WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION

Form #1

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OFFICE WEST VIRGINIA SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Dept. of Environmental Protection, Office of Waste Management TITLE NUMBER: 33

RULE TYPE: Legislative CITE AUTHORITY: Section 22-18-06

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 21, 2005 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: WV Department of Environmental Protection
Division of Water and Waste Management
601 57th Street, SE
Charleston, WV 25304

Coopers Rock Room 1203 and 1204 (Training Center)

COMMENTS LIMITED TO: ORAL ___, WRITTEN ___, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

WVDEP - Division of Water and Waste Mgt.
601 57th Street SE
Charleston, WV 25304
ATTN: Carroll Cather

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

Stephanie R. Timmermeyer
Authorized Signature

$17.50

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BRIEFING DOCUMENT

Rule Title: "Hazardous Waste Management Rule" 33 CSR 20

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 2005 adopts and incorporates by reference one year of federal regulations pertaining to hazardous waste management as set forth in 40 CFR parts 260 through 279. The federal regulations became effective on July 1, 2005.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

This rule is proposed to adopt changes to federal hazardous waste management regulations into the State hazardous waste management rule, enabling the State hazardous waste program to maintain consistency with the federal program. The changes to the 40 CFR federal regulations include the following areas: "Hazardous Waste – Nonwastewaters From Production of Dyes , Pigments, and Food, Drug and Cosmetic Colorants: Mass Loading-Based Listing; Final Rule. This rule adds [a new hazardous waste (K181) to the list of hazardous wastes in 40 CFR 261.32. K181 is hazardous nonwastewaters generated from the production of certain dyes, pigments, and food, drug and cosmetic colorants] and revises [the Uniform Hazardous Waste Manifest regulations and the manifest and continuation sheet forms used to track hazardous waste from the generator to the site of disposition].

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

W.Va. Code Section §22-1-3 in conjunction with W.Va. Code Section §22-1-3a requires, in part, the Secretary of the Department of Environmental Protection, to determine if a new or amended environmental provision should be the same in substance as a counterpart federal regulation. If the new rule should be the same in substance, as the counterpart federal regulation, then the Secretary shall incorporate by reference, to the greatest extent possible, the federal counterpart rule.

The proposed amendments to the rule will adopt additional federal counterpart regulations by reference, and these amendments are no more stringent than the federal counterpart regulations.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with §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 the June 8, 2005 meeting, the Environmental Protection Advisory Council reviewed and discussed this proposed rule. The Council's comments are contained in the attached minutes.

West Virginia Department of Environmental Protection

ADVISORY COUNCIL MEETING MINUTES

Wednesday - June 8, 2005
601 57th Street, SE, Charleston, WV
Dolly Sods Conference Room – 1st Floor

ATTENDEES:

Advisory Council Members:
Larry Harris
Jackie Hallinan
Rick Roberts
Lisa Dooley
Bill Raney
Karen Price

DEP:
Stephanie R. Timmermeyer, Cabinet Secretary
Karen G. Watson, Assistant General Counsel
Ken Ellison, Director - Division of Land Restoration
Lisa McClung, Director – Division of Water and Waste Management
John Benedict, Director – Division of Air Quality
Mike Zeto, WVDEP
Charlie Sturey, WVDEP
Jessica Greathouse, Chief Communication Officer – WVDEP – Public Information Office
James Martin, Chief, WVDEP - Office of Oil & Gas
Brett Loflin, WV Oil and Gas Conservation Commission
Dave Bassage- WVDEP
Greg Adolpson – WVDEP
Jim Mason – WVDEP
Fred Durham – WVDEP
Jim Mason – WVDEP
Mike Johnson – WVDEP

VISITORS:

Linda Tennant, Spilman, Thomas, Battle
Don Garvin – WVEC
Bob Asplund - Dominion

Karen Watson, WVDEP – Assistant General Counsel, called the meeting to order at 10:00 a.m.

Proposed rules for the 2006 legislative session are as follows:

- **45CSR1 "Control and Reduction of Nitrogen Oxides from Non-Electric Generating Units as a Means to Mitigate Transport of Ozone Precursors"**

  This rule partially fulfills the State's obligations in response to U.S. EPA's final rule, *Findings of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group region for Purposes of Reducing Regional Transport of Ozone* 27 Oct 1998, herein referred to as the *NO_x SIP Call*). Essentially, the federal rule requires that large emitters of Nitrogen Oxides (NO_x) significantly reduce emissions and constrains them to set budgets, starting in 2004 and maintaining them thereafter. Flexibility is built in through market-based "cap and trade" provisions which allow sources to buy/sell NO_x emission allowances from /to other program participants. For example, a source which has emitted NO_x in excess of its NO_x allowance allocation may purchase NO_x allowances under the federal NO_x Budget Trading Program to obtain the needed NO_x emission allowances to cover its actual NO_x emissions during an ozone season. Conversely, a source which emits fewer tons of NO_x than its NO_x allowance allocation may either bank or sell (trade) the excess NO_x allowances to another sources which needs them to cover its excess NO_x emissions.

  45CSR1 applies to large fossil fuel-fired stationary sources (large industrial boilers) with heat inputs greater than 250 mmBtu/hr. The Department of Environmental Protection, Division of Air Quality (DAQ) addresses Electric Generation Units (EGUs) in a separate rulemaking, 45CSR26. 45CSR1 also applies to large cement kilns and internal combustion engines which emitted more than one ton per day of NO_x from May 1 through September 30, 1995, although these sources are not subject to the NO_x Budget Trading Program.

  Comments:

  How will this relate to the new rule 40?

  Rule 40 will repeal Rule 1 in 2009.

  Are these kinds of trading effective in lowering NO_x emission?

  Yes, West Virginia has dropped from one of the highest to one of the lowest states.

  If one is testing, how do you see which sources account for improvement?

  Have CEMS on stacks so we can analyze data.

- **45CSR15 – "Emission Standards for Hazardous Air Pollutants Pursuant to 40CFR Part 61"**

  This rule establishes and adopts national emission standards for hazardous air pollutant (NESHAPO) and other regulatory requirements promulgated by the United States Environmental Protection Agency (USEPA) pursuant to 40CFR part 61 and section 112 of the federal clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement emission standards for stationary sources that emit (or have the

potential to emit) one or more to the eight substances listed as hazardous air pollutants in 40 CFR §61.01(a). The rule incorporated by reference the NESHAP standards of 40 CFR Parts 61 and 65 (consolidated Federal Air Rule), to the extent referenced in 40CFR part 61, promulgated as of June 1, 2005. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CSR parts 61 and 65. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 CFR Part 61 must comply with the applicable NESHAPS and this rule.

45CSR15, in conjunction with 45CSR34, establishes general provisions for emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by USEPA pursuant to section 112 of the federal Clean Air Act, as amended. 45CSR34 incorporates hazardous air pollutant standards codified by USEPA under 40CFR part 63 whereas 45CSR15, incorporates hazardous air pollutant standards promulgated by USEPA under 40 CFR Part 61.

This revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of June 1, 2005: National Emission Standards for Hazardous Air Pollutants for Asbestos.

No Comments

- **45CSR16 – "Standards of Performance for New Stationary Sources Pursuant to 40CFR Part 60"**

This rule establishes and adopts national standards of performance for new stationary sources and other regulatory requirements promulgated by the United States Environmental Protection Agency (USEPA) pursuant to section 111(b) of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement standards of performance for new stationary sources set forth in 40 CFR Part 60. The rule incorporates by reference New Sources Performance Standards (NSPS) promulgated as of June 1, 2005. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to such standards. Any person who constructs, modifies, reconstructs or operates an affected facility after the effective date of any NSPS under 40 CFR Part 60 must comply with the applicable NSPS and this rule.

This revised rule incorporates by reference the following new or revised NSPS standards promulgated as of July 1, 2005: Standards of performance for Industrial-Commercial-Institutional Steam Generating units; Stationary Gas Turbines: Steel Plants; and new and Existing Stationary Sources: Electric Utility Steam Generating Units (CAMR).

No Comments

- **45CSR25 – "To Prevent and Control Air Pollution from Hazardous Waste Treatment Storage or Disposal Facilities."**

  This rule establishes and adopts national standards of performance for new stationary sources and other regulatory requirements promulgated by the United States Environmental Protection Agency (USEPA) pursuant to the Resource Conservation and Recovery Act, as amended (RCRA). This rule codifies general procedures and criteria to implement emission standards set forth in the Code of Federal Regulations as listed in Table 25-A of the rule. The rule also adopts associated appendices, reference methods, performance specifications and other test methods, which are appended to these standards. Any person, who constructs, reconstructs, modifies or operates any hazardous waste treatment, storage, or disposal facility must comply with the West Virginia Hazardous Waste management Program, the codified federal emission standards, and this rule.

  45CSR25 establishes a program of regulation over the treatment, storage, and disposal of hazardous wastes in order to achieve and maintain such levels of air quality as will protect the public health and safety and the environment from the effects of improper, inadequate, or unsound treatment, storage, or disposal of hazardous wastes.

  This revised rule incorporates by reference the following provisions of 40 CFR Part 262 promulgated as of June 1, 2005: National Environmental Performance Track Program.

  Comments:

  What does the term "constituents" mean and how does one decide whether a source has prevented emissions that would cause harm under section 1.1.b of the rule?

  > *Look at the definition of "hazardous waste" and prevention language is meant to set forth overall purpose of the rule.*

  Does the agency consult with DHHR or other public health officials?

  > *No, the agency uses a risk-based approach and has a toxicologist employed. It also looks to EPA.*

- **45CSR33 – "Acid Rain Provisions and Permits"**

  This rule establishes and adopts the general provisions and operating permit program requirements for affected sources under the Acid Rain Program promulgated by the4 United States Environmental Protection Agency (USEPA) undertitle IV of the Clean Air Act, as amended (CAA). The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these provisions. Under the Acid Rain Program and 45CSR33, no person may construct, modify, or operate or cause to be constructed, modified, or operated, an Acid Rain Source in violation of 40CFR Parts 72 through 77.

Title IV of the CAA requires each state to implement an operating permit system conforming to Title IV and Title V of the CAA, as amended. 45CSR33 incorporates by reference the federal counterpart regulation 40 CFR Parts 72 through 77. USEPA approved West Virginia's Acid Rain Program with its approval of the state's Title V Operating Permit Program on December 15, 1995.

This revised rule incorporates by reference the following revisions to 40CFR Parts 72 through 77 promulgated as of June 1, 2005: Permits Regulation, Sulfur Dioxide Allowance System, Sulfur Dioxide Opt-Ins; continuous Emission Monitoring, Excess Emissions (CAIR & CAMR).

No Comments

- **45CSR34 – "Emission Standards for Hazardous Air Pollutants For Source Categories Pursuant to 40 CFR Part 63**

This rule establishes and adopts national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to section 112 of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement emission standards for stationary sources that emit, or have the potential to emit, one or more of the hazardous air pollutants set forth in section 112(b) of the CAA. The rule incorporates by reference the NESHAP standards of 40 CFR Parts 63 and 65 (Consolidated Federal Air Rule), to the extent referenced in 40 CFR Part 63, promulgated as of June 1, 2005. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 63 and 65. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 CFR Part 63 must comply with the applicable NESHAPS and this rule.

45CSR34, in conjunction with 45CSR15, establishes general provisions for emission standards for hazardous air pollutants and other regulatory requirements promulgated by U.S. EPA pursuant to section 112 of the federal Clean Air Act, as amended. 45CSR34 incorporates hazardous air pollutant standards codified by U.S. EPA under 40 CFR Part 63 whereas 45CSR15 incorporates hazardous air pollutant standards promulgated by U.S. EPA under 40 CFR Part 61.

This revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of June 1, 2005: National Environmental Performance Track Program, National Emission Standards for Hazardous Air Pollutants for Source Categories, Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, Plywood & Composite Wood Products; Effluent Limitations Guidelines and Standards for Timber Products Point Source Category; List of HAPs, Lesser Quantity Designations, Source Category List, Printing, Coating & Dyeing of Fabrics and Other Textiles, Stationary Combustion Turbines, Solvent Extraction for Vegetable Oil Production, Industrial, Commercial, Institutional Boilers and Process Heaters, Secondary Aluminum Production, Coke Ovens: Pushing, Quenching, and Battery Stacks, List of Hazardous Air

Pollutants, Petition Process, Lesser Quantity Designations, Source Category List; Petition to Delist of Ethylene Glycol Monobutyl Ether, Organic Hazardous Air Pollutants from Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipments Leaks, Coke Ovens: Pushing, Quenching, and Battery Stacks, Leather Finishing Operations, Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units, Revision of December 2000 Regulatory Finding on the Emissions of HAPs from Electric Utility Steam Generating Units & Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units from Section 112(c) List, Generic MACT; Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations, Coke Oven Batteries, Miscellaneous Coating Manufacturing, Pharmaceuticals Production, Asphalt Processing & Asphalt Roofing Manufacturing and Iron and Steel Foundries.

No Comments

- **45CSR37 – "Mercury Budget Trading Program to Reduce Mercury Emissions"**

This rule establishes the general provisions and designated representative, permitting, allowance and monitoring provisions for the Mercury (Hg) Budget Trading Program, as a means of reducing national mercury emissions, pursuant to the federal Clean Air Mercury Rule (CAMR) established under Section 111 of the Clean Air Act (CAA) and 40 CFR 60, Subpart HHHH.

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units* (15 March 2005, at FR XXXXX). The federal rule establishes standards of performance for mercury (Hg) for new and existing coal-fired electric utility steam generating units (utility units). This rule establishes a mechanism by which Hg emissions from new and existing coal-fired utility units are capped at specific nation-wide levels. U.S. EPA has specified that annual Hg emission reductions be implemented in two phases. The first phase of Hg reductions starts in 2010 and the second phase begins in 2018, and continues thereafter. Flexibility is built in through market-based "cap and trade" provisions which allow sources to buy or sell Hg emission allowances from or to other program participants.

45CSR37 applies to coal-fired electric utility steam generating units that have greater than 25 MW_e generating capacity.

Comments:

How will this affect Industrial boilers?

The rule does not cover these sources.

What kind of monitoring is required?

Have to install CEMS.

What happens when there is litigation?

If court remands, we would withdraw the rule.

Does the rule apply to natural gas-fired units?

No, only coal-fired.

Does the rule establish new fees?

No.

John Benedict informed the Council of the following reductions:

Nationally

2010 – 22%
2018 – 69%

WV:

2010 – 43%
2018 – 77%

- **45CSR39 – "Control of Annual Nitrogen Oxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Nitrogen Oxides"**

This rule establishes general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR NO_X Annual Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AA through II, and 40 CFR §51.123 for state implementation plans as a means of mitigating interstate transport of fine particulates and nitrogen oxides (NO_X).

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of NO_X reduce annual emissions through the constraint of set budgets. U.S. EPA is specifying that annual NO_X emission reductions be implemented in two

phases. The first phase of NO_X reductions starts in 2009; the second phase starts in 2015, and continues thereafter. The NO_X emission reduction requirements are based on controls that are known to be highly cost effective for electric generating units. Flexibility is built in through market-based "cap and trade" provisions which allow sources to buy or sell NO_X emission allowances from or to other program participants. Reducing upwind NO_X emissions will assist downwind $PM_{2.5}$ and 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

45CSR39 applies to large fossil fuel-fired electric generating units that have greater than 25 MW_e generating capacity. The CAIR NO_X Ozone Season Trading Program requirements are set forth in 45CSR40.

Comments:

How will this affect industrial boilers?

It will not. It only affects electric utilities.

Is there a set-aside provision?

Yes.

Agency should consider using the money to clean up streams impacted by acid rain.

- **45CSR40 – "Control of Ozone Season Nitogen Oxide Emissions to Mitigate Interstate Transport of Ozone and Nit5rogen Oxides"**

This rule establishes the general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR NO_X Ozone Season Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AAAA through IIII, and 40 CFR §51.123 for state implementation plans as a means of mitigating interstate transport of ozone and nitrogen oxides (NO_X).

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of NO_X reduce ozone season emissions through the constraint of set budgets. U.S. EPA is specifying that ozone season NO_X emission reductions be implemented in two phases. The first phase of ozone season NO_X reductions starts in 2009; the second phase starts in 2015, and continues thereafter. The NO_X emission reduction requirements are based on controls that are known to be highly cost effective for electric generating units and large industrial boilers. Flexibility is built in through market-based "cap and trade" provisions which allow sources to buy or sell NO_X emission

allowances from or to other program participants. Reducing upwind ozone season NO_X emissions will assist downwind 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

Because CAIR subsumes the ozone season NO_X SIP Call trading program, existing NO_X SIP Call rules 45CSR1 and 45CSR26 and their ozone season NO_X reduction provisions must be "sunsetted" by January 1, 2009. Therefore, 45CSR40 contains a repeal clause which effectively "sunsets" these rules, meeting the approvability requirement for implementing CAIR.

45CSR40 applies to large fossil fuel-fired electric generating units that have greater than 25 MW_e generating capacity and large fossil fuel-fired industrial boilers with a heat input greater than 250 mmBtu/hr. This rule also applies to affected cement kilns and internal combustion engines, by retaining the NO_X SIP Call ozone season NO_X emission reduction requirements for these sources from 45CSR1. These existing requirements do not provide for inclusion in any cap and trade program for cement kilns and internal combustion engines. The CAIR NO_X Annual Trading Program requirements are set forth in 45CSR39.

No Comments.

- **33CSR41 – "Control of Annual Sulfur Dioxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Sulfur Dioxide"**

This rule establishes general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR SO_2 Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AAA through III, and 40 CFR §51.124 for state implementation plans as a means of mitigating interstate transport of fine particulates and sulfur dioxide (SO_2).

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of SO_2 reduce annual emissions based upon the implementation of retirement ratios for SO_2 allowances allocated under the Acid Rain Program. U.S. EPA is specifying that annual SO_2 emission reductions be implemented in two phases. The first phase of SO_2 reductions starts in 2010 and requires retiring SO_2 allowances at a 2:1 ratio; the second phase starts in 2015 and requires retiring SO_2 allowances at a 2.86:1 ratio, and continues thereafter. The SO_2 emissions reductions requirements are based on controls that are known to be highly cost effective for electric generating units. Flexibility is built in through market-based "cap and trade" provisions which allow sources to buy or sell SO_2 emission allowances from or to other program participants. Reducing upwind SO_2 emissions will assist downwind $PM_{2.5}$ and 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

45CSR41 applies to large fossil fuel-fired electric generating units that have greater than 25 MW_e generating capacity.

How was the fiscal note derived?

It is based on how many persons will be necessary to implement the rule.

When will these rules be filed with EPA?

September of 2006 for the CAIR rules and November 2006 for the mercury rule.

- **33CSR1 – "Solid Waste Management Rule"**

This legislative rule establishes requirements for the siting (including location standards), financial assurance, installation, establishment, construction, design, groundwater monitoring, modification, operation, permitting, closure and post-closure care of any solid waste facility that processes, recycles, composts, transfers or disposes of solid waste pursuant to W. Va. Code §22-15-1 et seq. The rule revision will clarify that the State Division of Highways is subject to an exemption from permitting for its construction/demolition wastes associated with highway construction. The rule will also clarify that the beneficial reuse of clean bituminous concrete (asphalt) is not subject to permitting requirements, just as the beneficial reuse of Portland cement is not subject to permitting.

Comments:

Has the agency worked with the Division of Highways on the rule?

Yes.

- **33-CSR20 – "Hazardous Waste Management"**

The purpose of this rule is to provide for the regulation of 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. The rule changes pick up two new federal regulations.

No Comments.

- **35CSR3 – "Coalbed Methane Wells Rule"**

This rule applies to coalbed methane wells. The rule changes are necessary to conform to recent statutory revisions related to spacing. The changes also address new technology allowing for the horizontal drilling of wells.

Comments:

Are operators required to sample both water quality and quantity?

Just quality.

A question was raised about the 100' and 1000' distance requirements from water wells and the agency explained how these provisions work.

A comment was made that landowners are confused by the rule's requirements and some further explanations would be helpful.

- **39CSR1 – "Rules of the Commission"**

The rule is designed to prevent waste, protect correlative rights and to conserve oil and gas in the State of West Virignia and is applicable to all activities subject to the jurisdiction of the Oil and Gas Conservation Commission. Where special field rules apply, the special field rules shall govern to the extent of any conflict. The rule changes are to clarify the agency can enter consent agreements and establish escrow accounts.

No comments.

- **60CSR8 "Environmental Excellence Program Rule"**

This legislative rule establishes the eligibility, procedures, standards and legal documents required for establishing a voluntary environmental excellence program, consisting of incentives to reward facilities that go beyond regulatory requirements.

