shall demonstrate financial assurance for closure of the facility by:

15.3.a.3.A. Maintaining a closure cost estimate that meets the requirements of 40 C.F.R. § 265.142 and that has been approved by the Secretary; and

15.3.a.3.B. Establishing financial assurance in accordance with 40 C.F.R. §265.143.

15.3.b. Owners or operators of facilities that store recyclable materials before they are recycled are subject to section 11 of this rule and to all applicable provisions of sections 1, 3, and 5.

§33-20-16. Appeal Rights.

Any person aggrieved or adversely affected by the failure or refusal of the Secretary to act within a reasonable time on an application for a permit or by the issuance or denial of or by the terms and conditions of a permit granted by the Secretary under the provisions of this rule, may appeal to the Environmental Quality Board in accordance with the provisions of W. Va. Code §§ 22-18-22 and 22B-1-1 et seq.

TABLE 1

TABLE 1

PERMIT APPLICATION FEE SCHEDULE

STORAGE

EPA CODE ACTIVITY	FEE	FEE
S01 Container	<100 tons capacity $2,500.00	>100 tons capacity $3,750.00
S02 Tank	<100 tons capacity $2,500.00	>100 tons capacity $3,750.00
S04 Surface Impoundment	<1,000 tons capacity $10,000.00	>1,000 tons capacity $12,500.00
S05 Drip Pad	$2,500.00	
S03 Waste Pile	<100 tons capacity $5,000.00	>100 tons capacity $7,500.00
S06 Waste Pile (Containment Bldg.)	<100 tons capacity $5,000.00	>100 tons capacity $7,500.00

DISPOSAL

EPA CODE ACTIVITY	FEE	FEE
D80 Landfill	<1,000 tons/year $15,000.00	>1,000 tons/year $25,000.00
D81 Land Application	<1,000 tons/year $15,000.00	>1,000 tons/year $25,000.00
D83 Surface Impoundment	<1,000 tons/year $15,000.00	>1,000 tons/year $25,000.00

TABLE 1
PERMIT APPLICATION FEE SCHEDULE
(CONTINUED)

TREATMENT

EPA CODE ACTIVITY	FEE	FEE
T01 Tank	<100 tons capacity $2,500.00	>100 tons capacity $3,750.00
T02 Surface Impoundment	<1,000 tons/year $10,000.00	>1,000 tons/year $12,500.00
T03 Incinerator	<1,000 tons/year $5,000.00	>1,000 tons/year $7,500.00
T80 thru T93 Boiler/Industrial Furnace	<1,000 tons/year $5,000.00	>1,000 tons/year $7,500.00
T04 Other	$5,000.00	$7,500.00
T-94 Containment Bldg. Treatment	$5,000.00	$7,500.00

EMERGENCY PERMITS

EPA CODE ACTIVITY	FEE
State and Federal	Nil
Others	$500.00

TABLE 1
PERMIT APPLICATION FEE SCHEDULE
(CONTINUED)

MISCELLANEOUS

EPA CODE ACTIVITY	FEE
Permit Modification under 40 C.F.R., 270.42 (Class I)	$ 500.00
Permit Modification under 40 C.F.R., 270.42 (Class II and III) HWIR Staging Pile	$ 1,250.00
Modification under 40 C.F.R., 270.41	$ 2,500.00
Post-Closure Care Permit	$15,000.00
Closure Plans	$ 1,500.00

Federal Register

Friday,
January 8, 2010

Part IV

Environmental Protection Agency

40 CFR Parts 262, 263, 264, et al.
Revisions to the Requirements for: Transboundary Shipments of Hazardous Wastes Between OECD Member Countries, Export Shipments of Spent Lead-Acid Batteries, Submitting Exception Reports for Export Shipments of Hazardous Wastes, and Imports of Hazardous Wastes; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 262, 263, 264, 265, 266, and 271

[EPA–HQ–RCRA–2005–0018; FRL–9098–7]

RIN 2050–AE93

Revisions to the Requirements for: Transboundary Shipments of Hazardous Wastes Between OECD Member Countries, Export Shipments of Spent Lead-Acid Batteries, Submitting Exception Reports for Export Shipments of Hazardous Wastes, and Imports of Hazardous Wastes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends certain existing regulations promulgated under the hazardous waste provisions of the Resource Conservation and Recovery Act (RCRA) regarding hazardous waste exports from and imports into the United States. Specifically, the amendments implement recent changes to the agreements concerning the transboundary movement of hazardous waste among countries belonging to the Organization for Economic Cooperation and Development (OECD), establish notice and consent requirements for spent lead-acid batteries intended for reclamation in a foreign country, specify that all exception reports concerning hazardous waste exports be sent to the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, DC, and require U.S. receiving facilities to match EPA-provided import consent documentation to incoming hazardous waste import shipments and to submit to EPA a copy of the matched import consent documentation and RCRA hazardous waste manifest for each import shipment.

DATES: This final rule is effective July 7, 2010. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of July 7, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2005–0018. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the RCRA Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: Laura Coughlan, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery (5304P), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 308–0005; fax number: (703) 308–0514; e-mail address: *coughlan.laura@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Final Rule Apply to Me?

1. OECD Revisions

The revisions regarding the OECD in this final rule affect all persons who export or import hazardous waste, export or import universal waste, or export spent lead-acid batteries (SLABs) destined for recovery operations in OECD Member countries, except for Mexico and Canada. Any transboundary movement of hazardous wastes between the United States and either Mexico or Canada will continue to be governed (or addressed) by their respective bilateral agreements and applicable regulations. Potentially affected entities may include, but are not limited to:

Industry sector	NAICS	SIC
Utilities	221100	4939
Petroleum and Coal Products Manufacturing	324	29
Chemical Manufacturing	325100	28
Primary Metal Manufacturing	331	33
Fabricated Metal Product Manufacturing	332	34
Machinery Manufacturing	333	35
Computer and Electronic Product Manufacturing	334110	357

Industry sector	NAICS	SIC
Electrical Equipment, Appliance, and Component Manufacturing	335	36
Transportation Equipment Manufacturing	336	37
Miscellaneous Manufacturing	339900	39
Scrap and Waste Materials	423930	5093
Material Recovery Facilities	562920	4953

2. SLAB Revisions

The revisions regarding SLABs in this final rule affect all persons who export SLABs for reclamation in any foreign country. Potentially affected entities may include, but are not limited to:

Industry sector	NAICS	SIC
Hazardous Waste Collectors	562112	4212
Recyclable Material Hauling, Long-Distance	484230	4213
Batteries, Automotive, Merchant Wholesalers	423120	5013
Lead-acid Storage Batteries, Manufacturing	335911	3691
Automotive Parts, Accessories, and Tire Stores	441310	5013
Tire Dealers	441320	5014
All other General Merchandise Stores	452990	5399
New Car Dealers	441110	5511
Recyclable Material Wholesaler	423930	5093
Other Waste Collection	562119	4212
Recyclable Material Collection	562111	4212
Services, Solid Waste Collection Marinas	713930	4493
General Freight Trucking, Long-Distance, TL	484121	4213
General Freight Trucking, Long-Distance, LTL	484122	4213
Specialized Freight Trucking	484200	4213
Freight Carriers (except air couriers), Air Scheduled	481112	4512
Freight Charter Services, Air	481212	4522
Freight Railways, Line-Haul	482111	4011
Freight Transportation, Deep Sea, to and from Domestic Ports	483113	4424
Freight Transportation, Deep Sea, to or from Foreign Ports	483111	4412

3. Exception Report Revisions for Exports Under Subparts E and H of 40 CFR Part 262

The exception report change to 40 CFR part 262, subpart E and subpart H of this final rule affect all persons who export hazardous waste, universal waste, or SLABs to any foreign country. Potentially affected entities may include, but are not limited to:

Industry sector	NAICS	SIC
Utilities	221100	4939
Petroleum and Coal Products Manufacturing	324	29
Chemical Manufacturing	325100	28
Primary Metal Manufacturing	331	33
Fabricated Metal Product Manufacturing	332	34
Machinery Manufacturing	333	35
Computer and Electronic Product Manufacturing	334110	357
Electrical Equipment, Appliance, and Component Manufacturing	335	36
Transportation Equipment Manufacturing	336	37
Miscellaneous Manufacturing	339900	39
Scrap and Waste Materials	423930	5093

4. Import Revisions

The revisions regarding imports in this final rule affect all facilities receiving imported hazardous waste from a foreign country that must comply with either 264.71(a)(3) or 265.71(a)(3). This includes those hazardous waste import shipments originating in OECD Member countries, as well as in non-OECD countries. Potentially affected entities may include, but are not limited to:

Industry sector	NAICS	SIC
Hazardous Waste Collectors	562112	4212
Recyclable Material Wholesaler	423930	5093
Other Waste Collection	562119	4212
Recyclable Material Collection Services, Solid Waste Collection	562111	4212
Scrap and Waste Materials	423930	5093

Industry sector	NAICS	SIC
Material Recovery Facilities	562920	4953

The lists of potentially affected entities in the above tables may not be exhaustive. The Agency's aim is to provide a guide for readers regarding those entities that potentially could be affected by this action. However, this action may affect other entities not listed in these tables. If you have questions regarding the applicability of this final rule to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT.**

B. List of Acronyms Used in This Final Rule

Acronym	Meaning
BCI	Battery Council International.
CBI	Confidential Business Information.
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act.
CFR	Code of Federal Regulations.
EPA	U.S. Environmental Protection Agency.
FR	Federal Register.
HSWA	Hazardous and Solid Waste Amendments.
LAB	Lead-Acid Battery.
NAICS	North American Industrial Classification System.
NTTAA	National Technology Transfer and Advancement Act.
NAFTA	North American Free Trade Agreement.
OECD	Organization for Economic Cooperation and Development.
OMB	Office of Management and Budget.
OSWER	Office of Solid Waste and Emergency Response.
RCRA	Resource Conservation and Recovery Act.
RFA	Regulatory Flexibility Act.
SIC	Standard Industrial Classification.
SLAB	Spent Lead-Acid Battery.
SBREFA	Small Business Regulatory Enforcement Fairness Act.
TRI	Toxics Release Inventory.
UMRA	Unfunded Mandates Reform Act.

C. What Are the Statutory Authorities for This Final Rule?

The authority to promulgate this rule is found in sections 1006, 2002(a), 3001–3010, 3013, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), and as amended by the Hazardous and Solid Waste Amendments, 42 U.S.C. 6905, 6912, 6921–6930, 6934, and 6938.

II. Background

A. OECD Revisions

1. What Is the OECD?

The OECD is an international organization established in 1960 to assist Member countries in achieving sustainable economic growth, employment, and an increased standard of living, while simultaneously ensuring the protection of human health and the environment. OECD Member countries are concerned with a host of international socio-economic and political issues, including environmental issues. To address these issues, the OECD Council may negotiate Council Decisions, which are international agreements that create binding commitments on the United States under the terms of the OECD Convention, unless otherwise provided in the Articles of the 1960 Convention. One such Council Decision addresses the transboundary movement of waste, which is the subject of this final rule. There are currently thirty OECD Member countries: Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, South Korea, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. The OECD country Web site for each Member country may be found at *http://www.oecd.org/infobycountry/.*

2. What OECD Decisions Form the Basis of the OECD Revisions in This Final Rule?

The current RCRA regulations regarding waste shipments destined for recovery within the OECD are found in 40 CFR part 262, subpart H. These regulations are based on the March 30, 1992, "Decision of the Council C(92)39/FINAL Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery" (hereinafter referred to as the 1992 Decision) that EPA then promulgated as a final rule under RCRA on April 12, 1996 (61 FR 16289). Since that time, the OECD has made a number of changes to the waste shipment regime, necessitating changes to the RCRA regulations.

On June 14, 2001, the OECD Council amended the "Decision of the Council C(92)39/FINAL Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery" by adopting "Revision of Decision C(92)39/FINAL on the Control of Transboundary Movement of Wastes Destined for Recovery Operations" (hereafter referred to as the 2001 OECD Decision). The goal of the 2001 OECD Decision was to harmonize the procedures and requirements of the OECD with those of the Basel Convention [1] and to eliminate duplicative activities between the two

[1] The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal is a comprehensive global environmental agreement on hazardous and other wastes. The Convention has 172 Member countries, also known as Parties, and aims to protect human health and the environment against the adverse effects resulting from the generation, management, transboundary movements and disposal of hazardous and other wastes. A copy of the convention text has been placed in the docket established for this rulemaking. More information on the Basel Convention may be found at *http://www.basel.int.*

international organizations as much as practical. These changes include revisions to the original established framework (such as reducing the levels of control from a three-tiered system to a two-tiered system), while also adding entirely new provisions (for example, the new certificate of recovery requirement). Subsequent to the 2001 OECD Decision, an addendum, C(2001)107/ADD1 (hereafter referred to as the 2001 OECD Addendum), which consists of revised versions of the notification and movement documents and the instructions to complete them, was adopted by the OECD Council on February 28, 2002. The addendum was incorporated into the 2001 OECD Decision as section C of Appendix 8, and the combined version was issued in May 2002 as C(2001)107/FINAL. The appendices of Decision C(2001)107/Final were amended three times by C(2004)20, C(2005)141, and C(2008)156.[2] The Decision, "Decision of the Council C(2001)107/FINAL, Concerning the Control of Transboundary Movements of Wastes Destined for Recovery Operations, as amended by C(2004)20; C(2005)141 and C(2008)156," is hereinafter referred to as the Amended 2001 OECD Decision.

B. SLAB Revisions

1. What are SLABs?

Lead-acid batteries (LABs) are secondary, wet cell batteries that contain liquid and can be recharged for many uses. They are the most widely used rechargeable batteries in the world and are mainly used as starting, lighting, and ignition (SLI) power batteries found in automobiles and other vehicles. A rechargeable SLAB is spent if it no longer performs effectively and cannot be recharged. Battery failure is most commonly attributed to water loss and grid corrosion during normal use. SLABs are considered both solid and hazardous wastes under Subtitle C of RCRA, because they are classified as spent materials that exhibit the toxicity characteristic for lead (*e.g.*, D008), and the corrosivity characteristic for the sulfuric acid electrolyte in the battery (*e.g.*, D001). For a full discussion of SLAB composition and how SLABs are managed, please *see* Sections II.B.1 and II.B.2 of the proposed rule (73 FR 58393).

2. How Must a Business Manage SLABs Intended for Domestic Recycling or Disposal?

Businesses subject to the RCRA hazardous waste regulations may choose from three options for managing hazardous waste spent lead-acid batteries. They may manage the batteries under the streamlined standards specifically for SLABs found in 40 CFR part 266, subpart G, the streamlined Universal Wastes standards for all hazardous waste batteries found in 40 CFR part 273, or the full Subtitle C hazardous waste management regulations found in 40 CFR parts 262–265, 267, 268, and 270. For the complete discussion of what these requirements entail for disposal or recycling within the United States, please *see* Section II.B.3 of the proposed rule (73 FR 58394).

3. What Does a Business Have To Do When Exporting SLABs for Recycling?

A company seeking to export SLABs may choose from the same three regulatory options described above. If they choose to follow the universal waste regulations, exporters of SLABs for reclamation are subject to the export requirements in 40 CFR part 273 (including the notice and consent requirements) or, if the SLABs are to be exported to an OECD Member country for recovery, the export requirements (including notice and consent) in 40 CFR part 262, subpart H. The second option would be for the export to follow the full subtitle C hazardous waste export regulations in 40 CFR part 262, subparts E or H. Most likely, SLAB exporters will choose to follow the regulatory provisions specific to SLABs in 40 CFR part 266, subpart G. Prior to today's rule, under part 266, SLABs that were destined for reclamation were exempt from the RCRA export requirements in 40 CFR part 262, subparts E and H (including the notice and consent requirements). Today's rule adds export requirements to part 266 that mirror those that apply to universal waste, as described later in this preamble.

C. Exception Reports for Hazardous Waste Exports

Prior to this final rule, under 40 CFR part 262, subparts E and H, exception reports were required to be submitted by the exporter to the EPA Administrator if any of the following occurred:

(1) The exporter did not receive a copy of the RCRA hazardous waste manifest (if applicable) signed by the transporter identifying the point of departure of the waste from the United States, within forty-five (45) days from the date it was accepted by the initial transporter;

(2) Within ninety (90) days from the date the hazardous waste was accepted by the initial transporter, the exporter did not receive written confirmation from the recovery facility that the hazardous waste was received;

(3) The hazardous waste was returned to the United States.

D. Documenting Hazardous Waste Import Shipments

Prior to this final rule, under §§ 264.71(a)(3) and 265.71(a)(3), U.S. receiving treatment, storage, and disposal facilities (TSDFs) had to submit a copy of the hazardous waste manifest to EPA to document individual hazardous waste import shipments within 30 days of shipment delivery.

E. Proposed Rule

On October 6, 2008, EPA published a **Federal Register** notice seeking comment on proposed revisions to the requirements regarding the export and import of hazardous wastes from and into the United States (*see* 73 FR 58388 and following pages). First, we proposed to modify the requirements concerning the transboundary movement of hazardous waste destined for recovery among Member countries to the OECD in order to implement the Amended 2001 OECD Decision. The changes, largely in 40 CFR part 262, subpart H, included reducing the number of control levels, exempting qualifying shipments sent for laboratory analyses from certain paperwork requirements, requiring recovery facilities to submit a certificate of recovery, adding provisions for the return or re-export of wastes subject to the Amber control procedures, and clarifying certain existing provisions that were identified as potentially ambiguous to the regulated community. Second, we proposed to amend the regulations in 40 CFR part 266, subpart G regarding the management of SLABs being reclaimed to require notice and consent for those batteries intended for reclamation in a foreign country, mirroring the existing export requirements for exports of RCRA universal waste batteries, to create a more uniform practice for exporting SLABs for recovery under RCRA. Third, we proposed a technical correction in the exception reporting requirements of §§ 262.55 and 262.87(b) for hazardous waste exports to specify that all exception reports submitted to EPA be sent to the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, DC rather than to the Administrator to ensure better oversight of return shipments to the U.S. and compliance with the exception reporting requirements without any additional

[2] Copies of these amendments have been placed in the docket established for this rulemaking.

regulatory burden for U.S. exporters. Fourth and last, we proposed to amend: the hazardous waste import requirements in 40 CFR part 262, subpart F to require that U.S. importers give the initial transporter a copy of the EPA-provided documentation confirming EPA's consent to the import of the hazardous waste when they provide the RCRA hazardous waste manifest; and, the import shipment document submittal requirements in §§ 264.71(a)(3) and 265.71(a)(3) to require that the U.S. receiving facility submit to EPA a copy of the EPA consent documentation along with the RCRA hazardous waste manifest within thirty days of import shipment delivery. Both proposed amendments were intended to improve EPA's oversight of such imports. For a more detailed description of the proposed revisions, as well as the intended benefits of each revision, please *see* Section I.D of the proposed rule (73 FR 58390 and following pages).

The Agency received four sets of comments in response to its October 6, 2008 proposal. The more significant comments on this proposal are addressed later in this preamble, but all are addressed in background documents for today's final rule, which are in the docket. After considering all comments, we are finalizing the revisions substantially as proposed, with one modification.

III. Summary of the Final Rule

A. Changes to 40 CFR 262.10(d)

This final rule updates § 262.10(d) to reflect that export shipments of SLABs being managed under 40 CFR part 266, subpart G that are destined for recovery in any of the OECD Member countries listed in § 262.58(a)(1) are now subject to 40 CFR part 262, subpart H. This change is necessary to conform with the scope in the updated § 262.80(a).

B. Changes to 40 CFR Part 262, Subpart E

This final rule amends the exception reporting requirements in § 262.55 to specify that all exception reports be submitted to the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, DC rather than to the Administrator. In addition, this rule also updates § 262.58(a) to reflect that export shipments of SLABs being managed under 40 CFR part 266, subpart G that are destined for recovery in any of the OECD Member countries listed in § 262.58(a)(1) are subject to the requirements of subpart H. Finally, this rule adds language in § 262.58(b) of subpart E to clarify that hazardous waste exports subject to subpart E and hazardous waste imports subject to subpart F are not subject to subpart H in order to reduce confusion for U.S. exporters and importers.

C. Changes to 40 CFR Part 262, Subpart H

All but the last three changes discussed below are necessary to conform to the revisions in the Amended 2001 OECD Decision. These changes range from substantive revisions and amendments to changes in terminology to simple editorial changes. Collectively, these changes serve to implement the Amended 2001 OECD Decision, as well as clarify certain sections that were previously ambiguous to the regulated community. Changes to 40 CFR part 262, subpart H include:

1. Changes in Terminology

In the Amended 2001 OECD Decision, the OECD Council updated several terms and definitions used in the 1992 Decision. EPA believes that these changes do not result in substantive changes to the intent of the requirements, but merely bring them in line with current terminology used in practice and in other international agreements. To limit any unnecessary confusion between the U.S. regulations and those of other OECD Member countries and to promote consistency with the Amended 2001 OECD Decision, this final rule adopts the following changes in terminology:

- "Transfrontier" to "transboundary";
- "Tracking document" to "movement document";
- "Amber-list controls" to "Amber control procedures";
- "Notifier" to "exporter"; and
- "Consignee" to "importer."[3]

2. The number of different levels of control is reduced from three (Green, Amber, and Red) to two (Green and Amber) and the waste lists have been updated.

The 2001 OECD Decision replaced the OECD three-tiered waste list (Green, Amber, and Red) system with a two-tiered system (Green and Amber) to conform to the Basel Convention waste lists more closely. Further, the revised OECD waste lists, as provided by the 2004 OECD Amendment, better correspond to those of the Basel Convention. Accordingly, we are making these same conforming changes to EPA's OECD rule.

Wastes subject to the Green control procedures are those wastes listed in Parts I and II of Appendix 3 to the Amended 2001 OECD Decision. Part I contains wastes listed in Annex IX of the Basel Convention, to which the OECD has made and noted adjustments, as appropriate. Part II contains additional wastes subject to the Green control procedures, which the OECD has assessed as not posing any risk to human health or the environment under its risk criteria.

Wastes subject to the Amber control procedures are those wastes listed in Parts I and II of Appendix 4 to the Amended 2001 OECD Decision. Part I contains wastes listed in Annexes II and VIII of the Basel Convention, to which the OECD has made and noted adjustments, as appropriate. Part II contains additional wastes subject to the Amber control procedures, which the OECD has assessed as posing a risk to human health or the environment under its risk criteria. Further, all wastes formerly appearing on the Red list are subject to the Amber control procedures.

U.S. importers and exporters of hazardous waste subject to the subpart H requirements of 40 CFR part 262 should be aware that wastes listed in Part I of both the new OECD Amber and Green waste lists have not retained their OECD waste codes. Consequently, the relevant Basel waste codes should be used when implementing the export and import procedures. However, wastes listed in Part II of both the new OECD Amber and Green waste lists do retain their original OECD waste codes, as listed in the 1992 Decision. This two-part system is necessary to ensure that wastes not yet explicitly listed under the Basel Convention will continue to have the same level of control applied to them when destined for recovery under the Amended 2001 OECD Decision.

Both the Green waste list and the Amber waste list are cited in § 262.89. This rule amends § 262.89(d) to incorporate by reference the most current OECD waste lists from the Amended 2001 OECD Decision. Further, the elimination of the Red list allows for the consolidation of the provisions currently found in § 262.89(b) and (c), which appears in new final § 262.89(b).

[3] The change from "consignee" to "importer" is only being made in 40 CFR part 262, subpart H, and does not affect the use of consignee in 40 CFR part 262, subpart E.

3. References to Unlisted Wastes Have Been Eliminated in Favor of "Wastes Not Covered in Appendices 3 and 4 of the OECD Decision"

Section 262.83(d) previously addressed the general notification requirements for unlisted wastes. Today's rule renumbers this section as § 262.83(c) since the previous § 262.83(c) addressed "Red-list wastes," which is no longer included in the final rule. Today's rule also replaces the term "unlisted wastes" with the phrase "wastes not covered in Appendices 3 and 4 of the OECD Decision,"[4] so that wastes not on these lists are not automatically subject to the Amber control procedures. Rather, "wastes not covered in Appendices 3 and 4 of the OECD Decision" will be subject to the domestic rules and regulations of the countries of concern.

4. Transboundary Movements May Now Qualify for a Laboratory Analysis Exemption

The Amended 2001 OECD Decision allows Member countries to decide through their domestic laws and regulations that waste samples normally subject to the Amber control procedures will only be subject to the Green control procedures (*e.g.*, the existing controls normally applied in commercial transactions) if such samples are destined for laboratory analyses to assess its physical or chemical characteristics, or to determine its suitability for recovery operations, and providing that the amount of the waste samples qualifying for this exemption are not more than the minimum quantity reasonably needed to perform the analyses adequately in each particular case up to a maximum of twenty-five kilograms (25 kg/55 lbs). Analytical samples also must be appropriately packaged and labeled and must be carried out under the terms of all applicable international transport agreements. Furthermore, any transboundary movement of such samples through non-OECD Member countries shall be subject to international law and to all applicable national laws and regulations.

This final rule allows waste samples that are sent for laboratory analyses to be controlled under the Green control procedures, as opposed to the Amber control procedures, provided they meet the same conditions as set forth in the Amended 2001 OECD Decision.

U.S. exporters should be aware, however, that even if their shipments qualify for the laboratory analyses exemption under U.S. domestic law, some Member countries may elect to still apply the Amber control procedures to such shipments, requiring the exporter of a waste sample for laboratory analyses to inform the competent authorities of such a movement. Therefore, we recommend that U.S. exporters check with the competent authorities of each country to find out if they require the Amber control procedures for a sample that would qualify for the laboratory analyses exemption.

5. Recovery Facilities Must Submit a Certificate of Recovery

This final rule implements the Amended 2001 OECD Decision's requirement that a duly authorized representative of the recovery facility submit a certificate of recovery to all interested parties (*i.e.*, exporter, country of export, country of import), documenting that recovery of the waste has been completed. A valid certificate of recovery is defined as a signed, written and dated statement that affirms that the waste was recovered in the manner agreed to by the parties to the contract.[5] This final rule also requires, as does the Amended 2001 OECD Decision, that the recovery facility send the certificate of recovery as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following the receipt of the waste by the recovery facility to the exporter and competent authorities of the countries of export and import by mail, e-mail followed by mail, or fax followed by mail. This final rule incorporates the certificate of recovery provisions of the Amended 2001 OECD Decision in § 262.83(e).

The Amended 2001 OECD Decision states that the completion of block 19 of the OECD movement document, and the submission of signed copies to the exporter and relevant competent authorities, fulfils the certificate of recovery requirement. Although the OECD movement document is recommended, the Amended 2001 OECD Decision does not require recovery facilities to use it.

While some recovery facilities may not be subject to the import and other requirements because they are not importing RCRA hazardous waste, these entities should be aware that the competent authorities of the exporting Member countries may still impose the conditions outlined in the Amended 2001 OECD Decision before the transactions can be completed. Thus, if the waste is considered non-hazardous in the United States, EPA would not require a certificate of recovery from a U.S. facility. However, the competent authority of the country of export may require a certificate of recovery, and may require that the exporter include such a requirement in the contract between the exporter and importer.

6. Amendments to the Notification Requirements

The Amended 2001 OECD Decision introduced a series of notification requirements that oblige EPA to make conforming amendments to its hazardous waste regulations. Specifically, this final rule amends § 262.83(e) (which has been renumbered as § 262.83(d)) by incorporating several new items that must be included in the notification, including:

- Exporter and importing recovery facility e-mail address;
- E-mail address for importer (if different from the importing recovery facility);
- Address, telephone, fax, and e-mail of intended transporter(s);
- Means of transport envisioned; and
- Specification of the type of recovery operation(s) that will be used.

7. Amendments to Procedures for Exports to Pre-Approved Facilities

Under the Amended 2001 OECD Decision and its predecessor, a pre-approved recovery facility (also known as a pre-consented recovery facility) is one that has been identified in advance by the competent authority having jurisdiction over that facility as acceptable for receiving certain hazardous waste imports under simplified and accelerated notification procedures. For these facilities, the competent authority must inform the OECD secretariat that the facility is pre-approved, and the waste types that are acceptable for recovery. Pre-approval may be granted for a specific time frame

[4] Section 262.81 in the final revisions to the regulatory text in 40 CFR part 262, subpart H defines "OECD Decision" as "Decision of the Council C(2001)107/FINAL, Concerning the Control of Transboundary Movements of Wastes Destined for Recovery Operations, as Amended by C(2004)20; C(2005)141 and C(2008)156" for the purposes of the subpart.

[5] Under both the 1992 Decision and the Amended 2001 OECD Decision, transboundary movements of wastes subject to the Amber control procedures may only occur under the terms of a valid written contract, or chain of contracts, or equivalent arrangements between facilities controlled by the same legal entity, starting with the exporter and terminating at the recovery facility. The contracts must: (a) Clearly identify the generator of each type of waste, each person who shall have legal control of the wastes and the recovery facility; (b) provide that relevant requirements of the OECD Decisions are taken into account and binding on all parties; and (c) specify which party to the contract shall assume responsibility for ensuring alternative management of the wastes including, if necessary, the return of the wastes.

and may be revoked at any time by the relevant competent authority.

The Amended 2001 OECD Decision established a time period for objection to transboundary movements to pre-approved facilities and lengthened the allowable coverage period for notifications. Specifically, the Decision established a time period of seven (7) working days during which the relevant competent authorities may object to the transboundary movements of waste to pre-approved facilities. The Decision also established that the allowable coverage period for general notifications (or the period of time for which consent may be granted) may extend up to three (3) years. Today's final rule amends the current regulations to incorporate these changes in § 262.83(b)(2)(ii) to reflect the seven (7) day time period and in § 262.83(b)(2)(i) to reflect the allowable coverage period of up to three (3) years for notifications.

8. New Procedures for the Pretreatment of Hazardous Wastes at R12/R13 Recovery Facilities

The final rule incorporates the Amended 2001 OECD Decision's new requirements for R12 and R13 recovery facilities. R12 and R13 recovery facilities are transfer and storage/accumulation facilities, respectively, that do not recover the wastes themselves. Because hazardous wastes destined for recovery may have to undergo treatment before a R1–R11 [6] recovery facility actually recovers them, the OECD considers R12 and R13 facilities as "intermediate or temporary operations." The primary reason for the new requirements is to ensure that the subsequent R1–R11 recovery operation receives the hazardous waste and completes its recovery in an environmentally sound manner.

Specifically, when the notification document lists an R12/R13 recovery facility, the exporter must indicate in the same notification document the recovery facility or facilities where the subsequent R1–R11 recovery operation takes place or may take place. In addition, the R12/R13 recovery facility shall:

- Certify the receipt of the hazardous waste by sending a copy of the duly completed movement document within three (3) working days of the receipt of such wastes to the exporter and all competent authorities concerned;
- Retain the original movement document for three (3) years;
- Certify the completion of the R12/R13 recovery operation by submitting a certificate of recovery as soon as possible, but no later than thirty (30) days after the completion of the R12/R13 recovery operation at that facility and no later than one (1) calendar year following the receipt of the waste by the R12/R13 recovery facility; and
- Send the certificate of recovery to the exporter and to the competent authorities of the countries of export and import by either mail, e-mail followed by mail, or by fax followed by mail.

The control procedures applied to the transboundary movement of hazardous waste from an R12/R13 recovery facility to a subsequent R1–R11 recovery facility vary depending on whether these facilities are located within the same Member country or in a different Member country.

When the subsequent R1–R11 recovery facility is located within the same Member country, the R12/R13 recovery facility must obtain from the subsequent R1–R11 recovery facility a certificate that the "final" recovery of the hazardous waste at that facility has been completed within one (1) calendar year following the delivery of the hazardous waste to the R1–R11 facility. The format of the certificate of recovery is not fixed, but it must, at a minimum, identify the code number of the notification document and the serial number of the movement documents to which it pertains. The R12/R13 recovery facility must then transmit the certification document prepared by the R1–R11 recovery facility to the competent authorities of the countries of import and export as soon as possible, but no later than one (1) calendar year following the delivery of the hazardous waste to the R1–R11 recovery facility.

When the subsequent R1–R11 facility is not located in the same Member country as the R12/R13 facility, a new notification must be made for the transboundary movement of hazardous waste by the R12/R13 recovery facility. In addition, the applicable procedures differ depending upon the country where the final recovery operation occurs. In particular, if the final R1–R11 recovery facility is located in the initial country of export, then the normal Amber control procedures shall apply. In this case, the R12/R13 facility must submit a new notification document to its competent authority and obtain consent from its competent authority and from the initial country of export to the export of the hazardous waste back to that country for final recovery. If, however, the final R1–R11 recovery facility is located in a country different from the initial country of export, then the Amber control procedures shall apply, but also the movement will in effect be treated as a "re-export" of waste to a third country. In this case, not only is a new notification document required, but the competent authority of the initial country of export must also be notified of the transboundary movement, and consent must be obtained from the original country of export and the new countries of import, export, and transit. For example, if a hazardous waste is exported from the United States to a R12/R13 facility in France, and then will be sent to a subsequent R1–R11 recovery facility in Germany, the R12/R13 facility in France must submit a notification to and obtain consent from France (the new country of export), the United States (the original country of export) and Germany (the new country of import for final recovery).

The final rule incorporates all of these requirements in § 262.82(f).

9. New Provisions Regarding Mixtures of Hazardous Wastes

The Amended 2001 OECD Decision contains controls and provisions related to the mixture of hazardous waste. Specifically, the Amended 2001 OECD Decision defines a mixture of hazardous waste as one that results from the intentional or unintentional mixing of two or more different hazardous wastes. However, under the Amended 2001 OECD Decision, a single shipment of hazardous wastes, consisting of two or more wastes, where each is separated, is not considered a mixture of hazardous waste.

The Amended 2001 OECD Decision also provides that:

- A mixture of two or more Green wastes should be subject to the Green control procedures. However, the regulated community should be aware that some OECD Member countries may require, by domestic law that mixtures of different Green wastes be subject to the Amber control procedures.
- A mixture consisting of a Green waste and more than a "de minimis" amount of Amber waste is subject to the Amber control procedures. In the absence of internationally accepted criteria, the term "de minimis" should

[6] Recovery operations R1 through R11 are defined as follows: R1, use as a fuel (other than in direct incineration) or other means to generate energy; R2, solvent reclamation/regeneration; R3, recycling/reclamation of organic substances which are not used as solvents; R4, recycling/reclamation of metals and metal compounds; R5, recycling/reclamation of other inorganic materials; R6, regeneration of acids or bases; R7, recovery of components used for pollution abatement; R8, recovery of components used from catalysts; R9, used oil re-refining or other reuses of previously used oil; R10, land treatment resulting in benefit to agriculture or ecological improvement; and, R11, uses of residual materials obtained from any of the operations numbered R1–R10.

be defined according to national regulations and procedures.

- A mixture containing two or more Amber wastes is subject to the Amber control procedures.

In this final rule, EPA has revised the text in § 262.82(a) to clarify that only those wastes and waste mixtures considered hazardous under U.S. national regulations will be subject to the Amber control procedures within the United States. This is consistent with longstanding EPA policy, and should minimize confusion for the regulated community. For example, under the existing RCRA hazardous waste regulations, any mixture of an Amber waste that exhibits one or more of the hazardous characteristics of ignitability, corrosivity, reactivity, or toxicity under RCRA with a Green waste shall be considered an Amber waste if the mixture still exhibits one or more of the RCRA hazardous waste characteristics and, thus, be subject to the Amber control procedures. Conversely, if the resulting mixture no longer exhibits one or more of the RCRA hazardous characteristics, it will instead be considered a Green waste, and be subject to the Green control procedures.

Because other OECD Member countries may require that the mixtures listed above (that the U.S. sometimes considers subject to the Green control procedures) be subject to the Amber control procedures, the final rule includes notes stating that other OECD Member countries may subject such mixtures to the Amber control procedures. In such cases, U.S. importers and exporters should be prepared to follow the Amber control procedures within those OECD Member countries.

Finally, the Amended 2001 OECD Decision requires that notification for a transboundary movement of a mixture of hazardous wastes falling under the Amber control procedures should be made by the person performing the mixing activity (the generator of the mixture) or any other person acting as an exporter in place of the person performing the mixing activity. In the notification, relevant information on each fraction of the waste, including its code numbers, has to be given in order of importance. This final rule imposes these requirements in 40 CFR 262.82(a)(3).

10. New Provisions Regarding the Return and Re-Export of Hazardous Wastes Subject to the Amber Control Procedures

This final rule adopts the Amended 2001 OECD Decision's more precise provisions (than the earlier 1992 Decision) on measures to be taken in case a transboundary movement of hazardous waste is subject to the Amber control procedures and cannot be completed as intended (*e.g.*, not in accordance with the notification, consents given by the competent authorities, or the terms of the contract). There may be a number of reasons for this non-completion, for example, an accident during the transport of the hazardous waste, improper notification, or any illegal action taken by someone involved with the movement of the hazardous waste.

The Amended 2001 OECD Decision provides that if this uncompleted movement of hazardous waste (hereafter referred to as the "incident"), takes place in the country of import, the competent authority of that country shall immediately inform the competent authority of the country of export. The competent authorities of the concerned countries are to cooperate in resolving the incident by making all necessary arrangements to ensure the best alternative management of the hazardous waste. If alternative arrangements cannot be made to recover these wastes in an environmentally sound manner in the country of import, the hazardous waste must be returned to the country of export or re-exported to a third country.

(a) Return of Hazardous Waste to the Country of Export

Under the Amended 2001 OECD Decision, the return of the hazardous waste to the country of export is to take place within ninety (90) days from the time when the country of export was informed of the incident, unless the concerned countries agree to another period of time. The competent authorities of both countries of export and transit (if applicable) are to be informed about the return of the hazardous waste and the reasons for its return. These authorities are prohibited from opposing or preventing the return of the hazardous waste to the country of export, so long as the movement complies with the requirements set out by the country of export's domestic law. If the waste is returned through a country of transit, the competent authority of that country is to be notified and consent obtained in accordance with the normal Amber control procedures.

When the incident occurs in the United States, the U.S. importer must inform EPA of the need to return the shipment. EPA will then inform the countries of export and transit, citing the reason(s) for returning the waste, and request written consent to the return by any transit country as needed. If the return shipment will cross any transit country, the return shipment may only occur after EPA provides a copy of the transit country's consent to the U.S. importer. The U.S. importer must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste unless otherwise informed by EPA in writing of an alternate timeframe for the return.

When the incident involves an export shipment from the United States, the U.S. exporter must provide for the return of the hazardous waste shipment within ninety (90) days from the time the country of import informs EPA of the need to return the shipment unless otherwise informed by EPA in writing of an alternate timeframe for the return. The U.S. exporter must also submit an exception report to EPA.

(b) Re-Export of Hazardous Waste From the Country of Import to a Third Country

Under the Amended 2001 OECD Decision, the re-export from the country of import to a third country is considered a new transboundary movement of hazardous waste. As a result, the Amber control procedures are applicable. The initial importer becomes the exporter of the hazardous waste and, consequently, assumes all responsibilities as an exporter. In addition, the notification must also include the competent authority of the initial country of export who, in accordance with the Amber control procedures, may object to the re-export if the movement does not comply with the requirements set out by its domestic law. Re-export of a hazardous waste shipment from the United States to a third country may therefore only occur after the importer (acting as the new exporter) submits a notification to EPA in compliance with the notice and consent procedures of § 262.83 and obtains consent from the original country of export, the new country of import, and any transit countries.

(c) Return of Hazardous Waste From the Country of Transit to the Country of Export

If the incident takes place in the country of transit, the exporter should make arrangements so that the hazardous waste still can be recovered in an environmentally sound manner in the recovery facility of the importing country to where it was originally destined. The competent authority of the country of transit is to immediately inform the competent authorities of the countries of export and import and any

other countries of transit. If the exporter is unable to arrange for the recovery of the hazardous waste in an environmentally sound manner at the recovery facility to where it was originally destined, the hazardous waste should be returned, adhering to subsection (a) above, to the country of export within ninety (90) days from the time when the country of export was informed of the incident or such other period of time as the concerned countries agree. The competent authorities of the country of export and the countries of transit are to be informed of the return, but they are prohibited from opposing or preventing the return of the hazardous wastes to the country of export, so long as the movement complies with the requirements set out by the country of export's domestic law.

When the United States is the transit country where the incident occurs, the U.S. transporter must inform EPA of the need to return the shipment. EPA will then inform the country of export, citing the reason(s) for returning the waste. The U.S. transporter must then complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste unless otherwise informed by EPA in writing of an alternate timeframe for the return.

When the waste shipment from the incident originated in the United States, the U.S. exporter must provide for the return of the hazardous waste shipment within ninety (90) days from the time the country of transit informs EPA of the need to return the shipment unless otherwise informed by EPA in writing of an alternate timeframe for the return. The U.S. exporter must also submit an exception report to EPA.

This final rule sets forth these re-export and return provisions of the Amended 2001 OECD Decision in §§ 262.82(c), 262.82(d), and 262.82(e).

11. SLABs Are Now Covered by EPA's OECD Rule

This final rule updates § 262.80(a) and § 262.89(a) to reflect that export shipments of SLABs being managed under 40 CFR part 266, subpart G that are destined for recovery in any of the OECD Member countries listed in § 262.58(a)(1) are subject to 40 CFR part 262, subpart H.

12. Technical Corrections to EPA's OECD Rule

This final rule makes several technical corrections to EPA's current OECD rule, including corrections to capitalization, syntax, and punctuation errors. In these changes, EPA is not making any substantive revisions, but is seeking to eliminate any confusion on the part of the regulated community by striving for consistency both within the regulations and with the terms of the Amended 2001 OECD Decision. Some examples of these types of revisions include changing "Subpart" to "subpart," "OECD member" to "OECD Member," and "thirty days" to "thirty (30) days."

13. Change to the Submittal Address for Exception Reports

This final rule amends the exception reporting requirements in § 262.87(b) to specify that all exception reports are to be submitted to the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, DC rather than the Administrator.

D. Changes to 40 CFR 263.10(d)

This final rule updates § 263.10(d) to reflect that export shipments of SLABs being managed under 40 CFR part 266, subpart G that are destined for recovery in any of the OECD Member countries listed in § 262.58(a)(1) are now subject to 40 CFR part 262, subpart H. This change is necessary to conform with the scope in the updated § 262.80(a).

E. Changes to 40 CFR 264.12(a)(2) and 40 CFR 265.12(a)(2)

This final rule amends §§ 264.12(a)(2) and 265.12(a)(2) by, among other things, requiring owners or operators of recovery facilities to submit a certificate of recovery as soon as possible after the recovery is completed, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following the receipt of the hazardous waste. This change is necessary to conform to the Amended 2001 OECD Decision.

F. Changes to 40 CFR 264.71(a)(3) and 40 CFR 265.71(a)(3)

This final rule amends §§ 264.71(a)(3) and 265.71(a)(3) by requiring owners or operators of facilities receiving imported hazardous wastes to submit to EPA a copy of the relevant written documentation of EPA's consent to the import along with a copy of the RCRA hazardous waste manifest for the incoming shipment within thirty (30) days of shipment delivery. This will enable EPA to match the individual shipment manifest to the consent for an annual notice from a foreign exporter.

G. Changes to 40 CFR 266.80(a)

EPA is amending the table located at 40 CFR 266.80 by including two additional rows to the current table. These additional rows contain the new provisions that require exporters and transporters of SLABs being sent to a foreign country for reclamation to meet the universal waste requirements concerning the export of SLABs for reclamation.

Specifically, exporters will need to either comply with the requirements in 40 CFR part 262, subpart H when the shipments are destined to any of the OECD Member countries listed in § 262.58(a)(1), or with the following requirements when the shipments are destined for any country not listed in § 262.58(a)(1):

- Comply with the requirements applicable to a primary exporter in 40 CFR 262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57;
- Export such SLABs only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in subpart E of 40 CFR part 262 of this chapter; and
- Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.

The transporter of SLABs being sent to a foreign country for reclamation will need to comply with the applicable requirements in 40 CFR part 262, subpart H when the shipments are destined to any of the OECD Member countries listed in § 262.58(a)(1). For export shipments of SLABs destined for a country not listed in § 262.58(a)(1), such as Canada or Mexico, the transporter will not be able to accept a shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent, and will have to ensure that:

- A copy of the EPA Acknowledgment of Consent accompanies the shipment; and
- The shipment is delivered to the foreign facility designated by the person initiating the shipment.

The new requirements at 40 CFR 266.80 will ensure greater protection of human health and the environment through notification, tracking, and management of SLABs. In addition to harmonizing the RCRA hazardous waste regulations for SLABs with the notification and consent requirements in the RCRA universal waste rules, today's final rule harmonizes the export requirements for SLABs with the Amended 2001 OECD Decision. (Note that the exemption from the RCRA hazardous waste manifest requirements for exporters and transporters of SLABs for reclamation will continue to remain in effect, although SLAB shipments for recovery to any of the OECD Member

countries listed in § 262.58(a)(1) must be accompanied by a movement document per § 262.84 that is separate from the RCRA hazardous waste manifest.)

The table located at 40 CFR 266.80 describes the various kinds of SLAB handlers and their respective legal requirements. Some SLAB handlers may find that more than one description located in the table applies to their SLAB management activities. It is the SLAB handler's responsibility to read all seven descriptions and carefully consider any and all requirements which may apply.

1. Export Shipments of SLABs to OECD Member Countries Listed in § 262.58(a)(1)

Exporters and transporters of SLABs destined for reclamation in any of the OECD Member countries listed in § 262.58(a)(1) will have to comply with all applicable sections of 40 CFR part 262, subpart H for wastes subject to the Amber control procedures. For a complete listing of the final OECD requirements, exporters and transporters should consult the regulatory text for 40 CFR part 262, subpart H in this final rule. In addition to the changes in subpart H discussed in earlier sections, the applicable Amber control procedures include, but are not limited to, the following:

(a) Notification of Intent To Export

Exporters of SLABs destined for reclamation are required to comply with the Amber control procedures in § 262.83. Under the Amber control procedures, an exporter must submit a complete notification to EPA of its intent to export at least 45 days before the export is scheduled to leave the United States (or at least ten days if the shipment is going to a pre-approved facility in the country of import). The notification can cover export activities spanning a period of up to and including 12 months (or up to three years, depending on the procedures of the importing country, if the shipment is going to a pre-approved facility in the country of import). Exporters may use the OECD Notification form in Appendix 8 of the Amended 2001 OECD Decision, or whatever notification form may be required by the country of import, but are not required by EPA to do so.

A complete notification includes, but is not limited to:

- Contact information and the EPA ID number (if applicable) for the exporter;
- Point of departure from country of export;
- A waste description and quantity of the hazardous waste being exported;
- The RCRA waste code(s) (if applicable), United Nations number, and OECD waste code for the hazardous waste (SLABs are classified as Amber waste A1160 under the Amended 2001 OECD Decision);
- Planned mode(s) of transportation;
- Contact information for all intended transporters;
- Contact information and the OECD recovery operation code(s) (*e.g.*, R1–R13) for both the importer and the final recovery facility (if different sites);
- The requested period of exportation;
- A list of all transit countries, along with the points of entry and departure, through which the hazardous waste will be sent; and
- A certification by the exporter that a contract or chain of contracts or equivalent arrangements among all parties to the final shipment are in place and are legally enforceable in all concerned countries.

If the notification is complete, EPA will forward it to the importing country and any transit country(ies). Within three working days of receiving the notification, the importing country must send either an Acknowledgement of Receipt or a list of items that the notification lacks directly to U.S. EPA, to the exporter, and to any countries of transit. The countries of import and transit have thirty (30) days from the date on the Acknowledgement of Receipt (seven days for shipments going to pre-approved facilities) to object or consent explicitly to the proposed shipment. Any explicit objection or consent by the country of import or transit will be sent simultaneously to U.S. EPA, the exporter, and any other interested country (*e.g.*, of import or transit). If no objections are submitted within the thirty day (30) period (seven days for shipments going to pre-approved facilities), under the provisions of the Amended 2001 OECD Decision, tacit (or implied) consent is assumed and the movement of the hazardous wastes may commence.

The subsequent SLAB shipments must be in accordance with the information from the notification that was reviewed and approved by the receiving country in its consent. Any changes to the information listed in the notification, such as changes to proposed total amounts to be exported or the ports of entry to be used, would require renotification and shipments could not take place until either tacit or written consent was obtained.

(b) Shipment Tracking

Under § 262.84, shipments of SLABs that are exported must be accompanied by a movement document from the initiation of the shipment until it reaches the final recovery facility. This movement document is described in § 262.84 and is different from the RCRA hazardous waste manifest. Exporters may use the OECD Movement form in Appendix 8 of the Amended 2001 OECD Decision, or whatever movement form may be required by the country of import, but are not required by EPA to use any particular form. Exporters must provide the initial transporter with the movement document. Transporters are prohibited from accepting a shipment of SLABs without such a movement document, and are required to ensure that the movement document accompanies the shipment from the initiation of the shipment until it reaches the final recovery facility. The movement document must include all the information from the notification, as well as the following:

- Date movement commenced;
- Name (if not the exporter), address, telephone and fax numbers, and e-mail of person originating the movement document (Note that this person is equivalent to the primary exporter under 40 CFR part 262, subpart E);
- Company name and EPA ID number (if applicable) of all transporters;
- Identification (license, registered name or registration number) of means of transport, including types of packaging envisaged;
- Any special precautions to be taken by transporter(s) during transportation;
- Certification/declaration signed by the exporter that no objection to the shipment has been lodged; and
- Appropriate signatures for each custody transfer (*e.g.*, transporter, importer, and owner or operator of the recovery facility).

(c) Annual Reporting

Under § 262.87(a), any person exporting SLABs who meets the definition of primary exporter in § 262.51 or who initiates the movement document under § 262.84 will have to submit to the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, DC, an annual report summarizing the types, quantities, frequency, and ultimate destination of all SLABs exported during the previous calendar year. Reports are due by March 1st of every year.

(d) Exception Reporting

Under § 262.87(b), any person exporting SLABs who meets the definition of primary exporter in § 262.51 or who initiates the movement

document under § 262.84 must file an exception report with the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, DC, if either of the following occurs:

- Within ninety (90) days from the date the SLAB shipment was accepted by the initial transporter, the exporter has not received written confirmation from the recovery facility that the SLAB shipment was received; or
- The SLAB shipment is returned to the United States.

(e) Recordkeeping

Under § 262.87(c), any person exporting SLABs who meets the definition of primary exporter in § 262.51 or who initiates the movement document under § 262.84 must keep the following records:

- A copy of each notification of intent to export and all written consents obtained from the competent authorities of countries concerned (*e.g.*, export, transit, and import) for a period of at least three (3) years from the date the SLAB shipment was accepted by the initial transporter;
- A copy of each annual report for a period of at least three (3) years from the due date of the report;
- A copy of any exception reports and a copy of each confirmation of delivery (*i.e.*, movement document) sent by the recovery facility to the exporter for at least three (3) years from the date the SLAB shipment was accepted by the initial transporter or received by the recovery facility, whichever is applicable; and
- A copy of each confirmation of recovery sent by the recovery facility to the exporter for at least three (3) years from the date that the recovery facility completed the processing of the SLAB shipment.

2. Export Shipments of SLABs to Countries Not Listed in § 262.58(a)(1)

(a) Notification of Intent To Export

Exporters of SLABs destined for reclamation in countries not listed in § 262.58(a)(1), such as Canada or Mexico, are required to comply with the primary exporter notification requirements in § 262.53, and may export the SLABs only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent, as defined in 40 CFR part 262, subpart E. Specifically, the exporter has to submit a complete notification of its intent to export to EPA at least 60 days before the export is scheduled to leave the United States. The notification can cover export activities spanning a period of up to and including 12 months. This complete notification contains:

- Contact information and the EPA ID number (if applicable) for the primary exporter;
- A description and quantity of the SLABs to be exported;
- The RCRA waste code(s) (if applicable), U.S. DOT proper shipping name, hazard class, and United Nations number as identified in 49 CFR parts 171 through 177;
- Planned mode(s) of transportation and type(s) of containers;
- A description of the manner in which the SLABs will be treated, stored, or disposed of (including recovery) in the receiving country;
- The planned frequency and time period of exportation;
- A list of all transit countries through which the SLABs will be sent, and a description of the approximate length of time the hazardous waste will remain in each country and the nature of its handling while there;
- All points of entry to and departure from each foreign country through which the SLABs will pass; and
- The name and site address of the consignee [7] and any alternate consignee.

If after proper notification, the receiving country consents to the receipt of the hazardous waste, EPA will forward an EPA Acknowledgment of Consent to the exporter. If, on the other hand, the receiving country objects to the receipt of the hazardous waste or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries.

The subsequent SLAB shipments must be in accordance with the information from the notification that was reviewed and approved by the receiving country in its consent. Any changes to the information listed in the notification (with the exception of changes to the primary exporter's telephone number, the listed means of transportation, or a decrease in the total amount to be exported) would require renotification and shipments could not take place until the exporter received an EPA Acknowledgement of Consent for the renotification.

(b) Shipment Documentation and Tracking

Exporters of SLABs must provide a copy of the EPA Acknowledgment of Consent for the SLAB shipment to the transporter transporting the shipment for export. Transporters are prohibited from accepting a SLAB export shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent. In addition, the transporter must ensure that:

- A copy of the EPA Acknowledgment of Consent accompanies the SLAB export shipment; and
- The SLAB export shipment is delivered to the facility designated by the person initiating the shipment.

Unlike SLAB export shipments to countries listed in § 262.58(a)(1) that must comply with 40 CFR part 262, subpart H, SLAB export shipments destined for countries not listed in § 252.58(a)(1) do not have any shipment tracking documentation requirements or exception reporting requirements because they are exempt from the RCRA hazardous waste manifest requirements and are not required to comply with the movement document requirements in § 262.84.

(c) Annual Reporting

Exporters of SLABs must follow the requirements applicable to a primary exporter detailed in § 262.56 "Annual reports" (a)(1) through (4), (6), and (b). Specifically, exporters will have to file with the EPA Administrator an annual report summarizing the types, quantities, frequency, and ultimate destination of all SLABs exported during the previous calendar year. Reports are due by March 1st of every year.

(d) Recordkeeping

Under § 262.57, exporters of SLABs must keep the following records:

- A copy of each notification of intent to export for at least three years from the date the SLAB export shipment was accepted by the initial transporter;
- A copy of each EPA Acknowledgment of Consent for at least three years from the date the SLAB export shipment was accepted by the initial transporter; and
- A copy of each annual report for at least three years from the due date of the report.

H. Changes to 40 CFR 271.1

This final rule amends Table 1 and Table 2 of § 271.1 by adding references to the revisions which amend 40 CFR part 262, subpart E to reflect that subpart E implements the Hazardous and Solid Waste Amendments of 1984.

[7] As noted previously, this is equivalent to the "importer" in the final revisions to 40 CFR part 262, subpart H.