Comments:

Will the reports that are filed be shared with the public?

Yes, they will be posted on the internet.

Will people pay the $1000 fee?

From pre-comments, most are willing to pay some amount. The administrative fund will cover the agency's operating costs.

A comment was made that there should be more programs like this, where companies are rewarded for good performance.

Lisa McClung, Director of DWWM, presented several rules under the water program that will be filed in the future. One was the concentrated animal feeding operation (CAFO) rule that was withdrawn by the agency in the 2005 session. As soon as EPA repromulgates its rule, the State will need to do so, perhaps by an emergency rule.

Then the new law transferring the authority to adopt water quality standards to the DEP was discussed. A question was raised concerning the public's involvement in the process. Ms. McClung responded that the process would be somewhat different from the agency's normal rulemaking.

Karen Watson then presented a list of bills passed by the Legislature during the 2005 regular session and signed by the Governor as follows:

1. SB 428. Creating the Revitalization Environmental Action Plan.

This legislation transfers the litter control and recycling programs from DNR to DEP and transfers the waste tire remediation program from DOH to DEP. The legislation was amended by the House to require the excess funds to be transferred to the state road fund rather than the solid waste reclamation and environmental response fund. SB 428 bill also incorporates the provisions of Senate Bill 42 at 22-15A-12(f) and (k). These provisions provide liability protection on waste tire remediation to bona fide purchasers of property containing waste tires.

2. SB 603. Higher Education Bill – Brownfield Assistance Centers.

This legislation creates a provision in W.Va. Code § 18B11-7 that authorizes Marshall University and West Virginia University to each create Brownfield Assistance Centers for the purpose of acquiring and developing property; seeking federal brownfield assistance funds; and providing assistance to municipalities and local governments for brownfields development.

Comments:

The Council discussed the funding mechanisms under the new law.

3. HB 3354. Oil and Gas Permit Fee Increase.

This legislation increases the permit fees for shallow wells from $250 to $400; the permit fees for deep wells from $250 to $650; and the reclamation fees for all well activity from $100 to $150. This legislation also includes some technical amendments to the statutes governing oil and gas and coal bed methane drilling and production. As introduced, the legislation increased the permit fees for coal bed methane wells from $250 to $650 but the legislation was amended by the Senate to eliminate this permit fee increase. In total, this legislation will generate approximately $350,000 for the Office of Oil and Gas.

4. SB 406. Uniform Environmental Covenant Act.

This legislation clarifies that environmental covenants containing affirmative obligations issued pursuant to the Voluntary Remediation and Redevelopment Act or other federal or state response actions are enforceable and perpetual; provides notice requirements for those placing environmental covenants on real property; and authorizes the department and local governments to enforce environmental covenants.

Comments:

A question was raised as to local governments.

The agency responded that they are included and have authority under the new law.

5. **HB 2723. Environmental Rules Bundle.**

This legislation consolidates the rules proposed by DEP and EQB. The DEP rules include revisions to the air, waste, water and mining programs. The EQB's rule relates to water quality standards. The EQB's rule was amended to eliminate Fill Hollow Creek in Preston County that the Board recommended to be included on the Tier 2.5 list. Tier 2.5 waters are waters of special concern and include naturally reproducing trout streams.

6. **HB 3236. Thin Seam Coal Tax Applicability.**

This legislation clarifies that the special tax on coal production and the special reclamation tax apply to coal produced from thin seams.

7. **HB 2333. Environmental Good Samaritan Act.**

This legislation protect landowners, groups and individuals who volunteer to reclaim abandoned mineral extraction lands and abate water pollution caused by abandoned mine lands from civil and environmental liability provided such activities are approved by the department and implemented in accordance with the plans approved by the department.

8. **HB 3033. Continuation of Special Reclamation Tax.**

This legislation extends the temporary special reclamation tax of seven cents for an additional eighteen months thereby maintaining the total special reclamation tax at fourteen cents per ton of coal produced. The legislation also requires the Secretary to evaluate and consider additional bonding mechanisms, such as full cost bonding and the creation of a water quality trust fund.

9. **SB 154. Beneficial Reuse of Water Treatment Plant Sludge.**

This legislation authorizes the beneficial reuse of water treatment plant sludge and requires the department to develop rules establishing criteria for the beneficial reuse of water treatment plant sludge.

10. **SB 287. Transfer of Rulemaking Authority for Water Quality Standards.**

This legislation transfers the authority to promulgate water quality standards and the authority to grant remining variances from the Environmental Quality Board to the department.

11. **SB 748. Credit for Mitigation.**

This legislation authorizes the secretary to grant credit for mitigation required by the Corps of Engineers pursuant to permit issued under Section 404 of the Clean Water Act when such mitigation satisfies mitigation required by the West Virginia Water Pollution Control Act.

12. SB 700. Creation of the Community Infrastructure Investment Program.

This legislation authorizes department to grant approval for the construction of privately financed water and sewage treatment facilities without the requirement of a certificate of need and convenience from the Public Service Commission provided that the project results in economic development and improvement of water quality. This legislation also authorizes municipal utilities and public service districts to enter into community service agreements with private developers for the purpose of constructing or expanding public utilities. This legislation also requires the secretary to promulgate emergency rules to implement the program.

Comments:

Two members expressed interest in the future rulemaking efforts and any stakeholders group.

13. HB 3356. Increasing authority of the Solid Waste Management.

This legislation requires the SWMB to conduct biannual performance reviews of county and regional solid waste authorities and grants the SWMB with the authority to supersede or exercise the powers granted to county or regional solid waste authorities that operate a solid waste facility

14. SB 455. Financing of Environmental Control Activities.

This Legislation authorizes the public service commission to review and approve the use of environmental control bonds for environmental control activities by certain qualified electric utilities.

The next meeting date was scheduled for September 15, 2005 – 1:00 p.m. – 3:00 p.m. – Trish will contact everyone with room location and agenda.

Karen Watson adjourned the meeting.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 33, Series 20, Hazardous Waste Management

Type of Rule: XX **Legislative** _____ **Interpretive** _____ **Procedural**

Agency Department of Environmental Protection

Address Office of Waste Management

601 57th Street, SE

Charleston, WV 25304

1. Effect of Proposed Rule

	ANNUAL			FISCAL YEAR	
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	$ 0	$ 0	$ 0	$ 0	$ 0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

This amendment will adopt by reference federal regulations in effect as of July 1, 2005 consisting of two changes. The first is the addition of one listed hazardous waste (K181) and the second is modification of the hazardous waste manifest and accompanying forms. These amendments are not projected to require additional operating expenses above the current level.

3. Objectives of these rules:

The objective of this rule is to stay in compliance with federal guidelines when implementing the State program. The consistency achieved in these revisions assures the State of maintaining its authorization status and, in turn, the continued receipt of federal funds that are vitally needed to implement the program.

4. **Explanation of Overall Economic Impact of Proposed Rule.**

A. Economic Impact on State Government.

Not anticipated to be appreciable.

B. Economic Impact on Political Subdivisions; Specific Industries, Specific groups of Citizens.

Not anticipated to be appreciable.

C. Economic Impact on Citizens/Public at Large.

N/A

TITLE 33
LEGISLATIVE RULES
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF WASTE MANAGEMENT

SERIES 20
HAZARDOUS WASTE MANAGEMENT RULE

§33-20-1. Scope and Authority.

1.1. Scope and Purpose. -- The purpose of this rule is to provide for the regulation of 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. -- ~~May 23, 2005.~~

1.4. Effective Date. -- ~~June 1, 2005.~~

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 July 1, ~~2004~~ 2005, 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. "Office of Waste Management, West Virginia Department of Environmental Protection" will be substituted for "Environmental Protection Agency."

1.5.a.2. "Director of the Office of Waste Management, 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 CFR § 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 CFR 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 of Air Quality rule, 45 CSR 25, "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or 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 which 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 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 which have been issued, made, granted, approved or allowed to become effective by the Director, and which 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, Office of Air Quality rule, 45 CSR 25, "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities" that is in effect on the date that this rule becomes effective.

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

2.1. 40 CFR Part 260. -- The provisions of 40 CFR part 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 CFR parts 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 (1000) kilograms of non-acutely hazardous waste in a calendar month and/or who treat, store or dispose of hazardous waste at their facility.

2.2. 40 CFR § 260.2. B -- The provisions of 40 CFR § 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 CFR § 260.21(d). B -- The provisions of 40 CFR § 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 CFR § 261.3 or 40 CFR part 261, subpart D, as incorporated by this rule, may petition the Director for an exclusion following the procedures established in 40 CFR § 260.20 and 40 CFR § 260.22. The Department of Environmental Protection will utilize EPA guidance in evaluating delisting petitions.

2.4.b. An initial non-refundable fee of $1,000.00 must accompany all petitions submitted under this rule. The petitioner must execute an agreement with the Director 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 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 will 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, must submit a certified letter to the Director 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 CFR § 261.3 or 40 CFR part 261, subpart D, pursuant to 40 CFR § 260.22, the Director will 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 CFR § 260.20(e); and

2.4.c.2. No scientifically supportable reasons for denying the petition are advanced which 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 must petition the Director 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 CFR §260.23, including all demonstration information;

2.5.a.2. A copy of the Administrator's approval granting the petition under 40 CFR § 260.23 and 40 CFR § 260.20 and 40 CFR part 273; and

2.5.a.3. Any additional information which may be required for the Director to evaluate the petition.

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

2.5.c. The Director will 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 which had not been presented to the Administrator.

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

2.5.d.1. Submit a petition to the Director demonstrating that regulation under the universal waste regulations of 40 CFR 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 must also include information required by 40 CFR § 260.20(b), and include as many of the factors listed in 40 CFR § 273.81 as are appropriate for the waste or category of waste addressed in the petition.

2.5.d.2. The Director will grant or deny a petition using the factors listed in 40 CFR § 273.81. The decision will be based on the weight of evidence showing that regulation under 40 CFR 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 Director will be in writing and state the reasons to either grant or deny the petition. Any petitioner aggrieved by the decision of the Director 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 CFR Part 261. -- The provisions of 40 CFR 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 CFR § 261.3(a)(2)(iv) to be exempt from the definition of hazardous waste, the owner or operator must comply with the following:

3.1.a.1. Provide a certification in writing to the Director that groundwater monitoring complying with either 40 CFR part 265, subpart F or which is approved by the Director, is or will be in place at the wastewater treatment facility identified in 40 CFR § 261.3(a)(2)(iv). A time schedule for the installation of groundwater monitoring must 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 CFR § 261.3(a)(2)(iv) must notify the Director of the receipt of the wastes on a form prescribed by the Director.

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

3.2. The provisions of 40 CFR § 261.5 (f)(3)(iv) and (v) and 40 CFR § 261.5(g)(3)(iv) and (v) are excepted from incorporation by reference. Conditionally exempt small quantity generators must notify the Director of their hazardous waste activity in accordance with section 4.

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

4.1. Applicability. Any person that engages in a hazardous waste activity in the State of West Virginia must notify the Director 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 that 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.

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 or all who initiated hazardous waste activities subsequent to the requirements of EPA as referenced above in subdivision 4.1.a to notify the Director of their hazardous waste activities.

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

4.2.a. Any person involved in hazardous waste activities that did not comply with the notification requirements of EPA, as referenced above in subsection 4.1, but is subject to those requirements must notify the Director in writing of his 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 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 CFR §§ 261.6(b) and 261.5, but subject to West Virginia notification requirements, must notify the Director in writing of his 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 must 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 subdivision 4.1.a must comply with the EPA identification number requirements and must 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 CFR Part 262. -- The provisions of 40 CFR part 262 are hereby adopted and incorporated by reference with the modifications, exceptions and additions contained in this section.

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

5.2.a. A person who generates a hazardous waste as defined by 40 CFR 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 CFR § 262.10(g) will be deemed references to subsection 5.2 and the subdivisions herein, as appropriate.

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

5.4. 40 CFR Part 262, Subpart E. -- The provisions of 40 CFR part 262, subpart E -- Exports of Hazardous Waste are hereby adopted and incorporated by reference. The substitution of terms in subdivision 1.5.a. 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 must file with the Director 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 CFR Part 262, Subpart H. -- The provisions of 40 CFR part 262, subpart H -- Transfrontier 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. 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 must file with the Director 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 CFR Part 262, Subpart I. -- The provisions of 40 CFR part 262, subpart I -- New York State Public Utilities will be excepted from incorporation.

5.7. 40 CFR Part 262, Subpart J. -- The provisions of 40 CFR 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 CFR Part 263. -- The provisions of 40 CFR 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", 150 CSR 11. The use of the state highways for the transportation of hazardous waste is regulated under the West Virginia Division of Highways, "Transportation of Hazardous Wastes Upon the Roads and Highways", 157 CSR 7.

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

7.1. 45 CSR 25, Office of Air Quality, -- The standards in section 7 apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste except as otherwise provided by law. In addition to the standards in section 7 of this rule, 45 CSR 25, "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities", applies to management facilities which may emit hazardous waste or the constituents thereof to the atmosphere including incineration facilities except as otherwise provided by law. For purposes of section 7, 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 CFR Part 264. -- The provisions of 40 CFR 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 CFR §§ 264.12(a)(1) and (2) are retained by the Environmental Protection Agency; however, the Director of the Office of Waste Management must receive identical notification.

7.4. Releases from Solid Waste Management Unit. -- The provisions of 40 CFR 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 CFR § 264.92, reference to the "Regional Administrator" will be to the "Environmental Quality Board." The Environmental Quality Board establishes groundwater protection standards pursuant to the authority granted the board in W. Va. Code, §22-12-4.

7.4.b. For purposes of 40 CFR § 264.94 and subparagraphs thereof, the Environmental Quality Board rule on groundwater protection standards, 46 CSR 12 will apply as required pursuant to the authority granted the Environmental Quality Board in W. Va. Code, §22-12-4.

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

7.4.c.1. The Director will specify in the facility permit the frequencies for collecting samples required under 40 CFR § 264.99(g). This frequency will not be less than once every five years.

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

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

7.6. Provisions Relating to Incinerators. -- The provisions of 40 CFR §§ 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 Office of Air Quality regarding emissions from incinerators. The Office of Air Quality retains its authority to enforce the air monitoring items listed in 40 CFR §264.347(a) related to incinerating hazardous waste. The Office of Waste Management retains its authority to enforce 40 CFR §§ 264.347(b)(c)(d).

7.6.a. Consult the Office of Air Quality, 45 CSR 25, "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities."

7.7. 40 CFR Part 264, Subparts AA, BB, CC and 40 CFR § 264.1080(f); and 40 CFR § 264.1080(g). -- The provisions of 40 CFR § 264.1080(f); and 40 CFR § 264.1080(g) are hereby adopted and incorporated by reference and the remaining provisions of 40 CFR part 264, subparts AA, BB, and CC are excepted from incorporation by reference. Consult the rules of the Office 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 CFR Part 265. -- The provisions of 40 CFR part 265 are adopted and incorporated by reference with the modifications, exceptions and additions set forth in this section.

8.2. 40 CFR §§ 265.12(a), 265.149 and 265.150. -- The provisions of 40 CFR §§ 265.12(a)(1) and (2), 265.149, and 265.150 are excepted from incorporation by reference. The Director of the Office of Waste Management must receive identical notification.

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

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

8.5. 40 CFR Part 265 Subparts AA, BB, CC and 40 CFR § 265.1080(f); and 40 CFR § 265.1080(g). -- The provisions of 40 CFR § 265.1080(f); and 40 CFR § 265.1080(g) are hereby adopted and incorporated by reference and the remaining provisions of 40 CFR part 265, subparts AA, BB, and CC are excepted from incorporation by reference. Consult the rules of the Office of Air Quality regarding air emission standards for process vents and air emmission 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.

40 CFR Part 266. -- The provisions of 40 CFR part 266 are hereby adopted and incorporated by reference. Consult the rules of the Office of Air Quality regarding Subpart H of this part.

§33-20-10. Land Disposal Restrictions.

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

10.2. 40 CFR §§ 268.5, 268.6, 268.10 - .13, 268.42(b) and 268.44. -- The provisions of 40 CFR §§ 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 CFR

§ 268.40(b). The term "Administrator" in 40 CFR § 268.40(b) will retain its meaning as defined in 40 CFR § 260.10.

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

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

11.2. 40 CFR § 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 CFR part 270 to 40 CFR part 124 will be deemed to be references to the applicable provisions of subsections 11.4 through 11.17. To the extent of any inconsistency with 40 CFR part 270, the specific provisions contained herein will control.

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, must 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 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 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 CFR § 270.42 for a description of permit modifications). The requirements of this section do not apply to permit modifications under 40 CFR § 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 must 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 must post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

11.4.c. The applicant must 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 CFR § 270.14(b).

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

upon request, documentation of the notice.

11.4.d.1. The applicant must provide public notice in all of the following forms:

11.4.d.1.A. A newspaper advertisement. The applicant must 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 Director will instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the Director determines that publication is necessary to inform the affected public. The notice must be published as a display advertisement.

11.4.d.1.B. A visible and accessible sign. The applicant must post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in paragraph 11.5.d.2. If the applicant places the sign on the facility property, then the sign must 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 must 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 Director.

11.4.d.1.D. A notice to the permitting agency. The applicant must send a copy of the newspaper notice to the permitting agency and the Director will 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 under paragraph 11.4.d.1. must 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 CFR § 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 Director will provide public notice as required in subsection 11.5 when a Part B permit application has been submitted. The Director will provide public notice to:

11.5.b.1. The applicant;

11.5.b.2. All persons on a mailing list developed under 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 Director 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 Director. The notice must 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 must 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 Director must 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 Director will assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the Director will 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 Director determines, at any time after submittal of a permit application, that there is a need for a repository, then the Director will notify the facility that it must establish and maintain an information repository.

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

11.6.d. The information repository will be located and maintained at a site chosen by the facility. If the Director 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 Director will specify a more appropriate site.

11.6.e. The Director will specify requirements for informing the public about the information repository. At a minimum, the Director will 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 owner/operator must be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Director. The Director will close the repository at his or her discretion, based on the factors in subdivision 11.6.b.

11.7. Application for a Permit.

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

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

11.7.c. If the applicant fails or refuses to correct deficiencies in the application, the permit will be denied and appropriate enforcement actions will be taken under the applicable statutory provisions of WV Code §22-18-1 et seq.

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

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

11.7.f. For each application the Director will, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule will specify target dates by which the Director 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 will be modified, revoked and reissued, or terminated either at the request of an interested person (including the permittee) or upon the Director's initiative. However, permits will only be modified, revoked and reissued, or terminated for the reasons specified in 40 CFR §§ 270.41 or 270.43. All requests must be in writing and must contain facts or reasons supporting the request.

11.8.b. If the Director decides the request is not justified, he or she will 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 Director may be appealed to the Environmental Quality Board in accordance with section 15.

11.8.b.1. If the Director initially decides to modify or revoke and reissue a permit under 40 CFR §§ 270.41 or 270.42 (c), he or she will prepare a draft permit under section 11.9 incorporating the proposed changes. The Director 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 Director will 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 must 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 CFR §§ 270.42 (a) and (b) are not subject to the requirements of this section.

11.8.c. If the Director decides to terminate a permit under 40 CFR § 270.43, he or she will issue a Notice of Intent to Terminate. A Notice of Intent to Terminate is a type of draft permit which follows the same procedures as any draft permit prepared under subsection 11.9

11.9. Draft Permits.

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

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

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

11.9.c.1. All conditions under 40 CFR §§ 270.30 and 270.32;

11.9.c.2. All compliance schedules under 40 CFR § 270.33;

11.9.c.3. All monitoring requirements under 40 CFR § 270.31; and,

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

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

11.10. Fact Sheet

11.10.a. A fact sheet will be prepared for every draft permit for a hazardous waste management facility, which the Director 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 Director will send the fact sheet to the applicant and to anyone who requests it.

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

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

11.10.b.2. The type and quantity of waste, fluids, or pollutants which 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 Director will 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. Written notice of that denial will 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 will 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 will 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 which the Director 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 the publications as regional and state funded newsletters, environmental bulletins, or state law journals. The Director will update the mailing lists from time to time by requesting written indications of continued interest from those listed. The Director will 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 person potentially effected 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 will 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.

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

11.13. Public Hearings.

11.13.a. The Director will 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 Director will 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 Director will 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 Director will 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 Director will 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 will 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 will 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 will 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 Director will 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 must be limited to the substantial new questions that caused its reopening. The public notice under subsection 11.11 will define the scope of the reopening.

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

11.15. Issuance and Effective Date of Permit.

11.15.a. After the close of the public comment period on a draft permit, the Director will issue a final permit decision. The Director will notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. The notice will 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 Director will 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 will be available to the public.