IV. Discussion of Comments Received in Response to the Proposed Rulemaking and the Agency's Responses

The Agency received comments from four entities: the Basel Action Network (BAN), a nongovernmental organization focused on the Basel Convention and in particular on the issue of illegal trade in hazardous wastes to developing countries; the Association of Battery Recyclers (ABR), a national trade association representing the lead recycling industry; Johnson Controls, Inc. (JCI), a global supplier of batteries to the automotive aftermarket and original equipment manufacturers; and Dow Chemical Company (DOW), a global chemical manufacturer. The comments were focused on specific issues or provisions in the proposed rule. To the extent that comments were not submitted on various aspects or provisions of the proposal, the Agency is finalizing those portions of the proposal, as-is, except in one case. That exception is discussed in section C below.

A. OECD Revisions

BAN argued that EPA should subject all wastes on the OECD amber list to amber control procedures when being exported regardless of whether the materials are RCRA hazardous wastes. This comment is outside the scope of this rulemaking, as EPA did not propose any changes to the fundamental regulatory framework regarding the applicability of the OECD provisions in 40 CFR part 262, subpart H (*see* Section II.A.5 of the proposed rule at 73 FR 58393). Moreover, it is important to recognize that the Amended 2001 OECD Decision and its predecessor have long recognized and allowed a Member country to determine if a waste on an OECD list is hazardous based on its "national procedures" (*see* Annex I, Section II.4 of the "Decision of the Council C(92)39/FINAL Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery" and Chapter II, Section B.4 of the Amended 2001 Decision). Discussion on how RCRA implementation of "national procedures" impacts transboundary movements of wastes subject to the RCRA exemptions, exclusions and recycling provisions can be found in the April 12, 1996, preamble to the original OECD rule (61 FR 16290–16316). EPA is therefore finalizing the scope of the OECD provisions in subpart H, as proposed.

BAN also commented that EPA should prohibit all exports of OECD amber listed wastes to non-OECD countries for any reason. ABR similarly commented that EPA should prohibit all exports of SLABs to non-OECD countries. EPA cannot grant this request since the statute does not give EPA the legal authority to implement an outright ban on hazardous waste exports. Specifically, RCRA section 3017 prohibits exports of hazardous waste unless either: (1) The shipments are covered under and conform to the terms specified in an agreement between the U.S. and the receiving country; or (2) the exporter has submitted written notification to EPA, obtained written consent from the receiving country via EPA, attached a copy of the written consent to the RCRA hazardous waste manifest for each shipment, and ensures that the shipments comply with the terms of the receiving country's consent. Moreover, section 3017 directs the State Department, on behalf of EPA, to forward a copy of the notification to the intended country of import within 30 days of EPA receiving a complete notification concerning a proposed waste export that would not be covered under the terms of an existing international agreement. Therefore, an outright ban regarding all exports of any individual hazardous waste (*e.g.* SLABs) or all hazardous wastes to non-OECD countries would require changes to the statutory language and is outside the scope of this regulatory action.

In practice, EPA has rarely received inquiries for hazardous waste exports to non-OECD countries. When approached by potential exporters who ask about exporting hazardous wastes to non-OECD countries that are, however, parties to the Basel Convention, it is EPA's practice to actively discourage such exports by informing them of the Basel Convention prohibition on transboundary shipments of hazardous waste between Basel Parties and a non-Party like the United States in the absence of a formal agreement per Article 11 of the Basel Convention (*e.g.*, the U.S.-Canada bilateral agreement, the U.S.-Mexico bilateral agreement, or the OECD multilateral agreement). The United States has no agreement with a non-OECD country for exports of RCRA hazardous wastes. A review of hazardous waste export notices between 1995–2007 indicates no approved or even proposed exports of RCRA hazardous waste to a non-OECD country. In the interest of transparency, however, EPA intends to post online at *http://www.epa.gov/epawaste/hazard/international/hazard/index.htm* summary information for all future notices we receive concerning a proposed export of RCRA hazardous waste to a non-OECD country. The online information will list the exporter name, exporter address, waste text description, proposed receiving country, and consent status (*e.g.*, notice submitted to foreign country, whether the foreign country consents or objects). Moreover, EPA's cover letters for notices concerning exports to non-OECD countries will remind the countries, when appropriate, of the relevant Basel hazardous waste listing and the Basel Convention prohibition on transboundary shipments of hazardous waste between Basel Parties and a non-Party like the United States.

In another comment, BAN asserted that EPA has not yet implemented the 1986 OECD Council Decision-Recommendation C(86)64(final)[8] ("1986 OECD Decision-Recommendation"), and should do so immediately. This comment is outside the scope of this rulemaking, as EPA proposed revisions to the OECD provisions to implement the Amended 2001 OECD Decision.

Finally, BAN suggested that the U.S. should simultaneously ratify the Basel Convention and the Basel Ban Amendment. However, ratification of the Basel Convention, with or without the Basel Ban Amendment, would require Congressional action to provide EPA the legislative authority to implement either of these, and thus, is outside the scope of this rulemaking.

Dow stated that it supported EPA revising the existing regulations to implement the Amended 2001 OECD Decision, and that the revisions will clarify and streamline the import and export process among OECD Member countries.

B. SLAB Revisions

Three of the commenters recognized the need to require notification and consent for SLABs being exported for reclamation in a foreign country, and all four commenters supported EPA establishing the notice and consent export requirements.

As part of ABR's comment suggesting that EPA ban all exports of SLABs to non-OECD countries (which is discussed in the previous section), ABR submitted data that analyzed export shipments of SLABs and other lead scrap based on the harmonized tariff code classifications between 2006–2008. The data indicated shipments of lead scrap and/or SLABs to non-OECD

[8] "Decision-Recommendation of the Council on Exports of Hazardous Wastes from the OECD area," issued June 5, 1986. This document is available online at *http://webdomino1.oecd.org/horizontal/oecdacts.nsf/linkto/C(86)64*, and a copy has been placed in the docket established for this rulemaking.

countries (*e.g.*, China and India). ABR asserted that this data demonstrates that many exporters were mislabeling their SLAB shipments as non-battery scrap, and that EPA might be underestimating the amount of SLABs that were exported for reclamation between 2006–2008. However, after reviewing the analysis conducted by ABR, who generally supports the proposed rule, we do not believe that ABR's data would lead to a significantly different answer, and cause EPA to reconsider its position. In particular, ABR's data indicated total exports of SLABs and lead scrap were approximately 220,000 metric tons in 2006 and approximately 250,000 metric tons in 2007, with about 8% of the total exports in 2006 going to non-OECD countries. In comparison, EPA's data on SLAB exports estimated that 269,171 metric tons were exported in 2006, and that 1.77% went to non-OECD countries. Because the maximum annual amount of SLABs exported between 2006–2007 based on ABR's data is less than the annual amount based on EPA's data, the Agency believes it most appropriate that the data used in the economic analysis for the proposed rule should continue to be used, and not revised to include the ABR data in the economic analysis for the final rule. As a general note, if anyone has specific knowledge pertaining to specific export shipments that they believe are in violation of the RCRA hazardous waste regulations, we encourage them to submit it using EPA's Web site at *http://www.epa.gov/compliance/complaints/index.html*.

ABR further commented that adding export requirements to 40 CFR part 266, subpart G that reference the 40 CFR part 262 requirements was confusing, and instead recommended that EPA simply require that all SLABs destined for export to be managed as Universal Waste batteries under 40 CFR part 273. EPA does not agree that requiring all SLABs that will be exported in the future be managed under 40 CFR part 273 would be easier or less confusing. EPA's policy has long allowed collectors and managers of SLABs destined for recycling to choose either Part 273 or Part 266 (*see* Section IV.B.2.b of the 1995 Final Universal Waste Rule at 60 FR 25504 and following pages). We believe that having the same export requirements for SLAB exports in 40 CFR part 273 and 40 CFR part 266, subpart G is the most straightforward approach to ensuring that SLAB exports for reclamation are appropriately controlled, and the references to requirements in 40 CFR part 262 should be no more confusing than the previously established references to 40 CFR parts 261 and 268. EPA is therefore finalizing the 40 CFR part 266, subpart G requirements as proposed.

JCI commented that a three-year time period for notice and consent of exports (as opposed to a one-year time period) would reduce the burden on U.S. exporters while still providing sufficient notification to the importing country of proposed shipments. While the Amended 2001 OECD Decision does allow importing countries to issue extended consents that last for up to three years when the proposed shipment is destined for a facility that the importing country has "pre-approved" for such imports, OECD countries are neither required to pre-approve facilities nor to issue such extended consents. The international agreements covering exports from the United States that are in place with Canada, Mexico, and the OECD all specify a one-year time period as the standard maximum length of time that a notification and consent can cover. Consistent with those agreements and with all other RCRA export regulatory requirements in 40 CFR parts 261, 262 and 273, EPA is therefore retaining the one-year time period for SLABs being exported under 40 CFR part 266, subpart G.

Dow made a general comment of support for the revisions to the SLAB regulations.

C. Export Exception Report Technical Correction and Import Revisions

BAN and Dow both made a general comment of support for the proposed technical corrections regarding export exception reports and import consent documentation submissions, as proposed. Therefore, EPA is finalizing the technical corrections as proposed. The final rule however, does not include the proposed requirement in 40 CFR part 262, subpart F that RCRA hazardous waste importers give a copy of the EPA-provided import consent documentation to the initial transporter along with the RCRA hazardous waste manifest.

According to longstanding EPA policy, any party who helped arrange for the importation (*e.g.*, a broker, a transporter, or the waste management facility), may be considered an importer.[9] Because EPA's consents are currently communicated only to the competent authority of the exporting country, the proposal stated that EPA would need to provide or otherwise make available to U.S. importers the documentation confirming the Agency's consent. We asked for comment in the proposed rule on how best to provide the consent documentation to the RCRA importer, but received no comments on this issue. Foreign notices we receive regarding proposed imports of hazardous waste do not generally identify the party acting as the importer under the RCRA regulations, but the notices always have to list the foreign generator, the waste to be imported, the intended management of the waste, and the U.S. TSDF that will dispose of or recover the imported hazardous waste.

Since we should be able to reliably identify the TSDF, and the TSDF should have enough knowledge of their individual customers and contracts to match up the incoming shipment manifests with the EPA-provided import consent documentation, we have decided to provide the import consent documentation directly to the TSDF listed on each consent document and require each TSDF receiving hazardous waste from a foreign source to send back a copy of the relevant import consent documentation along with a signed copy of the RCRA hazardous waste manifest within 30 days of delivery. Because receiving facilities would have received the consent documentation directly under the proposal for those instances when they were acting as the RCRA importer of record, making this change is a logical outgrowth of the proposal and does not require a supplemental notice.

V. Future Rulemaking

1. Changes to OECD Member Country List

Qualified countries may be invited to accede to the OECD Convention as new Members. The OECD Convention defines qualified countries as those that have demonstrated the basic values shared by all Members: An open market economy, democratic pluralism, and respect for human rights. Any decision to invite a new country to become a Member of the OECD must be unanimous, although abstentions may be allowed. Thus, no new Member may be admitted over the objection of the United States (or any other Member country).

In order to accommodate changes in OECD membership as quickly as possible, EPA will publish in the **Federal Register** any future amendments to the list of OECD Member countries set forth in

[9] *See* June 25, 1985, memo from John H. Skinner, Director of the Office of Solid Waste to Harry Seraydarian, Director, Toxics and Waste Management Division, EPA Region IX, "Determining Who Assumes Generator Responsibilities for Importations of Hazardous Waste."

§ 262.58(a)(1), as a final rule without prior notice and opportunity for comment. EPA believes that the Agency would be able to make a "good cause" finding under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B) to make these future amendments without prior notice and comment. EPA believes notice and an opportunity for comment on future amendments to § 262.58(a)(1) to reflect the updates to the OECD list of Member countries would be unnecessary, because the United States, as an OECD Member country, is legally obligated to implement OECD Decisions with respect to all OECD Member countries.

2. Changes to OECD Waste List

The OECD waste list is incorporated by reference and cited in § 262.89(d). If the OECD amends its waste list in the future by decision of the OECD Council (with the concurrence of the United States), EPA will publish a notice of these amendments in the **Federal Register** as a final rule without prior notice and an opportunity for comment. EPA believes that the Agency would be able to make a "good cause" finding under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) to make these future amendments without prior notice and comment because the purpose of § 262.89(d) is solely informational—to provide an up-to-date reference of the OECD waste list. Public comment on such updates is unnecessary, as EPA would have no discretion to modify this list.

VI. Costs and Benefits of the Final Rule

A. Introduction

The value of any regulatory action is traditionally measured by the net change in social welfare that it generates. The Agency's economic assessment conducted in support of this final action evaluates costs, cost savings, benefits, and other impacts, such as environmental justice, children's health, unfunded mandates, regulatory takings, and small entity impacts. To conduct this analysis, we developed and implemented a methodology for examining the impacts, and followed appropriate guidelines and procedures for examining equity considerations, children's health, and other impacts.

B. Analytical Scope

This analysis assesses the final integration of the Amended 2001 OECD Decision into the existing U.S. regulations governing shipments (export/import/transit) of hazardous wastes destined for recovery between the U.S. and other OECD Member countries. In addition, we assess the newly final export regulations for SLABs to OECD and non-OECD countries. Also incorporated into the analysis is the requirement that a receiving facility subject to 40 CFR parts 264 or 265 submit to EPA a copy of the documentation confirming EPA's consent to the import when it submits to EPA the RCRA hazardous waste manifest for the import shipment of hazardous waste. Finally, this action revises the current language in §§ 262.55 and 262.87(b) to require exception reports to be submitted directly to the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, DC, rather than to the EPA Administrator. There is no discernable cost impact associated with this final requirement for exception reports to be submitted directly to the Director.

First, we assessed potential cost impacts (positive and negative) of the final revisions to the OECD rule, including:

- Exemptions for wastes destined for laboratory analyses,
- The requirement to provide a certificate of recovery,
- Information collection requirements associated with the exchange and accumulation recovery operations, and
- The notification requirements related to the return of wastes.

Next, we assessed potential cost impacts (positive and negative) of the final revisions to the SLAB regulations, including:

- Notification requirements for SLAB exporters,
- The renotification requirements associated with any changes to the original SLAB export notification,
- The annual reporting requirements,
- Additional reporting requirements (if requested by EPA), and
- SLAB exporter recordkeeping requirements.

Finally, we analyzed the final requirements that a receiving facility subject to 40 CFR parts 264 or 265 submit to EPA a copy of the documentation confirming EPA's consent to the import when it submits to EPA the RCRA hazardous waste manifest for the import shipment of hazardous waste.

We also included an estimate for potentially affected entities to read the regulation, which is, by default, a necessary requirement for understanding the regulation. Cost impacts associated with reading the regulation are assessed for exporters, importers, and transporters.

C. Cost Impacts

The total incremental cost for the OECD portion of the final rule during the first year of implementation, including reading the rule, is estimated to be $14,494. This is a net impact estimate that includes a total net incremental cost increase to the regulated community of $13,656, and a total net cost increase to EPA of $838. The total incremental annual net cost for the OECD portion after the first year of implementation, excluding reading the rule, is estimated to be $9,700.

The total incremental cost for the SLAB portion of the final rule during the first year of implementation, including reading the rule, is estimated at $850,000. The first year total incremental cost is expected to be about $780,000 for the affected U.S. industry and about $71,000 for EPA. The total incremental annual cost after the first year of implementation, excluding reading the rule, is estimated to be $400,000.

The combined total cost of the final rule (OECD portion, plus SLAB portion, plus import consent documentation portion) is estimated at $910,000 for the first year. Approximately 93% of this total is attributable to the SLAB portion of the rule, followed by the EPA import consent documentation requirements representing about 5% of the total. The OECD portion accounts for less than 2% of the total first year cost of the rule. After the first year, the total incremental cost of the final rulemaking is estimated at $460,000.

Cost estimates presented in this section are based on our estimates for the number of potentially affected importers, exporters, and transporters. Numerous data sources were used in the derivation of these estimates, including: RCRAInfo, the Waste International Tracking System (WITS), industry consultations, the Biennial Report, the International Trade Commission (ITC), Environment Canada, and SEMARNAT [10] data. A full explanation of the data sources, analytical methodology, assumptions, and limitations associated with the findings presented above is presented in our Cost Assessment [11] document prepared in support of this final action. This document is available in the docket to today's rule.

[10] Secretaría de Medio Ambiente y Recursos Naturales (SEMARNAT).

[11] *Cost Assessment for the Final Rule on Exports and Imports of Hazardous Waste Destined for Recovery Among OECD Countries, Exports of Spent Lead-Acid Batteries from the U.S., and Import Consent Documentation.*

D. Benefits

We have prepared a qualitative assessment of the benefits anticipated from this action. Overall, this action is expected to result in improved regulatory efficiency of the affected materials, while ensuring improved data collection and enhanced enforcement capabilities. Specific benefits include the following:

- Increasing regulatory efficiency by implementing provisions in the Amended 2001 OECD Decision that were meant to clarify the scope of control and make the control procedures more precise;
- Helping to improve market efficiency by allowing exporters to ship wastes more quickly and store for shorter periods of time;
- Encouraging the environmentally sound recovery of hazardous wastes, thereby reducing the risks associated with treatment and disposal; and
- Providing for the improved ability to acquire information regarding the quantities of SLABs exported from the U.S. and the destination facilities to which the SLABs are exported.

VII. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer their own hazardous waste programs in lieu of the Federal program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for State authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in that State, since only the State was authorized to issue RCRA permits. When new, more stringent Federal requirements were promulgated, the State was obligated to enact equivalent authorities within specified time frames. However, the new Federal requirements did not take effect in an authorized State until the State adopted the Federal requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed by the statute to implement these 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 more stringent HSWA related provisions as State law to retain final authorization, EPA implements the HSWA provisions in authorized States until the States do so.

Authorized States are required to modify their programs only when EPA enacts Federal requirements that are more stringent than existing Federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program (*see also* 40 CFR 271.1). Therefore, authorized States may, but are not required to, adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous Federal regulations.

B. Effect on State Authorization

Because of the Federal government's special role in matters of foreign policy, EPA does not authorize States to administer Federal import/export functions in any section of the RCRA hazardous waste regulations. This promotes national coordination, uniformity and the expeditious transmission of information between the United States and foreign countries. Although States do not receive authorization to administer the Federal government's export functions in 40 CFR part 262, subpart E, import functions in 40 CFR part 262, subpart F, import/export functions in 40 CFR part 262, subpart H, or the import/export related functions in any other section of the RCRA hazardous waste regulations, State programs are still required to adopt those provisions in today's rule that are more stringent than existing Federal requirements to maintain their equivalency with the Federal program (*see* for example, 40 CFR 271.10(e)). Today's rule contains many amendments to 40 CFR part 262, subpart H, a number of which are more stringent. The rule also contains amendments to § 262.10, § 262.55, § 262.58, § 263.10(d), § 264.12(a)(2), § 264.71, § 265.12(a)(2), and § 265.71, almost all of which are more stringent. The States that have adopted 40 CFR part 262, subparts E and H, 40 CFR part 263, 40 CFR part 264 or 40 CFR part 265 must adopt the provisions listed above that are more stringent. In addition, States that have adopted management standards for spent lead-acid batteries analogous to 40 CFR part 266, subpart G must adopt the changes in today's rule which are more stringent.

States are not required to adopt the amendments in this rule that are not more stringent. However, EPA strongly encourages States to incorporate all the import and export related requirements into their regulations for the convenience of the regulated community and for completeness, particularly where a State has already incorporated 40 CFR part 262, subparts E, and H, the import/export manifest and OECD movement document related requirements in § 263.10(d), the import manifest and OECD movement document submittal requirements in §§ 264.12(a)(2), 264.71, 265.12(a)(2), and 265.71, or the management provisions for SLABs in 40 CFR part 266, subpart G. When a State adopts the import/export provisions in this final rule, care should be taken not to replace Federal or international references with State terms.

The provisions of today's notice take effect in all States on July 7, 2010, since these import and export requirements will be administered by the Federal government as a foreign policy matter, and will not be administered by States.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action." This action may raise novel legal or policy issues [3(f)(4)] arising out of legal mandates, although it is not economically significant. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866. Any changes made in response to OMB's recommendations have been documented in the docket for this action.

This final rule is projected to result in a net increase in costs to certain importers, exporters, and transporters of affected hazardous wastes. Increased costs are also projected for the Federal government. The total net cost of this rule is estimated to be $910,000 during the first year following rule implementation. Exporters are projected to account for approximately 69 percent of this total. Benefits of this action include increased regulatory efficiency, reduced risks associated with the treatment and disposal of hazardous wastes, and improved data collection.

The total net cost estimate for this rule is significantly below the $100 million threshold [12] established under part 3(f)(1) of the Order. Thus, this rule is not considered to be an economically significant action. However, in an effort to comply with the spirit of the Order, we have prepared an economic assessment [13] in support of this final rule. The RCRA docket established for today's rulemaking contains a copy of this document.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them. The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2308.02.

The final rule requires that the affected sources submit the following:

- *Under the final OECD revisions:* U.S. recovery facilities will have to submit a certificate of recovery to the foreign exporter, and to the competent authority of the country of export and EPA, as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following receipt of the waste; U.S. facilities that exchange or accumulate waste shipments (*e.g.,* R12/R13 facilities) before final recovery at another facility (*e.g.,* R1–R11 facilities) will have to prepare and provide a certificate of recovery for the R12/R13 recovery operations, and provide and maintain a copy of the certificate of recovery for the subsequent R1–R11 recovery operations; U.S. recovery facilities, including R12/R13 facilities, that must re-export or otherwise return the hazardous waste shipment will have to submit new notification documents and comply with the associated Amber control procedures; and U.S. exporters will have to keep records of the additional certifications of recovery and any R12/R13 certifications they receive from recovery facilities in other OECD Member countries.
- *Under the final SLAB revisions:* SLAB exporters will have to comply with the full subpart H requirements if going to the OECD Member countries listed in § 262.58(a)(1) (*e.g.,* submitting notices, originating a movement document for each shipment, keeping records of all confirmations of receipt and recovery they receive, submitting exception reports and annual reports, and recordkeeping); and comply with portions of the subpart E requirements if going elsewhere (*e.g.,* submitting notices, providing a copy of EPA's Acknowledgement of Consent for each shipment, submitting annual reports and recordkeeping).
- *Under the final import documentation revisions:* U.S. receiving facilities will have to submit to EPA copies of the documentation confirming EPA's consent to the import each time they submit to EPA a copy of the RCRA hazardous waste manifest for each hazardous waste import shipment within thirty (30) days of shipment delivery.

All affected sources will have to retain records of this paperwork for a period of three (3) years, which is consistent with the RCRA hazardous waste requirements of §§ 262.53, 262.56, 262.57, 262.83, 262.87, 264.71 and 265.71. The collection of the requested information is mandatory, as it is needed by EPA as a part of its overall compliance and enforcement program for the protection of human health and the environment.

The estimated annual public reporting burden for the new paperwork requirements in the final rule is 4.63 hours/year per respondent under the final OECD revisions; 20.74 hours/year per respondent under the final SLAB revisions; and 8.44 hours/year per respondent under the final import consent documentation. The annual public recordkeeping burden is estimated to average 10.20 hours/year per respondent under the final OECD revisions, and 0.25 hours/year per respondent under the final SLAB revisions. The total annual public burden is estimated to be 14,854 hours at a cost of $832,400 during the first year of implementation, and 8,799 hours at a cost of $381,400 after the first year. The capital and start-up costs plus total operation and maintenance costs are expected to be negligible. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We have determined that a substantial number of potentially affected small businesses (importers, exporters, and transporters) will not experience significant negative economic impacts. For the purpose of our impact analyses, small business is defined either by the number of employees or by the dollar amount of sales. The level at which a business is considered small is determined for each North American Industrial Classification System (NAICS) code by the Small Business Administration. No small governmental jurisdiction or small not-for-profit organizations are expected to be affected by this action.

While a significant number of exporters may be small businesses, the results of our analysis indicate that the cost to individual small entities in each potentially affected sector (as identified by NAICS codes) is likely to be insignificant. This determination was made by comparing annual compliance costs under the rule to the average annual sales of small business in the industry sectors likely affected by the rule. According to the U.S. Small Business Administration's small business size standards, firms in most of these industry sectors are classified as a

[12] This $100 million threshold applies to both costs, and cost savings.

[13] *Cost Assessment for the Final Rule on Exports and Imports of Hazardous Waste Destined for Recovery Among OECD Countries, Exports of Spent Lead-Acid Batteries from the U.S., and Import Consent Documentation (Cost Assessment).*

"small business" if they have fewer than 750 employees. For purposes of this analysis, the Agency examined a subset of small entities expected to face the largest relative impacts as measured by cost to sales ratios. The average annual gross sales of the potentially impacted small companies within this subset with fewer than 20 employees were found to range from $0.4 million to $4.1 million, depending upon the NAICS sector. The annual compliance costs for these companies, as a percentage of average annual gross sales, was found to range from 0.01 percent to 0.08 percent. The regulatory flexibility screening analysis prepared in support of this determination is incorporated into the *Cost Assessment,* which is available in the docket established for this rule.

D. Unfunded Mandates Reform Act of 1995

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. UMRA does not apply to rules that are necessary for the national security or the ratification or implementation of international treaty obligations (*e.g.,* the Amended 2001 OECD Decision, the U.S.-Canada bilateral waste agreement). Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. Finally, this action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As explained previously, EPA does not authorize States to administer Federal import/export functions in any section of the RCRA hazardous waste regulations because of the Federal government's special role in matters of foreign policy.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Specifically, this final rule does not have Federalism implications because the State and local governments do not administer the export and import requirements under RCRA. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This final rule does not have Tribal implications, as specified in Executive Order 13175. No Tribal governments are known to own or operate businesses that may be affected by this rule. Thus, Executive Order 13175 does not apply to this final rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children residing in the United States. This rule is intended to improve regulatory efficiency, enhance waste tracking procedures, and increase accountability among all parties associated with international shipments, and does not directly affect the level of protection provided to human health or the environment in the United States.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866. This rule will not seriously disrupt energy supply, distribution patterns, prices, imports or exports. In fact, this rule is designed to improve regulatory efficiency and improve information collection, in part by implementing revisions and clarifications to the existing regulations.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and/or adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment in the United States. This rule is intended to improve regulatory efficiency, enhance waste tracking procedures, and increase accountability among all parties associated with international shipments.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective July 7, 2010.

List of Subjects

40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, International

organizations, Labeling, Packaging and containers, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 263

Environmental protection, Hazardous materials transportation, Hazardous waste, Imports.

40 CFR Part 264

Environmental protection, Hazardous waste, Imports, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 265

Environmental protection, Hazardous waste, Imports, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 266

Environmental protection, Exports, Spent lead-acid batteries, Recycling, Waste treatment and disposal.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Hazardous materials transportation, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Dated: December 23, 2009.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter 1 of the Code of Federal Regulations is amended as follows.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

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

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

2. Section 262.10(d) is amended by revising paragraph (d) to read as follows:

§ 262.10 Purpose, scope, and applicability.

* * * * *

(d) Any person who exports or imports wastes that are considered hazardous under U.S. national procedures to or from the countries listed in § 262.58(a)(1) for recovery must comply with subpart H of this part. A waste is considered hazardous under U.S. national procedures if the waste meets the Federal definition of hazardous waste in 40 CFR 261.3 and is subject to either the Federal RCRA manifesting requirements at 40 CFR part 262, subpart B, the universal waste management standards of 40 CFR part 273, State requirements analogous to 40 CFR part 273, the export requirements in the spent lead-acid battery management standards of 40 CFR part 266, subpart G, or State requirements analogous to the export requirements in 40 CFR part 266, subpart G.

* * * * *

3. 262.55 is amended by revising the introductory text to read as follows:

§ 262.55 Exception reports.

In lieu of the requirements of § 262.42, a primary exporter must file an exception report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, if any of the following occurs:

* * * * *

4. Section 262.58 is revised to read as follows:

§ 262.58 International agreements.

(a) Any person who exports or imports wastes that are considered hazardous under U.S. national procedures to or from designated Member countries of the Organization for Economic Cooperation and Development (OECD) as defined in paragraph (a)(1) of this section for purposes of recovery is subject to subpart H of this part. The requirements of subparts E and F of this part do not apply to such exports and imports. A waste is considered hazardous under U.S. national procedures if the waste meets the Federal definition of hazardous waste in 40 CFR 261.3 and is subject to either the Federal RCRA manifesting requirements at 40 CFR part 262, subpart B, the universal waste management standards of 40 CFR part 273, State requirements analogous to 40 CFR part 273, the export requirements in the spent lead-acid battery management standards of 40 CFR part 266, subpart G, or State requirements analogous to the export requirements in 40 CFR part 266, subpart G.

(1) For the purposes of subpart H, the designated OECD Member countries consist of Australia, Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, the Republic of Korea, the Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

(2) For the purposes of subpart H of this part, Canada and Mexico are considered OECD Member countries only for the purpose of transit.

(b) Any person who exports hazardous waste to or imports hazardous waste from: A designated OECD Member country for purposes other than recovery (*e.g.*, incineration, disposal), Mexico (for any purpose), or Canada (for any purpose) remains subject to the requirements of subparts E and F of this part, and is not subject to the requirements of subpart H of this part.

5. Subpart H is revised to read as follows:

Subpart H—Transboundary Movements of Hazardous Waste for Recovery Within the OECD

Sec.

Subpart H—Transboundary Movements of Hazardous Waste for Recovery Within the OECD

§ 262.80 Applicability.

(a) The requirements of this subpart apply to imports and exports of wastes that are considered hazardous under U.S. national procedures and are destined for recovery operations in the countries listed in § 262.58(a)(1). A waste is considered hazardous under U.S. national procedures if the waste:

(1) Meets the Federal definition of hazardous waste in 40 CFR 261.3; and

(2) Is subject to either the Federal RCRA manifesting requirements at 40 CFR part 262, subpart B, the universal waste management standards of 40 CFR part 273, State requirements analogous to 40 CFR part 273, the export requirements in the spent lead-acid battery management standards of 40 CFR part 266, subpart G, or State requirements analogous to the export requirements in 40 CFR part 266, subpart G.

(b) Any person (exporter, importer, or recovery facility operator) who mixes two or more wastes (including hazardous and non-hazardous wastes) or otherwise subjects two or more wastes (including hazardous and non-hazardous wastes) to physical or chemical transformation operations, and thereby creates a new hazardous waste,

becomes a generator and assumes all subsequent generator duties under RCRA and any exporter duties, if applicable, under this subpart.

§ 262.81 Definitions.

The following definitions apply to this subpart.

Competent authority means the regulatory authority or authorities of concerned countries having jurisdiction over transboundary movements of wastes destined for recovery operations.

Countries concerned means the OECD Member countries of export or import and any OECD Member countries of transit.

Country of export means any designated OECD Member country listed in § 262.58(a)(1) from which a transboundary movement of hazardous wastes is planned to be initiated or is initiated.

Country of import means any designated OECD Member country listed in § 262.58(a)(1) to which a transboundary movement of hazardous wastes is planned or takes place for the purpose of submitting the wastes to recovery operations therein.

Country of transit means any designated OECD Member country listed in § 262.58(a)(1) and (a)(2) other than the country of export or country of import across which a transboundary movement of hazardous wastes is planned or takes place.

Exporter means the person under the jurisdiction of the country of export who has, or will have at the time the planned transboundary movement commences, possession or other forms of legal control of the wastes and who proposes transboundary movement of the hazardous wastes for the ultimate purpose of submitting them to recovery operations. When the United States (U.S.) is the country of export, *exporter* is interpreted to mean a person domiciled in the United States.

Importer means the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the country of import.

OECD area means all land or marine areas under the national jurisdiction of any OECD Member country listed in § 262.58. When the regulations refer to shipments to or from an OECD Member country, this means OECD area.

OECD means the Organization for Economic Cooperation and Development.

Recognized trader means a person who, with appropriate authorization of countries concerned, acts in the role of principal to purchase and subsequently sell wastes; this person has legal control of such wastes from time of purchase to time of sale; such a person may act to arrange and facilitate transboundary movements of wastes destined for recovery operations.

Recovery facility means a facility which, under applicable domestic law, is operating or is authorized to operate in the country of import to receive wastes and to perform recovery operations on them.

Recovery operations means activities leading to resource recovery, recycling, reclamation, direct re-use or alternative uses, which include:

R1 Use as a fuel (other than in direct incineration) or other means to generate energy.
R2 Solvent reclamation/regeneration.
R3 Recycling/reclamation of organic substances which are not used as solvents.
R4 Recycling/reclamation of metals and metal compounds.
R5 Recycling/reclamation of other inorganic materials.
R6 Regeneration of acids or bases.
R7 Recovery of components used for pollution abatement.
R8 Recovery of components used from catalysts.
R9 Used oil re-refining or other reuses of previously used oil.
R10 Land treatment resulting in benefit to agriculture or ecological improvement.
R11 Uses of residual materials obtained from any of the operations numbered R1–R10.
R12 Exchange of wastes for submission to any of the operations numbered R1–R11.
R13 Accumulation of material intended for any operation numbered R1–R12.

Transboundary movement means any movement of wastes from an area under the national jurisdiction of one OECD Member country to an area under the national jurisdiction of another OECD Member country.

§ 262.82 General conditions.

(a) *Scope.* The level of control for exports and imports of waste is indicated by assignment of the waste to either a list of wastes subject to the Green control procedures or a list of wastes subject to the Amber control procedures and by the national procedures of the United States, as defined in § 262.80(a). The OECD Green and Amber lists are incorporated by reference in § 262.89(d).

(1) Listed wastes subject to the Green control procedures.

(i) Green wastes that are not considered hazardous under U.S. national procedures as defined in § 262.80(a) are subject to existing controls normally applied to commercial transactions.

(ii) Green wastes that are considered hazardous under U.S. national procedures as defined in § 262.80(a) are subject to the Amber control procedures set forth in this subpart.

(2) Listed wastes subject to the Amber control procedures.

(i) Amber wastes that are considered hazardous under U.S. national procedures as defined in § 262.80(a) are subject to the Amber control procedures set forth in this subpart.

(ii) Amber wastes that are considered hazardous under U.S. national procedures as defined in § 262.80(a), are subject to the Amber control procedures in the United States, even if they are imported to or exported from a designated OECD Member country listed in § 262.58(a)(1) that does not consider the waste to be hazardous. In such an event, the responsibilities of the Amber control procedures shift as provided:

(A) For U.S. exports, the United States shall issue an acknowledgement of receipt and assume other responsibilities of the competent authority of the country of import.

(B) For U.S. imports, the U.S. recovery facility/importer and the United States shall assume the obligations associated with the Amber control procedures that normally apply to the exporter and country of export, respectively.

(iii) Amber wastes that are not considered hazardous under U.S. national procedures as defined in § 262.80(a), but are considered hazardous by an OECD Member country are subject to the Amber control procedures in the OECD Member country that considers the waste hazardous. All responsibilities of the U.S. importer/exporter shift to the importer/exporter of the OECD Member country that considers the waste hazardous unless the parties make other arrangements through contracts.

Note to Paragraph (a)(2): Some wastes subject to the Amber control procedures are not listed or otherwise identified as hazardous under RCRA, and therefore are not subject to the Amber control procedures of this subpart. Regardless of the status of the waste under RCRA, however, other Federal environmental statutes (*e.g.*, the Toxic Substances Control Act) restrict certain waste imports or exports. Such restrictions continue to apply with regard to this subpart.

(3) Procedures for mixtures of wastes.

(i) A Green waste that is mixed with one or more other Green wastes such that the resulting mixture is not considered hazardous under U.S.

national procedures as defined in § 262.80(a) shall be subject to the Green control procedures, provided the composition of this mixture does not impair its environmentally sound recovery.

Note to Paragraph (a)(3)(i): The regulated community should note that some OECD Member countries may require, by domestic law, that mixtures of different Green wastes be subject to the Amber control procedures.

(ii) A Green waste that is mixed with one or more Amber wastes, in any amount, *de minimis* or otherwise, or a mixture of two or more Amber wastes, such that the resulting waste mixture is considered hazardous under U.S. national procedures as defined in § 262.80(a) are subject to the Amber control procedures, provided the composition of this mixture does not impair its environmentally sound recovery.

Note to Paragraph (a)(3)(ii): The regulated community should note that some OECD Member countries may require, by domestic law, that a mixture of a Green waste and more than a *de minimis* amount of an Amber waste or a mixture of two or more Amber wastes be subject to the Amber control procedures.

(4) Wastes not yet assigned to an OECD waste list are eligible for transboundary movements, as follows:

(i) If such wastes are considered hazardous under U.S. national procedures as defined in § 262.80(a), such wastes are subject to the Amber control procedures.

(ii) If such wastes are not considered hazardous under U.S. national procedures as defined in § 262.80(a), such wastes are subject to the Green control procedures.

(b) *General conditions applicable to transboundary movements of hazardous waste:* (1) The waste must be destined for recovery operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the importing country;

(2) The transboundary movement must be in compliance with applicable international transport agreements; and

Note to Paragraph (b)(2): These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADNR (1970), MARPOL Convention (1973/1978), SOLAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985).

(3) Any transit of waste through a non-OECD Member country must be conducted in compliance with all applicable international and national laws and regulations.

(c) *Provisions relating to re-export for recovery to a third country:* (1) Re-export of wastes subject to the Amber control procedures from the United States, as the country of import, to a third country listed in § 262.58(a)(1) may occur only after an exporter in the United States provides notification to and obtains consent from the competent authorities in the third country, the original country of export, and any transit countries. The notification must comply with the notice and consent procedures in § 262.83 for all countries concerned and the original country of export. The competent authorities of the original country of export, as well as the competent authorities of all other countries concerned have thirty (30) days to object to the proposed movement.

(i) The thirty (30) day period begins once the competent authorities of both the initial country of export and new country of import issue Acknowledgements of Receipt of the notification.

(ii) The transboundary movement may commence if no objection has been lodged after the thirty (30) day period has passed or immediately after written consent is received from all relevant OECD importing and transit countries.

(2) In the case of re-export of Amber wastes to a country other than those listed in § 262.58(a)(1), notification to and consent of the competent authorities of the original OECD Member country of export and any OECD Member countries of transit is required as specified in paragraph (c)(1) of this section, in addition to compliance with all international agreements and arrangements to which the first importing OECD Member country is a party and all applicable regulatory requirements for exports from the first country of import.

(d) *Duty to return or re-export wastes subject to the Amber control procedures.* When a transboundary movement of wastes subject to the Amber control procedures cannot be completed in accordance with the terms of the contract or the consent(s) and alternative arrangements cannot be made to recover the waste in an environmentally sound manner in the country of import, the waste must be returned to the country of export or re-exported to a third country. The provisions of paragraph (c) of this section apply to any shipments to be re-exported to a third country. The following provisions apply to shipments to be returned to the country of export as appropriate:

(1) Return from the United States to the country of export: The U.S. importer must inform EPA at the specified address in § 262.83(b)(1)(i) of the need to return the shipment. EPA will then inform the competent authorities of the countries of export and transit, citing the reason(s) for returning the waste. The U.S. importer must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned Member countries. If the return shipment will cross any transit country, the return shipment may only occur after EPA provides notification to and obtains consent from the competent authority of the country of transit, and provides a copy of that consent to the U.S. importer.

(2) Return from the country of import to the United States: The U.S. exporter must provide for the return of the hazardous waste shipment within ninety (90) days from the time the country of import informs EPA of the need to return the waste or such other period of time as the concerned Member countries agree. The U.S. exporter must submit an exception report to EPA in accordance with § 262.87(b).

(e) *Duty to return wastes subject to the Amber control procedures from a country of transit.* When a transboundary movement of wastes subject to the Amber control procedures does not comply with the requirements of the notification and movement documents or otherwise constitutes illegal shipment, and if alternative arrangements cannot be made to recover these wastes in an environmentally sound manner, the waste must be returned to the country of export. The following provisions apply as appropriate:

(1) Return from the United States (as country of transit) to the country of export: The U.S. transporter must inform EPA at the specified address in § 262.83(b)(1)(i) of the need to return the shipment. EPA will then inform the competent authority of the country of export, citing the reason(s) for returning the waste. The U.S. transporter must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned Member countries.

(2) Return from the country of transit to the United States (as country of export): The U.S. exporter must provide for the return of the hazardous waste shipment within ninety (90) days from the time the competent authority of the country of transit informs EPA of the need to return the waste or such other period of time as the concerned Member countries agree. The U.S. exporter must

submit an exception report to EPA in accordance with § 262.87(b).

(f) *Requirements for wastes destined for and received by R12 and R13 facilities.* The transboundary movement of wastes destined for R12 and R13 operations must comply with all Amber control procedures for notification and consent as set forth in § 262.83 and for the movement document as set forth in § 262.84. Additional responsibilities of R12/R13 facilities include:

(1) Indicating in the notification document the foreseen recovery facility or facilities where the subsequent R1–R11 recovery operation takes place or may take place.

(2) Within three (3) days of the receipt of the wastes by the R12/R13 recovery facility or facilities, the facility(ies) shall return a signed copy of the movement document to the exporter and to the competent authorities of the countries of export and import. The facility(ies) shall retain the original of the movement document for three (3) years.

(3) As soon as possible, but no later than thirty (30) days after the completion of the R12/R13 recovery operation and no later than one (1) calendar year following the receipt of the waste, the R12 or R13 facility(ies) shall send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. Washington, DC 20460, by mail, e-mail without digital signature followed by mail, or fax followed by mail.

(4) When an R12/R13 recovery facility delivers wastes for recovery to an R1–R11 recovery facility located in the country of import, it shall obtain as soon as possible, but no later than one (1) calendar year following delivery of the waste, a certification from the R1–R11 facility that recovery of the wastes at that facility has been completed. The R12/R13 facility must promptly transmit the applicable certification to the competent authorities of the countries of import and export, identifying the transboundary movements to which the certification pertain.

(5) When an R12/R13 recovery facility delivers wastes for recovery to an R1–R11 recovery facility located:

(i) In the initial country of export, Amber control procedures apply, including a new notification;

(ii) In a third country other than the initial country of export, Amber control procedures apply, with the additional provision that the competent authority of the initial country of export shall also be notified of the transboundary movement.

(g) *Laboratory analysis exemption.* The transboundary movement of an Amber waste is exempt from the Amber control procedures if it is in certain quantities and destined for laboratory analysis to assess its physical or chemical characteristics, or to determine its suitability for recovery operations. The quantity of such waste shall be determined by the minimum quantity reasonably needed to perform the analysis in each particular case adequately, but in no case exceed twenty-five kilograms (25 kg). Waste destined for laboratory analysis must still be appropriately packaged and labeled.

§ 262.83 Notification and consent.

(a) *Applicability.* Consent must be obtained from the competent authorities of the relevant OECD countries of import and transit prior to exporting hazardous waste destined for recovery operations subject to this subpart. Hazardous wastes subject to the Amber control procedures are subject to the requirements of paragraph (b) of this section; and wastes not identified on any list are subject to the requirements of paragraph (c) of this section.

(b) *Amber wastes.* Exports of hazardous wastes from the United States as described in § 262.80(a) that are subject to the Amber control procedures are prohibited unless the notification and consent requirements of paragraph (b)(1) or paragraph (b)(2) of this section are met.

(1) Transactions requiring specific consent:

(i) *Notification.* At least forty-five (45) days prior to commencement of each transboundary movement, the exporter must provide written notification in English of the proposed transboundary movement to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, with the words "Attention: OECD Export Notification" prominently displayed on the envelope. This notification must include all of the information identified in paragraph (d) of this section. In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, the same RCRA waste codes, and are to be sent periodically to the same recovery facility by the same exporter, the exporter may submit one general notification of intent to export these wastes in multiple shipments during a period of up to one (1) year. Even when a general notification is used for multiple shipments, each shipment still must be accompanied by its own movement document pursuant to § 262.84.

(ii) *Tacit consent.* If no objection has been lodged by any countries concerned (*i.e.,* exporting, importing, or transit) to a notification provided pursuant to paragraph (b)(1)(i) of this section within thirty (30) days after the date of issuance of the Acknowledgement of Receipt of notification by the competent authority of the country of import, the transboundary movement may commence. Tacit consent expires one (1) calendar year after the close of the thirty (30) day period; renotification and renewal of all consents is required for exports after that date.

(iii) *Written consent.* If the competent authorities of all the relevant OECD importing and transit countries provide written consent in a period less than thirty (30) days, the transboundary movement may commence immediately after all necessary consents are received. Written consent expires for each relevant OECD importing and transit country one (1) calendar year after the date of that country's consent unless otherwise specified; renotification and renewal of each expired consent is required for exports after that date.

(2) Transboundary movements to facilities pre-approved by the competent authorities of the importing countries to accept specific wastes for recovery:

(i) *Notification.* The exporter must provide EPA a notification that contains all the information identified in paragraph (d) of this section in English, at least ten (10) days in advance of commencing shipment to a pre-approved facility. The notification must indicate that the recovery facility is pre-approved, and may apply to a single specific shipment or to multiple shipments as described in paragraph (b)(1)(i) of this section. This information must be sent to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, with the words "OECD Export Notification—Pre-approved Facility" prominently displayed on the envelope. General notifications that cover multiple shipments as described in paragraph (b)(1)(i) of this section may cover a period of up to three (3) years. Even when a general notification is used for multiple shipments, each shipment still must be accompanied by its own

movement document pursuant to § 262.84.

(ii) Exports to pre-approved facilities may take place after the elapse of seven (7) working days from the issuance of an Acknowledgement of Receipt of the notification by the competent authority of the country of import unless the exporter has received information indicating that the competent authority of any countries concerned objects to the shipment.

(c) *Wastes not covered in the OECD Green and Amber lists.* Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists, incorporated by reference in § 262.89(d), but which are considered hazardous under U.S. national procedures as defined in § 262.80(a), are subject to the notification and consent requirements established for the Amber control procedures in accordance with paragraph (b) of this section. Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists incorporated by reference in § 262.89(d), and are not considered hazardous under U.S. national procedures as defined by § 262.80(a) are subject to the Green control procedures.

(d) *Notifications submitted under this section must include the information specified in paragraphs (d)(1) through (d)(14) of this section:* (1) Serial number or other accepted identifier of the notification document;

(2) Exporter name and EPA identification number (if applicable), address, telephone, fax numbers, and e-mail address;

(3) Importing recovery facility name, address, telephone, fax numbers, e-mail address, and technologies employed;

(4) Importer name (if not the owner or operator of the recovery facility), address, telephone, fax numbers, and e-mail address; whether the importer will engage in waste exchange recovery operation R12 or waste accumulation recovery operation R13 prior to delivering the waste to the final recovery facility and identification of recovery operations to be employed at the final recovery facility;

(5) Intended transporter(s) and/or their agent(s); address, telephone, fax, and e-mail address;

(6) Country of export and relevant competent authority, and point of departure;

(7) Countries of transit and relevant competent authorities and points of entry and departure;

(8) Country of import and relevant competent authority, and point of entry;

(9) Statement of whether the notification is a single notification or a general notification. If general, include period of validity requested;

(10) Date(s) foreseen for commencement of transboundary movement(s);

(11) Means of transport envisaged;

(12) Designation of waste type(s) from the appropriate OECD list incorporated by reference in § 262.89(d), description(s) of each waste type, estimated total quantity of each, RCRA waste code, and the United Nations number for each waste type;

(13) Specification of the recovery operation(s) as defined in § 262.81.

(14) Certification/Declaration signed by the exporter that states:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, and that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement.

Name: _____

Signature: _____

Date: _____

Note to Paragraph (d)(14): The United States does not currently require financial assurance for these waste shipments. However, U.S. exporters may be asked by other governments to provide and certify to such assurance as a condition of obtaining consent to a proposed movement.

(e) *Certificate of Recovery.* As soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following receipt of the waste, the U.S. recovery facility shall send a certificate of recovery to the exporter and to the competent authorities of the countries of export and import by mail, e-mail without a digital signature followed by mail, or fax followed by mail. The certificate of recovery shall include a signed, written and dated statement that affirms that the waste materials were recovered in the manner agreed to by the parties to the contract required under § 262.85.

§ 262.84 Movement document.

(a) All U.S. parties subject to the contract provisions of § 262.85 must ensure that a movement document meeting the conditions of paragraph (b) of this section accompanies each transboundary movement of wastes subject to the Amber control procedures from the initiation of the shipment until it reaches the final recovery facility, including cases in which the waste is stored and/or sorted by the importer prior to shipment to the final recovery facility, except as provided in paragraphs (a)(1) and (2) of this section.

(1) For shipments of hazardous waste within the United States solely by water (bulk shipments only), the generator must forward the movement document with the manifest to the last water (bulk shipment) transporter to handle the waste in the United States if exported by water, (in accordance with the manifest routing procedures at § 262.23(c)).

(2) For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator must forward the movement document with the manifest (in accordance with the routing procedures for the manifest in § 262.23(d)) to the next non-rail transporter, if any, or the last rail transporter to handle the waste in the United States if exported by rail.

(b) The movement document must include all information required under § 262.83 (for notification), as well as the following paragraphs (b)(1) through (b)(7) of this section:

(1) Date movement commenced;

(2) Name (if not exporter), address, telephone, fax numbers, and e-mail of primary exporter;

(3) Company name and EPA ID number of all transporters;

(4) Identification (license, registered name or registration number) of means of transport, including types of packaging envisaged;

(5) Any special precautions to be taken by transporter(s);

(6) Certification/declaration signed by the exporter that no objection to the shipment has been lodged, as follows:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement, and that:

1. All necessary consents have been received; OR

2. The shipment is directed to a recovery facility within the OECD area and no objection has been received from any of the countries concerned within the thirty (30) day tacit consent period; OR

3. The shipment is directed to a recovery facility pre-approved for that type of waste within the OECD area; such an authorization has not been revoked, and no objection has been received from any of the countries concerned.

(Delete sentences that are not applicable)

Name: _____

Signature: _____

Date: _____

(7) Appropriate signatures for each custody transfer (*e.g.*, transporter, importer, and owner or operator of the recovery facility).

(c) Exporters also must comply with the special manifest requirements of 40 CFR 262.54(a), (b), (c), (e), and (i) and importers must comply with the import

requirements of 40 CFR part 262, subpart F.

(d) Each U.S. person that has physical custody of the waste from the time the movement commences until it arrives at the recovery facility must sign the movement document (*e.g.*, transporter, importer, and owner or operator of the recovery facility).

(e) Within three (3) working days of the receipt of imports subject to this subpart, the owner or operator of the U.S. recovery facility must send signed copies of the movement document to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and to the competent authorities of the countries of export and transit. If the concerned U.S. recovery facility is a R12/R13 recovery facility as defined under § 262.81, the facility shall retain the original of the movement document for three (3) years.

§ 262.85 Contracts.

(a) Transboundary movements of hazardous wastes subject to the Amber control procedures are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the exporter and the owner or operator of the recovery facility, and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangements.

(b) Contracts or equivalent arrangements must specify the name and EPA ID number, where available, of paragraph (b)(1) through (b)(4) of this section:

(1) The generator of each type of waste;

(2) Each person who will have physical custody of the wastes;

(3) Each person who will have legal control of the wastes; and

(4) The recovery facility.

(c) Contracts or equivalent arrangements must specify which party to the contract will assume responsibility for alternate management of the wastes if their disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts must specify that:

(1) The person having actual possession or physical control over the wastes will immediately inform the exporter and the competent authorities of the countries of export and import and, if the wastes are located in a country of transit, the competent authorities of that country; and

(2) The person specified in the contract will assume responsibility for the adequate management of the wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of wastes and, as the case may be, shall provide the notification for re-export.

(d) Contracts must specify that the importer will provide the notification required in § 262.82(c) prior to the re-export of controlled wastes to a third country.

(e) Contracts or equivalent arrangements must include provisions for financial guarantees, if required by the competent authorities of any countries concerned, in accordance with applicable national or international law requirements.

Note to Paragraph (e): Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD Member countries do. It is the responsibility of the exporter to ascertain and comply with such requirements; in some cases, transporters or importers may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

(f) Contracts or equivalent arrangements must contain provisions requiring each contracting party to comply with all applicable requirements of this subpart.

(g) Upon request by EPA, U.S. exporters, importers, or recovery facilities must submit to EPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40 CFR 2.203(b) will be treated as confidential and will be disclosed by EPA only as provided in 40 CFR 260.2.

Note to Paragraph (g): Although the United States does not require routine submission of contracts at this time, the OECD Decision allows Member countries to impose such requirements. When other OECD Member countries require submission of partial or complete copies of the contract as a condition to granting consent to proposed movements, EPA will request the required information; absent submission of such information, some OECD Member countries may deny consent for the proposed movement.

§ 262.86 Provisions relating to recognized traders.

(a) A recognized trader who takes physical custody of a waste and conducts recovery operations (including storage prior to recovery) is acting as the owner or operator of a recovery facility and must be so authorized in accordance with all applicable Federal laws.

(b) A recognized trader acting as an exporter or importer for transboundary shipments of waste must comply with all the requirements of this subpart associated with being an exporter or importer.

§ 262.87 Reporting and recordkeeping.

(a) *Annual reports.* For all waste movements subject to this subpart, persons (*e.g.*, exporters, recognized traders) who meet the definition of primary exporter in § 262.51 or who initiate the movement documentation under § 262.84 shall file an annual report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. (If the primary exporter or the person who initiates the movement document under § 262.84 is required to file an annual report for waste exports that are not covered under this subpart, he may include all export information in one report provided the following information on exports of waste destined for recovery within the designated OECD Member countries is contained in a separate section.) Such reports shall include all of the following paragraphs (a)(1) through (a)(6) of this section specified as follows:

(1) The EPA identification number, name, and mailing and site address of the exporter filing the report;

(2) The calendar year covered by the report;

(3) The name and site address of each final recovery facility;

(4) By final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from 40 CFR

part 261, subpart C or D), designation of waste type(s) and applicable waste code(s) from the appropriate OECD waste list incorporated by reference in § 262.89(d), DOT hazard class, the name and U.S. EPA identification number (where applicable) for each transporter used, the total amount of hazardous waste shipped pursuant to this subpart, and number of shipments pursuant to each notification;

(5) In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100kg but less than 1,000kg in a calendar month, and except for hazardous waste for which information was already provided pursuant to § 262.41:

(i) A description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated; and

(ii) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

(6) A certification signed by the person acting as primary exporter or initiator of the movement document under § 262.84 that states:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.

(b) *Exception reports.* Any person who meets the definition of primary exporter in § 262.51 or who initiates the movement document under § 262.84 must file an exception report in lieu of the requirements of § 262.42 (if applicable) with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, if any of the following occurs:

(1) He has not received a copy of the RCRA hazardous waste manifest (if applicable) signed by the transporter identifying the point of departure of the waste from the United States, within forty-five (45) days from the date it was accepted by the initial transporter;

(2) Within ninety (90) days from the date the waste was accepted by the initial transporter, the exporter has not received written confirmation from the recovery facility that the hazardous waste was received;

(3) The waste is returned to the United States.