11.17. Administrative Record.

11.17.a. The provisions of a draft permit prepared under subsection 11.9 will 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 Director will 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 which identified and supports 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 will 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 Director's possession will be available to the public for inspection and copying; provided, however, that upon a satisfactory showing to the Director that those records, reports, permit documentation, or information, or any part hereof would, if made public, divulge methods or processes or activities entitled to protection as trade secrets, the Director will consider, treat, and protect those records as confidential.

11.18.b. It will 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 Director which contains information for which

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

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

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

11.18.f. Nothing contained herein will be construed to restrict the release of relevant confidential information during situations declared to be emergencies by the Director or his designee.

11.18.g. Nothing in subsection 11.18 will be construed as limiting the disclosure of information by the department to any officer, employee, or authorized representative of the state or federal government concerned with effecting the purposes of this subsection.

11.18.h. Persons interested in obtaining information pursuant to this subsection must submit a request in accordance with the Environmental Quality Board rule 46 CSR 8.

11.19. 40 CFR §270.12. The provisions of 40 CFR §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.

11.20. 40 CFR § 270.24. The provisions of 40 CFR § 270.24 are excepted from incorporation by reference. Consult the rules of the Office of Air Quality regarding emissions from process vents.

11.21. 40 CFR §§ 270.60(b) and 270.64. The provisions of 40 CFR §§ 270.60(b) and 270.64 are hereby adopted and incorporated by reference. Consult the rules of the Office of Water Resources and the Environmental Quality Board regarding additional requirements for underground injection wells.

11.22. 40 CFR §270.155. The provisions of 40 CFR §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 Director's decision to approve or deny the RAP application to the Environmental Quality Board under subsections 11.4 through 11.17. 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 §11. The Director will 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.

§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 must 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 CFR § 264.117(c).

12.2. Upon actual transfer of property which contains hazardous wastes that have been stored, treated, or disposed of, the previous owner must notify the Director 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 CFR Part 273. -- The provisions of 40 CFR part 273 are hereby adopted and incorporated by reference with the modifications, exceptions and additions contained in this section.

13.2. 40 CFR §§ 273.20, 273.40, 273.56 -- The provisions of 40 CFR §§ 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 CFR part 273 must file with the Director copies of all documentation, manifests, exception reports, annual reports or records, submitted to EPA, the Administrator or the regional Administrator as required by 40 CFR part 273.

13.3. 40 CFR § 273.70 -- The provisions of 40 CFR § 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 CFR §§ 273.80 and 273.81 -- The provisions of 40 CFR §§ 273.80 and 273.81 are excepted from incorporation by reference. Consult the provisions of subdivision 2.5.d to petition to include a waste as a universal waste.

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

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

14.2. 40 CFR § 279.82(b). -- The term EPA at 40 CFR § 279.82(b) will have the meaning of United States Environmental Protection Agency.

§33-20-15. Appeal Rights.

Any person aggrieved or adversely affected by the failure or refusal of the Director 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 Director under the provisions of this rule, may appeal to the Environmental Quality Board in accordance with the provisions of W. Va. Code §22B-1-1 et seq.

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 CFR, 270.42 (Class I)	$ 500.00
Permit Modification under 40 CFR, 270.42 (Class II and III) HWIR Staging Pile	$ 1,250.00
Modification under 40 CFR, 270.41	$ 2,500.00
Post-Closure Care Permit	$15,000.00
Closure Plans	$ 1,500.00

Federal Register

Friday,
March 4, 2005

Part III

Environmental Protection Agency

40 CFR Parts 260, 261, et al.
Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 263, 264, 265, and 271

[FRL–7867–4]

RIN 2050–AE21

Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is establishing new requirements revising the Uniform Hazardous Waste Manifest regulations and the manifest and continuation sheet forms used to track hazardous waste from a generator's site to the site of its disposition. The revisions announced today will standardize the content and appearance of the manifest form and continuation sheet (Forms 8700–22 and 22a), make the forms available from a greater number of sources and adopt new procedures for tracking certain types of waste shipments with the manifest. The latter types of shipments include hazardous wastes that destination facilities reject, wastes consisting of residues from non-empty hazardous waste containers, and wastes entering or leaving the United States.

DATES: This final rule is effective September 6, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. RCRA–2001–0032. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., 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 in EDOCKET or in hard copy at the EPA Docket Center (EPA/DC), EPA/DC, EPA West, Room B102, 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 EPA Docket Center is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: For further information regarding specific aspects of this notice, contact Bryan Groce, Office of Solid Waste, (703) 308–8750, *groce.bryan@epa.gov,* or Richard LaShier, Office of Solid Waste, (703) 308–8796, *lashier.rich@epa.gov.* Mail inquiries may be directed to the Office of Solid Waste, (5304W), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Rule Apply to Me?

This rule affects up to 139,000 entities in at least 45 industries (see table below) involved in shipping approximately 12 million tons of RCRA hazardous wastes annually (non-wastewaters and wastewaters), using between 2.4 and 5.1 million EPA Uniform Hazardous Waste Manifests (EPA Form 8700–22 and continuation sheets EPA Form 8700–22A). These entities include but are not limited to: Hazardous waste generators; transporters; treatment, storage and disposal facilities (TSDFs); federal facilities; state governments; and governmental enforcement personnel dealing with hazardous waste transportation issues. If you have any questions regarding the applicability of this rule to a particular entity, consult the people listed under **FOR FURTHER INFORMATION CONTACT.**

LIST OF INDUSTRIES POTENTIALLY AFFECTED BY REVISIONS TO THE RCRA MANIFEST FORM AND CONTINUATION SHEET

[EPA form 8700–22 & 22a]

Item	SIC	NAICS	Industry or sub-sector identity	Item	SIC	NAICS	Industry or sub-sector identity
1	1794	23593	Construction excavation work ...	24	4512	48111	Air transportation.
2	20	311	Food and kindred products manufacturing.	25	4613	48691	Refined petroleum pipelines.
3	2295	31332	Coated fabrics manufacturing ...	26	4789	488999	Transportation services n.e.c.
4	24	321	Lumber and wood products manufacturing.	27	4813	5133	Telephone communications.
5	25	337	Furniture and fixtures manufacturing.	28	49	2211	Electric, gas & sanitary services.
6	26	322	Pulp and allied products manufacturing.	29	4953	562211	Hazardous waste treatment & disposal.
7	27	511	Printing and publishing	30	4959	562910	Hazardous waste remediation services.
8	28	325	Chemicals and allied products mfg.	31	50	421	Wholesale trade (durable goods).
9	29	324	Petroleum and coal products mfg.	32	51	422	Wholesale trade (nondurable goods).
10	30	326	Rubber & misc plastic products mfg.	33	5912	44 to 45	Drugstores & proprietary retail stores.
11	32	327	Stone, clay and glass products mfg.	34	6552	23311	Real estate sub-dividers & developers.
12	33	331	Primary metal manufacturing industries.	35	7216	81232	Dry cleaning plants.
13	34	332	Fabricated metal products manufacturing.	36	73	541	Business services.
14	35	333	Industrial machinery & equipment mfg.	37	7532	811121	Top, body & upholstery repair & paint shops.
15	36	335	Electronic & other electric equipment mfg.	38	7699	561	Repair shops & related services n.e.c.
16	37	336	Transportation equipment manufacturing.	39	8062	62211	General medical & surgical hospitals.

LIST OF INDUSTRIES POTENTIALLY AFFECTED BY REVISIONS TO THE RCRA MANIFEST FORM AND CONTINUATION SHEET—Continued

[EPA form 8700–22 & 22a]

Item	SIC	NAICS	Industry or sub-sector identity	Item	SIC	NAICS	Industry or sub-sector identity
17	38	334	Instruments & related products mfg.	40	8221	61131	Colleges & universities.
18	39	339	Miscellaneous manufacturing industries.	41	87	541	Engineering & management services.
19	4111	485	Local and suburban passenger transit.	42	8999	541	Services n.e.c.
20	4173	48849	Terminal service facilities for vehicle transport.	43	95	924 to 925	Environmental quality & housing administration.
21	42	484	Trucking and warehousing	44	9661	92711	Space research & technology.
22	4212	562112	Hazardous waste collection services.	45	9711	92811	National security (*e.g.* military bases).
23	4491	4883	Marine cargo handling..				

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket number RCRA–2001–0032. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except legal holidays. The telephone number for the Reading Room is (202) 566–1742 and the telephone number for the EPA Docket Center is (202) 566–0270.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at *http://www.epa.gov/fedrgstr/*. This Federal Register also may be accessed from EPA's main manifest web page at *http://www.epa.gov/epaoswer/hazwaste/gener/manifest/index.htm*. An electronic version of the public docket is available through EPA's electronic public docket and comment, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select "search," then key in the appropriate docket identification number.

Outline

I. Background

On May 22, 2001, EPA published a notice of proposed rulemaking (NPRM) to revise the hazardous waste manifest system (66 FR 28240). The revisions, proposed in May 2001, aimed to reduce the manifest system's paperwork burden on users, while enhancing the effectiveness of the manifest as a tool to track hazardous waste shipments that are shipped from the site of generation to treatment, storage, or disposal facilities (TSDFs). The proposed rule would have accomplished this by adopting a standardized manifest form with fewer or no optional data fields, by adopting a new approach for distributing and acquiring the form, by standardizing further the data elements and procedures for tracking certain types of hazardous waste shipments, and by allowing the manifest to be completed, signed, transmitted and stored electronically. Thus, the proposed rule consisted of manifest system reforms of two distinct types: (1) Revisions to the manifest form itself and the procedures for using the form (hereafter, "form revisions"); and (2) revisions aimed at replacing the paper-based manifest system with a nearly paperless, electronic approach to tracking hazardous waste shipments (hereafter, "e-manifest").

EPA received 64 sets of public comments in response to the May 22, 2001 proposed rule notice from hazardous waste generators, transporters, waste management firms, consultants, an information technology vendor and ten state hazardous waste agencies. Commenters generally supported our goals of further standardizing the manifest form elements and reducing variability among the manifests that authorized RCRA state agencies currently distribute. However, the commenters had differing views on many of the particulars of the proposed revisions to the manifest. Moreover, there were a substantial number of comments that took issue with EPA's proposed approach to the e-manifest, particularly with respect to the technical rigor of the proposal, the assumptions relied upon by EPA in its projections of burden and cost reductions, the feasibility of the proposed electronic signature options, the highly detailed security requirements aimed at preventing fraud and data corruption, the reliance on regulated industry to develop private e-manifest systems, and the NPRM's suggestion that state programs may not be required to adopt the e-manifest requirements within their authorized RCRA state programs.

We believe that the comments addressing the e-manifest proposal raised significant substantive issues that merit further analysis and stakeholder outreach prior to adopting a final approach. The comments received in response to the form revisions proposal, on the other hand, raised fewer difficult issues that would deter us from going forward at this time with a final rule. Therefore, EPA has decided to separate the e-manifest from the form revisions portion of the final rulemaking. Today's notice announces our final rule approach only with respect to the manifest form revisions. Final action on the e-manifest will be based on the results of continuing analysis and outreach on several key rulemaking issues that are fundamental to the ultimate decision regarding whether EPA will adopt the e-manifest.

The key e-manifest issues that must be resolved include: (1) Whether the e-manifest should be decentralized as proposed and hosted by multiple private systems, centrally by EPA or by another party; (2) if a decentralized approach were to be adopted, how EPA's standards should address interoperability of private systems; (3) whether the final e-manifest approach should be integrated with biennial reporting or other functions supported by EPA, the states or other agencies; (4) what electronic signature methods should be included in the final rule; and, (5) the technical rigor and detail necessary in EPA's final standards to ensure a workable approach to the e-manifest.

While today's rule finalizes action only on the manifest form revisions, the e-manifest remains a high priority for the Agency. EPA conducted a stakeholder outreach meeting dedicated to the e-manifest during May 19–20, 2004 in Washington, DC. We learned from these focused stakeholder discussions that there is strong support for the e-manifest among the various private and public sector interests involved with waste generation and management, as well as among the State agencies that collect manifest data and oversee compliance with the manifest system. In particular, we learned that there is strong support among stakeholders for a consistent, national e-manifest system, although there are varying views on whether a national system should be privately or publicly hosted and funded, or, developed as a joint public/private venture. Significantly, the user community indicated at the May 2004 stakeholder meeting that it is willing to help fund the establishment and operation of an e-manifest system through the payment of reasonable user or transactional fees for e-manifest services. Given the strong interest expressed by stakeholders in a national e-manifest system, EPA is now exploring if there is a feasible means for EPA or another party to develop and implement a national e-manifest system, as well as exploring in more detail the design and performance requirements of any such system. The Agency expects to announce its decision on the future direction of the e-manifest by the end of Fiscal Year 2005.

In Section II of this preamble, we discuss the elements of the final form revisions rule, including a summary of our May 2001 proposal, the significant comments raised in response to the proposal, our final rule determinations, and the rationale for those determinations. On balance, the final form revisions resemble the proposed rule's contents very closely. We adopted relatively minor changes in response to public comments. For example, we accepted the great number of comments urging EPA *not* to retain any manifest data fields as "optional" fields. Thus, today's final rule introduces changes from the proposal to the RCRA waste code fields and to the handling code fields, since these elements will be mandatory fields to be completed on all manifests.

With respect to the Generator Identification field on the form, we accepted the comments asking us to expand this field to include the generator's site address, if different from

the mailing address already required on the form. We are also finalizing the proposed changes to the manifest form acquisition requirements, and providing more guidance and information on the particulars of the Registry process by which EPA will authorize entities adhering to the new federal printing specification to print and distribute manifests.

In addition, with respect to the proposed rejected waste and residue fields and procedures, we accepted the numerous comments asking EPA to allow users to mark up the original manifest in some instances when they forward rejected waste shipments to alternate facilities or return shipments to generators, rather than always require treatment, storage, and disposal facilities (TSDFs) to initiate a new manifest. We also adjusted the rejected waste proposal to explain that the TSDFs that initiate new manifests for purposes of forwarding rejected waste or residue shipments bear the limited liability of an "offeror" with respect to the forwarded wastes, and not the more extensive liabilities of RCRA generators. We discuss these and other changes from the proposed rule in the following section.

II. Detailed Discussion of the Final Rule

A. *Standardization of the Hazardous Waste Manifest.* As we explained in the May 22, 2001 proposed rule (see 66 FR 28240 at 28243), the adoption of the Uniform Manifest in 1984 did not entirely eliminate the problems with lack of consistency and uniformity that have existed since the inception of the manifest program. Many problems arise from states' varying use of available optional fields, users' different understandings about what information to enter in the current data fields, and different copy distribution systems and submission requirements among authorized state programs. All of these differences have forced waste handlers to expend considerable effort and incur significant paperwork burden in order to comply with the varying state manifest requirements. We received many strongly positive comments endorsing our proposal to further standardize the manifest format and procedures, effectively reducing the burden on waste handlers.

Standardization of the manifest form involves three related measures that we included in the proposed rule. First, the proposed rule discussed eliminating or consolidating several of the existing data fields whose waste transportation or data tracking functions were neither essential nor appeared justified by the burden they caused to the manifest system. Second, the proposed rule discussed adding several new fields that EPA, states, or stakeholders believed were necessary to improve the effectiveness of the manifest for tracking waste. Third, the proposed rule addressed eliminating or reducing the number of optional fields for use by the states. The Uniform Manifest adopted in 1984 included eleven such optional fields. The states varying implementation of these optional fields on state-specific formats resulted in generators, transporters and TSDFs having to stock a variety of states' manifest forms and remain cognizant of the differences in states' requirements. We will explain how the final rule addresses each of these three proposed measures.

B.1. *Elimination or Consolidation of Existing Data Elements—Introduction.* In the NPRM, we proposed to remove nine data elements from the Uniform Manifest form. All but one of these nine items appear in what is known as the "state optional" or upper right area of the current manifest, rather than being among the items that are designated as mandatory fields. The nine data elements that we proposed to remove or consolidate with other spaces on the manifest were:

VIII. Item A State Manifest Document Number,
IX. Item B State Generator's ID,
X. Item C State Transporter's ID,
XI. Item D Transporter's Phone,
XII. Item E State Transporter's ID,
XIII. Item F Transporter's Phone,
XIV. Item G State Facility's ID,
XV. Item H Facility's Phone, and
XVI. Item J Additional Descriptions for Materials.

In short, the proposed rule would have removed all of the fields currently designated as "state optional," except for current optional Item I, which is reserved for collecting RCRA waste code information, and current Item J, which collects data on handling codes. With regard to Item I, we proposed to retain, enlarge and make mandatory the optional data element for collecting waste codes. Section II.F.6 of this preamble includes a discussion of the final rule's treatment of waste code information. With respect to Item J, we proposed to standardize the information to be entered here around the hazardous waste management method codes entered for hazardous waste reporting purposes.

The proposal to remove the other nine data elements was grounded on several factors: (1) A desire to reduce the time spent completing the manifest; (2) the recognition that several of the nine elements were redundant with each other; (3) the recognition that a few states were using several of the optional fields as tools for "niche" data reporting, sometimes in ways that were not contemplated by EPA or DOT in 1984 when we decided to include the optional fields on the manifest; and (4) the recognition that all shareholders prefer that the manifest remain a one-page format that collects the most essential waste shipment information. Thus, the addition of several new tracking fields to the form will of necessity require space to be freed up on the form for this new information, and require us to remove items that appear less essential for tracking waste shipment and management information.

We received several comments endorsing the proposal to eliminate all nine of these "optional" fields as a way of reducing burden and variability in the manifest system. These commenters pointed out that the data involved consisted largely of state ID Numbers, facility phone numbers, or other static information that emergency responders or waste handlers could obtain elsewhere. These comments were balanced by other comments suggesting that most of the fields we proposed to remove provided some useful contact information that should be entered on the form for the benefit of emergency responders, state agency personnel, or in some instances, other waste handlers. However, we clearly could not retain all of these data elements and still accommodate any changes to the form that would add or delineate in more detail other waste tracking information that stakeholders urged us to adopt as part of the manifest revision effort, unless we were willing to expand the manifest to a two-page document. Given that the current one-page manifest already entails preparing and filing between four and eight copies, and the concerns that have been raised by users with Continuation Sheets that can be separated and misplaced during transit, we do not believe that a two-page format would be an acceptable outcome. We believe that it is essential to retain the manifest's one-page format, and this choice necessitates that additions to the form be offset with deletions. Thus, in making final decisions on what fields to eliminate, the Agency relied heavily on the numerous comments on this subject, but had to exercise its judgment in determining which data elements were most essential to the transportation and tracking functions of the manifest, which data elements avoided duplication with data collected elsewhere, and which data elements

seemed to provide the most benefit to the greatest number of stakeholders. We explain our final decisions for each of these nine data elements below.

2. *Proposed Removal of State Manifest Tracking Number.* The State Manifest Tracking Number is not necessary, given the new manifest acquisition process discussed in Section III.A.3 of this preamble. When the new manifest form becomes effective, a registered printer will assign each manifest a unique, pre-printed Manifest Tracking Number. Printers can obtain authority to print manifests by registering with EPA under the Registry process and adhering to the federal printing specification for the manifest. There no longer will be separate state versions of the manifest form, and authorized states will no longer control the assignment of State Manifest Numbers to the new form. Thus, the State Manifest Number's role—assuring uniqueness of each manifest and facilitating the tracking of manifests in databases—is subsumed by the new mandatory requirement for Manifest Tracking Numbers to be pre-printed on the forms.

3. *Proposed Removal of State Generator ID Field.* We proposed in the May 2001 NPRM to remove this data element from the revised manifest form, but comments we received have persuaded us to retain a State's ability to require a State Generator ID number in certain instances. Several comments from state agencies pointed out that, in certain instances, states regulate generators as hazardous waste generators under their programs, but the generators do not have EPA ID numbers. For example, cases exist where a facility generates a waste regulated by the state as hazardous (states may have broader-in-scope programs), but is not a hazardous waste under the federal RCRA waste listings or characteristics. Similarly, the state may implement a broader-in-scope program that does not include as many of the federal exemptions from the definition of solid or hazardous wastes, or, the state may not recognize the status of conditionally exempt small quantity generators or other conditionally exempt wastes. In these cases, EPA would not issue such a generator an EPA Generator ID. However, the state would have a legitimate interest in assigning a State Generator ID Number to identify that generator on manifests or other submissions and in the state's databases. We agree with these commenters that there are valid reasons for retaining the State Generator ID field on the manifest and for providing the state authority to require such an ID when no corresponding EPA ID Number is assigned to that generator. Therefore, in this final rule, the manifest form will provide a common field for entering the generator's EPA or State ID Number. In this way, it is not necessary to retain the State Generator ID item as a separate data field. We emphasize that the State Generator ID Number should only be entered in this field when there is no available EPA ID Number for the generator.