(c) *Recordkeeping.* (1) Persons who meet the definition of primary exporter in § 262.51 or who initiate the movement document under § 262.84 shall keep the following records in paragraphs (c)(1)(i) through (c)(1)(iv) of this section:

(i) A copy of each notification of intent to export and all written consents obtained from the competent authorities of countries concerned for a period of at least three (3) years from the date the hazardous waste was accepted by the initial transporter;

(ii) A copy of each annual report for a period of at least three (3) years from the due date of the report;

(iii) A copy of any exception reports and a copy of each confirmation of delivery (*i.e.,* movement document) sent by the recovery facility to the exporter for at least three (3) years from the date the hazardous waste was accepted by the initial transporter or received by the recovery facility, whichever is applicable; and

(iv) A copy of each certificate of recovery sent by the recovery facility to the exporter for at least three (3) years from the date that the recovery facility completed processing the waste shipment.

(2) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

§ 262.88 Pre-approval for U.S. recovery facilities [Reserved].

§ 262.89 OECD waste lists.

(a) *General.* For the purposes of this subpart, a waste is considered hazardous under U.S. national procedures, and hence subject to this subpart, if the waste:

(1) Meets the Federal definition of hazardous waste in 40 CFR 261.3; and

(2) Is subject to either the Federal RCRA manifesting requirements at 40 CFR part 262, subpart B, the universal waste management standards of 40 CFR part 273, State requirements analogous to 40 CFR part 273, the export requirements in the spent lead-acid battery management standards of 40 CFR part 266, subpart G, or State requirements analogous to the export requirements in 40 CFR part 266, subpart G.

(b) If a waste is hazardous under paragraph (a) of this section, it is subject to the Amber control procedures, regardless of whether it appears in Appendix 4 of the OECD Decision, as defined in § 262.81.

(c) The appropriate control procedures for hazardous wastes and hazardous waste mixtures are addressed in § 262.82.

(d) The OECD waste lists, as set forth in Annex B ("Green List") and Annex C ("Amber List") (collectively "OECD waste lists") of the 2009 "Guidance Manual for the Implementation of Council Decision C(2001)107/FINAL, as Amended, on the Control of Transboundary Movements of Wastes Destined for Recovery Operations," are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**. The materials are available for inspection at: the U.S. Environmental Protection Agency, Docket Center Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004 (Docket # EPA–HQ–RCRA–2005–0018) or at the National Archives and Records Administration (NARA), and may be obtained from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue André Pascal, F–75775 Paris Cedex 16, France. For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.* To contact the EPA Docket Center Public Reading Room, call (202) 566–1744. To contact the OECD, call +33 (0) 1 45 24 81 67.

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

The authority citation for part 263 continues to read as follows:

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

Section 263.10(d) is amended by revising paragraph (d) to read as follows:

§ 263.10 Scope.

* * * * *

(d) A transporter of hazardous waste subject to the Federal manifesting requirements of 40 CFR part 262, or subject to the waste management standards of 40 CFR part 273, or subject to State requirements analogous to 40 CFR part 273, that is being imported

from or exported to any of the countries listed in 40 CFR 262.58(a)(1) for purposes of recovery is subject to this Subpart and to all other relevant requirements of subpart H of 40 CFR part 262, including, but not limited to, 40 CFR 262.84 for movement documents.

* * * * *

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

8. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

9. Section 264.12 is amended by revising paragraph (a)(2) to read as follows:

§ 264.12 Required notices.

(a) * * *

(2) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H must provide a copy of the movement document bearing all required signatures to the foreign exporter; to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to the competent authorities of all other countries concerned within three (3) working days of receipt of the shipment. The original of the signed movement document must be maintained at the facility for at least three (3) years. In addition, such owner or operator shall, as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following the receipt of the hazardous waste, send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to EPA's Office of Enforcement and Compliance Assurance at the above address by mail, e-mail without a digital signature followed by mail, or fax followed by mail.

* * * * *

10. Section 264.71 is amended by revising paragraphs (a)(3) and (d) to read as follows:

§ 264.71 Use of manifest system.

(a) * * *

(3) If a facility receives hazardous waste imported from a foreign source, the receiving facility must mail a copy of the manifest and documentation confirming EPA's consent to the import of hazardous waste to the following address within thirty (30) days of delivery: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

* * * * *

(d) Within three (3) working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and to competent authorities of all other concerned countries. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature.

* * * * *

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

11. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937.

12. Section 265.12 is amended by revising paragraph (a)(2) to read as follows:

§ 265.12 Required notices.

(a) * * *

(2) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H must provide a copy of the movement document bearing all required signatures to the foreign exporter; to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to the competent authorities of all other countries concerned within three (3) working days of receipt of the shipment. The original of the signed movement document must be maintained at the facility for at least three (3) years. In addition, such owner or operator shall, as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following the receipt of the hazardous waste, send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to EPA's Office of Enforcement and Compliance Assurance at the above address by mail, e-mail without a digital signature followed by mail, or fax followed by mail.

* * * * *

13. Section 265.71 is amended by revising paragraphs (a)(3) and (d) to read as follows:

§ 265.71 Use of manifest system.

(a) * * *

(3) If a facility receives hazardous waste imported from a foreign source, the receiving facility must mail a copy of the manifest and documentation confirming EPA's consent to the import of hazardous waste to the following address within thirty (30) days of delivery: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

* * * * *

(d) Within three (3) working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and to competent authorities of all other countries concerned. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature.

* * * * *

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

14. The authority citation for part 266 is revised to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 3017, 6905, 6906, 6912, 6921, 6922, 6924–6927, 6934, and 6937.

15. In § 266.80(a) the table is revised to read as follows:

§ 266.80 Applicability and requirements.

(a) * * *

If your batteries . . .	And if you . . .	Then you . . .	And you . . .
(1) Will be reclaimed through regeneration (such as by electrolyte replacement).	.....	are exempt from 40 CFR parts 262 (except for § 262.11), 263, 264, 265, 266, 268, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	are subject to 40 CFR parts 261 and § 262.11 of this chapter.
(2) Will be reclaimed other than through regeneration.	generate, collect, and/or transport these batteries.	are exempt from 40 CFR parts 262 (except for § 262.11), 263, 264, 265, 266, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	are subject to 40 CFR parts 261 and § 262.11, and applicable provisions under part 268.
(3) Will be reclaimed other than through regeneration.	store these batteries but you aren't the reclaimer.	are exempt from 40 CFR parts 262 (except for § 262.11), 263, 264, 265, 266, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	are subject to 40 CFR parts 261, § 262.11, and applicable provisions under part 268.
(4) Will be reclaimed other than through regeneration.	store these batteries before you reclaim them.	must comply with 40 CFR 266.80(b) and as appropriate other regulatory provisions described in 266.80(b).	are subject to 40 CFR parts 261, § 262.11, and applicable provisions under part 268.
(5) Will be reclaimed other than through regeneration.	don't store these batteries before you reclaim them.	are exempt from 40 CFR parts 262 (except for § 262.11), 263, 264, 265, 266, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	are subject to 40 CFR parts 261, § 262.11, and applicable provisions under part 268.
(6) Will be reclaimed through regeneration or any other means.	export these batteries for reclamation in a foreign country.	are exempt from 40 CFR parts 263, 264, 265, 266, 268, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA. You are also exempt from part 262, except for 262.11, and except for the applicable requirements in either: (1) 40 CFR part 262 subpart H; or (2) 262.53 "Notification of Intent to Export, 262.56(a)(1) through (4)(6) and (b) "Annual Reports," and 262.57 "Recordkeeping".	are subject to 40 CFR part 261 and § 262.11, and either must comply with 40 CFR part 262, subpart H (if shipping to one of the OECD countries specified in 40 CFR 262.58(a)(1)), or must: (a) Comply with the requirements applicable to a primary exporter in 40 CFR 262.53, 262.56(a) (1) through (4), (6), and (b) and 262.57; and (b) Export these batteries only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in subpart E of part 262 of this chapter; and (c) Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.
(7) Will be reclaimed through regeneration or any other means.	Transport these batteries in the U.S. to export them for reclamation in a foreign country.	are exempt from 40 CFR parts 263, 264, 265, 266, 268, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	must comply with applicable requirements in 40 CFR part 262, subpart H (if shipping to one of the OECD countries specified in 40 CFR 262.58(a)(1)), or must comply with the following: (a) you may not accept a shipment if you know the shipment does not conform to the EPA Acknowledgment of Consent; (b) you must ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment; and

If your batteries . . .	And if you . . .	Then you . . .	And you . . .
			(c) you must ensure that the shipment is delivered to the facility designated by the person initiating the shipment.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

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

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

17. Section 271.1(j) is amended by adding the following entry to Table 1 and Table 2 in chronological order by date of publication in the **FEDERAL REGISTER,** to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

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

Promulgation date	Title of regulation	**Federal Register** reference	Effective date
* *	* *	* *	*
Jan. 8, 2010	Exports of hazardous waste	[Insert FR page numbers]	July 7, 2010.

* * * * *

TABLE 2—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	**Federal Register** reference
* *	* *	*	* *
July 7, 2010	Exports of hazardous waste	3017(a)	[Insert **Federal Register** reference for publication of final rule].

* * * * *

[FR Doc. E9–31081 Filed 1–7–10; 8:45 am]

BILLING CODE 6560–50–P

This technical correction is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because this action is not a significant regulatory action under Executive Order 12866.

This technical correction does not involve changes to the technical standards related to test methods or monitoring requirements; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

This technical correction also does not involve special consideration of environmental justice-related issues as required by Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the U.S. Section 808 allows the issuing Agency to make a rule effective sooner than otherwise provided by the CRA if the Agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, we have determined that there is good cause for making this technical correction final without prior proposal and opportunity for comment because only simple typographical errors are being corrected that do not substantially change the Agency actions taken in the final rule. Thus, notice and public procedure are unnecessary. EPA has therefore established an effective date of April 19, 2010. The EPA will submit a report containing this final action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of this action in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule will be effective April 19, 2010.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: March 11, 2010.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

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

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

Subpart AAAAAAA—[Amended]

§ 63.11563 [Amended]

■ 2. Section 63.11563 is amended by redesignating paragraphs (l), (m) and (n) to become paragraphs (g), (h), and (i), respectively.

■ 3. Section 63.11564 is amended by revising paragraphs (c)(8) and (c)(9) to read as follows:

§ 63.11564 What are my notification, recordkeeping, and reporting requirements?

* * * * *

(c) * * *

(8) A copy of the site-specific monitoring plan required under § 63.11563(b) or (g).

(9) A copy of the approved alternative monitoring plan required under § 63.11563(h), if applicable.

* * * * *

[FR Doc. 2010–5964 Filed 3–17–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 263, 264, 265, 266, 268 and 270

[EPA–RCRA–2008–0678; FRL–9127–9]

RIN 2050–AG52

Hazardous Waste Technical Corrections and Clarifications Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is taking Direct Final action on a number of technical changes that correct or clarify several parts of the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations that relate to hazardous waste identification, manifesting, the hazardous waste generator requirements, standards for owners and operators of hazardous waste treatment, storage and disposal facilities, standards for the management of specific types of hazardous waste and specific types of hazardous waste management facilities, the land disposal restrictions program, and the hazardous waste permit program. These changes correct existing errors in the hazardous waste regulations that have occurred over time in numerous final rules published in the **Federal Register**, such as typographical errors, incorrect or outdated citations, and omissions. Some of the corrections are necessary to make conforming changes to all appropriate parts of the RCRA hazardous waste regulations for new rules that have since been promulgated. In addition, these changes clarify existing parts of the hazardous waste regulatory program and update references to Department of Transportation (DOT) regulations that have changed since the publication of various RCRA hazardous waste final rules.

DATES: This Direct Final Rule is effective on June 16, 2010 without further notice unless EPA receives adverse comments by May 3, 2010. If adverse comment is received, EPA will publish a timely withdrawal of the Direct Final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. No. EPA–HQ–RCRA–2008–0678 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: rcra-docket@epa.gov* and *oleary.jim@epa.gov.* Attention Docket ID No. EPA–HQ–RCRA–2008–0678.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–RCRA–2008–0678.
- *Mail:* RCRA Docket (2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. EPA–HQ–RCRA–2008–0678. Please include a total of 2 copies.
- *Hand Delivery:* EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–RCRA–2008–0678. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://*

www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the HQ–Docket Center, Docket ID No. EPA–HQ–RCRA–2008–0678, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For more information on this rulemaking, contact Jim O'Leary, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery (MC:5304P), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Phone: (703) 308–8827; or e-mail: *oleary.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Why Is EPA Using a Direct Final Rule?

EPA is publishing this rule without prior proposal because we view this as a non-controversial action and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposed rule to adopt the provisions in this Direct Final rule if adverse comments are filed. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If we receive adverse comment on any individual correction, we will publish a timely withdrawal in the **Federal Register** to notify the public about a specific paragraph or amendment in the Direct Final rule that will not take effect.

II. Does This Action Apply to Me?

Entities potentially affected by this action include facilities subject to the RCRA hazardous waste regulations and States implementing the RCRA hazardous waste regulations.

III. What Should I Consider as I Prepare My Comments for EPA?

1. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

IV. Acronyms

Acronym	Definition
CFR	United States Code of Federal Regulations.
EPA	United States Environmental Protection Agency.
HSWA	Hazardous and Solid Waste Amendments.
OMB	Office of Management and Budget.
RCRA	Resource Conservation and Recovery Act.
U.S.C.	United States Code.

V. Preamble

A. What Is the Legal Authority for This Direct Final Rule?

This rule is authorized under Sections 1004, 3001, 3002, 3003, 3004 and 3005 of the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6903, 6921–6925.

B. Why Are We Amending Various Sections of Parts 260–266, 268 and 270?

In the process of publishing numerous final rules in the **Federal Register**, typographical errors, incorrect or outdated citations, and omissions have occurred. Similarly, the Agency has sometimes failed to make conforming changes to all appropriate parts of the RCRA hazardous waste regulations when new rules were promulgated. These inadvertent errors and oversights have sometimes resulted in confusion and inefficiency on the part of the regulated community and Federal and State regulators implementing the hazardous waste regulatory program.

This rule addresses these problems by correcting the RCRA hazardous waste management regulations—specifically the general requirements under 40 CFR part 260, the hazardous waste identification requirements under 40 CFR part 261, the manifesting and hazardous waste generator requirements under 40 CFR part 262, the hazardous waste transporter requirements under 40 CFR part 263, the related manifesting and emergency preparedness requirements under 40 CFR parts 264 and 265, the requirements for recycling of hazardous wastes in a manner constituting disposal under 40 CFR part 266, the land disposal restrictions requirements under 40 part 268, and the hazardous waste permit program requirements under 40 CFR part 270. Several re-designation and format corrections are also included for several

paragraphs in the permitting and interim status requirements under 40 CFR parts 264 and 265.

However, unlike most of the technical corrections and clarifications in today's rule, the changes associated with the hazardous waste manifest regulations are closely interrelated, and involve changes to several sections and paragraphs in 40 CFR parts 262, 264 and 265. Therefore, in the interest of clarity, we describe all of the changes associated with the hazardous waste manifest in Section V.C.10.

When the 40 CFR part 267 standards for owners and operators of hazardous waste facilities operating under a standardized permit were promulgated in September, 2005, EPA failed to make conforming changes to certain paragraphs in 40 CFR parts 260–263 and 266. This rule addresses that inadvertent oversight. Affected sections are identified at the end of Section V.C.7.

Today's Direct Final rule is similar to the Final rule published on July 14, 2006. See 71 FR 40254, Parts 260, 261 *et al.* Hazardous Waste and Used Oil; Corrections to Errors in the Code of Federal Regulations; Final rule. EPA continues to review its regulations for additional technical corrections or errors and will address any such edits in forthcoming rules.

Today's action makes approximately 90 changes to 40 CFR parts 260–266, 268 and 270. References to the 40 CFR sections where technical corrections are being made are organized by part. In addition, EPA provides a description and explanation of the changes in the preamble to today's Direct Final rule.

C. Description of Direct Final Amendments to Parts 260–266, 268 and 270

1. Corrections to 40 CFR Part 260 (Hazardous Waste Management System: General)

In 40 CFR part 260, EPA is amending the following sections in order to make a number of changes: Section 260.10 and Appendix I

a. 40 CFR 260.10: In 40 CFR part 260, EPA is amending 40 CFR 260.10 to correct the date cited in the definition of "*New hazardous waste management facility* or *new facility*." The date is changed from "October 21, 1976" to "November 19, 1980." This date refers to the date a facility began operation, or for which construction commenced.

A review of the May 19, 1980 preamble to the first set of RCRA hazardous waste regulations shows that EPA was aware that the October 21, 1976 date specified in the statute was an unrealistic date to establish, and anticipated statutory amendments to correct this problem. Specifically, in May 1980, EPA wrote:

"Definition of Existing Facility"

Several commenters pointed out what they perceived as a serious fault in Section 3005(e) of RCRA, which is that the Section limits interim status to owners and operators of facilities "in existence" on or before October 21, 1976. The statute requires that, in order to operate legally, facilities which have come into existence after October 21, 1976, must obtain a permit by the effective date of the Section 3005 regulations (*i.e.*, within 180 days after the promulgation date of the regulations). Because it is unlikely that permits can be issued within 180 days for all facilities not "in-existence" by October 21, 1976, the commenters felt that the language of the statute was unfair to the owners and operators of these facilities.

"EPA agrees that the language of the statute as it now stands would make the RCRA program unworkable. However, the language of RCRA is clear and EPA has had no alternative but to follow it in the regulations. As the preamble to the Part 122 regulations discusses, EPA expects that amendments to RCRA now in conference will be passed shortly and will cure this problem." (45 FR 33068, May 19, 1980)

RCRA Section 3005(e) related to Interim Status facilities was amended to correct this problem. Section 3005(e)(1) now reads: "Any person who—(A) owns or operates a facility required to have a permit under this section which facility—(i) was in existence on November 19, 1980, or (ii) is in existence on the effective date of statutory or regulatory changes under this Act that render the facility subject to the requirement to have a permit under this section * * * shall be treated as having been issued such permit until such time as final administrative disposition of such application is made, unless the Administrator * * *."

Therefore, EPA is amending § 260.10 to make this conforming change by revising the date "October 21, 1976" to read "November 19, 1980." More specifically, the regulatory citation will read as follows:

"*New hazardous waste management facility* or *new facility*" means a facility which began operation, or for which construction commenced after November 19, 1980."

Note that the definition at § 260.10 for "Existing hazardous waste management facility" includes the correct date (*i.e.*, November 19, 1980), which further supports this conforming change.

b. 40 CFR part 260, Appendix I: In 40 CFR part 260, EPA is deleting the appendix entitled, Appendix I to Part 260: Overview of Subtitle C Regulations, which includes a brief discussion of the hazardous waste regulations, along with associated Figures 1–4. This Appendix was initially developed when the hazardous waste regulations were first promulgated in May 1980. Since then, the regulations have changed a number of times and this Appendix is no longer accurate. Therefore, we are deleting it to avoid any confusion.

2. Corrections to 40 CFR Part 261 (Identification and Listing of Hazardous Waste)

In 40 CFR part 261, EPA is amending the following sections in order to correct typographical errors, include correct citations, and incorporate conforming changes: Sections 261.1, 261.2, 261.4, 261.5, 261.6, 261.7, 261.23, 261.30, 261.31, 261.32, 261.33 and Appendix VII to part 261.

a. 40 CFR 261.1(c)(10): In 40 CFR part 261, EPA is amending this paragraph to correct a citation error by revising "§ 261.4(a)(13)" to read "§ 261.4(a)(14)" in the parenthetical note at the end of paragraph (c)(10). 40 CFR 261.1(c)(10) defines "Processed scrap metal." As part of this definition, the parenthetical note at the end of the paragraph states:

"(**Note:** shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (§ 261.4(a)(13))."

However, § 261.4(a)(13) relates to excluded scrap metal, not shredded circuit boards. The correct citation for shredded circuit boards being recycled is found at § 261.4(a)(14). Thus, we are correcting this incorrect citation.

b. 40 CFR 261.2(c), Table 1: In 40 CFR part 261, EPA is amending § 261.2(c), Table 1 by removing the phrase, "Scrap metal other than excluded scrap metal (see 261.1(c)(9))" and replacing it with "Scrap metal that is not excluded under § 261.4(a)(13)." This change more concisely describes scrap metal that is subject to the RCRA Subtitle C regulations, namely regulated scrap metal. This phrase also is consistent with paragraph 40 CFR 261.6(a)(3)(ii) related to the requirements for regulated scrap metal.

c. 40 CFR 261. 4(a)(17)(vi): In 40 CFR part 261, EPA is amending § 261.4(a)(17)(vi) to correct a citation error by revising the citation "paragraph (a)(7)" to read "paragraph (b)(7)."

The reference to "paragraph (a)(7)," which relates to spent sulfuric acid, was incorrectly revised in the final rule published in 67 FR 11254 (March 13, 2002) and should have properly referred to paragraph (b)(7). Thus, we are correcting this incorrect citation.

d. 40 CFR 261.5(e)(1): In 40 CFR part 261, EPA is amending this paragraph to read, "A total of one kilogram of acute hazardous wastes listed in §§ 261.31 or 261.33(e)."

This change removes a reference to acute hazardous wastes listed under "§ 261.32," because currently, there are no acute hazardous wastes listed in § 261.32.

e. 40 CFR 261.5(e)(2): In 40 CFR part 261, EPA is amending this paragraph to remove the reference to acute hazardous wastes listed under "§ 261.32," because, as noted previously, there are no acute hazardous wastes listed in § 261.32.

EPA is also amending the parenthetical comment at the end of § 261.5(e)(2) to correct the term "generators of greater than 1,000 kg" to read "generators of 1,000 kg or greater" and to eliminate the redundant term "non-acutely."

Specifically, § 261.5(e) addresses those amounts of acute hazardous waste that are subject to full regulation under 40 CFR parts 262–268, 270, and 124, and the notification requirements of Section 3010 of RCRA. At the end of § 261.5(e)(2) is a comment which reads:

[Comment: "Full regulation" means those regulations applicable to generators of greater than 1,000 kg of non-acutely hazardous waste in a calendar month.]

This comment describes full regulation as regulations applicable to generators of greater than 1,000 kg of non-acutely hazardous waste in a calendar month (a large quantity generator), but 40 CFR 262.34(d) lists conditions for facilities who generate greater than 100 kg but less than 1,000 kg of hazardous waste in a calendar month (*e.g.,* a small quantity generator). Therefore, facilities that generate exactly 1,000 kg are not included in either range. At 40 CFR 262.34(g) and (h), we state that generators who generate 1,000 kilograms of hazardous waste per month and generators that generate greater than 1,000 kilograms of hazardous waste per calendar month (as this quantity relates to generators of wastewater treatment sludges from electroplating operations (EPA Hazardous Waste No. F006)) are subject to the same regulatory standards. Likewise, at 40 CFR 262.34(j), we state that generators who generate 1,000 kilograms of hazardous waste per calendar month and generators that generate greater than 1,000 kilograms of hazardous waste per calendar month (as this quantity relates to members of the Performance Track program) are subject to the same regulatory standards.[1] Therefore, our intent always has been to regulate facilities generating exactly 1,000 kilograms of hazardous waste in a calendar month the same as those generators who generate greater than 1,000 kilograms of hazardous waste in a calendar month (*i.e.,* large quantity generators) rather than the requirements for facilities generating greater than 100 kilograms in a calendar month, but less than 1,000 kilograms of hazardous waste in a calendar month, (*i.e.,* small quantity generators). Clarifying the parenthetical comment at the end of § 261.5(e)(2) resolves the inconsistency that exists between this comment and §§ 262.34(d), 262.34(g), 262.34(h) and 262.34(j).

Also, since this comment refers to non-acute hazardous wastes, use of the term "non-acutely" is redundant and unnecessary.

f. 40 CFR 261.5(f): In 40 CFR part 261, EPA is amending this paragraph to read, "In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in paragraphs (e)(1) or (e)(2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:"

This change clarifies that the relevant paragraphs of section 261.5 (e) are both (e)(1) and (e)(2). The current regulation references paragraph (e)(1) or (2).

g. 40 CFR 261.5(g): In 40 CFR part 261, EPA is amending this paragraph to read, "In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of 100 kilograms or less of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:"

This paragraph currently refers to "in quantities of less than 100 kilograms of hazardous waste" which is inconsistent with 40 CFR 261.5 (a) which describes a conditionally exempt small quantity generator as one who generates no more than 100 kilograms of hazardous waste in a calendar month (*i.e.,* 100 kilograms or less). Thus, this change makes 40 CFR 261.5(g) consistent with 40 CFR 261.5(a).

h. 40 CFR 261.5(g)(2): In 40 CFR part 261, EPA is amending this paragraph to read, "The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time more than a total of 1,000 kilograms of his hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of part 262 applicable to generators of greater than 100 kg and less than 1000 kg of hazardous waste in a calendar month as well as the requirements of parts 263 through 268, and parts 270 and 124 of this chapter, and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34(d) for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1000 kilograms;"

This change clarifies the amount of hazardous wastes a generator can generate in a calendar month and still be classified as a small quantity generator; *e.g.,* greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month. Similarly, this change is consistent with paragraphs § 262.34(d)–(f).[2]

i. 40 CFR 261.6(a)(2): In 40 CFR part 261, EPA is making a conforming change to add "268" to § 261.6(a)(2) so that it reads "* * * and all applicable provisions in parts 268, 270, and 124 of this chapter." This change is necessary to be clear that the requirements of part 268 are applicable to the subject of this provision (recycled wastes regulated under part 266). An examination of § 261.6(a)(3) clearly shows that the Agency was aware that Part 268 is applicable to recycled wastes. Thus, the failure to cite part 268 in paragraph (a)(2) was an oversight. A December 20, 1989 memo from EPA Headquarters to EPA Region 1 (RCRA Online 11482), a copy of which is included in today's docket, explained this oversight and the need to correct this error in a future rulemaking.

j. 40 CFR 261.6(a)(2)(ii): In 40 CFR part 261, EPA is amending § 261.6(a)(2)(ii) to read "Hazardous waste burned (as defined in section 266.100(a)) in boilers and industrial furnaces that are not regulated under subpart O of part 264 or 265 of this chapter (40 CFR part 266, subpart H)."

Specifically, § 261.6(a)(2) indicates which subparts of part 266 govern the management of certain recycled materials. Paragraph § 261.6(a)(2)(ii) currently indicates that hazardous waste burned for energy recovery in boilers and industrial furnaces is covered under Subpart H of part 266. Prior to 1991, hazardous waste burned for energy recovery was subject to Subpart D of part 266, and § 261.6(a)(2)(ii) specifically referred to Subpart D. In

[1] EPA terminated the Performance Track Program on May 14, 2009 (74 FR 22741) and thus the program's incentives, including the hazardous waste incentives, are no longer available. EPA plans to take steps to rescind the final rules that enabled these incentives.

[2] The Agency is also adding part 267 to this CFR section, *i.e.,* § 261.5(g). See discussion later in the preamble for the basis of this change.

1991, the boiler and industrial furnace rule expanded the scope of the part 266 boiler and industrial furnace regulations to address burning for both energy recovery and materials recovery, and the Subpart D regulations were replaced with regulations under Subpart H of part 266. The 1991 rule amended the reference in § 261.6(a)(2)(ii) from subpart D to subpart H of part 266, but inadvertently omitted the parallel conforming change to the text of (a)(2)(ii) to reflect the expanded scope of the regulations, which now cover both burning for energy recovery and burning for material recovery. This amendment makes that conforming change.

k. 40 CFR 261.7(a)(1), (a)(2), (b)(1) and (b)(3): In 40 CFR part 261, EPA is making conforming changes to §§ 261.7(a)(1) and (a)(2) to add "part 266."