4. *Proposed Removal of State Transporter's ID Fields.* Under the existing Uniform Manifest, users record State Transporter's ID numbers in optional Items C and E. We proposed to remove these data elements in the May 2001 proposed rule, primarily because we believed that all hazardous waste transporters would have EPA ID numbers; there was no reason to retain data elements that would collect redundant information. In addition, we proposed to remove these data elements because we understood that states were using the Transporter ID field to collect certain types of information that were not authorized under the 1984 Uniform Manifest Rule that established the optional fields and set restrictions on their use. We intended the Transporter ID number field to record numbers established by EPA or states to identify a transportation company. Over the years, however, some states elected to use this field to collect identifying information on particular vehicles (*e.g.*, registration numbers) or drivers (*e.g.*, training certification numbers). EPA previously has issued guidance or interpretations stating that such uses are inconsistent with the federal program.

Several commenters requested that the State Transporter ID field be retained in this rule. Several state agencies and a waste management facility commenter pointed out that some states, in fact, use this field to check whether waste transporters or their vehicles are properly licensed in the state. EPA does not agree with these commenters that the states' interest in licensing hazardous waste transporters or registering transportation vehicles or drivers is sufficient to warrant retaining the State Transporter ID Number fields on the revised manifest. In fact, these comments only confirm our belief that the use of this field over the years has extended to areas that were not contemplated or allowed when the Uniform Manifest Rule was issued in 1984. The federal regulations do not require states to issue licenses to hazardous waste transporters. There are ways to verify the transporters' state-licensed status other than requiring generators to enter license information or vehicle registration numbers on each hazardous waste manifest. The Transporter ID field's purpose was to identify each transporter company uniquely and indicate its eligibility under RCRA to handle and transport hazardous waste. While states may issue licenses to hazardous waste transporters, we do not believe that the Uniform Manifest should contain state-specific data requirements aimed at enforcing transporter licensing requirements that vary from state to state. We did not receive any comments suggesting that there were state regulated transporters that lacked an EPA ID number. Therefore, this final rule removes the State Transporter ID fields from the manifest form, and affirms that it is sufficient for the purposes of the revised manifest to enter only the transportation company's EPA ID number.

5. *Proposed Removal of Transporter's Phone Fields.* Under the existing form, Items D and F are optional fields where users can record phone numbers for up to two transporters that may be identified in the mandatory transporter fields of the Uniform Manifest. The May 2001 NPRM proposed to remove Items D and F because we believed it was unnecessary to record the transporter phone numbers along with the other mandatory phone numbers. Several commenters asked us to retain the transporter phone fields because of the convenience accorded waste handlers who have grown accustomed to finding this contact information on the form.

EPA does not agree with the commenters that convenience of the parties in this instance provides a sufficiently compelling argument for retaining the transporter phone number fields on the form. We believe that the argument for retaining transporter phone contact information would be compelling if there were information in the comments suggesting that this is vital information for emergency responders. However, the revised form now includes an Emergency Response Phone Number field (explained in Section II.C.3 of this preamble), which is consistent with DOT requirements for hazardous materials shipping papers. We believe that including this new data element—dedicated to Emergency Response purposes—effectuates the manifest's emergency response purpose more effectively than recording each transporter company's phone number on the form. Moreover, the revised manifest still requires phone numbers for the generator and the designated facility, who are directly responsible for reconciling discrepancy and exception events. Waste handlers should not be

greatly inconvenienced if they must at times resort to their internal contact lists rather than the Uniform Manifest to obtain a transporter's current phone number. Therefore, today's final rule removes the transporter phone number data elements from the revised manifest form.

6. *Proposed Removal of State Facility's ID Field.* Item G is an optional field on the existing Uniform Manifest, used to record a State Facility ID number. We proposed to remove this data element in May 2001 based on our belief that it produced duplicate information already provided by the EPA ID Number in Item 10 of the existing form. Designated facilities with EPA ID Numbers already are identified uniquely on the manifest and in RCRA databases (*e.g.*, RCRAInfo). While commenters suggested it was convenient to use these numbers to ensure compliance with state licensing requirements, we did not receive comment that refuted our argument concerning redundancy. While permitted states may issue their own facility identification numbers, it is not necessary to burden waste handlers or the revised, standardized manifest form, with a requirement to enter duplicative facility identifiers. Therefore, this final rule removes the State Facility ID data element from the revised manifest form.

7. *Proposed Removal of Facility's Phone Field.* The existing manifest form designates Item H as an optional data element where users can record the designated facility's phone number. The NPRM proposed to remove this data element from the revised form because we believed that users could obtain this contact information through means other than the manifest. However, we received a substantial number of comments from waste handlers and authorized states urging EPA to retain this data field. We learned from these commenters that generators, transporters and agency personnel use this information to address discrepancies, exceptions or other issues that arise from shipments of waste moving in commerce. Resolving discrepancies and exceptions are important waste tracking functions served by the manifest, and the comments persuaded us that the facility's phone number facilitates the performance of these critical tracking functions. Therefore, the revised manifest form retains space for entering the facility's phone number. The revised manifest will include this space in the Designated Facility's Name and Site Address field as a mandatory data element.

8. *Proposed Consolidation of Additional Descriptions and Special Handling Fields.* In the May 2001 NPRM, we proposed to remove Item J (Additional Descriptions for Materials Listed Above) from the manifest and to consolidate this information with that of existing Item 15 (Special Handling Instructions and Additional Information). Today's rule creates a combined data element, Special Handling Instructions and Additional Information, which appears as Item 14 on the revised manifest form. We proposed to consolidate these two data elements to create space on the revised form to accommodate the new International Shipments field and expanded discrepancy space, and because stakeholders previously had petitioned EPA to combine these two information fields.[1]

Comments on this proposal reflected a variety of views. While commenters did not object *per se* to our proposal to consolidate these two data elements, we received several comments expressing concerns about the amount of space allotted to the field, as well as many comments concerning the type of information that individual states might require in this block. Comments from generators, waste industry members and states stressed the need for more space on the revised manifest for the Special Handling and Additional Information field than we originally proposed. Industry commenters expressed the concern that the field, as proposed, would leave waste handlers too little space to enter waste profile information, bar codes depicting waste information, or information already required in this space by existing federal and state programs. State commenters echoed this concern, and one state (New York) added that the proposed field would not allow the state to track parameters such as the specific gravity of wastes (used to convert waste volume units to units of mass) or the ultimate handling code for wastes processed by multiple TSDFs. Industry comments also voiced strongly and frequently the concern that the revised Special Handling and Additional Information field would become a "catch-all" for entering various types of information. These commenters worried that eliminating many of the current "state optional" fields from the form would result in state programs requiring waste handlers to enter this information instead in Item 14 of the revised form. These commenters urged EPA to explicitly restrict the information that state agencies could require in this block, so that the anticipated paperwork burden reductions under the revised form would not be diminished.

In response to these comments, today's revised manifest form includes Item 14 as proposed, but with minor modifications. Because we accepted comments suggesting that EPA not include a third Transporter block on the revised form, and accepted also the comment that the proposed form provided too much space for the new International Shipment field, we were able to create additional space for purposes of Item 14.

More significantly, we are limiting the scope of information that users may enter in this field. Due to today's changes to other manifest form data elements, some of the previously required information in the "Special Handling" field of the Uniform Manifest will no longer need to be entered in Item 14. For example, the revised form includes a new International Shipment field, which tracks imports and exports of hazardous waste. Thus, it will not be necessary to enter export shipments' port of exit information in the revised form's Special Handling and Additional Information Block, nor will it be necessary for transporters to sign and date the manifest here to indicate when a waste shipment has left the U.S. Moreover, the revised form has space to enter up to six RCRA waste codes for each waste stream identified in Item 9b of the new form. Today's rule also clarifies that no more than six waste codes may be entered for each waste stream (*see* Section II.F.3 of this preamble), which should eliminate the need to enter additional RCRA waste codes in this block.

Under today's final rule, EPA is limiting the use of new Item 14 primarily to waste handlers to record their site-specific or shipment-specific information. This will allow waste handlers to supply information to facilitate the proper management or tracking of waste materials as required by their companies' business processes. With regard to the "Special Handling" aspect of this Item, we expect waste handlers to continue to use this field to enter waste profile numbers, container codes, Emergency Response Guide numbers, bar codes or other site-specific or company-specific tracking information. We anticipate that waste handlers may use the "Additional

[1] The manifest reform effort began in 1990 with the filing of a rulemaking petition by the Association of State and Territory Solid Waste Management Officials (ASTSWMO). The petition requested, among other things, greater standardization of the manifest form, including the consolidation of these two elements. For further information about this petition, see RCRA Docket F–2000–UWMP–FFFFF.

Description" field of the revised Item 14 to enter chemical names, constituent percentages, physical state or specific gravity of wastes identified with volume units in Item 9b of the revised form.

The federal regulatory uses of the Special Handling field of Item 14 are limited to: (1) Identification of the original manifest tracking number for rejected waste or residue shipments that are being forwarded to an alternate facility or returned to the generator under a second manifest; and (2) specification of PCB waste descriptions and PCB out-of-service dates under 40 CFR 761.207. Waste handlers, however, cannot be required to enter information in this space to meet state regulatory requirements.

We recognize that states have previously used the Additional Description field to record state-specific information such as ultimate process codes for treating wastes, information relating to eligibility for state-specific exemptions, and information indicating the eligibility of specific wastes for differential fees or assessments levied by some states based on how these wastes are managed. Since the revised form will no longer allow state-specific information of this type to be entered in Item 14, states will need to find other means to flag state-specific information of this type so that the standardized manifest does not become burdened with state-specific data requirements. To the extent that such state-specific information can be captured by waste code information, we urge the states to develop appropriate waste codes to convey this information, and require its entry among the waste codes to be recorded in Item 13 of the new form. In this way, all state-specific information requirements could be conveyed in Item 13 rather than being dispersed across several data elements. EPA will support the dissemination of information to manifest users on state waste code requirements, and we urge states to address any needed waste code changes during the period before the delayed compliance date of this rule.

9. *Continuation Sheet.* In the NPRM, we explained that the manifest system includes both the Uniform Hazardous Waste Manifest (EPA Form 8700–22) and the Uniform Hazardous Waste Manifest Continuation Sheet (EPA Form 8700–22A). We clarified that the continuation sheet includes many of the same data elements as the manifest form and merely adds additional fields to identify additional transporters or waste streams which do not fit on the manifest. In this regard, we explained our intent to implement the proposed revisions with respect to both the manifest and the corresponding data fields found on the continuation sheet. EPA requested that commenters consider both the manifest and continuation sheet in providing comments. The majority of commenters on the continuation sheet asked for clarification on its use and design.

In response to commenters' requests, we are clarifying today that the continuation sheet being published in the rule will continue to be used in the same way as the previous continuation sheet (*e.g.*, when more than two transporters transport the waste). Moreover, the design of the new continuation sheet closely mirrors the previous continuation sheet, except that it has been revised to incorporate changes being made to the manifest form. Thus, the continuation sheet no longer includes fields for State Transporter ID numbers or phone numbers or the field on the previous continuation sheet denoted Item S, Additional Descriptions for Materials Listed Above. Eliminating these blocks freed up space on the continuation sheet which allowed us to add an additional row in the U.S. DOT Description block, increasing the number of rows from nine to ten. The continuation sheet no longer includes blocks for a Manifest Document Number or a State Manifest Document Number. These have been replaced by a block requiring a unique, pre-printed Tracking Number that will serve essentially the same function as the Manifest Document Number and State Manifest Document Number. However, the new continuation sheet includes a single field for the generator's EPA or state ID Number. The continuation sheet also includes fields for federally required waste codes and Hazardous Waste Report Management Method Codes and includes a Discrepancy field if additional space is needed to describe a manifest discrepancy. Unlike the Discrepancy field on the manifest form, the continuation sheet's Discrepancy field does not include check boxes to indicate the type of discrepancy or a designated space to provide the manifest reference number. EPA believes the manifest form's Discrepancy field provides ample space for this information. Finally, whereas the previous continuation sheet included letters "a" through "i" in the nine rows of the U.S. DOT Description field, EPA has removed these letters from this field in the new continuation sheet and will now require the manifest preparer to number these rows. EPA reasons that the manifest preparer may need to complete multiple continuation sheets for a shipment and that the preparer should number these rows consecutively from one continuation sheet to the next, to reflect the total number of wastes being shipped. The numbering of the wastes on the first continuation sheet should start with Waste #5, and should continue from there forward until all wastes being shipped have been numbered and identified.

C.1. *Addition of New Data Elements—Introduction.* The May 2001 NPRM suggested several new data elements that stakeholders argued were necessary or useful to improve the hazardous waste manifest as a tool for tracking waste shipments, for facilitating emergency responders' activities and recording waste management data. Specifically, the NPRM proposed and solicited comment on: (1) Adding a Generator Site Address field to the form; (2) adding an Emergency Response Telephone Number field; (3) adding an International Shipments field; and, (4) adding a third Transporter field to the transporter information area of the manifest.

The NPRM also included several other new waste tracking elements that could be viewed as additions to the manifest form. Specifically, we proposed to expand the space on the form reserved for recording RCRA waste codes (current Block I). The current Uniform Manifest includes space for one RCRA code; the proposed rule would have enlarged this space to accommodate up to six federal or state waste codes. Furthermore, the proposed rule suggested expanding the Discrepancy field by adding check boxes and information fields to facilitate tracking rejected waste shipments and shipments involving non-empty container residues. We received many comments on our proposal to expand the waste codes, as well as the rejected waste and residue tracking requirements. Since these proposals involved more complex substantive issues than the other proposed additions summarized in this section, we discuss our final decisions on the waste code and discrepancy space proposals below in separate Sections II.F. and IV.A.2 of this preamble.

2. *Addition of Generator Site Address Field.* While requesting comment on our proposed reductions in state optional fields (*see* 66 FR 28240 at 28254), we also requested comment on a stakeholder suggestion to include a space on the form to record the generator's physical site address, either in lieu of or in addition to the current requirement for generators to provide their mailing address on the form. Although we did not include the

Generator Site Address field in the proposed rule form, we highlighted the issue and solicited comment on its merits. Originally, we refrained from including the Site Address field in the proposed rule form because we wanted to avoid introducing duplicative data elements to the manifest form. At that time, we thought that the manifest already included the site-specific Generator ID number, and we believed that this site-specific number, in tandem with the generator's mailing address, was sufficient to identify a generator site by location.

Comments on this issue, however, persuaded us to include the Generator's Site Address field on the revised form. This issue was of great interest to the authorized states who identified the addition of the generator site address as a priority issue during the development of the proposed rule. Our state agency partners advised us that the mailing address for a company's corporate offices could be in a different state from the site address where waste shipments actually initiated. Thus, manifest copies could be routed erroneously to the state corresponding to the mailing address, rather than to the state responsible for overseeing the generation site. In addition, these states suggested that the EPA Generator ID number was not always a reliable site-specific identifier of generation, and that the Generator's Site Address on the manifest would be a more reliable indicator of the origin of a waste shipment in a manifest system that purports to track waste from "cradle-to-grave." Furthermore, a site address is necessary in those instances where shipments must be returned to the generator. Although industry commenters tended to oppose the proposal to add a Generator's Site Address field to the form, some agreed it would be useful for returning shipments.

After considering these comments, we have decided to include the Generator's Site Address field on the manifest. We retained the current requirement to enter a generator's mailing address, because we believe that the generators should be able to designate a corporate office where signed copies of the manifest are collected and managed. We do not believe that requiring generators to enter their site address overburdens them since they only have to do so when this location differs from their mailing address. To ensure that the new field's limited use is understood clearly by waste handlers, the field's caption contains distinct text explicitly stating that the site address should only be entered when it is different from the mailing address.

3. *Addition of Emergency Response Phone Number Field.* Because the hazardous waste manifest is also a "shipping paper" under DOT's Hazardous Materials Regulations (HMRs), it must include information specified in the HMRs for shipping papers. As we explained in the proposed rule, DOT currently requires an Emergency Response Phone Number on the shipping paper for most shipments of hazardous materials (*See* 49 CFR 172.604). Without discrete space provided for this regulatory requirement on the manifest, generators have complied by entering the emergency responder's phone number in either the margin of the form, the Generator's Phone Number field, the Special Handling field, or in the spaces designated for DOT shipping descriptions.

The Emergency Response Phone Number field provides vital information for emergency responders to use in the event of an accident or other serious incident that occurs while a hazardous materials shipment is en route to its destination. The phone number must belong to the generator or other agency or organization that accepts responsibility for providing detailed information about the shipment. Additionally, the number must correspond to a phone that is monitored 24 hours per day while the waste is in transportation. The person assigned to this phone must have either personal knowledge or immediate access to a person with knowledge of the material being shipped, as well as comprehensive emergency response, spill cleanup and incident mitigation information about the material. To communicate the importance of this information, EPA proposed in the NPRM to add a specific data element to record this information. Also, to ensure that there would be neither redundancy in the recording of phone numbers nor ambiguity about which phone was intended for emergency response purposes, we proposed to eliminate the two optional Transporter Phone Number fields. We are finalizing this approach in today's final rule. Therefore, under today's revised manifest form, the manifest will continue to require the phone numbers of the generator and the designated TSDF (so that exceptions and discrepancies can be resolved) to be entered, and it will now require as well the phone number designated for the vital emergency response functions. The revised manifest form will not provide space for entering additional transporter phone numbers.

The use of the Emergency Response Phone Number field (Item 3) is appropriate for those cases in which the listed phone number applies to every item of waste material listed in Item 9b of the manifest. However, there may be instances (*e.g.*, consolidated shipments) where more than one emergency response number may apply to the various waste items listed on the manifest, because specific listed items may be associated with different emergency response numbers. In these cases, DOT regulations specify that the applicable emergency response numbers should appear immediately following the shipping descriptions under Item 9b. See 49 CFR 172.604(a)(3). Therefore, in order to maintain consistency with the applicable DOT regulations, today's rule also clarifies that Item 3 is to be used for entering emergency response phone information only when there is one Emergency Response Phone Number that applies to all the waste materials described in Item 9b. Otherwise, the phone number associated with each specific material should be entered after the description of the material in Item 9b.

4. *Addition of International Shipments Field.* In the May 22, 2001 NPRM, we proposed to revise the manifest form by adding an explicit field for recording information on transboundary shipments of hazardous wastes. These shipments involve imports and exports of hazardous waste to and from the U.S. under bilateral agreements or other arrangements with foreign governments, waste importers and waste exporters. Current regulations require hazardous waste exporters to record the waste's port of exit on the form; transporters exporting waste must sign and date the manifest to indicate when the shipment left U.S. territory and leave a copy of the manifest with U.S. Customs officials.

While these hazardous waste export requirements already apply to exporters and transporters, the current Uniform Manifest does not reserve any specific space for collecting this data. In order to comply with existing regulations, exporters enter the port of exit and transporters provide the date and signature for a shipment leaving the U.S. in the Special Handling and Additional Information field of the current form. In several cases, transporters found to be out of compliance with the current requirements have alleged that their violations resulted partly from a lack of clarity on the manifest form as to how and where they should enter the information.

To alleviate this problem and reduce the complexity and burden of completing the manifest, we proposed

to add International Shipments, Item 16, to the revised form. The proposed changes provide explicit spaces for entering currently required information. The International Shipment field would provide the exporter with a check box to indicate an export and a space for entering the port of exit. Similarly, this data element would provide transporters with a discrete data element for indicating the date an export shipment leaves the U.S. and a signature line to attest to it.

With respect to imports, the NPRM proposed to add new tracking requirements and corresponding data elements in the International Shipments field. The proposed import elements parallel those that already apply to exports of hazardous waste. Thus, the proposed International Shipments field would provide a check box for importers to indicate an import shipment and a space to identify the port of entry. We did not propose any requirements for transporters to sign off on import shipments in this new data field because import shipments will be closed out domestically by the signature of the receiving facility in the U.S. However, the NPRM proposed that transporters importing hazardous waste shipments leave a copy of the manifest with U.S. Customs. This copy aids EPA in collecting consistent information on hazardous waste imports, rather than relying on the piecemeal information that currently comes to the Agency under informal arrangements with border states and port authorities.

Generally, commenters reacted positively to the proposed International Shipments field and the proposed requirement to submit a copy of the import manifest to U.S. Customs. Most generators, TSDFs and authorized states agreed that including an explicit field for transboundary waste movements was a good idea and would not pose any unreasonable compliance issues. However, many commenters contended that too much space seemed to be allocated for this purpose. Since nearly all available space on the proposed form has been utilized, one commenter suggested that the International Shipments field be removed from the domestic manifest and that a distinct new manifest form be developed to address international waste movements. Other commenters expressed the view that the rule should clarify that exporters rather than generators are responsible for entering the required export data, and that EPA should clarify the status of international shipments that are rejected by consignees and must be returned to the country of origin.

In response to these comments, EPA is finalizing the rule with the International Shipments field retained on the revised form, as proposed but with some modifications. First, we have reduced the field size since excessive space was dedicated to the field on the proposed form relative to the amount of data that actually needs to be collected. We also emphasize that primary exporters are required to complete export manifests as required under current regulations. As long as they are not the primary exporters, domestic generators do not have to complete this portion. Although some commenters requested that EPA clarify the status of rejected import shipments, that involves interpretations of waste export policies and bilateral agreements that are beyond the scope of this rulemaking.

Second, we are removing the proposed provision at § 263.20(i), which required transporters who are transporting hazardous waste into the United States to leave an extra copy of the manifest with a U.S. Customs official at the point of entry into the United States. Instead, we have added a new provision (a)(3) in paragraph (a) of §§ 264.71 and 265.71. This new provision requires the receiving facility to mail a final, signed copy of the manifest to the following address within 30 days of delivery: International Compliance Assurance Division, OFA/OECA (2254A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

We also have revised the proposed provision at § 262.60(e), which required the importer to provide the transporter with an additional copy of the manifest for delivery to the U.S. Customs official at the point the hazardous waste enters the United States in accordance with § 263.20(g)(4). We revised this provision by removing the reference to § 263.20(g)(4) and replacing that reference with references to new §§ 264.71(a)(3) and 265.71(a)(3). The resulting effect of these revisions to the proposed requirements would still be the same as that of the proposed requirements—*i.e.*, copies of import manifests will be delivered to EPA for tracking purposes. However, the means for achieving this result have changed from a drop-off requirement for the transporter to a direct mailing requirement for the receiving facility.

We believe this revised approach is more appropriate than the proposed approach, because it parallels existing manifest mailing requirements for receiving facilities. Specifically, §§ 264.71(a)(2)(iv) and 265.71(a)(2)(iv) in the proposed rule require receiving facilities to mail copies of manifests to generators within 30 days of delivery of hazardous waste shipments. (In addition, some states also require receiving facilities to mail them copies of manifests upon receipt of hazardous waste shipments.) EPA believes that TSDFs, as receiving facilities, are well situated to mail a copy of the final, signed copy of the manifest to EPA for tracking purposes since they are already required to, and are in the practice of, mailing a copy of the same document to generators and, in some cases, to states as well. EPA believes that TSDF mailing of a copy of the manifest to EPA is a more direct and efficient way for EPA to receive this document than the proposed approach of transporter drop-off of a copy of the manifest to U.S. Customs at the port of entry into the U.S. In addition, this new approach results in EPA's receipt of a copy of the manifest at a final stage of the transport process when the receiving facility has actually received the hazardous waste, rather than at an earlier stage of the process, when the transporter has brought the hazardous waste into the U.S. port of entry. It makes more sense for EPA to receive a copy of the manifest from the receiving facility at this final stage, when there is clear closure to the manifest process.

Finally, EPA has not accepted the comment requesting the adoption of a separate manifest for international shipments. The great majority of commenters seemed to agree that the proposed International Shipments field should appear on the Uniform Manifest. While we understand that space could be saved on the domestic manifest form if the International Shipment field was not established, we believe that the more desirable outcome of this rulemaking is to adopt one standardized manifest format, rather than adopting multiple formats with redundant information.

5. *Proposed Addition of Third Transporter Field.* The May 2001 NPRM proposed to revise the form by adding a third Transporter field. At the time, we believed that providing a third Transporter field would be useful for waste handlers and would reduce paperwork burden in the manifest system. In previous discussions, stakeholders advised us that waste shipments implicate a third transporter frequently enough to warrant our creating a new field on the Uniform Manifest, and that completing a third Transporter field would cause less burden than completing the more extensive data requirements contained in the continuation sheet.

Comments on the proposed rule did not support including a third Transporter field. Upon viewing the draft of the revised form, commenters became aware that no space was available to accommodate non-essential data elements. We received several comments from industry and state commenters suggesting that a third Transporter block should not be included on the revised form, since a third transporter was not used often enough to warrant taking up valuable space that could be better allocated toward shipping descriptions or other data elements that commenters regarded as more critical. We agree with these comments and have accepted the suggestions to exclude the third Transporter item from the revised form. Today's final rule withdraws both the third Transporter item and the corresponding signature space for the third transporter from the revised manifest form.

D. *Reduction or Elimination of "Optional" Field Designations.* Another facet of manifest form standardization deals with the degree to which the form will continue to provide state optional fields for use by authorized states. In the 1984 Uniform Manifest Rule, EPA announced the availability of eleven such fields that states could select from and require waste generators to complete. These optional fields were established based on state agency consultations and were intended to collect information commonly required by authorized state programs. The eleven state optional fields were displayed primarily in the form's upper right portion. The left-hand side of the form included the mandatory federal data elements supporting RCRA mandated and federally required core transportation-related and waste shipment routing functions. Neither the federal transportation laws nor RCRA 3003 mandated the establishment of these optional fields, and EPA and DOT could have established a manifest that did not allow for such state variations. However, at the time the Uniform Manifest Rule was initially developed, EPA and DOT were convinced that including optional fields would be acceptable. If these types of information needs could be accommodated on the manifest form, then it would not be necessary for the states to require waste handlers and facilities to submit separate reports containing this information.

While this policy may have seemed beneficial in 1984, we now have had almost twenty years of experience with the Uniform Manifest and the coexistence on the form of mandatory federal elements and state optional fields. Over the course of the negotiated manifest reform rulemaking activity in the early 1990s and continuing through the development of our proposed rule in May 2001, we have consistently heard strong complaints from manifest users about the current system. Users have told us that the current manifest system is burdensome because it allows too much variability among the manifests codified in state statutes or regulations and distributed by the various states. Thus, it became a goal of this rulemaking to reduce or eliminate this variability, if this could be done practically and could be accomplished without undue disruption to the authorized states' RCRA programs.

In Section II.B., we explained our final decisions on action we took to remove several of the data elements on the current manifest. We removed several optional fields that were either duplicative or nonessential, while retaining several others and designating them as mandatory for future purposes in the revised form. In total, we eliminated nine of the current optional fields; we also revised § 271.10(h)(1) by removing the provisions in this section that correspond to those nine optional fields. Whether these fields were eliminated or designated mandatory, they will no longer cause burdensome variability under the newly revised form.

In our May 2001 proposed rule notice, we proposed to retain two optional fields on the revised form. We knew from years of experience with the manifest system that states considered RCRA Waste Codes (current Item I) and Handling Codes (current Item K) two of the most valuable fields on the form. States used these codes to track waste generation and management trends, to facilitate the completion of or verify annual or biennial report submissions, and to support state assessments that are levied for waste generation or management activities. Our intention at the time of the proposal was to expand waste code information space and to standardize any handling codes that users entered to describe waste management processes. We proposed to retain these elements as optional fields. However, we requested comments on whether handling codes should be made mandatory in all the states, and on additional ways to integrate manifest data collection with the RCRA biennial reporting process.

The comments on this issue were strong and nearly unanimous. Nearly every commenter urged EPA to finalize the rule with mandatory waste codes and handling codes, rather than retaining their current optional field designations. Commenters further explained that completing a manifest that was consistent across states would reduce their compliance burden because they would not have to spend time determining which of the optional fields were used by each state. The Agency was impressed that commenters identified standardization as a preeminent goal. Commenters urged us to go further than our proposed rule by adopting a truly standardized manifest that eliminates all optional field designations.

EPA agrees with the comments urging us to eliminate all optional field designations from the manifest form. Therefore, EPA declares that all fields set out in this final rule's revised form are mandatory. You can find additional discussion of the standardization of handling code and waste code reporting on the manifest in Sections II.E.5. and II.F.6. of this preamble. When the revised form is in use among the states, there will no longer be optional fields to determine and complete.

E.1. *Proposed Standardization of Handling Codes-Introduction.* In the May 2001 NPRM, EPA proposed to standardize the Handling Codes information field on the revised manifest. On the current form, Handling Codes is a state optional field, to be entered in Item K of the Uniform Manifest. As we explained in the proposed rule preamble (see 66 FR 28240 at 28256), authorized states currently implement the Handling Codes field in a variety of ways. Some states require handling codes as set out in Appendix I, Table 2 under 40 CFR Parts 264 and 265, while other states require processing codes assigned for purposes of the RCRA Biennial Report. Other states have developed their own process codes, which have special meaning in the states' databases and determine how states assess waste management fees. Stakeholders identified variability in the states' use and meaning of handling codes as an issue under the current manifest system, particularly for the generators and TSDFs that were subject to multiple states' handling code requirements.

Moreover, during meetings on the development of the proposed rule, industry members and states both urged EPA to standardize the handling codes and harmonize them with RCRA Biennial Report process codes. This would not only eliminate variability among the states on what codes would be entered, but it also would help integrate manifest data collection with the biennial reporting process. Ultimately, including the process codes

used for biennial reporting could eliminate or greatly reduce waste handlers' and states' current burden of separately gathering and reporting this waste management information.

2. *Content of the Handling Code Proposal.* Based on broad stakeholder interest in this issue, EPA proposed in May 2001 to rename the Handling Code field "Item B," since, at that time, this field would remain optional. In cases where the states required handling codes, we proposed that responsibility to enter the process code information would fall on TSDFs, who are most familiar with the waste management processes and the codes used to identify them. Additionally, consistent with stakeholders' views, we proposed that the handling codes entered would be the process codes used in connection with the RCRA Biennial Report. At the time we developed the proposed rule, these codes were referred to as the Biennial Report System Type Codes. Recently, the biennial reporting system was revised and is now known as the Hazardous Waste Report. The process codes also have been revised somewhat and renamed the Hazardous Waste Report Management Method Codes.

3. *Standardization of Handling Codes.* EPA also requested comment on whether state, industry, and other stakeholders would prefer a new list of codes as an alternative to using the full list of Hazardous Waste Report Management Method Codes. There was some sense that a smaller code set could be more manageable to implement, and might still provide sufficient information distinguishing major process types. Comments nearly unanimously expressed support for standardizing the handling codes on the revised manifest and particularly the proposal to standardize the data to be entered based on biennial report process codes. Only one TSDF commenter argued against including this information on the manifest, contending that the information was not necessary to track waste. Other TSDFs and authorized states agreed that including and standardizing the process codes would be beneficial. While a few TSDFs argued that generators should enter the process codes, the large majority of TSDFs, as well as states commented that the TSDFs could enter this information on the manifest more effectively. Several industry commenters suggested that the final rule clarify that the code entered here should reflect the final handling of the waste by the TSDF shown as the designated facility on the manifest, and not the ultimate disposition of the waste by some other facility. Similarly, one state suggested that the form provide a second box for entering codes for the final disposition process, if different than the process code for the designated facility.

Most of the commenters agreed with the reasoning set out in the proposed rule that using the proposed System Type Codes (now known as Hazardous Waste Report Management Method Codes) would increase consistency with the biennial report requirements, thus aiding in completing and reducing the burden associated with the biennial report. The majority of commenters also preferred using the entire list of process codes developed for biennial reporting, rather than creating a new list containing a subset of the process codes.

4. *Adoption of Hazardous Waste Report Management Method Codes.* Based on comments we received on this subject, today's final rule establishes one set of codes and instructions for all manifest users in all states for the aforementioned reasons. Therefore, today's rule requires TSDFs to enter data in Item 19, entitled Hazardous Waste Report Management Method Codes. We are also clarifying, as commenters suggested, that the code in Item 19 corresponds with the final disposition of the waste by the designated facility on the manifest. EPA believes that it would be confusing and inappropriate to expect a TSDF to enter an "ultimate disposition" code reflecting how the waste was to be processed at another facility. Thus, we are not accepting the comments suggesting that space be provided for entering ultimate disposition codes, as there was not significant support expressed for this approach.

Hazardous Waste Report Management Method Codes should be entered in Item 19 of the revised manifest. These codes are updated routinely and published in the instructions accompanying the current edition of the Hazardous Waste Report forms. For the convenience of readers of this final rule, EPA is publishing the updated list of Hazardous Waste Report Management Method Codes as they exist at the time of this rule's publication. However, these codes are subject to change over time, and manifest users are urged to refer to the most recent instructions for the Hazardous Waste Report for the most current and accurate set of codes to be entered in Item 19. You can also find an updated list of codes at EPA's Web site: *www.epa.gov/epaoswer/hazwaste/data/index.htm#br.* The left column of the table below corresponds to the Hazardous Waste Report Management Method Code for a process, while the right column corresponds to the System Type Codes that were in use before the establishment of the Hazardous Waste Report Management Method Codes.

Hazardous Waste Report Management Method codes describe the type of hazardous waste management system used to treat or dispose a hazardous waste.

Code	Hazardous waste report management method code group	Corresponding codes from 1999 hazardous waste report*
	Reclamation and Recovery	
H010	Metals recovery including retorting, smelting, chemical, etc	M011–M019
H020	Solvents recovery	M021–M029, M104
H039	Other recovery or reclamation for reuse including acid regeneration, organics recovery, etc	M031–M039
H050	Energy recovery at this site—use as fuel (includes on-site fuel blending)	M051–M059
H061	Fuel blending prior to energy recovery at another site	M061
	Destruction or Treatment Prior to Disposal at Another Site	
H040	Incineration—thermal destruction other than use as a fuel	M041–49
H071	Chemical reduction with or without precipitation	M071
H073	Cyanide destruction with or without precipitation	M073
H075	Chemical oxidation	M075
H076	Wet air oxidation	M076, M084, M093
H077	Other chemical precipitation with or without pre-treatment	M072, M074, M077
H081	Biological treatment with or without precipitation	M081, M091

Code	Hazardous waste report management method code group	Corresponding codes from 1999 hazardous waste report*
H082	Adsorption	M082, M092, M103
H083	Air or steam stripping	M083
H101	Sludge treatment and/or dewatering	M101, M102, M109
H103	Absorption	M103
H111	Stabilization or chemical fixation prior to disposal at another site	M111
H112	Macro-encapsulation prior to disposal at another site	M112, NEW
H121	Neutralization only	M121
H122	Evaporation	M122
H123	Settling or clarification	M123
H124	Phase separation	M124
H129	Other treatment	M078, M079, M085, M089, M094, M099, M119, M125, M129
	Disposal	
H131	Land treatment or application (to include on-site treatment and/or stabilization)	M131
H132	Landfill or surface impoundment that will be closed as landfill (to include on-site treatment and/or stabilization).	M132, M133
H134	Deepwell or underground injection (with or without treatment)	M134
H135	Discharge to sewer/POTW or NPDES (with prior storage—with or without treatment)	M135, M136
	Storage and Transfer	
H141	Storage, bulking, and/or transfer off site—no treatment/recovery (H010–H129), fuel blending (H061), or disposal (H131–H135) at this site.	M141

*For clarification only. Use the Hazardous Waste Report Management Method codes in the left column only (*i.e.*, codes beginning H___).

5. *Designation of Process Codes as Mandatory.* While we proposed to retain the revised handling codes as an optional field for use by states, we also requested comment on whether to deem Hazardous Waste Report Management Method Codes a mandatory field. At that time, we were wary of imposing new reporting burdens on those waste handlers in states that did not require handling codes. On the other hand, we were aware that much of the manifest use burden arose not so much from completing individual data elements, but from determining what elements were required in individual states and by complying with state-specific information and instructions. The great majority of commenters expressed a strong desire to designate the handling codes mandatory for use in all states. Because most states which currently require the codes will continue to require them, the commenters did not see any reason to maintain the optional status. The commenters also believed that making one set of codes mandatory would reduce the burden associated with completing the manifest; rather than having the regulated community learn several different coding systems, one set of codes would be used in every state. This change would increase consistency in manifest requirements and likely reduce paperwork burdens. Therefore, today's final rule mandates the entry of the Hazardous Waste Report Management Method Codes on the manifest. In addition, EPA has re-designated the Hazardous Waste Report Management Method Code field as Item 19 (rather than Block B) in the revised form and placed it in the bottom section of the form among the data elements that designated facilities must complete.

6. *Party Responsible for Completing Item 19.* The majority of commenters supported our proposal to identify the designated TSDF as the party responsible for completing Item 19. TSDFs often determine waste management methods on a day-by-day basis, (*e.g.*, TSDFs may use fuel blending on a waste stream on one day and solvent recovery the next). Consequently, many commenters argued that generators could not be expected to foresee the management method the TSDF would choose for a particular shipment of waste. On the other hand, several commenters were concerned that the generator would continue to be held responsible for the disposal of the waste, yet the generator would lose control of the waste's disposal if TSDFs entered this information.

Today's rule finalizes the requirement for TSDFs to complete Item 19 as proposed. While generators must ensure their wastes are disposed of at authorized facilities, their responsibility does not extend to controlling the disposal process. In most instances, the disposal firm is an independent contractor. Therefore, we believe it is appropriate for TSDFs to enter the process code reflecting their management of the waste, rather than requiring the generator to enter this information.

F.1. *Proposed Standardization of RCRA Waste Code Fields—Introduction.* In the May 2001 NPRM, we proposed: (1) To redesignate the block for entering RCRA waste numbers as Block A and to title this block "Waste Codes;" (2) to expand the space provided for entering waste codes to accommodate up to six codes for each material identified with a distinct DOT description; (3) to designate the top three spaces in Block A for the entry of federal waste codes, and the bottom three spaces for state waste codes; and, (4) to establish a toxicity-based hierarchical approach for determining the ordering of waste codes on the new Waste Codes field. The purpose of the hierarchical approach was to ensure that waste codes suggesting the presence of high toxicity wastes would appear first on the form, so that manifest users and emergency responders would be alerted to their presence. Finally, EPA proposed to retain RCRA waste codes as an optional field for states. At the time of the proposal, we did not want to impose additional reporting burdens on waste handlers operating in states that did not require waste code data.

2. *Comment Analysis.* We received many comments from authorized states and from industry on the proposal to expand the waste code field and the

proposal to divide space between federal and state waste codes. State agency commenters strongly favored the proposed expansion that would allow the reporting of up to six waste codes in proposed Item A, although comments differed on how to allocate the expanded space between federal and state waste codes. Some state comments supported a side-by-side array of the federal and state codes, while others asked us not to differentiate between federal and state codes. Industry commenters provided additional detail on these points. While most industry commenters supported the proposal to provide space for three to six waste codes, two large TSDFs noted that in their vast experience with manifests, space for four federal codes ordinarily would be sufficient. As with the state comments, several industry commenters suggested that the rule allow users to allocate the space between federal and state codes as they saw fit, rather than limiting them to entering three federal codes and three state codes. These comments also criticized the proposed approach to divide the state waste code space between the generator state and the consignee state, as this would probably generate confusion.

State commenters generally supported requiring or allowing users to enter all applicable waste codes, entering any overflow from existing Block A in the "Additional Descriptions" space. Several industry commenters also supported the idea of entering all applicable waste codes (utilizing the Additional Descriptions space). Believing that six codes were more than sufficient to characterize the properties of a hazardous waste, others suggested that the final rule should restrict waste code entries to no more than six codes per waste stream.

Industry commenters raised additional concerns related to using the RCRA manifest to enter state waste codes. In an effort to further reduce the burden incurred by users in entering waste code data, several commenters suggested that EPA clarify in the final rule that state waste codes could be entered on the revised manifest form only to the extent that they were not redundant with federal waste codes established by EPA. These commenters argued that it makes little sense to use both a federal code and a distinct state waste code to describe the same material on the manifest, especially since paperwork burden reduction is a major objective of this rulemaking.

However, the waste code issue that generated the greatest level of interest was the proposed hierarchical approach to entering federal waste codes in the Item A space. In the May 2001 NPRM, we proposed a waste code hierarchy intended to order federal waste codes according to their toxicity properties, alerting manifest users and emergency responders to their presence. The hierarchical approach would not have applied to state waste codes. The proposed hierarchy specified the following ordering of federal waste codes:

I. All acutely hazardous wastes, including all P-listed wastes and all acutely hazardous F-listed wastes,

II. U-listed wastes (toxic),

III. K-listed wastes (specific sources),

IV. Non-acute F-listed wastes (non-specific sources), and

V. D wastes (characteristic).

The proposed rule also stipulated that in instances where states designated ignitable and reactive wastes as priority waste classes, these wastes would be entered first in Block A, ahead of the waste types that would otherwise appear first in the above hierarchy.