Specifically, an examination of the **Federal Register** from 1980 to the present reveals that §§ 261.7(a)(1) and (a)(2) have been amended several times to include additional parts to the list of applicable regulations as the RCRA regulatory program evolved. As examples, paragraphs (a)(1) and (a)(2) of § 261.7 were amended in 1983 (48 FR 14294) to remove part 122 and substitute part 270; were amended in 1986 to include part 268 (the Land Disposal Restrictions program) (51 FR 40637); and were amended again in 2005 to incorporate part 267 (the Standardized Permit program) (70 FR 53453). However, references to part 266, which addresses Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities, were not added when part 266 was promulgated. Because part 266 is one of the parts applicable to the wastes discussed in § 261.7, it should have been added to the lists of applicable parts. The Agency is now correcting this oversight.

In this section, EPA is also amending paragraphs (b)(1) and (b)(3) to remove the reference to acute hazardous wastes listed in "§ 261.32," because currently, there are no acute hazardous wastes listed in § 261.32.

l. 40 CFR 261.23(a)(8): In 40 CFR part 261, EPA is amending this paragraph to read, "It is a forbidden explosive as defined in 49 CFR 173.54, or is a Division 1.1, 1.2 or 1.3 explosive as defined in 49 CFR 173.50 and 173.53."

Specifically, 40 CFR 261.23(a)(8) cross-references Department of Transportation (DOT) regulations addressing forbidden explosives, Class A explosives, and Class B explosives. However, these cross-references are out of date with the current DOT regulations, and the referenced sections either no longer exist or no longer address these explosives. This change modifies the rule to provide the correct citations.

m. 40 CFR 261.30(d). In 40 CFR part 261, EPA is amending this paragraph to read, "The following hazardous wastes listed in § 261.31 are subject to the exclusion limits for acutely hazardous wastes established in § 261.5: EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026 and F027."

The existing paragraph indicates that acutely hazardous wastes are listed in § 261.31 and § 261.32. However, because there are no acute hazardous wastes currently listed in § 261.32, we are removing the reference to § 261.32.

n. 40 CFR 261.31: In 40 CFR part 261, EPA is amending the listing for EPA Hazardous Waste No. F037 by correcting the phrase "* * * oil cooling wastewaters" to read "* * * oily cooling wastewaters." It is clear from the 1990 and 1998 **Federal Register** notices promulgating and subsequently revising this listing that the correct phrase is "oily cooling wastewaters" (55 FR 46396 and 63 FR 42185, respectively). This phrase is also consistent with the listing description of F037 and F038 in the table in 40 CFR 268.40 and Table 302.4—List of Hazardous Substances and Reportable Quantities.

o. 40 CFR 261.32: In 40 CFR part 261, EPA is amending the listing for K107, by correcting the misspelled chemical name "* * * carboxylic acid hydrazines" to read "* * * carboxylic acid hydrazides." That this is a misspelling is clear from the original listing background document supporting the K107 listing which discusses "carboxylic acid hydrazides." The proposed rule (December 20, 1984; 49 FR 49559) included this error in the listings for K107, K108, K109, and K110. The error was corrected in the final rule (May 2, 1990; 55 FR 18505) for all the listings except K107.

p. 40 CFR 261.32: In 40 CFR part 261, EPA is amending the table in this section to remove the section headings that have no waste codes included: "*Primary Copper:*", "*Primary Lead:*", "*Primary Zinc:*"; and "*Ferroalloys:*".

Specifically, the entries for Hazardous Waste Nos. K064 (Primary Copper), K065 (Primary Lead), K066 (Primary Zinc) and K090 and K091 (Ferroalloys) were removed from the table in 1999 (64 FR 56470, October 20, 1999; see also 63 FR 28599–29600, May 26, 1998). Although these were the only waste codes listed in the sections having the same title, the section headings were inadvertently not removed with the waste codes. Thus, they are being deleted in today's Direct Final rule.

q. 40 CFR 261.33(f): In 40 CFR part 261, EPA is amending this section to revise the listing for U239, "Benzene, dimethyl- (I,T)" to read "Benzene, dimethyl- (I)." Inclusion of the "T" (for toxicity) in the parentheses was an oversight because this chemical was listed only for ignitability ("I") and not for toxicity ("T"). This error was first identified in 1990, but the Agency failed to correct this error in previous technical correction rules (see memo from Scarberry to Kreider (April 5, 1990, RO115020), a copy of which is included in today's docket). This correction is also consistent with the same listing under the more common name for U239, "xylene," which has only an "I" in the parentheses.

r. Part 261, APPENDIX VII: In 40 CFR part 261, EPA is amending this section to remove the entries "K064," "K065," "K066," "K090," and "K091." In the final rule published in 64 FR 56470 (October 20, 1999), see also 63 FR 28599–29600, May 26, 1998, EPA removed these K-listed wastes from § 261.32, but failed to make the necessary conforming changes in Appendix VII of part 261. This amendment makes that conforming change.

3. Corrections to 40 CFR Part 262 (Standards Applicable to Generators of Hazardous Waste)

In 40 CFR part 262, EPA is amending the following sections in order to clarify regulatory citations and address incorrect citations: Sections 262.10, 262.11, 262.23,[3] 262.34, 262.41, 262.42 and 262.60.[4]

a. 40 CFR 262.34(a): In 40 CFR part 262, EPA is amending this paragraph by revising 40 CFR 262.34(a) to read, "A generator who generates 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§ 261.31 or 261.33(e) in a calendar month, may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:"

Specifically, the current language in 40 CFR 262.34(a) fails to clarify that this paragraph applies to large quantity generators only—that is, generators who generate 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§ 261.31 or 261.33(e) in a calendar month. Small quantity generators can accumulate hazardous waste on site for 180 days (or 270 days

[3] Discussed under section V.C.10.

[4] **Note:** The changes at 40 CFR 262.10, 262.11 and 262.41 refer to the conforming change to include part 267.

if he must transport his waste or offer his waste for transportation over a distance of 200 miles or more) or less without a permit or without having interim status.

b. 40 CFR 262.34(a)(1)(iv)—as related to Closure: EPA is amending CFR 262.34(a) by moving a sentence from one portion of the regulation to another, more appropriate, portion of the regulation where it will be easier to find.

Specifically, EPA is moving the language that currently appears after 40 CFR 262.34(a)(1)(iv)(B) which states that generators accumulating hazardous waste on-site for 90 days or less without a permit or interim status are exempt from all the requirements in subparts G and H of 40 CFR part 265, except for 40 CFR 265.111 and 265.114.

This amendment is necessary because this sentence stating the requirements for large quantity generators closing their waste accumulation units is incorrectly and awkwardly found after 40 CFR 262.34 (a)(1)(iv)(B), when it should be elsewhere in the regulation. That is, this section of the regulations has no relationship to the closure requirements, but instead addresses the documentation needed by a large quantity generator accumulating hazardous waste in containment buildings to demonstrate that the unit has been emptied at least once every 90 days. Thus, requirements for large quantity generators closing their 90-day waste accumulation units should properly be located in another portion of this regulation. EPA has expressed this same intent in a Hotline document in the December 1998 Hotline Monthly Report entitled, Generator Closure Requirements, a copy of which is included in today's docket. (Also see RCRA Online 14321.[5])

EPA is moving this sentence to a new section 40 CFR 262.34(a)(5). This new location for this long-standing closure requirement for large quantity generators will make it less likely that users of the regulations will miss the provision and thus be unaware of its existence. Putting this sentence in a new subparagraph (5) of paragraph (a) following existing subparagraphs (1) through (4) also makes it much clearer that the closure provision is one of the five existing requirements applicable to large quantity generators accumulating waste on-site.

[5] RCRA Online is an electronic database of selected letters, memoranda, questions and answers, publications, and other outreach materials, written by EPA's Office of Solid Waste (now the Office of Resource Conservation and Recovery) since 1980.

c. 40 CFR 262.34(a)(2)—*as related to Marking:* In 40 CFR part 262, EPA is amending this paragraph by revising 40 CFR 262.34(a)(2) to read "each container and tank" instead of "each container."

Specifically, § 262.34(a)(3) makes clear that displaying the words "Hazardous Waste" is required for both containers and tanks accumulating waste, but the words "and tank" were inadvertently omitted from the text of § 262.34(a)(2) which discusses displaying the accumulation start date. In the preamble to the March 24, 1986 **Federal Register** (51 FR 10146 and 51 FR 10160), EPA makes clear that under 40 CFR 262.34 both containers and tanks must be marked with accumulation start dates. EPA also explained that both containers and tanks must be marked with accumulation start dates in the June 2003 RCRA Call Center Monthly Report, a copy of which is included in today's docket. This amendment corrects this omission.

d. 40 CFR 262.34(a)(4) and 40 CFR 262.34(d)(4)—as related to the Land Disposal Restrictions (LDR): In 40 CFR part 262, EPA is amending these paragraphs by revising 40 CFR 262.34(a)(4) and 40 CFR 262.34(d)(4) to delete "40 CFR 268.7(a)(5)" and substitute the words "all applicable requirements under 40 CFR part 268."

Both 40 CFR 262.34(a)(4) and 40 CFR 262.34 (d)(4) specifically state that large quantity generators and small quantity generators must comply only with 40 CFR 268.7(a)(5) of the land disposal restriction requirements. This provision addresses waste analysis plans. However, the limited reference to 40 CFR 268.7(a)(5) is in error. As stated elsewhere in the hazardous waste regulations, both small and large quantity generators are subject to the full land disposal restriction requirements program, and not just the requirement to develop waste analysis plans. For example, 40 CFR 262.11 points to the need for materials subject to the hazardous waste regulations to comply with all applicable regulations under 40 CFR part 268 (Land Disposal Restrictions). Similarly, 40 CFR 268.1(b) is clear that the LDR requirements "apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage and disposal facilities." Thus, EPA is correcting this error by revising these paragraphs to properly conform to the requirements elsewhere for large quantity generators and small quantity generators to comply with all applicable regulations under 40 CFR part 268.

e. 40 CFR 262.34(b): Consistent with the changes being made in section 262.34(a) of today's Direct Final rule, EPA is amending 40 CFR 262.34 by revising the first sentence of 40 CFR 262.34(b) to read, "A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§ 261.31 or 261.33(e) in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264, 265 and 267 and the permit requirements of 40 CFR 270 unless he has been granted an extension to the 90-day period." (See discussion in section V.3.a regarding paragraph 262.34(a) for explanation of change.)

f. 40 CFR 262.34(c)(1): EPA is amending 40 CFR 262.34 by revising 40 CFR 262.34(c)(1) to read: "A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in § 261.31 or § 261.33(e) in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraphs (a) or (d) of this section provided he:"

This revision clarifies that the satellite accumulation provisions for large quantity generators also are applicable to small quantity generators, and that this provision applies to acutely hazardous wastes listed under § 261.31 as well. As currently constructed, the regulatory citations at 40 CFR 262.34 associated with satellite accumulation are only found under the requirements for large quantity generators, or paragraph (a). The preamble to the final rule promulgating this provision published in the March 24, 1986 **Federal Register** makes clear that the satellite accumulation provisions also are applicable to small quantity generators. The regulatory text omitted the appropriate reference to implement this intent. See 51 FR 10162. In addition, other EPA documents state that the satellite accumulation provisions apply to small quantity generators as well. See, for example, Memorandum from Robert Springer, Director Office of Solid Waste to Regions 1–10, *Frequently Asked Questions about Satellite Accumulation Areas,* March 17, 2004 (RO 14703), a copy of which is included in today's docket.

With respect to including acutely hazardous wastes listed under § 261.31, when the dioxin listings for acutely

hazardous wastes listed under § 261.31 were promulgated in 1985 (see 50 FR 2000), we failed to make conforming changes to the satellite accumulation regulations found at 40 CFR 262.34 (c)(1) and (c)(2) which were promulgated in 1984. This amendment corrects this omission.

g. 40 CFR 262.34(c)(2): EPA is amending 40 CFR 262.34 by revising 40 CFR 262.34(c)(2) to read: "A generator who accumulates either hazardous waste or acutely hazardous waste listed in § 261.31 or § 261.33(e) in excess of the amounts listed in paragraph (c)(1) of this section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with paragraph (a) of this section or other applicable provisions of this chapter.

During the three day period the generator must continue to comply with paragraphs (c)(1)(i) and (ii) of this section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating."

This amendment makes the conforming change discussed above (section V.3.f.) for 40 CFR 262.34(c)(1).

h. 40 CFR 262.42(a)(1), (a)(2), and (c)—Exception Reporting: In 40 CFR part 262, EPA is amending both 40 CFR 262.42(a)(1) and (a)(2) to read, "A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than1 kg of acute hazardous waste listed in §§ 261.31 or 261.33(e) in a calendar month * * *" Also, EPA is adding paragraph (c) to this section to require a generator to comply with this provision when a designated facility re-ships a generator's hazardous waste shipment of rejected loads or container residues to an alternate facility for further hazardous waste management. This correction is discussed in Section V.C.10 below, along with other corrections and clarifications to the hazardous waste manifest regulations.

Specifically, the current language in paragraphs (a)(1) and (a)(2) at 40 CFR 262.42 incorrectly describes the exception reporting requirements as applying only to generators of "greater than 1000 kilograms of hazardous waste" in a calendar month, when it should properly address such requirements for large quantity generators (*i.e.*, those generators generating 1,000 kilograms or greater of hazardous waste or greater than 1 kg of acute hazardous waste listed in § 261.31 or § 261.33(e) in a calendar month). These amendments are further supported by the language in paragraphs § 262.34(d), § 262.34(g), § 262.34(h) and § 262.34(j) cited under 40 CFR 261.5(e).

i. 40 CFR 262.60(b)—Imports of Hazardous Waste: In 40 CFR part 262, EPA is amending 40 CFR 262.60(b) to replace "§ 262.20 (a)" with "§ 262.20."

Specifically, paragraph 262.60(b) incorrectly states that "when importing hazardous waste, a person must meet all the requirements of § 262.20(a) for the manifest except that * * *" However § 262.20(a) is only one component of the hazardous waste manifest requirements that facilities must meet in either transporting or importing hazardous wastes. To comply with this requirement only, and no other, would be a violation of the hazardous waste manifest requirements. EPA made this error in the original import regulations (see 51 FR 28685, August 8, 1986) and is now amending this section to reflect the Agency's intent.

4. Corrections to 40 CFR Part 264 (Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities)

In 40 CFR part 264, EPA is amending the following sections in order to include correct citations, clarify regulatory requirements that are either cited elsewhere in **Federal Register** notices or documents published in RCRA Online, and incorporate conforming changes: Sections 264.52, 264.56, 264.72,[6] 264.314, 264.316, and 264.552.

a. 40 CFR 264.52—Content of contingency plan: EPA is amending § 264.52(b) by removing the phrase "or part 1510 of chapter V," since part 1510 of chapter V no longer exists.

b. 40 CFR 264.56—Emergency Procedures: Consistent with the change being made in 40 CFR 264.52, EPA is amending § 264.56(d)(2) by removing the parenthetical phrase "(in the applicable regional contingency plan under part 1510 of this title)," since this provision no longer exists.

c. 40 CFR 264.314(d) and 264.316(b): The Burden Reduction Rule (71 FR 16906, April 4, 2006) deleted the obsolete paragraph (a) in § 264.314 and moved up the rest of the paragraphs in that section. Thus, paragraphs (b) through (f) were re-designated paragraphs (a) through (e). In doing this, the Burden Reduction Rule failed to update the cross-references in paragraph 264.314(d) from "(e)(1)" to "(d)(1)" and "(e)(2)" to "(d)(2)," and failed to update the cross-reference in § 264.316(b) from "§ 264.314(e)" to "§ 264.314(d)". Today's rule corrects these errors.

[6] Discussed under Section V.C.10.

d. 40 CFR 264.552(a)(3): As discussed under 40 CFR 264.314 (section V.4.c), the Burden Reduction Rule (71 FR 16906, April 4, 2006) deleted the obsolete paragraph 264.314(a) and moved up the rest of the paragraphs in that section. Thus, paragraphs (b) through (f) were re-designated paragraphs (a) through (e). In doing this, the Burden Reduction Rule failed to update the cross-references in § 264.552 to these re-designated paragraphs. Today's rule corrects this as follows: Paragraph 264.552(a)(3)(ii) revises the citation "§ 264.314(d)" to read "§ 264.314(c)"; paragraph 264.552(a)(3)(iii) revises the citation "§ 264.314(f)" to read "§ 264.314(e)"; and paragraph 264.552(a)(3)(iv) revises the citation "§ 264.314(c)" to read "§ 264.314(b)" and "§ 264.314(e)" to read "§ 264.314(d)."

e. 40 CFR 264.552(e)(4)(iv)(F): Today's rule revises the citation in § 264.552(e)(4)(iv)(F) from "260.11(a)(11)" to read "260.11(c)(3)(v)." The Corrective Action Management Units (CAMUs) final rule (67 FR 3025, January 22, 2002), in § 264.552(e)(4)(iv)(F), provided for a variance from the "Toxicity Characteristic Leaching Procedure" (TCLP), SW846 Method 1311, and incorrectly cited "40 CFR 260.11(11)" for Method 1311. This reference was an improper citation format. It should have read "40 CFR 260.11(a)(11)." EPA then significantly reorganized and revised 40 CFR 260.11 (70 FR 34538, June 14, 2005), without making the corresponding revision to the citation in § 264.552(e)(4)(iv)(F). However, the June 14, 2005 revision (at 70 FR 34560) also added a new § 260.11(c)(3)(v) referencing Method 1311. The EPA CFR Corrections rule (71 FR 40273, July 14, 2006) corrected the original § 264.552(e)(4)(iv)(F) citation to read "40 CFR 260.11(a)(11)," the paragraph that in 2002 correctly referred to SW846, which includes Method 1311. But, because of the June 14, 2005 revisions, the correct citation in the July 14, 2006 CFR corrections rule should have been "§ 260.11(c)(3)(v)."

5. Corrections to 40 CFR Part 265 (Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities)

In 40 CFR part 265, EPA is amending the following sections in order to include correct citations, clarify particular regulatory requirements that are either cited elsewhere in **Federal Register** notices or documents published in RCRA Online, and incorporate conforming changes:

Sections 265.52, 265.56, 265.72,[7] 265.314 and 265.316.

a. 40 CFR 265.52—Content of contingency plan: EPA is amending § 265.52(b) by removing the phrase "or part 1510 of chapter V," since part 1510 of chapter V no longer exists.

b. 40 CFR 265.56—Emergency Procedures: Consistent with the change being made in 40 CFR 265.52, EPA is amending § 265.56(d)(2) by removing the parenthetical phrase "(in the applicable regional contingency plan under part 1510 of this title)," since the provision no longer exists.

c. 40 CFR 265.314(e) and 265.316(b): As discussed under the sections on 40 CFR 264.314 and 264.316 above (section V.4.c), today's rule corrects some errors made in the Burden Reduction Rule (71 FR 16912, April 4, 2006) in 40 CFR 264.314(e) and 264.316(b). We are also making the same corrections to the corresponding part 265 provisions, which are identical in language to the part 264 provisions. Specifically, the 2006 Burden Reduction Rule deleted obsolete paragraph (a) in § 265.314 and moved up the rest of the paragraphs in that section. Thus, paragraphs (b) through (g) became re-designated as paragraphs (a) through (f). In doing this, the Burden Reduction Rule failed to update the cross-references in paragraph 265.314(e) from "(f)(1)" to "(e)(1)" and "(f)(2)" to "(e)(2)," and failed to update the cross-reference in § 265.316(b) from "§ 265.314(f)" to "§ 265.314(e)." Today's rule corrects these errors.

6. Corrections to 40 CFR Part 266 (Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities)

In 40 CFR part 266, EPA is amending the following section in order to make a necessary conforming change: Section 266.20.

40 CFR 266.20—Subpart C—Recyclable Materials Used in a Manner Constituting Disposal: EPA is amending § 266.20(b) by adding at the end of this paragraph the phrase, "and the recycler complies with § 268.7(b)(6)."

Specifically, when EPA promulgated § 268.7(b)(6), the Agency failed to make the conforming change at § 266.20(b) to clarify that the recycler must comply with the one-time certification requirement described at § 268.7(b)(4) for the initial shipment of the waste, and a one-time notification under paragraph § 268.7(b)(3). This correction addresses this oversight.

[7] Discussed under Section V.C.10.

7. Conforming Changes To Include Reference to Part 267 in Different Sections of Parts 261, 262, 263, and 266.

In 2005, EPA promulgated 40 CFR part 267, which provides alternative management standards for owners and operators of certain types of hazardous waste treatment and storage facilities operating under a special type of permit—that is, the standardized permit. Management includes storing or non-thermally treating hazardous waste on-site in tanks, containers or containment buildings, or receiving hazardous waste generated off-site by a generator under the same ownership as the receiving facility, and then storing or non-thermally treating the hazardous waste in containers, tanks, or containment buildings. (See 40 CFR 270.255.) When EPA promulgated this rule, the Agency inadvertently failed to make a number of conforming changes to other parts of the RCRA hazardous waste regulations that were affected by this new rule. In particular, there are various paragraphs throughout parts 261, 262, 263 and 266 where the phrase, "parts 262 through 266, 268, and parts 270 and 124," or variations appear. When part 267 was promulgated, this phrase should have been amended in the applicable paragraphs to add part 267 and reflect this change. The following paragraphs are amended to correct this oversight:

—§ 261.5(b), (e) and (f)(2), and (g)(2)
—§ 261.6(a)(3), (c)(1) and (d)
—§ 261.7(a)(2)
—§ 261.30(c)
—§ 262.10(f), (j)(1) and (k).
—§ 262.11(d)
—§ 262.34(b), (f), and (i)
—§ 262.41(b)
—§ 263.12
—§ 266.22, 266.70(d), 266.80(b), 266.101(c)(1) and (c)(2)

8. Corrections to Part 268 (Land Disposal Restrictions)

EPA is amending the following sections of 40 CFR part 268 in order to make a number of changes: Sections 268.40 and 268.48.

b. 40 CFR 268.40: In 40 CFR 268.40, EPA is amending the table, Treatment Standards for Hazardous Wastes, by revising the wastewater concentration associated with the regulated hazardous constituent, vinyl chloride, for F025 to read "0.27," and by revising the wastewater concentration associated with the regulated hazardous constituent, arsenic, for K031 to read "1.4." With respect to F025, 63 FR 28657–58 identified the wastewater concentration for vinyl chloride to be 0.27 mg/L. With respect to K031, the preamble to the Universal Treatment Standards at 59 FR 48000, and confirmed at 59 FR 48070 for the table, Treatment Standards for Hazardous Wastes found in 40 CFR 268.40, the correct concentration for the regulated hazardous constituent, arsenic, is 1.4 mg/L for K031. Whether through a printing error, or inadvertent technical error, the concentrations for vinyl chloride and arsenic under F025 and K031 were changed in subsequent CFR publications to "0.027" and "14," respectively. These changes correct those inadvertent errors.

In 40 CFR 268.40, EPA is also amending the table, Treatment Standards for Hazardous Wastes, for the waste codes K156, K157 and K158 by reinserting the parenthetical sentence, "(This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)" As a result of the November 1, 1996, ruling of the United States Court of Appeals for the District of Columbia Circuit in *Dithiocarbamate Task Force* v. *EPA,* EPA added to the 40 CFR 268.40 table "Treatment Standards for Hazardous Wastes," at the end of the "Waste description * * *" column for the entries for K156, K157, and K158, the parenthetical sentence "(This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate)." (See 62 *FR* 32979, June 17, 1997.) This same parenthetical sentence was also added by the June 17, 1997 **Federal Register** notice under the entries for K156, K157, and K158 in the following two tables: 40 CFR 261.32 Listed hazardous wastes from specific sources and 40 CFR Table 302.4 List of Hazardous Substances and Reportable Quantities (62 FR 32977 and 32980, respectively). This parenthetical sentence still exists in these latter two tables, but was inadvertently deleted from the § 268.40 table under all three entries (K156–158) by 63 FR 28706–8, May 26, 1998. The purpose of this section of the **Federal Register,** as discussed in the preamble at 63 FR 28623, was to modify the entry in the § 268.40 table for U108; there was no mention of any revisions to the entries for K156–158. Yet when this table was recreated to reflect the U108 revision, the parenthetical sentence at the end of K156–158 was inadvertently deleted.

b. 40 CFR 268.48: At 59 FR 48103, September 19, 1994, EPA added § 268.48 and a table containing Universal Treatment Standards, including treatment standard entries in the table for "bis(2-Ethylhexyl)phthalate" and for "Hexachloropropylene." The entries for these two chemicals appear in the 1995–

1998 Code of Federal Regulations. They also appear in this same table in the 1998 Phase IV Land Disposal Restrictions (LDR) Final Rule (63 FR 28744, May 26, 1998). By mistake, these entries do not appear in the same table in the 1999 Code of Federal Regulations, or in any CFR since then. There are no FR notices removing these entries. EPA is today restoring these two entries as they first appeared in 1994, and continued unchanged through 1998.

9. Corrections to Part 270 (EPA Administered Permit Programs: The Hazardous Waste Permit Program)

EPA is amending the following section of 40 CFR part 270 in order to make a necessary change: Section 270.4.

40 CFR 270.4(a): Today's rule restores the following sentence at the end of § 270.4(a): "However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 270.41 and 270.43, or the permit may be modified upon the request of the permittee as set forth in § 270.42." (except that today's rule deletes the introductory word "However,"). The first part of this sentence was promulgated on April 1, 1983 (48 FR 14232). EPA attempted to add the last phrase of this sentence on September 28, 1988 (53 FR 37935), but was not able to because EPA had inadvertently deleted the first part of this sentence December 1, 1987 (52 FR 45799). In order to reinstate the missing sentence, EPA is today re-designating the introductory text of paragraph (a) as (a)(1); re-designating paragraphs (a)(1), (a)(2), (a)(3) and (a)(4) as paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii) and (a)(1)(iv), respectively; and reinstating the missing sentence in a new paragraph (a)(2).

10. Corrections To Manifest Regulations

Today's rule corrects certain omissions and an error in the final manifest rule that was published on March 4, 2005 (See 70 FR 10776).

The March 2005 manifest rule (manifest rule) inadvertently omitted certain requirements that were intended for inclusion, and that relate to the use of a manifest in shipments of rejected hazardous wastes or non-empty containers containing regulated residues ("container residues"). In addition, the manifest rule contained an error regarding a designated facility's preparation of a new manifest in certain returned shipment situations. Today's rule corrects these omissions and this error as follows:

1. The generator must confirm receipt of a returned shipment of rejected hazardous wastes or container residues by sending a copy of the final hazardous waste manifest that accompanied the shipment, whether it was a new manifest or the generator's original manifest, to the designated facility. Today's rule adds a new paragraph (f) to 40 CFR 262.23 to reflect this requirement.

The preamble to the May 22, 2001 proposed manifest rule (66 FR 28240) explained the importance of ensuring that a shipment returned to the generator be verified by the designated facility. Hence, it would be necessary for the generator to send to the designated facility a copy of the final manifest. However, the March 2005 final rule regulatory text inadvertently omitted this requirement for the generator to send a final copy of the manifest to the designated facility, even though the proposed rule preamble discussion clearly intended this requirement. Today's rule corrects this inadvertent omission.

2. The generator must sign and date the manifest accompanying the returned shipment of rejected hazardous wastes or container residues, provide the transporter with a copy of the manifest, and retain a copy of the manifest for three years. New paragraph (f) to 40 CFR 262.23, described previously in item 1, reflects these requirements as well.