While several commenters supported the hierarchy concept, EPA received many more comments critical of the hierarchy proposal. The supportive comments pointed out that a hierarchy would usefully limit the number of codes entered on the form, because one would only need to enter the first six codes identified under the hierarchy. Other commenters emphasized that the hierarchy would be useful for completing the manifest consistently across all jurisdictions. A few comments suggested that the hierarchy approach would be improved if ignitable and reactive wastes always were placed at the top of the hierarchical ordering, while other comments indicated that the order should not be affected at all by ignitable or reactive wastes.

However, the commenters criticizing the proposed waste code hierarchy raised many other concerns. The strongest comments of this type suggested that the proposed hierarchy was valueless for communicating the real hazard posed by a waste. These comments pointed out that the hierarchy could miscommunicate hazards posed, since a P or U waste code still might be associated with a waste under the RCRA "derived-from" rule, even though the constituent involved may be present in minuscule quantities. Other comments focused on the overly simplistic assumptions underlying the proposed hierarchy, stating that one could not assume that all P wastes were more toxic than U wastes or that all U wastes were more toxic than K wastes, etc. Still other commenters explained that the hierarchy did not serve our stated purpose. They emphasized that TSDFs rely upon their waste profile information to determine the acceptability of wastes at their facilities, while users and emergency responders relied much more on DOT nomenclature (i.e., the shipping descriptions entered in Item 9b) to gauge the hazards of materials in transportation. It was further suggested that the proposed waste code hierarchy would be duplicative with DOT's system and could result in confusion. The commenters that were highly critical of the proposed hierarchy scheme preferred to allow manifest users to exercise their own judgment when ascertaining which waste codes are most representative of a waste.

3. *Final Rule Determinations—Number and Allocation of Waste Codes.* While the proposed rule suggested that additional waste codes could be entered in Item 9b (as part of the U.S. DOT Description) and in the "Additional Information" space (Item 14 of the revised form), we were persuaded by comments stating that six waste codes normally would be more than adequate to describe hazardous wastes commonly shipped under the manifest. Waste codes must continue to be included in the Item 9b "U.S. DOT Descriptions" where a RCRA waste code is required to complete a shipping description for a hazardous waste with the DOT "not otherwise specified," or "n.o.s," notation. However, it is not necessary to list any additional waste codes in Item 14 that might be applicable to a waste stream. We are persuaded that the provision of space for six codes in Item 13, augmented by any other codes required to be included in Item 9b for n.o.s. shipping descriptions, will be sufficient to describe hazardous wastes for the purposes of the manifest. Commenters pointed out that many facilities provide large lists of waste codes on the current manifest as a protective filing measure. We believe that this creates unnecessary burden in completing the manifest, without improving appreciably the quality of the hazardous waste data.

We also are accepting the comments that criticized the proposed rule for trying to allocate the space available between three federal waste codes and three state waste codes, and for trying to allocate space between generator state codes and consignee state codes. Therefore, the final rule leaves it largely to the users' discretion to assign the appropriate combination of federal and state codes to describe a waste, up to a maximum of six codes. As we explain below in section II.F.4., the users' discretion to assign these waste codes is

limited somewhat when a hazardous waste is described by a non-redundant state waste code that identifies that a waste is regulated uniquely or subject to a differential fee imposed by a state hazardous waste program. In such a case, the state waste code must appear among the 6 waste codes that describe such a waste. We also are finalizing the waste code space on the revised form without any partitions between individual digits or characters, since commenters indicated that the inclusion of partitions actually could frustrate reporting these data legibly.

4. *Final Rule Determinations—Entering State Waste Codes.* In addition to commenting on the number of waste codes users may enter in Item 13 of the revised form, commenters suggested that the RCRA hazardous waste manifest should only include information on federally regulated RCRA wastes. Other commenters expressed the view that this rule should affirm that states may require users to enter state waste codes on the revised form, so long as no corresponding federal code exists that describes the same waste. Other commenters expressed the same or similar point of view, suggesting that redundant state waste codes should not be entered on the form.

We continue to believe, as we first indicated with the first Uniform Manifest Rule in 1984, that it is preferable to include federal and state waste codes on the RCRA manifest. Including both types of codes avoids the need for hazardous waste handlers to develop separate recording systems to report their involvement with state regulated wastes. However, in this final rule, we clarify in Item 13 of the form instructions and in § 271.10(h)(1) that state waste codes are to be included on the revised manifest form where they are not redundant with federal waste codes describing the same waste. The federal RCRA waste codes are understood nationwide, so in cases where a state code duplicates entirely a federal code for a RCRA hazardous waste, it serves the burden reduction purposes of this rulemaking to enter only the federal code on the revised manifest. Thus, state waste codes must be entered on the revised form to describe state regulated hazardous wastes for which there is no corresponding federal code, as well as state codes which convey additional information not conveyed by the corresponding federal code. These state codes most often appear in connection with what are known as the "state only" hazardous wastes, that is, wastes which are regulated as hazardous in an authorized state program, but not under the Federal Subtitle C regulations.

However, examples also exist where there may be a federal waste code that corresponds generally to a waste, but the state adopts a unique code or perhaps adds another character to the federal waste code to designate that there are requirements unique to that state that apply to the waste. Since this information is not conveyed by the federal code itself, the state's adoption of a unique code or its addition of another character to the federal code would not be considered redundant with the federal code for purposes of this rule. These state codes must be entered in the space allotted for federal and state waste codes in Item 13 of the revised form. There is no discretion to omit such state codes from Item 13 of the revised form.

As one example, a state may regulate a hazardous waste identified with a federal waste code (*e.g.*, lead wastes, regulated federally for lead levels at or above 5.0 mg/L, and denoted D008), but regulate differently or more extensively than the EPA rules (*e.g.*, a state regulates lead wastes at the 1.0 mg/L level or higher). Similarly, a state may regulate a listed federal hazardous waste, but regulate it for the presence of constituents other than those which gave rise to the federal listing decision. In such cases, a specific state code that identifies the materials that are regulated uniquely by the state in such a manner must be included on the manifest.

As another example, a state may require its generators to add the letter "R" to a federal waste code to indicate that the waste described by the federal code is to be recycled, or may require the letter "C" to be added to a federal code to indicate a waste has been commingled with other generators' wastes. The state may need to know which wastes are recycled or commingled because it assesses a differential waste management fee or applies additional management requirements to the recycled or commingled wastes that are so identified. Again, it is not a redundant state code if the state code or a state-required addition to a federal code serves to distinguish a waste that is regulated uniquely or differently in the state, or to distinguish wastes subject to differential fees or similar requirements based on the nature of the waste or how it is processed.

EPA has made it a focus of this rulemaking to reduce the variability that appeared among the manifest forms that are currently distributed by authorized states. The elimination of optional fields, the standardization of handling codes, and the new registry and acquisition procedures are examples of significant manifest reforms we have adopted to address this issue. Nevertheless, all variability cannot be eliminated. However, we believe that the variability problem has been greatly improved by this rule, in that variability which may have been dispersed among 11 optional fields on the old form has been reduced to variability limited to the reporting of state waste codes. States may develop additional waste codes in response to today's rule in order to designate wastes which qualify for state specific exemptions, wastes which are subject to a differential waste management fee based on how a waste is managed, or wastes which are subject to other state-specific management conditions. While this may have the effect of increasing the number of state-specific waste codes, we believe this is a preferred outcome to allowing varying information to populate other fields of the form.

5. *Final Rule Determination—Waste Code Hierarchy.* Many commenters expressed views about the proposed hierarchy approach. We were most impressed by the significant number of comments assuring us that in the great majority of cases, there really was no need to apply any hierarchical ordering of waste codes. These commenters stated that four to six waste codes would be sufficient in all but a few cases to describe a waste's properties, and with space provided now to show six codes, it was not critical to order them with a hierarchy.

Ordering of waste codes, however, could be more useful for special types of wastes (*e.g.*, lab packs, incinerator ash) for which there are potentially more than six waste codes that could describe the wastes. We examined the comments to determine if there were views expressed suggesting that these complex wastes might benefit from a waste code hierarchy.

After considering all these comments, the final rule abandons the requirement to order waste codes according to any hierarchy. We may have reached a different conclusion if commenters persuaded us that waste code data were being used strategically or critically by emergency responders responding to accidents or by TSDFs determining the acceptability of wastes at their permitted facilities. Rather, we found the comments persuasive on the point that emergency responders rely far more heavily on the DOT hazard classification system and nomenclature when identifying appropriate response actions in emergencies. Likewise, the

TSDFs commented persuasively that they rely on the more detailed waste profile information that they develop to classify waste streams and the processes they use to manage wastes received under the manifest. Thus, we conclude that a risk-based ordering of waste codes is currently unnecessary as a risk communication tool for the revised manifest.

Instead, we have found that manifest waste code data primarily inform state agencies of materials generated within or brought into an authorized state for management. States use this information to monitor trends in waste management, levy assessments based on waste generation or management in the state, or prepare the RCRA biennial report. For over 20 years, waste handlers have been entering waste codes without the benefit of a hierarchy rule, and we are not aware that waste handler judgment in assigning codes has resulted in serious problems for authorized states. Therefore, we are accepting the comments submitted by both industry members and state agencies that the choice to enter waste codes should be left to the judgment of the users completing the form. The users should ascertain the waste codes that are most representative of the waste, giving due regard to the degree of the hazardous properties presented (*i.e.*, toxicity, reactivity, ignitability), the waste properties that are most material to the chosen management process, and the volume or relative quantity of the material associated with the waste code in question. We believe it is more practical to rely upon waste handler judgment, rather than develop a rigorous rule that presumes a precise toxicity-based ordering that is neither practical nor credible.

6. *Final Rule Determination—Waste Codes are Mandatory Fields.* In the May 2001 NPRM, we proposed to maintain RCRA waste codes as one of only two optional fields on the revised manifest. While EPA did not propose or solicit specific comment on designating RCRA waste codes as a mandatory data field, comments were submitted in response to our request for comment on additional ways to better integrate the collection of manifest data with the biennial reporting process. Commenters provided very strong and nearly unanimous comments urging EPA to designate waste codes as mandatory rather than optional. Commenters argued that designating waste code as reporting mandatory would be a burden reduction measure, since it would obviate the need to determine from state to state whether the codes were required. We were further advised by the comments that the benefits of a truly uniform manifest would outweigh any incidental burden arising from including RCRA waste codes on all manifests. State commenters tended to emphasize that waste code data were needed nationally in order to support RCRA reporting requirements. Industry and state commenters suggested that mandatory waste code reporting could help to integrate manifest data collection with the collection of RCRA Report data, streamlining the overall process. Finding these comments persuasive, we are imposing a mandatory requirement for users to report waste codes in Item 13 on all manifests in all states.

G.1. *Other Manifest Form Revisions—Introduction.* While the NPRM clearly focused on standardizing the form's data elements, it also discussed several other changes to terms and procedures affecting the manifest's use. Specifically, the NPRM discussed how the Subtitle C regulations define "bulk" containers for purposes of managing empty containers, and it addressed the use of fractions in reporting waste quantities on the manifest. In addition, the NPRM raised the issue of whether a TSDF initiating a new manifest for a rejected waste or container residue signs that manifest as an "offeror" of the rejected waste shipment, or, as the agent signing "on behalf of" the original generator. The "offeror" issue in fact has a much broader impact than the management and tracking of rejected wastes and residues, and in recognition of this broader impact, the final rule is revising the Generator's Certification statement on the form so that it will in the future be identified as the Generator's/Offeror's Certification. This preamble section explains our final rule positions for each of these areas.

2. *Definition of Bulk Container.* The May 2001 NPRM proposed to modify several current regulations that distinguish between bulk and non-bulk containers. Current regulations (40 CFR 261.7(b)(1)(iii) and § 262.32) make reference to containers that are either greater than, less than, or equal to 110 gallons in size. Section 261.7(b)(1)(iii) establishes criteria for determining if a hazardous waste container is "empty," while § 262.32 requires a generator to mark containers of 110 gallons or less. In each case, the 110 gallon threshold was selected to conform to a 1982 DOT regulation that defined bulk packaging as packaging of 110 gallons or more. Thus, the current RCRA regulations established distinct "empty" container thresholds for bulk and non-bulk hazardous waste containers. However, DOT standards were revised in 1991 to harmonize them with international requirements, which distinguished bulk from non-bulk packagings at a threshold of 450 L or 119 gallons (*see* 55 FR 52471, December 21, 1990). To maintain conformity with DOT requirements, we proposed to revise the regulations so that they distinguish bulk from non-bulk containers at the 119 gallon threshold.

We received only a few comments that addressed this issue, but they supported the proposal to conform the bulk container threshold in the hazardous waste regulations with the current DOT requirements. Therefore, today's final rule amends § 261.7(b)(1)(iii)(A), § 261.7(b)(1)(iii)(B) and § 262.32 by substituting the 119 gallon threshold for the 110 gallon threshold that appears in the existing regulations.

3. *Use of Fractions.* In the May 2001 NPRM, EPA proposed new language for the manifest form instructions to clarify the Agency's position on including fractions or decimals in the waste quantities reported in Item 13 of the existing manifest. We proposed this language in response to reports from several states, which noted an increase in the number of manifests containing quantity descriptions with fractions. This can pose problems for state databases, which may not accommodate entries that include a fraction or a decimal. Therefore, several states urged EPA to adopt new regulatory language that more clearly would exclude fractions from the quantity descriptions reported on the form.

EPA has provided guidance on this issue in past manifest rulemakings. As we explained in the proposed rule preamble (see 66 FR 28250), EPA has historically discouraged the use of fractions or decimals. We stated in the March, 1984 Uniform Manifest Rule that quantity descriptions should be as accurate as possible without using fractions or decimals. However, EPA also is aware that a strict exclusion of fractional quantities could cause waste handlers to report waste quantities that lacked precision. For example, for waste quantities reported in tons, a waste quantity reported as 1.5 tons is far more precise than the alternative of truncating the quantity reported to only 1 ton or rounding up the quantity reported to 2 tons.

In order to address this problem, we proposed to revise the manifest instructions to require only whole numbers to describe non-bulk shipments, but allowing fractions to be used where necessary to describe bulk shipments. We received varying comments in response to this proposal.

Several state agencies provided strong comments discouraging any use of fractions in waste quantities, while one state advised that allowing fractions in bulk shipment descriptions should be extended to non-bulk shipments of acute hazardous wastes. The states opposed to reporting fractional quantities argued that state databases would have to be rewritten to accommodate fractions, and that we could avoid the precision issue by requiring smaller units of measure to describe bulk waste quantities. Industry commenters tended to be split between those that agreed that fractions should not be used on the manifest, and those that believed that generators should decide whether to use whole numbers or fractions. Some commenters raised the concern that prohibiting fractions would result in lower accuracy, although several industry commenters also advised that the accuracy issue would be resolved if smaller units of measure were used in the waste descriptions.

EPA agrees with commenters who pointed out that the issue is not the use of fractions *per se*, but rather quantity reporting precision. This data quality issue is not necessarily resolved by precluding the use of fractions or decimals. However, after considering all the comments, we believe that our earlier direction precluding the use of fractions or decimals remains the more sound guidance for the manifest. Many state databases are not set up to receive data reported as fractions or decimals; states reasonably may have relied upon EPA's earlier guidance recommending against fractions and decimals when they designed their data systems. Moreover, if waste quantities routinely included fractional or decimal entries, we believe that a significant number of errors could result from attempts to interpret the fractions or to determine when and where a decimal point was present. Given the use of carbonless and non-carbon papers to transmit data entries from the top copy of the manifest to lower copies, we do not believe that fractions or decimal points are likely to be transmitted through clearly to the lower copies in the package. The possible misinterpretation of these entries could further reduce the precision of waste quantity reporting on the manifest. Therefore, the manifest instructions included in today's final rule continue to state that waste quantities on the manifest are to be reported as accurately as possible without using fractions or decimals.

While we believe that fractions and decimals should not be entered on the manifest, we also believe that commenters raised a valid point that generators must give greater attention to the appropriateness of the units they select to report waste quantities. We agree with the numerous state and industry commenters who suggested that greater waste quantity reporting precision could be achieved if waste handlers exercised greater care when selecting the units. Bulk shipment quantities (those > 110 gals.) should be reported in units of gallons, liters, pounds, or kilograms. Larger units of measure (*e.g.*, tons, cubic yards, cubic meters) that do not allow for precision when quantities are expressed as whole numbers should not be used on the manifest, except to describe very large bulk quantities, such as the contents of a rail car, barge or tank truck.

However, additional care in the selection of quantity units alone will not resolve all the data quality issues that arise in connection with reporting waste quantity information on the manifest. In our discussions with the authorized states who consulted with EPA during development of this rule, we learned that there is another significant issue affecting the quality of waste quantity data reported on the manifest. According to several authorized states, a significant source of imprecision results from generators routinely reporting container capacities as quantities shipped, regardless of whether the container is in fact full when placed in transportation. In other words, some generators are reporting 55 gallons of waste shipped for every drum included in a shipment, even though the drums may only be partially filled. The same practice is allegedly used for reporting quantities shipped in larger bulk packages, presenting an even greater potential for waste quantities to be misrepresented on the manifest.

Since the manifest system was first announced by EPA in 1980, it has been assumed that generators and TSDFs understood their mutual responsibilities with respect to generators entering quantities shipped and TSDFs verifying the quantities (or reporting discrepancies) at the time of receipt. The manifest system was created to foster accountability for waste shipments among the generators, transporters and TSDFs. The manifest regulations have always required and continue to require generators to enter the actual quantities of wastes shipped and not merely the capacity of the containers selected for shipment. Likewise, the manifest regulations have always placed the responsibility and continue to place responsibility for verifying the actual quantities received on the designated facilities (TSDFs), who are required either to acknowledge that the quantities of wastes indicated as shipped were in fact received, or to report a discrepancy on the form if the quantities received do not match closely the generator's "as shipped" quantities. The underlying purpose of the manifest in ensuring accountability for off-site waste shipments is undermined if generators are not reporting quantities shipped accurately, and if TSDFs are overlooking these inaccuracies when they receive wastes at their facilities. In addition, any future efforts by EPA and the states to streamline the RCRA biennial reporting process by relying more heavily on manifest data will be frustrated if we conclude that waste quantities reported on the manifest are not a reliable source of information on quantities shipped or waste receipts.

EPA is therefore including additional language in the manifest instructions emphasizing the generators' responsibility to report quantities shipped and not simply container capacities. While EPA recognizes that some generators may not be in a position to measure quantities of wastes to a high level of precision, we believe that a good faith effort to estimate quantities shipped as accurately as possible represents a more acceptable standard or practice than simply reporting container capacities. We believe that it is a violation of the current manifest requirements for generators to report container capacities as the quantities shipped, when it is known that a container is not filled to capacity. The clarification in the revised form instructions should remove any doubts that may remain concerning the requirement that generators accurately report actual quantities shipped in Item 11. We will also look to TSDFs to comply with the requirement to report discrepancies on the form when generators fail to report quantities shipped accurately, since generators will likely improve their methods of measurement and the accuracy of their quantity entries when they realize that the receiving facilities are paying close attention to reconciling the quantities reported as shipped and received.

4. *Offerors and the Preparation of Hazardous Waste Shipments and Manifests.* The proposed rule would have added a new definition of "preparer" to the definitions in 40 CFR 260.10. While this new definition was proposed in the context of those using an electronic manifest, the purpose of the definition was to extend to the electronic manifest sufficient flexibility to enable the person performing the steps necessary to prepare a waste shipment for transportation to also

prepare and sign the electronic manifest on behalf of the generator. The discussion in the NPRM of the proposed "preparer" definition referred to the instructions for Item 16 of the current manifest paper form as a precedent for this flexibility in the paper context, since the Item 16 instruction allows signatures on the generator certification statement to be made "on behalf of" the generator. Thus, this aspect of the proposed rule raised an issue dealing with the activities of shipment preparers, their authority to initiate and sign the manifest for the generator, and their resulting responsibilities. Similarly, in the context of TSDFs rejecting waste shipments and preparing manifests to forward rejected waste to alternate facilities (or return the shipment to the generator), the NPRM raised the issue of the responsibility and liability of the rejecting TSDF when it initiates a new manifest and signs the generator's certification statement. For the latter issue, we proposed that the TSDF in such cases was signing the manifest in the capacity of an "offeror" of the shipment, but we asked for comment whether the TSDF forwarding a rejected waste under a new manifest should be viewed instead as signing the manifest as the agent of the generator. Today's final rule affirms that the TSDF rejecting waste and completing a new manifest to track the rejected waste to an alternate facility (or the generator site) signs the manifest in the capacity as offeror of the shipment, and not as an agent of the generator. Nor would the TSDF be functioning as a generator by intitiating such a manifest, although the NPRM would have had the facility sign the Generator's Certification statement. The specific issue of TSDFs rejecting wastes and their offeror responsibilities when they complete and sign new manifests is addressed in detail in section IV.B.3. of this preamble. However, because the offeror concept carries broader implications for hazardous waste shipments and waste handlers, and overlaps with the "preparer" concept that we proposed in the May, 2001 NPRM, we are including additional discussion here of the offeror status and how it impacts more generally those who prepare hazardous waste shipments and manifests for transportation.