In the appendix to part 262, the instructions for completing the manifest require the generator to sign and date the manifest for returned shipments involving the original manifest (generator must sign and date Item 18c of the original manifest) or a new manifest (generator must sign and date Item 20 of the new manifest). Moreover, EPA intended to include all of these same requirements (which generators must currently meet under the manifest instructions) to the regulatory text of the final manifest rule for returned shipments for the purpose of completion, but inadvertently omitted these requirements. Today's rule corrects these inadvertent omissions.

3. The generator must comply with the Exception reporting requirements of 40 CFR 262.42(a) or (b) when a designated facility forwards its hazardous waste or container residues to an alternate facility under a new manifest. Today's rule adds a new paragraph (c) to 40 CFR 262.42 to reflect this requirement.

The current exception reporting requirements in 40 CFR § 262.42 require a generator to file an exception report when a copy of that signed original manifest is not received from the designated facility within the specified time frame. EPA also intended to include, but inadvertently omitted in the 2005 final manifest rule, exception reporting for hazardous waste shipments forwarded to an alternate facility by a designated facility using a new manifest (following the procedures of CFR 264.72(e)(1)–(6)). Specifically, EPA intended to require the generator to comply with the exception reporting requirements of 40 CFR 262.42 (a) or (b) when a designated facility forwards rejected wastes or container residues to an alternate facility using a new manifest. Today's rule corrects this inadvertent omission.

4. The designated facility must mail to the generator a signed copy of the new manifest included with the shipments of rejected loads or container residues that are re-shipped to an alternate facility by the designated facility under a new manifest. Today's rule amends paragraph (e)(6) of 40 CFR 264.72 and 40 CFR 265.72 to reflect this requirement.

When a designated facility forwards to an alternate facility shipments of rejected loads or container residues under a new manifest, it is important for the designated facility also to send the generator a copy of the new manifest indicating the date on which the shipment was accepted by the initial transporter that is transporting the rejected hazardous waste or container residues to the alternate facility. Otherwise, the generator cannot reasonably determine that the alternate facility received the shipment in the appropriate time frame in order to fulfill its various obligations under the manifest regulations. EPA intended to include, but inadvertently omitted, this requirement in the manifest rule. Today's rule corrects this inadvertent omission.

5. The designated facility must enter its own information (instead of the generator's information) in Item 5 of the new manifest form when it originates the shipments of rejected hazardous waste or container residues. Today's rule amends 40 CFR 264.72(f)(1) and 265.72(f)(1) to correct this error.

This approach provides the most straightforward facility-to-generator tracking of waste shipments and was explained in the preamble to the May 22, 2001, proposed rule (66 FR 28240). In response to requests for clarification of this issue from the regulated community and State waste management officials, EPA's Office of Solid Waste (OSW) issued a memorandum (May 14, 2007) from Matt Hale, OSW Office Director, to the Regional Waste Division Directors and RCRA Enforcement Managers acknowledging this error and recommending that manifests should be

considered compliant if, in cases of rejected wastes and container residues, designated facilities entered their own information in Item 5 of the new manifest. In addition, the memo indicated that EPA would correct this error in the future. A copy of this memo is in the Docket for this rulemaking.

6. The designated facility using a new manifest to return a full load or partial load of rejected hazardous wastes, or container residues, to the generator must comply with the exception reporting provisions of 40 CFR 262.42(a). Today's rule adds new paragraph (f)(8) to 40 CFR 264.72 and 265.72 to reflect this requirement. Today's rule also makes a necessary conforming amendment to paragraph (f)(7) to 40 CFR 264.72 and 40 CFR 265.72 to reference new paragraph (f)(8).

Under today's rule, the designated facility must file an exception report in situations when a completed copy of the manifest is not received from the generator within 35 days of the date that the shipment was accepted by the initial transporter transporting the shipment. This requirement ensures that the shipment returned to the generator can be verified by the designated facility, as explained in the preamble to the May 22, 2001 proposed manifest rule. EPA intended to include, but inadvertently omitted, this requirement in the initial manifest rule of March 4, 2005. Today's rule corrects this inadvertent omission.

Table 1 provides a summary of the manifest technical corrections.

TABLE 1—MANIFEST RELATED OMISSIONS AND INACCURACIES CORRECTED IN TODAY'S DIRECT FINAL RULE

Citation	Action in today's final rule	Summary of added or corrected provision	Type of shipment affected (RW&CR = rejected waste and container residues)
262.23(f)	Add new paragraph (f)	Generator (recipient of shipment) must: —sign/complete the manifest. —provide a copy of the completed manifest to transporter. —send a copy of the completed manifest to the Designated Facility (originator of shipment). —keep a copy of completed manifest.	RW&CR returned from Designated Facility to Generator using a new or an original manifest.
262.42(c)	Add new paragraph (c).	Generator must file an exception report if a copy of the signed new manifest is not received from the alternate facility within a specified time frame.	RW&CR forwarded from Designated Facility to Alternate Facility using a new manifest.
264.72(e)(6) and 265.72 (e)(6).	Add new provision to existing paragraph (6).	Designated Facility must send copy of new manifest to the Generator.	RW&CR forwarded from Designated Facility to Alternate Facility using a new manifest.
264.72(f)(1) and 265.72 (f)(1).	Correct paragraph (1)	Designated Facility must enter its own information in Box 5 of the manifest.	RW&CR returned from Designated Facility to Generator using a new manifest.
264.72(f)(7) and 265.72 (f)(7).	Correct references in paragraph (7).	Designated Facility using original manifest need not comply with new paragraph (8).	RW&CR returned from Designated Facility to Generator using the original manifest.
264.72(f)(8) and 265.72 (f)(8).	Add new paragraph (8).	Designated Facility must comply with the exception reporting requirements for shipments returned to the Generator.	RW&CR returned from Designated Facility to Generator using a new manifest.

VI. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize a qualified State to administer its own hazardous waste program within the State in lieu of the Federal program. Following authorization, EPA retains enforcement authority under Sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for State authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in that State, since only the State was authorized to issue RCRA permits. When new, more stringent Federal requirements were promulgated, the State was obligated to enact equivalent authorities within specified time frames. However, the new Federal requirements did not take effect in an authorized State until the State adopted the Federal requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed by the statute to implement these 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, EPA implements the HSWA provisions in authorized States until the States do so.

Authorized States are required to modify their program only when EPA enacts Federal requirements that are more stringent or broader in scope than the existing Federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program (see also 40 CFR 271.1). Therefore, authorized States may, but are not required to, adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous Federal regulations.

B. Effect on State Authorization

Today's Direct Final rule finalizes technical corrections to a number of the regulations in 40 CFR parts 260–266, 268 and 270 that are being promulgated in part under the authority of HSWA, and in part under non-HSWA authority. Thus, the technical corrections and clarifications finalized today under non-HSWA authority would be applicable on the effective date only in those States that do not have final authorization of their base RCRA programs. The technical corrections to regulations in part 268 are promulgated under the authority of HSWA and would be

effective on the effective date of this Direct Final rule in all States unless the State is not authorized for the underlying provisions. Moreover, authorized States are required to modify their programs only when EPA promulgates Federal regulations that are more stringent or broader in scope than the authorized State regulations. For those changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their program. This is a result of section 3009 of RCRA, which allows States to impose more stringent regulations than the Federal program. Today's Direct Final rule is considered to be neither more nor less stringent than the current standards. Therefore, authorized States would not be required to modify their programs to adopt the technical corrections promulgated today, although we would strongly urge the States to adopt these technical corrections to avoid any confusion or misunderstanding by the regulated community and the public.

One exception to the above discussion concerns clarifications of the manifest regulations in 40 CFR 262.23. All authorized States will be required to adopt these revisions in accordance with the consistency requirements in 40 CFR 271.4(c). See 70 FR 10811, March 4, 2005 for a further discussion of this provision.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action." Accordingly, EPA did not submit this action to the Office of Management and Budget (OMB) for review under Executive Order 12866.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them. As described in the preamble, while the recordkeeping and reporting requirements related to the manifest are not considered new requirements, we nevertheless discuss the information collection burden under the provisions of the *Paperwork Reduction Act* with respect to this action.

The manifest amendments in this action impose recordkeeping and reporting burden to generators and designated facilities subject to these manifest changes. However, EPA believes that the burden impacts are minimal since the changes apply only to rejected load shipments and container residue shipments that require the completion of a new hazardous waste manifest. EPA estimates that each manifest completed and sent off site by a generator (2,074,900) will be delivered to the designated treatment, storage or disposal facility (TSDF), minus those manifests accompanying export shipments (19,509 manifests) or lost during transport (173 manifests). Hence, USEPA estimates that 2,055,218 manifests will be delivered to the designated TSDF. EPA estimates that 3% of these shipments will be classified as rejected loads or container residue shipments, and that 50% of these shipments would be affected by the manifest regulatory amendments in this action. Approximately 99% of these shipments (30,519) will be sent to an alternate facility, and the remaining 1% (308) of these shipments will be returned to the generator. Most of the incremental burden increase will result from the proposed changes applicable to the estimated 30,519 hazardous waste shipments forwarded to an alternate facility. However, EPA expects that the total national hourly burden will be minimal (4,578) hours, since for each affected shipment the respondent activity associated with the changes should require, at most, nine minutes of clerical staff time.

EPA believes that the potential recordkeeping and reporting burden associated with hazardous waste shipments returned to the generator will be negligible since the proposed changes will only affect 308 shipments annually, and only an extremely small fraction of those returned shipments will require the completion, submission, and recordkeeping of an exception report.

As a result of a small increase in the number of burden hours, EPA has submitted a nonsubstantive change request to the Office of Management and Budget (OMB) that will modify the information collection request (ICR) entitled, "Requirements for Generators, Transporters, and Waste Management Facilities under the RCRA Hazardous Waste Manifest System" (EPA ICR #0801.16; OMB Control No. 2050–0039) to account for this overall change in manifest burden hours. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administrations' regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's Direct Final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action simply corrects typographical errors, incorrect citations, omissions provides clarifications, and makes conforming changes where they have not been made previously.

Although this Direct Final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and

tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This action contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This Direct Final rule corrects typographical errors, incorrect citations, omissions, provides clarifications, and makes conforming changes where they have not been made previously. In any event, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments because this rule corrects errors in the CFR and clarifies existing regulatory language.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action corrects typographical errors, incorrect citations, omissions, provides clarifications, and makes conforming changes where they have not been made previously. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This action does not have tribal implications, as specified in Executive Order 13175. It will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law because this rule corrects typographical errors, incorrect citations, omissions, provides clarifications, and makes conforming changes where they have not been made previously. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because it is not based on environmental health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this Direct Final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because this rule corrects typographical errors, incorrect citations, omissions, provides clarifications, and makes conforming changes where they have not been made previously. These types of changes to the rule do not affect the level of protection provided to human health or the environment.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*, as amended) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined

by 5 U.S.C. 804(2). This action is effective June 16, 2010.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 261

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

40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 263

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

40 CFR Part 264

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 266

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

40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: March 10, 2010.

Lisa P. Jackson,

Administrator.

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

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

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

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

§ 260.10 [Amended]

■ 2. Amend § 260.10, the definition of "*New hazardous waste management facility* or *new facility*" by removing the date "October 21, 1976" and adding in its place the date "November 19, 1980".

Appendix I [Removed]

■ 3. Amend part 260 by removing Appendix I.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

§ 261.1 [Amended]

■ 5. Amend § 261.1(c)(10) by removing the citation "§ 261.4(a)(13)" and adding in its place the citation "§ 261.4(a)(14)".

■ 6. Amend § 261.2(c), Table 1, by removing the entry for "Scrap metal other than excluded scrap metal (see 261.1(c)(9))" and adding in its place the entry "Scrap metal that is not excluded under § 261.4(a)(13)" to read as follows:

§ 261.2 Definition of Solid Waste

* * * * *

(c) * * *

TABLE 1

	Use constituting disposal (§ 261.2(c)(1))	Energy recovery/fuel (§ 261.2(c)(2))	Reclamation (261.2(c)(3)), except as provided in §§ 261.2(a)(2)(ii), 261.4(a)(17), 261.4(a)(23), 261.4(a)(24), or 261.4(a)(25)	Speculative accumulation (§ 261.2(c)(4))
	1	2	3	4
* * *	*	*	*	*
Scrap metal that is not excluded under § 261.4(a)(13)	(*)	(*)	(*)	(*)
* * *	*	*	*	*

* * * * *

§ 261.4 [Amended]

■ 7. Amend § 261.4, paragraph (a)(17)(vi) by removing the citation "(a)(7)" and adding in its place the citation "(b)(7)".

■ 8. Amend § 261.5 as follows:

■ a. By revising paragraph (b).

■ b. By revising paragraph (e).

■ c. By revising paragraph (f) introductory text.

■ d. By revising paragraph (f)(2).

■ e. By revising paragraph (g) introductory text.

■ f. By revising paragraph (g)(2)

§ 261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

* * * * *

(b) Except for those wastes identified in paragraphs (e), (f), (g), and (j) of this section, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under parts 262 through 268, and parts 270 and 124 of this chapter, and the notification requirements of section 3010 of RCRA, provided the generator complies with

the requirements of paragraphs (f), (g), and (j) of this section.

* * * * *

(e) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acute hazardous waste are subject to full regulation under parts 262 through 268, and parts 270 and 124 of this chapter, and the notification requirements of section 3010 of RCRA:

(1) A total of one kilogram of acute hazardous wastes listed in §§ 261.31 or 261.33(e).

(2) A total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in §§ 261.31, or 261.33(e).

Note to paragraph (e): "Full regulation" means those regulations applicable to generators of 1,000 kg or greater of hazardous waste in a calendar month.

* * * * *

(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in paragraphs (e)(1) or (e)(2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:

* * * * *

(2) The generator may accumulate acute hazardous waste on-site. If he accumulates at any time acute hazardous wastes in quantities greater than those set forth in paragraph (e)(1) or (e)(2) of this section, all of those accumulated wastes are subject to regulation under parts 262 through 268, and parts 270 and 124 of this chapter, and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34(a) of this chapter, for accumulation of wastes on-site, begins when the accumulated wastes exceed the applicable exclusion limit;

* * * * *

(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of 100 kilograms or less of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

* * * * *

(2) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time 1,000 kilograms or greater of his hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of part 262 applicable to generators of greater than 100 kg and less than 1000 kg of hazardous waste in a calendar month as well as the requirements of parts 263 through 268, and parts 270 and 124 of this chapter, and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34(d) for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes equal or exceed 1000 kilograms;

* * * * *

■ 9. Amend § 261.6 as follows:

■ a. By revising paragraph (a)(2) introductory text.

■ b. By revising paragraph (a)(2)(ii).

■ c. By revising paragraph (a)(3) introductory text.

■ d. By revising paragraph (c)(1).

■ e. By revising paragraph (d).

The revisions read as follows:

§ 261.6 Requirements for recyclable materials.

(a) * * *

(2) The following recyclable materials are not subject to the requirements of this section but are regulated under subparts C through N of part 266 of this chapter and all applicable provisions in parts 268, 270, and 124 of this chapter.

* * * * *

(ii) Hazardous wastes burned (as defined in section 266.100(a)) in boilers and industrial furnaces that are not regulated under subpart O of part 264 or 265 of this chapter (40 CFR part 266, subpart H);

* * * * *

(3) The following recyclable materials are not subject to regulation under parts 262 through parts 268, 270 or 124 of this chapter, and are not subject to the notification requirements of section 3010 of RCRA:

* * * * *

(c) (1) Owners and operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of subparts A though L, AA, BB, and CC of parts 264 and 265, and under parts 124, 266, 267, 268, and 270 of this chapter and the notification requirements under section 3010 of RCRA, except as provided in paragraph (a) of this section. (The recycling process itself is exempt from regulation except as provided in § 261.6(d).)

* * * * *

(d) Owners or operators of facilities subject to RCRA permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of subparts AA and BB of part 264, 265 or 267 of this chapter.

■ 10. Amend § 261.7 as follows:

■ a. By revising paragraph (a).

■ b. By revising paragraph (b)(1) introductory text.

■ c. By revising paragraph (b)(3) introductory text.

The revisions read as follows:

§ 261.7 Residues of hazardous waste in empty containers.

(a)(1) Any hazardous waste remaining in either: an empty container; or an inner liner removed from an empty container, as defined in paragraph (b) of this section, is not subject to regulation under parts 261 through 268, 270, or 124 this chapter or to the notification requirements of section 3010 of RCRA.

(2) Any hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty, as defined in paragraph (b) of this section, is subject to regulation under parts 261 through 268, 270 and 124 of this chapter and to the notification requirements of section 3010 of RCRA.

(b)(1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in §§ 261.31 or 261.33(e) of this chapter is empty if:

* * * * *

(3) A container or an inner liner removed from a container that has held an acute hazardous waste listed in §§ 261.31 or 261.33(e) is empty if:

* * * * *

■ 11. Amend § 261.23 by revising paragraph (a)(8) to read as follows:

§ 261.23 Characteristic of reactivity.

(a) * * *

(8) It is a forbidden explosive as defined in 49 CFR 173.54, or is a Division 1.1, 1.2 or 1.3 explosive as defined in 49 CFR 173.50 and 173.53.

* * * * *

■ 12. Amend § 261.30 by revising paragraphs (c) and (d) to read as follows:

§ 261.30 General.

* * * * *

(c) Each hazardous waste listed in this subpart is assigned an EPA Hazardous Waste Number which precedes the name of the waste. This number must be used in complying with the notification requirements of Section 3010 of the Act and certain recordkeeping and reporting requirements under parts 262 through 265, 267, 268, and 270 of this chapter.

(d) The following hazardous wastes listed in § 261.31 are subject to the

exclusion limits for acutely hazardous wastes established in § 261.5: EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026 and F027.

■ 13. In § 261.31(a), the table is amended by revising the entry for F037 to read as follows:

§ 261.31 Hazardous wastes from non-specific sources.

* * * * *

(a) * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
*	*	*
F037	Petroleum refinery primary oil/water/solids separation sludge—Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing. This listing does include residuals generated from processing or recycling oil-bearing hazardous secondary materials excluded under § 261.4(a)(12)(i), if those residuals are to be disposed of.	(T)
*	*	*

* * * * *

■ 14. In § 261.32(a), the table is amended as follows:

■ a. Under the heading "organic chemicals", revise the entry for "K107".

■ b. Remove the heading "Primary copper:".

■ c. Remove the heading "Primary lead:".

■ d. Remove the heading "Primary zinc:".

■ e. Remove the heading "Ferroalloys:".

The revision reads as follows:

§ 261.32 Hazardous wastes from specific sources

* * * * *

(a)* * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
*	*	*
	Organic chemicals	
*	*	*
K107	Column bottoms from product separation from the production of 1,1 dimethylhydrazine (UDMH) from carboxylic hydrazides.	(C,T)
*	*	*

* * * * *

■ 15. In § 261.33(f), the table is amended by revising the entry for U239 to read as follows:

§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.

* * * * *

(f) * * *

Hazardous waste No.	Chemical abstracts No.	Substance
*	*	*
U239	1330–20–7	Benzene, dimethyl- (I)
*	*	*

* * * * *

Appendix VII [Amended]

■ 16. Section 261, Appendix VII is amended by removing in its entirety the entries for EPA Hazardous Waste Nos. "K064," "K065," "K066," "K090," and "K091".

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

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

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

■ 18. Amend § 262.10 as follows:

■ a. By revising paragraph (f).

■ b. By revising paragraph (j)(1) introductory text (table remains unchanged).

■ c. By revising paragraph (k).

§ 262.10 Purpose, scope and applicability.

* * * * *

(f) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of § 262.70 is not required to comply with other standards in this part or 40 CFR parts 270, 264, 265, 267, or 268 with respect to such pesticides.

* * * * *

(j)(1) Universities that are participating in the Laboratory XL project are the University of Massachusetts Boston in Boston, Massachusetts, Boston College in Chestnut Hill, Massachusetts, and the University of Vermont in Burlington, Vermont ("Universities"). The Universities generate laboratory wastes (as defined in § 262.102), some of which will be hazardous wastes. As long as the Universities comply with all the requirements of subpart J of this part the Universities' laboratories that are participating in the University Laboratories XL Project as identified in Table 1 of this section, are not subject to the provisions of §§ 262.11, 262.34(c), 40 CFR parts 264 and 265, 267, and the permit requirements of 40 CFR part 270 with respect to said laboratory wastes.

* * * * *

(k) Generators in the Commonwealth of Massachusetts may comply with the State regulations regarding Class A recyclable materials in 310 C.M.R. 30.200, when authorized by the EPA under 40 CFR part 271, with respect to those recyclable materials and matters covered by the authorization, instead of complying with the hazardous waste accumulation requirements of § 262.34, the reporting requirements of § 262.41, the storage facility operator requirements of 40 CFR parts 264, 265 and 267, and the permitting requirements of 40 CFR part 270. Such generators must also comply with any other applicable requirements, including any applicable authorized State regulations governing hazardous wastes not being recycled and any applicable Federal requirements which are being directly implemented by the EPA within Massachusetts pursuant to the Hazardous and Solid Waste Amendments of 1984.

* * * * *

■ 19. Amend § 262.11 by revising paragraph (d) to read as follows:

§ 262.11 Hazardous waste determination.

* * * * *

(d) If the waste is determined to be hazardous, the generator must refer to parts 261, 264, 265, 266, 267, 268, and 273 of this chapter for possible exclusions or restrictions pertaining to management of the specific waste.

■ 20. Amend § 262.23 by adding paragraph (f) to read as follows:

§ 262.23 Use of the manifest.

* * * * *

(f) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are returned to the generator by the designated facility (following the procedures of 40 CFR 264.72(f) or 265.72(f)), the generator must:

(1) Sign either:

(i) Item 20 of the new manifest if a new manifest is used for the returned shipment; or

(ii) Item 18c of the original manifest if the original manifest is used for the returned shipment;

(2) Provide the transporter a copy of the manifest;

(3) Within 30 days of delivery of the rejected shipment or container residues contained in non-empty containers, send a copy of the manifest to the designated facility that returned the shipment to the generator; and

(4) Retain at the generator's site a copy of each manifest for at least three years from the date of delivery.

■ 21. Amend § 262.34 as follows:

■ a. By revising paragraph (a) introductory text.

■ b. By removing the undesignated sentence after paragraph (a)(1)(iv)(B).

■ c. By revising paragraph (a)(2).

■ d. By revising paragraph (a)(4).

■ e. By adding paragraph (a)(5)

■ f. By revising paragraph (b).

■ g. By revising paragraph (c)(1) introductory text.

■ h. By revising paragraph (c)(2).

■ i. By revising paragraph (d)(4).

■ j. By revising paragraph (f).

■ k. By revising paragraph (i).

The revisions and addition read as follows:

§ 262.34 Accumulation time.

(a) A generator who generates 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§ 261.31 or 261.33(e) in a calendar month, may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:

* * * * *

(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container and tank;

* * * * *

(4) The generator complies with the requirements for owners or operators in subparts C and D in 40 CFR part 265, with § 265.16, and with all applicable requirements under 40 CFR part 268.

(5) Generators accumulating hazardous waste on-site for 90 days or less without a permit or without having interim status are exempt from all the requirements in subparts G and H of 40 CFR part 265, except for 40 CFR 265.111 and 265.114.

(b) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§ 261.31 or 261.33(e) in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264, 265, and 267 and the permit requirements of 40 CFR part 270 unless he has been granted an extension to the 90-day period. Such extension may be granted by EPA if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis.

(c)(1) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in § 261.31 or § 261.33(e) in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) or (d) of this section provided he:

* * * * *

(2) A generator who accumulates either hazardous waste or acutely hazardous waste listed in § 261.31 or § 261.33(e) in excess of the amounts listed in paragraph (c)(1) of this section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with paragraph (a) of this section or other applicable provisions of this chapter. During the three day period the generator must continue to comply with paragraphs (c)(1)(i) and (ii) of this section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

* * * * *

(d) * * *

(4) The generator complies with the requirements of paragraphs (a)(2) and (a)(3) of this section, the requirements of subpart C of part 265, with all applicable requirements under 40 CFR part 268; and

* * * * *

(f) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6000 kg or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264, 265 and 267, and the permit requirements of 40 CFR part 270 unless he has been granted an extension to the 180-day (or 270-day if applicable) period. Such extension may be granted by EPA if hazardous wastes must remain on-site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis.

* * * * *

(i) A generator accumulating F006 in accordance with paragraphs (g) and (h) of this section who accumulates F006 waste on-site for more than 180 days (or for more than 270 days if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more), or who accumulates more than 20,000 kilograms of F006 waste on-site is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264, 265 and 267, and the permit requirements of 40 CFR part 270 unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by EPA if F006 waste must remain on-site for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste must remain on-site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the Regional Administrator on a case-by-case basis.

* * * * *

■ 22. Amend § 262.41 by revising paragraph (b) to read as follows:

§ 262.41 Biennial report.

* * * * *

(b) Any generator who treats, stores, or disposes of hazardous waste on-site must submit a biennial report covering those wastes in accordance with the provisions of 40 CFR parts 270, 264, 265, 266, and 267. Reporting for exports of hazardous waste is not required on the Biennial Report form. A separate annual report requirement is set forth at 40 CFR 262.56.

* * * * *

■ 23. Amend § 262.42 as follows:
■ a. By revising paragraph (a)(1).
■ b. By revising paragraph (a)(2) introductory text.
■ c. By adding paragraph (c).

The revisions and addition read as follows:

§ 262.42 Exception reporting.

(a)(1) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in § 261.31 or § 261.33(e) in a calendar month, who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

(2) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in § 261.31or § 261.33(e) in a calendar month, must submit an Exception Report to the EPA Regional Administrator for the Region in which the generator is located if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The Exception Report must include:

* * * * *

(c) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are forwarded to an alternate facility by a designated facility using a new manifest (following the procedures of 40 CFR 264.72(e)(1) through (6) or 40 CFR 265.72(e)(1) through (6)), the generator must comply with the requirements of paragraph (a) or (b) of this section, as applicable, for the shipment forwarding the material from the designated facility to the alternate facility instead of for the shipment from the generator to the designated facility. For purposes of paragraph (a) or (b) of this section for a shipment forwarding such waste to an alternate facility by a designated facility:

(1) The copy of the manifest received by the generator must have the handwritten signature of the owner or operator of the alternate facility in place of the signature of the owner or operator of the designated facility, and

(2) The 35/45/60-day timeframes begin the date the waste was accepted by the initial transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility.

§ 262.60 [Amended]

■ 24. Amend § 262.60(b) introductory text by removing the citation "§ 262.20(a)" and adding in its place "§ 262.20".

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

■ 25. The authority citation for part 263 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924 and 6925.

■ 26. Revise § 263.12 to read as follows:

§ 263.12 Transfer facility requirements.

A transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of § 262.30 at a transfer facility for a period of ten days or less is not subject to regulation under parts 270, 264, 265, 267, and 268 of this chapter with respect to the storage of those wastes.

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

■ 27. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924 and 6925.

§ 264.52 [Amended]

■ 28. Amend § 264.52(b) in the first sentence by removing the words ", or part 1510 of chapter V".

§ 264.56 [Amended]

■ 29. Amend paragraph § 264.56(d)(2) introductory text by removing the parenthetical phrase "(in the applicable regional contingency plan under part 1510 of this title)".

■ 30. Amend § 264.72 as follows:
■ a. By revising paragraph (e)(6).
■ b. By revising paragraph (f)(1).
■ c. By revising paragraph (f)(7).
■ d. By adding paragraph (f)(8).

The revisions and addition read as follows:

§ 264.72 Manifest discrepancies.