The term "offeror" refers to a status that is well understood under the Hazardous Materials Regulations (HMRs) of the Department of Transportation (DOT). The HMRs apply to persons who transport hazardous materials in commerce, as well as to persons who offer hazardous materials for transportation. Since hazardous wastes are also hazardous materials within the scope of the HMRs, and since our RCRA statute requires us to regulate hazardous waste transportation-related activities consistent with DOT regulations, the requirements and policies adopted in the HMRs with respect to those who offer hazardous materials for transportation ("offerors") apply to hazardous waste shipments and those who offer hazardous wastes in transportation. DOT consistently has interpreted the "offeror" status as connoting those persons involved with performing certain "pre-transportation" functions that must occur before hazardous materials are transported in commerce. Over the years, DOT has described the pre-transportation functions that may be performed by an "offeror" as including activities such as determining a material's hazard class, selecting a packaging, making and labeling a package, filling a hazardous materials package, preparing a hazardous materials shipping paper (including the hazardous waste manifest), providing emergency response information, and certifying that a hazardous material is in proper condition for transportation in conformance with the HMRs. The latter certification is in fact made when one signs the shipper's certification on a hazardous materials shipping paper, which occurs with respect to the hazardous waste manifest when one signs the Generator's Certification statement. DOT has issued interpretive letters and policy statements respecting offerors and their responsibilities when they perform the types of pre-transportation activities described above. However, these activities and responsibilities were further clarified by DOT when the Department codified these policies in a recent final regulation dealing with the applicability of the HMRs to loading, unloading, and storage. See 68 FR 61906 (October 30, 2003). In this rule, DOT codified a new regulatory definition of "pre-transportation function," and listed the above-described activities and others as examples of theses functions that are specified in the HMR and "required to assure the safe transportation of a hazardous material in commerce." See 49 CFR 171.8.

In the preamble discussion of the "pre-transportation functions," DOT explains that a pre-transportation function is performed to prepare a hazardous material and its accompanying shipping documentation for transportation and is required to assure its safe transportation in commerce. 68 FR 61906 at 61909. The rule further explains that it does not matter if the pre-transportation function is performed by the shipper's (generator's) personnel or by the carrier's (transporter's) personnel. The HMR requirements apply to any person who performs or is responsible for performing the pre-transportation functions, and that person must perform the functions in accordance with the HMRs. See 68 FR at 61909–61911. Moreover, as to when compliance or non-compliance must be demonstrated, DOT has stated that it would generally expect an offeror to be able to demonstrate compliance with all applicable pre-transportation requirements at the time the hazardous material is staged for loading and the shipping paper is signed, as this is the offeror's certification that the material has been prepared properly for transportation in accordance with the HMRs. Id. at 61911–61912. At the same time, however, DOT has clarified that "intermediaries" who certify as the offeror assume responsibility only "for all aspects of that shipment about which he knew or should have known."

EPA is today clarifying that the issues concerning the activities of shipment "preparers" and the corresponding issues tied with the authority of a generator or other preparer to complete and sign the Generator's Certification statement on the manifest are governed by the same considerations discussed by DOT with respect to "offerors" and the performance of the pre-transportation functions described in 49 CFR 171.8. Since hazardous waste shipments and waste handlers are subject to the HMRs, and DOT recently has finalized a rulemaking under the HMRs which provides more clarity on these issues, EPA is deferring to these DOT requirements, rather than adopting its own definitions or differing interpretations based on the "on behalf of" language in the manifest instructions or on "preparer" signatures, etc.

Therefore, this final rule resolves the issues pending in this rulemaking relating to preparers signing manifests and TSDFs initiating new rejected waste manifests consistent with the DOT requirements in the HMRs pertaining to offerors and pre-transportation functions. Moreover, we have amended the Generator's Certification statement on the manifest form so that it will be described on the revised form as the Generator's/Offeror's Certification. This change more accurately represents the fact that the person signing the certification statement may in some instances be an offeror involved with

the preparation of the waste shipment (or of the manifest) for transportation, rather than the waste generator.

While the proposed rule discussed the offeror status while dealing with the issue of TSDFs rejecting and re-shipping wastes, we wish to emphasize that the offeror concept is broad enough to cover many waste shipment scenarios. Indeed, the offeror status and signature would be encountered most commonly in connection with the waste pick-up and transportation arrangements made between generators and waste transporters when the transporters service the generators' sites. Since the transporter's personnel frequently will aid generators in preparing their waste shipments for transportation (*e.g.*, selecting packages, labeling containers, filling and closing containers, selecting and affixing placards, completing the manifest or reviewing it for compliance with the HMRs and RCRA), the transporter performing such pre-transportation functions may be an offeror with respect to the shipment. While a generator may certainly sign the generator certification statement in its capacity as the generator, today's rule is intended to clarify that another person, such as a transporter making a waste pick-up and helping with the pre-transportation functions, may sign the certification statement on the manifest in their capacity as an offeror. This person may sign as an offeror if they have performed pre-transportation functions, and can certify that the shipment has been properly described, classified, packed, marked, and labeled, and is in all respects in proper condition for transportation under the applicable international or national regulations. The person preparing the shipment and making the certification is responsible for the proper discharge of the offeror functions they perform and the truth of the certification statement. The offeror is liable in its independent offeror capacity for discharging their offeror responsibilities, regardless of whether or not they may also be viewed as performing these activities "on behalf of" or the agent of the generator, as the generator's independent service contractor, or pursuant to a course of dealing with the generator.

Because we believe that the "offeror" approach and the new regulatory requirements in the HMRs concerning pre-transportation functions deal effectively with the issues we raised in the NPRM with respect to shipment preparers and manifest signatures, we are not finalizing the definition of "preparer" we proposed for inclusion in § 260.10. Nor are we expanding or otherwise modifying the meaning of the language in the Item 16 manifest form instruction enabling one to include the words "on behalf of" in connection with a signature, although it will now apply both to generator and offeror signatures. A preparer who assists with pre-transportation functions under the HMRs, and who can certify to the "shipper's certification" statements in the Generator's/Offeror's Certification, may sign this certification and initiate the manifest as an offeror. The "on behalf of" language is retained in the instruction to the signature item in order to effectuate the limited purpose for which this language was added in 1986, that is, to connote that generator (and now offeror) organizations typically act through their employees or agents, and that the employee/agent signatures bind the organizations they represent.

The term "offeror" thus connotes a status in hazardous materials management distinct from that of a shipper or generator. The offeror's responsibilities are limited to the proper discharge of the pre-transportation functions they perform or certify to being properly performed. While it is true that a generator may often elect to perform the pre-transportation functions, these represent only a subset of the full generator responsibilities set out in 40 CFR part 262. Likewise, when an entity other than a generator (*e.g.*, transporter or TSDF) performs pre-transportation functions as an offeror, it does not thereby assume full generator responsibilities. Rather, it assumes only the more limited responsibilities (for the pre-transportation functions) and the distinct liability that attaches to the offeror status. Therefore, a TSDF that only is offering hazardous waste in transportation after rejecting and staging the waste temporarily at its facility would be subject to the offeror responsibilities for the new movement of the waste, but it would not be subject to the full range of generator requirements. This issue is explained further in section IV.B.3. of this preamble.

H.1. *Delayed Compliance Date for Revised Form—Introduction.* When we proposed the manifest form revisions in May 2001, we were interested in according manifest users and authorized states adequate time to phase-in use of the new form. We realized that waste handlers and states would need some time to become familiar with the new requirements, entities with existing stocks of manifests would want to use up their supplies of the "old forms," and new manifest printers would require time to register with EPA and prepare for printing and distributing the revised manifest. Likewise, state agencies would need sufficient time to amend their regulatory programs and adapt their databases to meet the new form requirements.

Cognizant of these factors, we proposed a "delayed compliance date" to allow time to transition to the new form. Under the proposed approach, the final rule would become effective six months after publication in the **Federal Register**, as is typically the case with RCRA regulations. However, for the first two years after the effective date of this final rule, we proposed that manifest users (*i.e.*, waste handlers) could choose which manifest form to use. They could use either the "old" manifest forms or the "new" manifest form established by this rulemaking. Those using the old manifest forms during the transition period would continue to record state tracking numbers and follow the instructions that accompany those forms. Anyone using the new form during the transition period would be required to comply with the form changes, instructions, and procedures applicable to the new form. At the conclusion of the proposed two year delayed compliance period, the revised form would be the only valid manifest that could be printed, distributed or used.

2. *Comment Analysis.* Commenters generally expressed support for the "delayed compliance date" or transition period approach. State agency commenters supported a phase-in period for the new form, but several cautioned that not every state would be able to make the necessary statutory and regulatory changes by the end of the proposed two-year period. However, several other state commenters claimed that two years was sufficient to implement the new form. In addition, state commenters also expressed concerns about their ability to adapt their tracking data bases to the new form requirements, and in particular, the confusion that would occur during the proposed two-year transition period if both the new form and old form were acceptable.

Industry commenters also supported the proposed transition period. However, their comments revealed a greater concern about the possible delay in achieving the benefits of manifest reform due to the transition period. While most industry commenters supported the two-year period, some desired to shorten the transition period to one year. These commenters argued this would ensure that the new form's benefits would be realized sooner in all states, and it would minimize problems associated with supporting dual

administrative systems. State and industry commenters shared the view that the proposed rule failed to clearly address the effect that authorized state program status would have on users' ability to implement the new form during the transition period. In particular, industry commenters urged EPA to clarify that waste handlers could begin to use the new form at any time during the transition period, regardless of whether the states had adopted the revised form requirements in their authorized programs. These commenters were concerned that the states could delay the new form's benefits beyond the two year transition period if they delayed adopting the new form.

3. *Delayed Compliance Date—Final Rule Approach.* After considering all the comments on this issue, we have decided to modify the transition approach from that which we proposed in May 2001. The comments that most influenced our decision were those suggesting that: (1) We should not extend the transition period or delay the realization of the new form's benefits for more than two years; (2) we should be sensitive to states' interests and allow the states a reasonable amount of time to adopt regulations and modify databases to accommodate the new form; (3) we should minimize or avoid any period of dual compliance with both the old and new manifest forms; and, (4) we should clarify more precisely when users may implement the new form.

In order to accommodate these key interests, today's final rule announces a delayed compliance period of 12 months for the new manifest form and its requirements. The delayed compliance period will begin on the effective date of the rule, which is September 6, 2005, and end 12 months later on September 5, 2006. The overall effect of the effective date and the delayed compliance period is that implementation of the revised manifest form and requirements will be delayed until September 5, 2006. We believe that this approach is much easier to implement than our proposed two year transition period. Since it is standard practice for EPA regulations to include a six month delayed effective date measured from the date of publication, today's final rule simply adds an additional 12 months of delayed compliance to allow users, state agencies, EPA and form printers to prepare to use the new form.

Therefore, prior to September 5, 2006, the existing manifest forms and requirements will continue to be implemented. Users and states will have a full 18 months to use up their stocks of existing manifests, and the states will be able to utilize this time to revise their regulatory requirements and adopt any necessary changes to their databases. Since only the existing forms will be accepted during this time, there should be no confusion about which form to use during the initial 18-month period after this final rule is published, nor any problems arising from dual implementation of the old and new forms. In addition, EPA will have adequate time to establish the manifest registry system, and registrants should have ample time to register with EPA and prepare to print and distribute the new form during the 18-month period.

After September 5, 2006, only the new manifest form and requirements established under today's final rule will be valid and acceptable for use. All shipments of hazardous waste initiated by generators or offerors on or after this date must be accompanied by the revised manifest form. Manifests initiated under the old forms and procedures by generators or offerors before this date may continue to accompany waste shipments that are already in transportation after the delayed compliance date for today's rule. By the end of the 18-month delayed compliance period, we expect that all necessary preparations for the use of the new form should be completed, so that no significant hardship should result from requiring the exclusive use of the revised form and requirements after this date.

4. *Delayed Compliance Date—Interaction with DOT Authority.* Since the promulgation of the Uniform Manifest by EPA and DOT in March 1984, the Agencies have emphasized that the RCRA manifest derives its implementation authority from both RCRA Subtitle C and DOT's Hazardous Materials ("Hazmat") laws. The manifest's joint RCRA/Hazmat nature affects the implementation of the revised manifest announced in today's final rule, particularly with respect to implementation of the new form after the rule's delayed compliance date. Therefore, this section of the preamble explains the interaction with hazardous materials authority, since this interaction produces results that are not typical of other RCRA requirements based on non-HSWA authority (*i.e.*, statutory authority predating the Hazardous and Solid Waste Amendments of 1984).

For other RCRA Subtitle C regulations based on pre-HSWA authority, federal revisions such as today's rule do not take effect until the states adopt the new requirement under state law and receive authorization from EPA for the program revision. However, as we explained in the 1984 Uniform Manifest Rule, any changes that EPA and DOT adopt to the hazardous waste manifest may be made effective immediately on the effective date of the regulation, regardless of when states become authorized for the revisions to the manifest system. This result follows from the DOT's authority under the hazardous materials laws to regulate uniformly the requirements for the use and content of shipping papers. As we said in the 1984 rule, "* * * These DOT amendments operate independently of RCRA requirements and will be applicable in all states, regardless of their authorization status" (55 FR 10490 at 10492 (March 20, 1984)). However, unlike the 1984 Rule, today's Manifest Form Revisions Rule includes an additional 12 months of delayed compliance measured from the effective date of the rule. EPA and DOT agree that there are sound reasons for this delayed compliance period, which has the effect of delaying the actual implementation of the new form until September 5, 2006. Thus, today's final rule will not be implemented immediately on the rule's effective date. Rather, on the delayed compliance date of September 5, 2006, today's final rule and the new manifest form will be implemented under DOT's authority to regulate these matters uniformly, regardless of RCRA state authorization status. Indeed, when today's final rule is in fact implemented on September 5, 2006, DOT will have the express statutory authority to preempt any state and local requirements that are not "substantively the same" as the federal manifest requirements announced in today's rule. This results from the inclusion of the preparation, execution and use of shipping documents among the so-called "covered subjects" within the express preemption provisions of the Hazmat statute and regulations. See 49 U.S.C. 5125(b)(1), 49 CFR 107.202(a)(3).

Therefore, after the delayed compliance date for today's rule, only the revised or new manifest requirements will remain valid. Federal and state officials may enforce the new manifest requirements under the authority of the federal hazardous materials transportation laws. They may also enforce the new manifest under the state law authorities of the RCRA authorized states at such time as the states adopt the new form requirements and obtain authorization for them from EPA. However, it must be emphasized that on the delayed compliance date, the new manifest requirements will become applicable uniformly in all states under

the authority of the hazardous materials transportation laws, regardless of state authorization status. While the new manifest requirements will also take effect as RCRA requirements once the authorized states obtain authorization for their program revisions adopting the new form, the new form and requirements will be applicable in all authorized states under hazardous materials authority in the interim period between the delayed compliance date and the date the states' program revisions are authorized by EPA.

III. Manifest Form Acquisition and Registry

A.1. *Manifest Form Acquisition—Introduction.* The May 2001 NPRM discussed 40 CFR 262.21 (*i.e.*, acquisition hierarchy), which requires generators to look first to the consignment state's manifest requirements (*i.e.*, the state in which the hazardous waste shipment will be transported and subsequently managed). If that state supplies a manifest and requires its use, the generator is required to use that state's manifest for the waste shipment. If, however, the consignment state does not supply a manifest, but the generator's state supplies one and requires its use, then the generator must use the manifest required by its state. If neither the consignment state nor generator state supplies a manifest, the generator can obtain the manifest from any source. In addition, 40 CFR 271.10 requires states to follow the federal format for EPA Manifest form 8700–22, and, if necessary, EPA Form 8700–22A but allows states the option to supplement the federal manifest format, to a limited extent, provided that their manifest complies with the consistency requirements of the Hazardous Materials Transportation Act (49 U.S.C. 1801 *et seq.*). Thus, states are able to print and distribute their own manifests and are afforded some discretion to include state-specific instructions for optional fields, minor formatting variations and variations for copy submission schemes. In May 2001, EPA proposed revisions to these manifest acquisition regulations, limiting the types of information that state agencies could require on the new form.

The following sections discuss the proposed changes to the manifest acquisition system, Registry, printing specifications, copy submissions, and the regulatory changes to 40 CFR 262.21 resulting from today's rule.

2. *Proposed Manifest Acquisition Provisions.* EPA proposed to remove the manifest hierarchy acquisition system and replace it with a standardized acquisition approach. We also proposed to establish a new operational function, called the "Registry," in which we would provide minimal oversight to ensure that the new forms are printed properly. According to the proposed acquisition approach, state agencies could no longer require generators to use their state's manifest, and users could obtain the manifest from a number of sources. State agencies could print the new form, but would have to register with EPA first. Similarly, the new acquisition system would allow waste handlers (generators, transporters and TSDFs) and commercial business form printers to print the form, but they, too, would be required to register with the Agency before doing so. Thus, state agencies, generators and other waste handlers that need the form could register with EPA to print the form themselves or they could obtain manifests from other registered sources.

In general, industry commenters supported the proposed manifest acquisition approach, indicating that it would reduce the administrative burden on certain waste handlers, particularly those who conduct business in multiple states that require use of their state manifest. State agency's comments on the proposed changes to the manifest acquisition system varied. State commenters who supported the proposed changes also suggested that we post certain state-specific information such as state waste codes, state mailing address and state copy submission requirements on an EPA hosted Web site. State commenters who criticized the new manifest acquisition approach did so for several reasons.

First, the proposed approach would remove states' ability to control exclusively the manifest production and distribution system. According to these commenters, the proposed changes would economically disadvantage those states that currently sell blank forms because they will lose the revenue they currently collect from selling manifests.[2]

Following discussions with most of the states that collect fees for selling blank forms, EPA has learned that these states generally use the revenues from selling blank manifests only to recoup their printing costs, and not to fund other components of their waste programs. Some states also have collected fees to offset the costs of processing collected manifest forms (*e.g.*, entering data into tracking databases), and in a few cases, the revenues collected from selling blank forms have been used to offset these processing costs as well as the printing costs. However, in our discussions with the states on manifest form fees, we found that several states no longer collect their processing fee as part of the sale price of the blank forms, but as a distinct charge divorced from the sale of the forms. Other states which collect these fees and consulted with us on the development of this rule also have indicated that they will in the future collect their processing fees by a means not tied to the sale of blank forms. Since most states only are recovering their printing costs when they sell manifests, and the states charging processing fees also have identified other means not tied to selling forms for recovering their processing costs, we do not believe that the proposed acquisition approach for the revised manifest would impact significantly these state program revenues.

The states with manifest tracking programs typically use their manifest data to assess additional waste management fees tied to the amount of waste being generated or managed in the states. The proposed acquisition approach would not impair states' ability to assess and collect these waste management fees, and we are encouraging the use of additional state waste codes as a means to flag state-specific requirements that would have significance to collecting such fees. Thus, if there are limited instances where a state is using revenues from selling blank manifests for other waste program purposes beyond offsetting form printing costs or processing costs, we believe that any reduction in such revenue tied to the proposed acquisition approach could be recouped by adjustments to the waste management fees. After considering these comments and the information we learned from discussing the revenue issue with additional states, we do not believe that the revenue issue raised by commenters is sufficient enough to warrant abandoning or altering the proposed acquisition approach.

As a second key concern, several state commenters argued that the new manifest acquisition approach would result in less net burden reduction than the proposal suggested. These commenters suggested that the proposed acquisition approach provides neither the time and burden savings nor the decreased complexity that we claimed

[2] Public data sources we reviewed in 2003 indicate that 12 state governments (AR, CA, CT, DE, IL, LA, MD, MI, MO, NH, NJ, PA) may collect revenues from direct assessment of fees during distribution of state-printed RCRA manifests, totaling an estimated $1.16 to $2.44 million per year (see "Economics Background Document" for basis of this estimate). However, as of 2004, we estimate there may only be seven states collecting manifest printing and distribution fees.

would result to the regulated community. They noted that the proposed approach would continue to require generators to contact all states in which they conducted business to obtain information on individual state requirements (*e.g.*, information on requirements for generator form submission to generator state, waste codes, etc.). Finally, some state commenters argued that the proposed changes are in fact more confusing because they prohibit the inclusion of state-specific information and instructions on the form. One commenter stated that eliminating the state's ability to print complete directions on the back of the manifest would increase burden on a large percentage of waste handlers who would need to maintain a separate filing system for state directions.