* * * * *

(e) * * *

(6) Sign the Generator's/Offeror's Certification to certify, as the offeror of the shipment, that the waste has been

properly packaged, marked and labeled and is in proper condition for transportation, and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

* * * * *

(f) * * *

(1) Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the facility's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the facility's site address, then write the facility's site address in the designated space for Item 5 of the new manifest.

* * * * *

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility must retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (f)(1), (2), (3), (4), (5), (6), and (8) of this section.

(8) For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in § 262.42(a).

* * * * *

§ 264.314 [Amended]

■ 31. In § 264.314, amend paragraph (d) introductory text by revising "(e)(1)" to read "(d)(1)" and by revising "(e)(2)" to read "(d)(2)".

§ 264.316 [Amended]

■ 32. In § 264.316, amend paragraph (b) by removing the citation "§ 264.314(e)" and adding in its place "§ 264.314(d)".

§ 264.552 [Amended]

■ 33. Amend § 264.552 as follows:

■ a. In paragraph (a)(3)(ii), remove the citation "§ 264.314(d)" and add in its place "§ 264.314(c)";

■ b. In paragraph (a)(3)(iii), remove the citation "§ 264.314(f)" and add in its place "§ 264.314(e)";

■ c. In paragraph (a)(3)(iv), remove the citation "§ 264.314(c)" and add in its place "§ 264.314(b)" and remove the citation "§ 264.314(e)" and add in its place "§ 264.314(d)"; and

■ d. In paragraph (e)(4)(iv)(F), remove the citation "260.11(a)(11)" and add in its place "260.11(c)(3)(v)".

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

■ 34. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6922–6925, 6935–6937, unless otherwise noted.

§ 265.52 [Amended]

■ 35. Amend paragraph § 265.52(b) in the first sentence by removing the words "or part 1510 of chapter V".

§ 265.56 [Amended]

■ 36. Amend § 265.56(d)(2) by removing the parenthetical phrase "(in the applicable regional contingency plan under part 1510 of this title)".

■ 37. Amend § 265.72 as follows:

■ a. By revising paragraph (e)(6).

■ b. By revising paragraph (f)(1).

■ c. By revising paragraph (f)(7).

■ d. By adding paragraph (f)(8).

The revisions and addition read as follows:

§ 265.72 Manifest discrepancies.

* * * * *

(e) * * *

(6) Sign the Generator's/Offeror's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation, and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

* * * * *

(f) * * *

(1) Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the facility's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the facility's site address, then write the facility's site address in the designated space for Item 5 of the new manifest.

* * * * *

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility must retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (f)(1), (2), (3), (4), (5), (6), and (8) of this section.

(8) For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in § 262.42(a).

* * * * *

§ 265.314 [Amended]

■ 38. In § 265.314, amend paragraph (e) introductory text by removing the citation "(f)(1)" and adding in its place "(e)(1)" and by removing the citation "(f)(2)" and adding in its place "(e)(2)".

§ 265.316 [Amended]

■ 39. In § 265.316, amend paragraph (b) by removing the citation "§ 265.314(f)" and adding in its place "§ 265.314(e)".

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

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

Authority: 42 U.S.C. 6905, 6912, 6922–6925, 6935–6937, unless otherwise noted.

■ 41. Amend § 266.20 by revising paragraph (b) to read as follows:

§ 266.20 Applicability.

* * * * *

(b) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a chemical reaction in the course of producing the products so as to become inseparable by physical means and if such products meet the applicable treatment standards in subpart D of part 268 (or applicable prohibition levels in § 268.32 of this chapter or RCRA section 3004(d), where no treatment standards have been established) for each recyclable material (*i.e.*, hazardous waste) that they contain, and the recycler complies with § 268.7(b)(6) of this chapter.

* * * * *

■ 42. Revise § 266.22 to read as follows:

§ 266.22 Standards applicable to storers of materials that are to be used in a manner that constitutes disposal who are not the ultimate users.

Owners or operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal, but who are not the ultimate users of the materials, are regulated under all applicable provisions of subparts A through L of parts 264, 265 and 267, and parts 270 and 124 of this chapter and the notification requirement under section 3010 of RCRA.

■ 43. Amend § 266.70 by revising paragraph (d) to read as follows:

§ 266.70 Applicability and requirements.

* * * * *

(d) Recyclable materials that are regulated under this subpart that are accumulated speculatively (as defined in § 261.1(c) of this chapter) are subject to all applicable provisions of parts 262 through 265, 267, 270, and 124 of this chapter.

§ 266.80 [Amended]

■ 44. Amend § 266.80 by adding paragraphs (b)(1)(viii) and (b)(2)(viii) to read as follows:

§ 266.80 Applicability and requirements.

* * * * *

(b) * * *

(1) * * *

(viii) All applicable provisions in part 267 of this chapter.

(2) * * *

(viii) All applicable provisions in part 267 of this chapter.

■ 45. Amend § 266.101 by revising paragraph (c) to read as follows:

§ 266.101 Management prior to burning.

* * * * *

(c) *Storage and treatment facilities.* (1) Owners and operators of facilities that store or treat hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provisions of parts 264, 265, 267 and 270 of this chapter, except as provided by paragraph (c)(2) of this section. These standards apply to storage and treatment by the burner as well as to storage and treatment facilities operated by intermediaries (processors, blenders, distributors, *etc.*) between the generator and the burner.

(2) Owners and operators of facilities that burn, in an onsite boiler or industrial furnace exempt from regulation under the small quantity burner provisions of § 266.108, hazardous waste that they generate are exempt from the regulations of parts 264, 265, 267 and 270 of this chapter applicable to storage units for those storage units that store mixtures of hazardous waste and the primary fuel to the boiler or industrial furnace in tanks that feed the fuel mixture directly to the burner. Storage of hazardous waste prior to mixing with the primary fuel is subject to regulation as prescribed in paragraph (c)(1) of this section.

PART 268—LAND DISPOSAL RESTRICTIONS

■ 46. The authority citation for part 268 continues to read as follows:

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

■ 47. In § 268.40(j), the table "Treatment Standards for Hazardous Wastes," is amended as follows:

■ a. By revising the entry for F025.

■ b. By revising the entry for K031.

■ c. By revising the entry for K156.

■ d. By revising the entry for K157.

■ e. By revising the entry for K158.

§ 268.40 Applicability of treatment standards.

* * * * *

(j) * * *

TREATMENT STANDARDS FOR HAZARDOUS WASTES

[**Note:** NA means not applicable]

Waste code	Waste description and treatment/ regulatory subcategory[1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS[2] No.	Concentration[3] in mg/L; or technology code[4]	Concentration[5] in mg/kg unless noted as "mg/L TCLP"; or technology code[4]
*	* *	*	*	*	*
F025 ...	Condensed light ends from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. F025—Light Ends Subcategory.	Carbon tetrachloride	56–23–5	0.057	6.0
		Chloroform	67–66–3	0.046	6.0
		1,2-Dichloroethane	107–06–2	0.21	6.0
		1,1-Dichloroethylene	75–35–4	0.025	6.0
		Methylene chloride	75–9–2	0.089	30
		1,1,2-Trichloroethane	79–00–5	0.054	6.0
		Trichloroethylene	79–01–6	0.054	6.0
		Vinyl chloride	75–01–4	0.27	6.0
	Spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. F025—Spent Filters/Aids and Desiccants Subcategory.	Carbon tetrachloride	56–23–5	0.057	6.0
		Chloroform	67–66–3	0.046	6.0
		Hexachlorobenzene	118–74–1	0.055	10
		Hexachlorobutadiene	87–68–3	0.055	5.6
		Hexachloroethane	67–72–1	0.055	30
		Methylene chloride	75–9–2	0.089	30
		1,1,2-Trichloroethane	79–00–5	0.054	6.0
		Trichloroethylene	79–01–6	0.054	6.0
		Vinyl chloride	75–01–4	0.27	6.0
*	* *	*	*	*	*
K031 ...	By-product salts generated in the production of MSMA and cacodylic acid.	Arsenic	7440–38–2	1.4	5.0 mg/L TCLP.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

[**Note:** NA means not applicable]

Waste code	Waste description and treatment/ regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration [3] in mg/L; or technology code [4]	Concentration [5] in mg/kg unless noted as "mg/L TCLP"; or technology code [4]
*	* *	*	*	*	*
K156 ...	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.).	Acetonitrile	75–05–8	5.6	1.8
		Acetophenone	98–86–2	0.010	9.7
		Aniline	62–53–3	0.81	14
		Benomyl	17804–35–2	0.056	1.4
		Benzene	71–43–2	0.14	10
		Carbaryl	63–25–2	0.006	0.14
		Carbenzadim	10605–21–7	0.056	1.4
		Carbofuran	1563–66–2	0.006	0.14
		Carbosulfan	55285–14–8	0.028	1.4
		Chlorobenzene	108–90–7	0.057	6.0
		Chloroform	67–66–3	0.046	6.0
		o-Dichlorobenzene	95–50–1	0.088	6.0
		Methomyl	16752–77–5	0.028	0.14
		Methylene chloride	75–09–2	0.089	30
		Methyl ethyl ketone	78–93–3	0.28	36
		Naphthalene	91–20–3	0.059	5.6
		Phenol	108–95–2	0.039	6.2
		Pyridine	110–86–1	0.014	16
		Toluene	108–88–3	0.080	10
		Triethylamine	121–44–8	0.081	1.5
K157 ...	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.)	Carbon tetrachloride	56–23–5	0.057	6.0
		Chloroform	67–66–3	0.046	6.0
		Chloromethane	74–87–3	0.19	30
		Methomyl	16752–77–5	0.028	0.14
		Methylene chloride	75–09–2	0.089	30
		Methyl ethyl ketone	78–93–3	0.28	36
		Pyridine	110–86–1	0.014	16
		Triethylamine	121–44–8	0.081	1.5
K158 ...	Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes (This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.).	Benomyl	17804–35–2	0.056	1.4
		Benzene	71–43–2	0.14	10
		Carbenzadim	10605–21–7	0.056	1.4
		Carbofuran	1563–66–2	0.006	0.14
		Carbosulfan	55285–14–8	0.028	1.4
		Chloroform	67–66–3	0.046	6.0
		Methylene chloride	75–09–2	0.089	30
		Phenol	108–95–2	0.039	6.2
*	* *	*	*	*	*

* * * * *

Footnotes to Treatment Standard Table 268.40

1. The waste descriptions provided in this table do not replace waste descriptions in 40 CFR 261. Descriptions of Treatment/ Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

2. CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

3. Concentration standards for wastewaters are expressed in mg/L and are based on analysis of composite samples.

4. All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42 Table 1—Technology Codes and Descriptions of Technology-Based Standards.

5. Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR Part 264 Subpart O or Part 265 Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

* * * * *

■ 48. In § 268.48(a), the table "Universal Treatment Standards," is amended by adding the specific entries, "bis(2-Ethylhexyl)phthalate" and for "Hexachloropropylene" in alphabetical order:

§ 268.48 Universal Treatment Standards.

(a) * * *

UNIVERSAL TREATMENT STANDARDS

[Note: NA means not applicable]

Regulated constituent common name	CAS [1] No.	Wastewater standard concentration [2] in mg/l	Nonwastewater standard concentration [3] in mg/kg unless noted as "mg/l TCLP"
Organic Constituents			
* * * * *		*	*
Ethyl ether	60–29–7	0.12	160
bis(2-Ethylhexyl)phthalate	117–81–7	0.28	28
* * * * *		*	*
Hexachloroethane	67–72–1	0.055	30
Hexachloropropylene	1888–71–7	0.035	30
* * * * *		*	*

* * * * *

Footnotes to Table UTS

1. CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with it's salts and/or esters, the CAS number is given for the parent compound only.

2. Concentration standards for wastewaters are expressed in mg/l and are based on analysis of composite samples.

3. Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O or 40 CFR part 265, subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

* * * * *

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

■ 49. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

■ 50. Amend § 270.4 as follows:

■ a. By redesignating paragraph (a)(1) as paragraph (a)(1)(i).

■ b. By redesignating paragraph (a)(2) as paragraph (a)(1)(ii).

■ c. By redesignating paragraph (a)(3) as paragraph (a)(1)(iii).

■ d. By redesignating paragraph (a)(4) as paragraph (a)(1)(iv).

■ e. By redesignating paragraph (a) as introductory text (a)(1).

■ f. By adding paragraph (a)(2) to read as follows:

§ 270.4 Effect of a permit.

(a) * * *

(2) A permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 270.41 and 270.43, or the permit may be modified upon the request of the permittee as set forth in § 270.42.

* * * * *

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket DOT–OST–2008–0088]

RIN OST 2105–AD84

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

Correction

In rule document 2010–3731 beginning on page 8528 in the issue of Thursday, February 25, 2010, make the following corrections:

§40.225 [Corrected]

1. On page 8529, in §40.225, in the first column, amendatory instructions 2 and 3 are corrected to read as follows:

■ 2. Section 40.225 (a) is amended by removing the words "beginning February 1, 2002".

■ 3. Appendix G is revised to read as follows:

Appendix G to Part 40 [Corrected]

2. On page 8530 and 8531, in Appendix G to Part 40, the graphics are reprinted to read as follows:

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

MEETING MINUTES
June 3, 2010

I. CALL TO ORDER

Kristin A. Boggs, Ex Officio Chair designated by Secretary Randy Huffman, called to order a special meeting of the DEP Advisory Council at 1:40 p.m. on June 3 2010 at the headquarters of the West Virginia Department of Environmental Protection, 601 57th Street Southeast, Charleston, West Virginia. Agendas were distributed.

II. ROLL CALL

Members present: Lisa Dooley, Jackie Hallinan, Larry Harris, Karen Price, Bill Raney, and Rick Roberts.

The meeting was also attended by the following DEP personnel: Randy C. Huffman, DEP Cabinet Secretary; Lisa McClung, DEP Deputy Cabinet Secretary; Kathy Cosco, DEP Chief Communication Officer; Daniel T. Arnold, Division of Water and Waste Management; Bill Timmermeyer, Division of Water and Waste Management; Charles Sturey, Division of Mining and Reclamation; Dave Vandelinde, Division of Mining and Reclamation, Office of Explosives and Blasting; Yvonne Anderson, Division of Mining and Reclamation; Ken Holliday, Division of Water and Waste Management; Yogesh Patel, Division of Water and Waste Management; Fred Durham, Division of Air Quality; Jim Mason, Division of Air Quality; Lewis Halstead, Division of Mining and Reclamation.

Also in attendance were: Don Garvin of the Ohio Valley Environmental Coalition; Katherine Crockett and Emily Moy of Spilman Thomas & Battle; and Lewis Baker of the West Virginia Rural Water Association.

III. OLD BUSINESS

Minutes of the May 27, 2010 Meeting. The minutes were emailed and provided to Council in hard copy. Ms. Dooley moved for approval of the minutes, Mr. Raney seconded the motion, and it was carried by acclamation of Council.

IV. PROPOSED 2011 LEGISLATIVE RULES

Because the Advisory Council had received summaries of the rule two weeks prior to the meeting, he suggested that Ms. Boggs simply read the title of the rule and allow Council members to ask questions, rather than read the summaries to Council. The suggestion was well taken. Summaries of the proposed rules are set forth herein for completeness of the record, and so the minutes will reflect the complete information provided to Council.

Division of Air Quality

- 45 C.S.R. 8 – *Ambient Air Quality Standards.* Promulgated last in the 2010 Session. Revisions to the rule include a change in format to incorporation by reference, rather than reiterating the NAAQS in the rule. The rule now incorporates by reference the NAAQS promulgated by EPA under 40 C.F.R. § 50 and the ambient air monitoring reference methods and equivalent methods under 40 C.F.R. § 53, which become effective June 1, 2010. EPA has established a new primary one-hour NO_2 standard at a level of 100 parts per billion, based on the three-year average of the 98th percentile of the yearly distribution of one-hour daily maximum concentrations, to supplement the existing primary annual standard of 53 parts per million. This new NO_2 primary standard is incorporated by reference in this rule.

  Section 2, titled *Anti-Degredation Policy*, has been stricken for two reasons. First, the new incorporation by reference format incorporates the federal significant deterioration of air quality provisions under 40 C.F.R. § 50.2(c). Second, because West Virginia adopted the federal Prevention of Significant Deterioration program under 45 C.S.R. 14 in the early 1980s, the State has more than satisfied the intent of the relic language in Section 2 to protect the air quality in areas that were in attainment of the NAAQS. Section 2 was authored in the early 1970s as a placeholder in anticipation of the future PSD program and its provisions for best available control technology.

- 45 C.S.R. 14 – *Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration.* Promulgated last in the 2010 Session. Revisions to the rule include deletion of federally stayed provisions for fugitive emissions and clarification of affected facilities at large coal prep plants. EPA is now reconsidering inclusion of fugitive emissions and will issue a final rule in the future. Fugitive emissions from stockpiles (now an affected source under 40 C.F.R. § 60, Subpart Y) are now counted for large coal prep plants (but haul roads are still excluded). Other minor revisions ensure consistency with federal counterpart language.

- 45 C.S.R. 16 – *Standards of Performance for New Stationary Sources.* Promulgated last in the 2010 Session. Revisions to this rule are the annual incorporate-by-reference amendments to the NSPS, including Standards of Performance for Coal Preparation and Processing Plants. These final amendments include revisions to the emission limits for particulate matter and opacity standards for thermal dryers, pneumatic coal cleaning equipment, and coal handling equipment located at coal preparation and processing plants.

- 45 C.S.R. 18 – *Combustion of Solid Waste.* Promulgated last in the 2008 Session. Revisions to the rule include new federal emission guidelines for existing hospital/medical/infectious waste incinerators (HMIWI). The revised rule has been restructured to better comport to respective federal counterpart language. The stricken provisions in Section 12, *Compliance Dates*, have been moved to respective sections for existing HMIWI and commercial and industrial solid waste incinerators. The revisions

strike obsolete language regarding repealed provisions, as well as add new definitions to the rule. Other miscellaneous revisions are included that improve the clarity and accuracy of existing rule language.

- 45 C.S.R. 19 – *Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Cause or Contribute to Nonattainment*. Promulgated last in the 2010 Session. Revisions to the rule include a new subsection 1.5, which provides that references to the federal counterpart will be construed as the version that was in effect as of June 1, 2010. Also, the term "affected facilities" has been clarified. Fugitive emissions from stockpiles (now an affected facility under 40 C.F.R. § 60, Subpart Y) are now counted for large coal prep plants (but haul roads are still excluded). Other minor revisions ensure consistency with federal counterpart language to date.

- 45 C.S.R. 25 – *Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities*. Promulgated last in the 2010 Session. Revisions to the rule include annual incorporation-by-reference updates. Definitions that are not used in the rule have been stricken and requirements pertaining to ignitable, reactive or incompatible wastes have been updated to reference a federal counterpart. The fee schedule for hazardous waste management facilities ahs been simplified.

- 45 C.S.R. 34 – *Emission Standards for Hazardous Air Pollutants*. Promulgated last in the 2010 Session. Revisions to this rule include the annual incorporation-by-reference revisions to the Hazardous Air Pollutant rule that include the following source categories of new or revised NESHAP standards promulgated as of June 1, 2010 for non-major area sources: Chemical Manufacturing Area Sources. The revised rule also incorporates by reference the following source categories of new or revised NESHAP standards promulgated as of June 1, 2010 for major sources: Petroleum Refineries and Reciprocating Internal Combustion Engines.

- The following source categories of newly promulgated NESHAPS affecting non-major area sources of hazardous air pollutants are being excluded from incorporation by reference: Prepared Feeds Manufacturing; Aluminum, Copper, and Other Non-Ferrous Foundries; Asphalt Processing and Asphalt Roofing Manufacturing, Paints and Allied Products Manufacturing; and Chemical Preparations Industry. EPA has not provided any additional funding to implement these new federal area source air toxics rules. Further, DAQ considers these standards to be resource-intensive and costly to implement as a practical matter, without achieving commensurate air quality benefits. For these reasons, West Virginia is one of Several States in Region III that are adopting some, but not all, of these standards. EPA Regional Offices will be implementing those standards not adopted by the States, thereby providing a measure of regulatory certainty and consistency.

Division of Water & Waste Management

- 33 C.S.R. 20 – *Hazardous Waste Management System*. Promulgated last in the 2010 Session. Revisions to this rule include striking "Expansion to RCRA Comparable Fuel Exclusion" from exclusion from incorporation by reference of the federal rule.

- 47 C.S.R. 12 – *Requirements Governing Groundwater Standards.* Promulgated last in the 2010 Session. The proposed revision to this rule is technical cleanup from last year's revision. Last year's amendment incorrectly set a numeric standard for radon, which the EPA proposed in draft language in 2009 but has not yet finalized. Therefore, West Virginia's adoption of a radon standard for groundwater was premature.

- 47 C.S.R. 60 – *Monitoring Well Design Standards.* Promulgated last in the 2010 Session. Revisions to this rule are needed to correct requirements for documentation submittals to DEP. The current version requires reporting of all borehole abandonment, which is unenforceable and unnecessary. Revisions to this rule will require abandonment documentation for "high risk" boreholes and permanent monitoring wells, as was the original intention of the 2010 amendments recommended by the Monitoring Well Advisory Council.

Secretary's Office

- 60 C.S.R. 2 – *Rules on Freedom of Information Act Requests.* Promulgated last in 1997. Revisions to this rule include changing the fee structure for searching for and reproducing requested records to bring it in line with other State agencies by setting a flat search fee of $20.00 per hour (or a quarter fraction thereof) for a Division's time spent in locating, duplicating or compiling the requested records providing and a cost of $10.00 if the information is produced on diskette, tape or other storage media.

Division of Mining & Reclamation

- 38 C.S.R. 2 – *West Virginia Surface Mining Reclamation Rule.* Promulgated last in the 2009 Session. In addition to the amendments discussed at the December 9, 2009 meeting, which are currently in effect as an Emergency Rule, the proposed revisions include the following: (1) Clarification of the format and information necessary for complete application submittal and clarification on the renewal process to take into account DEP's electronic filing processes; (2) Provision for advertisement of the application when it is technically complete, as opposed to administratively complete; (3) Provision for reopening of the public comment period; (4) Provision that pre-subsidence surveys shall be confidential and only used for evaluating damage relating to subsidence; (5) Clarification of when an operator is considered to be in compliance with applicable environmental performance standards; (6) Provision that the Secretary has the authority to initiate bond release in lieu of the permittee; (7) Clarification that bonding for a permit in inactive status shall remain in effect for the life of the operation; and (8) Provision that the Secretary shall provide email notice of the issuance of a show cause order to members of the public who have subscribed to the Secretary's email notification service and otherwise provide notice to any person whose Citizen Complaint has resulted in the issuance of any violation that led to the issuance of a show cause order.

- ❖ 199 C.S.R. 1 – *Surface Mining Blasting Rule*. Promulgated last in the 2008 Session Revisions to this rule include modifying the definitions of "other structure" and "structure" to provide for dams as defined in 38 C.S.R. 4 § 2.7 and to provide that those dams will be exempt from the maximum air blast and ground vibration standards of the rule.

V. COMMENTS FROM COUNCIL

Ms. Dooley moved that Council recommend to the Secretary that the Air Quality rules contain language in their sections entitled "Inconsistency Between Rules" to read as follows: "In the event of any inconsistency between this rule and any other rule of the West Virginia Department of Environmental Protection, the inconsistency shall be resolved by the determination of the Secretary and the determination shall be based upon the application of the more stringent provision, term, condition, method, or rule using sound scientific information." *See*, 45 C.S.R. 8 proposed § 4.1. Ms. Dooley pointed out that DEP uses this language in some of its other Divisions' rules and some states surrounding West Virginia also use this language or similar language. Mr. Raney seconded the motion and discussion ensued. Ms. Hallinan pointed out that the proposed language is vague and may cause *Daubert*-related problems for attorneys arguing before boards and the courts using these rules. A vote was taken, and Ms. Dooley's motion passed by a majority vote of Council; Ms. Hallinan voted no and Dr. Harris abstained.

Regarding 45 C.S.R. 8, Dr. Harris asked about removing the anti-degredation section. He expressed concern about how many areas of the State are in attainment and asked if West Virginia does not still need the policy in order to stay in attainment. He was also concerned that removing the specific reference to "anti-degredation" might lead the public to believe that DEP does not enforce any such policy anymore. Mr. Mason explained that the anti-degredation was meant as a placeholder back when the rule was originally promulgated in the 1970s until the states could get their own programs up and running. Because West Virginia adopted the federal Prevention of Significant Deterioration program under 45 C.S.R. 14 in the early 1980s, the State has more than satisfied the intent of the relic "anti-degredation" language in Section 2 to protect the air quality in areas that were in attainment of the NAAQS. "Prevention of significant deterioration" in Rule 14 means the same thing as "anti-degredation."

Regarding 45 C.S.R. 14, Dr. Harris inquired about the justification for the proposed changes to the rule. Mr. Mason explained why the rule is being amended and a discussion ensued about fugitive emissions.

In relation to 45 C.S.R. 25, Mr. Roberts asked how many hazardous waste treatment, storage, and disposal facilities are in West Virginia, and Mr. Mason advised Council that he would have to research those numbers and report back.

Finally, regarding 45 C.S.R. 34, Dr. Harris asked for a definition of "area sources" and whether the federal EPA would enforce those provisions. Mr. Mason explained what area sources are and that EPA will enforce those standards.

In relation to 33 C.S.R. 20, Ms. Dooley inquired whether hazardous waste fees were being changed, and Ms. Boggs explained that, while fees are regurgitated in this rule, the statutory authority to change the fees was set forth in the statute; there are no changes to the fee structure proposed in this rule.

Dr. Harris asked the record to reflect that the Groundwater Standards rule was not submitted by the deadline, so Council had not yet had an opportunity to review the text or a summary of the rule prior to the Council meeting. Mr. Timmermeyer was on hand and did answer questions regarding why the rule had to be promulgated this year.

Regarding 60 C.S.R. 2, Ms. Dooley inquired about the language "shall furnish copies," and Ms. Boggs explained that the language for § 7.2 is in the disjunctive: the agency shall furnish copies or advise the requester when he or she can come in and review documents or deny the request. Ms. Dooley then inquired about the new exemptions, and Ms. Boggs explained that the exemptions mirror the West Virginia Freedom of Information Act, which is set forth at W. Va. Code 29B-1-1 et seq., and the federal Freedom of Information Act. Finally, Ms. Dooley asked whether the proposed fee changes would be sufficient to cover the agency's costs in responding to FOIA requests, and Ms. Cosco affirmed that they would.

Finally, regarding 38 C.S.R. 2, Dr. Harris inquired about the provisions relating to the addition of a trust account as an approved form of bond. Specifically, he asked whether the proposed trust account would cover perpetual treatment. Mr. Clarke explained that the proposed trust account is intended to be another form of bonding, not be a replacement for the Special Reclamation Fund. Dr. Harris then inquired as to how the cost of perpetual treatment is calculated. Mr. Clarke explained that the federal Office of Surface Mining Reclamation & Enforcement (OSM) has developed a computer model that estimates cost by developing a formula based on a mechanism that allows treatment for 40 or more years.

VI. COMMENTS FROM THE PUBLIC

Mr. Garvin asked for clarification on the trust account proposed by the Division of Mining and Reclamation. Mr. Clarke answered his questions.

Mr. Garvin then had several questions for Mr. Mason and Mr. Durham regarding the proposed Air Quality rules, which were duly answered.

VII. ADJOURNMENT

Mr. Raney moved that the meeting be adjourned, Ms. Dooley seconded the motion, and it carried by acclamation of Council. The meeting was adjourned at 3:05 p.m.