3. *Final Manifest Acquisition Provisions.* The final rule substantively retains the proposed manifest acquisition and Registry regulations at § 262.21. Under the final § 262.21 manifest acquisition requirements, a waste generator, transporter or TSDF can register with EPA to print its own manifests, or it could obtain manifests from other registered sources such as states, commercial printers or other waste handlers. The final manifest acquisition requirements do not allow states to require generators to use their state form.

The Agency recognizes that although today's action standardizes the manifest acquisition provisions, generators must still be cognizant of state-specific information, such as state waste code and generator manifest copy submission instructions. Generators will be able to determine this state-specific information from a variety of sources, such as Web sites, state regulations and other published materials, or contacts with State agency staff. We, however, do not agree with commenters' argument that waste handlers will need to maintain a separate filing system for state directions. The Agency notes that it had proposed to eliminate all but two optional fields (*i.e.*, Waste Codes and Handling Codes, previously Items I and K, respectively) from the form and has since made these two blocks mandatory with today's action. (*See* sections II.E.4 and II.F.6 for further discussion on management method codes and waste codes, respectively.)

Further, in response to commenters' suggestions to provide additional support to industry under the revised manifest procedures, EPA is planning to design a Web site to: (1) Assist registrants to prepare their applications; (2) provide a means for both printers and the public to communicate with the Registry; and, (3) assist waste handlers in completing their manifests to accompany hazardous waste shipments. In addition, we would post the following guidance documents (once they are finalized) at the EPA Web site:

- Registration instructions that will lay out the specific requirements/components of the application package, along with examples of what EPA expects to see (*e.g.*, examples of quality control procedures for tracking numbers, definition of terms, etc) and a Q&A document of frequently asked questions.
- A guidance document that sets forth print specifications that registrants may use in preparing manifest samples for Registry evaluation.
- An up-to-date list of all approved registrants, contact information, and approved numbering schemes. The list would allow: (i) Prospective registrants to develop and propose unique suffixes; (ii) states to learn which entities are printing manifests in their state; and, (iii) the public to contact registrants for forms; and
- Information and/or links to assist waste handlers in completing the manifest, including the manifest instructions, a description of the delayed compliance date, and related matters, applicable state requirements (*e.g.*, state manifest copy submission requirements, contacts, waste codes), federal waste codes and Hazardous Waste Report Management Method codes.

With regard to the state manifest programs' potential loss of revenue, we understand these concerns, but as we explained above, after a more thorough consideration of this issue, we believe that the revenue losses that will result from the new acquisition approach will either be insignificant or can be avoided by the states as they plan for the implementation of the revised form.

B.1. *Proposed Manifest Registry and Printing Specifications—Introduction.* We proposed a Registry system that described procedural mechanisms and offered federal printing specifications to ensure that printers used unique tracking numbers on each manifest, and to reduce the possibility of printing many variations of manifest forms. The manifest tracking number would be a unique pre-printed 11-digit number (*i.e.*, the applicant's proposed unique three-letter prefix followed by eight numeric digits). EPA proposed to prohibit people from assigning manifest tracking numbers and distributing the form without submitting an application to EPA and receiving approval of their manifest tracking number system. In general, the proposed regulations required the following administrative procedures and printing specifications:

- Applicants must register with EPA to obtain manifest tracking number system approval and to ensure that they adhere to federal printing specifications and procedures. Prospective registrants must submit their company's profile information (*e.g.*, company name, address, EPA Identification number, mailing address, etc.), their proposed, unique three-letter prefix and a detailed description of their numbering system (*i.e.*, creating and assigning of 11-digit alphanumeric manifest tracking numbers to manifests);
- Applicants must submit a manifest proof;
- Applicants must sign a certification to ensure tracking numbers will not be duplicated intentionally and, if applicable, will adhere to all printing specifications;
- The form must be printed in the same format as EPA Form 8700–22 and 22A, according to the federal printing specifications at 40 CFR 262.21(b);
- Manifest tracking number must be assigned in accordance with a numbering system approved by EPA and must be pre-printed on the form;
- Applicants cannot add additional boxes on the form;
- Applicants cannot delete existing boxes on the form;
- Applicants must print the form with manifest dimensions of 8½ by 11 inches;
- Applicants must print the form in black ink so that it can be photocopied or faxed;
- Applicants must print the standardized manifest instructions, provided in the appendix to Part 262, on the back of the manifest; and,
- Applicants must print the form as a six-copy form and must indicate on the form that copies of the form are distributed as follows:

Page 1 (top copy): "Designated facility to consignment state" (if required);

Page 2: "Designated facility to generator state" (if required);

Page 3: "Designated facility to generator";

Page 4: "Designated facility copy";

Page 5: "Transporter copy"; and,

Page 6 (bottom copy): "Generator's initial copy."

In the proposal, we stated that generators should provide a photocopy of the manifest if their state requires it. The proposal also noted that a completed manifest may contain fewer pages if the state does not require submission of forms; however, printers are required to print six-copy forms. Under certain circumstances (*e.g.*,

exports, imports, additional transporters, exception reporting, and/or states requiring additional copies), more than six copies of a manifest may be necessary. In these cases, the generator or transporter must photocopy the most legible copy of the form available to ensure that the extra manifest copies are legible.

In general, industry commenters supported the Registry process, but indicated that EPA should provide greater detail on the Registry and the tracking number system than we provided in the proposal. Commenters also requested that information be provided to the regulated community so that they can be assured that prospective form registrants are granted authorization by EPA to print and distribute manifests forms. One industry comment suggested that EPA provide more information in areas such as: procedures for registering and applying for the unique numbers; information on how to contact the Registry; the mechanism for obtaining manifest numbers; and a verification process by which the public can confirm that waste handlers are authorized to use their assigned numbers, etc. Another commenter recommended that EPA develop a registration application form for the manifest and make it available to waste handlers and states. Industry commenters also suggested that EPA conduct the Registry electronically and by mail so that waste handlers and states could register and obtain unique numbers via the internet.

State comments on the proposed Registry and manifest tracking number system varied. Some state commenters favored the proposed Registry provided that EPA implements procedures which ensure the printing of non-duplicate numbers. A few of these commenters also suggested that EPA post a Registry of printers on the EPA Web site so that they and others could have links to the Web site and could access manifest information easily. Other state commenters supporting the proposed Registry suggested that EPA assign blocks of numbers to entities and make information regarding tracking number assignment for printers available to states. One commenter suggested that EPA should ensure its numbering scheme does not duplicate states' current numbering conventions. However, several state commenters expressed concern that delegating printing responsibility to industry would lead to a hodgepodge of different tracking schemes or other difficulties. Some of these commenters suggested that states control the distribution of blocks of tracking numbers.

We understand that the states want assurance that approved registrants will pre-print a unique tracking number on each manifest. However, EPA does not believe that it or state agencies must have strict control assigning and distributing tracking numbers. We believe our involvement is necessary to some extent, but only should be operational in nature. In other words, we will implement policies and procedures needed to run the Registry, provide the necessary guidance and/or detailed specification for designing the manifest, and set forth procedures for approving or denying form printers' applications.

Commenters also provided suggestions for the form printing specifications. Several commenters suggested that EPA: Include hash marks in Item 14; prohibit the use of corporate logos, advertising or other information not explicitly allowed in the rule; eliminate shading on the form; use a black border to designate sections of the manifest; ensure minimum quality of paper; and, ensure readability of instructions on the back of the manifest. EPA researched state manifests and consulted five commercial printers and four states to identify additional specifications that the Agency should require in today's rule or in guidance. Although EPA generally agrees with the commenters' suggestions, we also recognize, based on our research, that certain printing specifications should be left to the discretion of printers. For these reasons, the final rule leaves a considerable amount of discretion to the registrant in designing its manifest. Refer to section III.B.3 of this preamble for a discussion of the final print specifications.

2 *Final Manifest Registry.* The registration approach being finalized today under § 262.21(a) through (e) reflects our desire to fully evaluate the ability of the registrant to tightly control the use of its tracking numbers and to print an acceptable manifest. In many respects, our final Registry approach resembles the proposed approach. However, we have expanded the proposed approach, keeping commenters' concerns and suggestions in mind. Most notably, the final approach requires a registrant to submit two separate application components to the Agency. This differs from the proposed approach, under which registrants would have submitted a single application to the Agency. EPA revised the proposed approach because we determined that the Agency would not have received enough information in one application submission to effectively evaluate the registrant's printing capabilities. In particular, the Agency would not have received a proof of the manifest for which approval is requested. Because the print specifications being published today leave considerable discretion to the registrant to design its manifest, the Agency believes it is essential that we evaluate and approve samples of the registrant's forms before they are used or sold. Hence, the final Registry approach requires the registrant to submit a fuller description of its printing operations and several samples of its manifest.

Although some commenters favored EPA developing a Registry application form, we have chosen not to do so. We believe that discussions given in today's final rule detailing the application process, supplemented by posting Registry information on the EPA Web site, are prescriptive enough for registrants to provide sufficient information. We also do not anticipate receiving a substantial number of applications. Because on these factors, we do not believe an application form is warranted.

Section 262.21(a)(1) provides that the registrant may not print, or have printed, the manifest for use or distribution unless it has received approval by EPA to do so under § 262.21(c) and (e). Section 262.21(a)(2) provides that the registrant is responsible for ensuring that the organizations identified in its application are in compliance with the approved application and the requirements of § 262.21.

Because the § 262.21(a) provisions hold the registrant directly accountable for compliance, we fully expect the registrant to use whatever mechanisms are available to ensure that the organizations and companies in its application also comply with the requirements. This could include, for example, the use of organizational controls (*e.g.*, clear lines of communication, accountability and oversight) and production-related controls (*e.g.*, the use of quality management systems in the printing process). It also could include the use of contract terms and conditions that encourage strong performance by contracted firms.

In addition, § 262.21(a)(2) provides that the registrant is the only entity that can assign manifest tracking numbers to its manifests, except that the registrant can delegate this activity. We believe this provision is needed to ensure tight control and accountability over its numbers. One of our highest priorities under the Registry is ensuring that each manifest used or distributed (*e.g.*, sold to the public) has a unique manifest

tracking number. Because approved registrants will be able to assign and pre-print tracking numbers onto manifests without any direct Agency oversight, we believe it is critical that the registrant be held accountable for ensuring that each manifest has a unique tracking number.

To become registered, a registrant must submit an initial application to the EPA under § 262.21(b). The application must provide basic information on the registrant's organization (*e.g.*, contact information). The application also must include a description of the scope of the operations that the registrant plans to undertake in printing, distributing and using its manifests. The registrant must describe whether it intends to print its manifests in-house or through a separate (*i.e.*, unaffiliated) printing company pursuant to contract.

In this regard, EPA recognizes that registrants will likely propose various ways to print the manifest. We expect that some registrants will be waste handler companies or forms brokers that do not have in-house printing capabilities. These companies may contract with a separate printing company to print their manifests. Other registrants might be commercial printers that may either print the forms themselves or outsource the print job to a subcontractor. Finally, there may be state agencies that will register to print the manifest, but contract with a commercial printer for these services.

If the registrant intends to use a separate printing company to print the manifest on its behalf, the application must identify this printing company. The application must discuss how the registrant will oversee the company to ensure compliance with all applicable requirements. If this includes the use of intermediaries (*e.g.*, prime and subcontractor relationships), the role of each must be discussed.

As mentioned earlier, one of our highest priorities is ensuring that each manifest used or distributed to the public has a unique manifest tracking number. To this end, the application must describe how the registrant will ensure that a unique manifest tracking number will be pre-printed on each manifest. The application must discuss the internal control procedures to be followed by the registrant and unaffiliated companies to ensure that numbers are tightly controlled and remain unique. In particular, the application must describe how the registrant will assign manifest tracking numbers to its manifests. If computer systems or other infrastructure will be used to maintain, track, or assign numbers, these should be indicated. The application also must indicate how the printer will print a unique number on each form (*e.g.*, crash or press numbering).

The rule does not specify how much information the registrant should provide in describing its processes and procedures for assigning and controlling numbers. This is left to the registrant's discretion. For registrants that propose a relatively simple printing arrangement (*e.g.*, a registrant that will assign tracking numbers directly to an in-house printer), the description may be relatively straightforward. Other organizations may propose more complex arrangements, *e.g.*, a waste handler corporation that will delegate tracking numbers to multiple different facilities within the corporation. In this case, the registrant will need to indicate how the numbers will remain unique across facilities. In those cases where a registrant will rely on a commercial printer to print their manifests, the registrant should explain the control processes that it and the commercial printer will follow to ensure that the registrant's tracking numbers will be unique and not confused with the tracking numbers of any other registrant who may contract with the same printer for its manifest printing jobs. In the end, each registrant will need to use its discretion to determine the amount of information necessary to demonstrate that tracking numbers will remain unique, given its particular printing arrangements and the complexity of its operations.

The application also must describe the other quality procedures to be followed by each establishment and printing company to ensure that all required print specifications are consistently achieved and that printing violations are identified and corrected at the earliest practicable time. Finally, the application must indicate how the registrant intends to use the manifests (*e.g.*, whether it intends to use them for its own hazardous waste operations, sell them, or otherwise make them available to generators).

Under § 262.21(b)(6), the registrant must describe the qualifications of the company that will print its manifest. A registrant that intends to print the manifest in-house (*i.e.*, using its own establishments) must describe the qualifications of these establishments to print the manifest. Registrants that intend to use a separate printing company must describe the qualifications of this company. The registrant may use readily available information to do so (*e.g.*, corporate brochures, product samples, customer references, Web site address), so long as such information pertains to the establishments or company being proposed.

The registrant also must propose a unique, three-letter suffix to be used in pre-printing a unique manifest tracking number on each manifest. EPA evaluated several different schemes before selecting a three-letter suffix. EPA decided to require a suffix because of its concern about duplicating manifest tracking numbers previously used by the states on their forms. States' manifest tracking numbers normally begin with a two- or three-letter prefix, followed by six or seven digits. Under the tracking number scheme being finalized today, each registrant's pre-printed number must consist of nine digits followed by its unique suffix. As mentioned earlier, EPA is planning to design a Web site, and would include a table that identifies all suffixes that have been approved. A prospective registrant would need to consult the Web site to determine which suffixes have not been approved and are therefore available. The registrant can propose any available suffix. EPA expects that most approved registrants will burn their suffix directly onto a printing plate. Each manifest can then be numbered sequentially as it passes through the printing process.

A duly authorized employee of the registrant must sign its application to certify that the organizations and companies in its application will comply with the procedures of the application and requirements of § 262.21 and that it will notify EPA of any duplicated manifest tracking numbers on manifests that have been used or distributed as soon as this becomes known. EPA believes this certification is important to emphasize to the registrant the importance of ensuring that its printing operations produce consistently high quality manifests, that tracking numbers be tightly controlled, and that print violations be corrected promptly.

Under § 262.21(c), EPA will either approve the application or request additional information or modification before approval. Once it is approved, EPA will email the registrant an electronic file of the manifest, continuation sheet, and manifest instructions and ask it to submit three fully assembled manifests that meet all of the specifications at Section 262.21(f). The registrant also must describe its manifest's paper type, paper weight, ink color of the manifest's instructions, and binding method (See § 262.21(d)). If screening of the ink was used for the manifest's instructions, the registrant must indicate the extent of the screening. The registrant need not

submit samples of its continuation sheet, so long as the continuation sheet will be printed using the same paper type, paper weight, ink color of the instructions, and binding method of the manifest form.

After EPA receives the form samples, we will evaluate them to determine if the specifications of § 262.21(f) have been met (*See* § 262.21(e)). For example, we will evaluate them to determine whether they have acceptable copy-to-copy registration, imprints appear legibly on all copies, and the ink of the manifest's instructions does not bleed through the front of the copies.

If the manifests pass these tests, EPA will approve the registrant to print, distribute and use the manifest as desired. The registrant may not use or distribute its forms until EPA approves them. EPA anticipates the evaluation of the sample forms and their subsequent approval will take forty-five days. However, this process conceivably could extend beyond the default forty-five day time frame if unforseen circumstances arise, or we determine that the registrant's forms are unacceptable. If EPA finds the forms unacceptable, we will request additional information or modification before approving or denying them. An approved registrant must print its manifest and continuation sheet according to its application approved under § 262.21(c) and the print specifications at § 262.21(f). The forms also must be printed according to the paper type, paper weight, ink color of the instructions, and binding method of the approved form sample.

For the registration process to be successful and attractive to registrants and printers, we understand that we must provide adequate support to maximize the likelihood that their manifests will pass EPA's tests on the first try. EPA recognizes that most printers will run a small test batch of forms to produce the form samples for EPA review, and thus, they will incur some production costs. EPA is keenly interested in ensuring that registrants develop an approvable manifest on the first try so they do not incur any added expense of redesigning their forms based on EPA's comments on the original samples. To this end, EPA will provide an electronic file of the manifest, continuation sheet, and manifest instructions to registrants, which will relieve them of the need to completely typeset their forms. Using EPA's electronic file should ensure that their forms have exact registration to EPA's forms and do not contain any typographical errors.

In addition, EPA is planning to post manifest print guidance on its Web site. The guidance will set forth examples of manifest specifications that we have found to be acceptable under our tests (*e.g.*, acceptable paper weights, ink colors for the instructions). Registrants need not follow these recommendations, as there are many other combinations of specifications that will be acceptable. However, the registrant might increase its likelihood of being approved if it considers the guidance in designing its forms. The guidance also will describe how we will perform our tests of the form samples under § 262.21(e) and will discuss the timeframe needed to review and approve registrants to print and distribute their manifest forms. While the registrant is not required to conduct such tests, they can increase its likelihood of approval by performing such tests on its forms before submitting them to the Registry. By setting forth print guidance and explaining our tests, we believe we are creating a transparent process in which the registrant fully understands how it is being evaluated and how it can develop an approvable manifest.

Although many commercial printers agree with our requirement under § 262.21(d) for registrants to submit form samples that meet the print specifications of § 262.21(f), we note that some commercial printers have expressed concern about it. They argue that three form samples will not provide us with much useful information on a registrant's ability to consistently print forms to our satisfaction. This is because each print job can vary (*e.g.*, brightness of the paper and the expertise of the print supervisor on shift can vary). Instead, some commercial printers have suggested that we require each registrant to typeset the form (*i.e.*, prepare it from scratch in a computer program), submit a proof on bond paper that shows the format and appearance of the form, and indicate the paper type, binding method, and other specifications they intend to use. Because these commenters believe that printing the manifest is relatively straightforward, such a submittal should be all we need to approve the registrant and be confident that it will produce adequate forms. They indicate that this approach also will be less expensive than requiring form samples that meet the § 262.21(f) specifications.

We disagree with these printers in several respects. First, we acknowledge the several limitations of evaluating a multi-part form sample. However, we believe the requirement for form samples provides critical information on the registrant. Form samples demonstrate the competence of the registrant to print the form to our satisfaction under the § 262.21(f) specifications. For many commercial printers, this will be straightforward. States have relied on commercial printers for years to print their forms, and these printers have developed an institutional knowledge and methods for ensuring appropriate binding, ink color for the instructions, and other aspects.

We expect, however, that certain prospective registrants will be completely new to multi-part forms printing and may not have the necessary knowledge and capabilities. For example, certain hazardous waste handlers may want to print their own forms, but lack prior experience in forms printing. If the Registry required only that the registrant typeset the form, print it on bond paper, indicate the type of paper and other specifications, and submit these materials with its application, anyone with a personal computer could register, including persons with no demonstrable capability to print the forms with consistent quality on a large scale.

Although we do not want to discourage legitimate organizations from registering, we must ensure that each registrant is competent to print the form. Because the Registry will be open to everyone, we feel an obligation to the states and waste handlers—those who will use the forms—to separate legitimate registrants from the others. In effect, a registrant who submits form samples meeting the § 262.21(f) specifications will be demonstrating its competence under the Registry.

In addition, we believe form samples will be necessary for us to determine if the registrant's forms meet the § 262.21(f) specifications. Although we plan to provide guidance on our Web site on acceptable or approved specifications (*e.g.*, paper weight, etc.), we fully expect that a number of registrants will submit forms samples whose specifications are unfamiliar to us. In such situations, we may not be certain that the proposed forms will be adequate. Even if the registrant also provides us with samples of the blank paper it intends to use (*e.g.*, so we could write on them to test legibility), we could not be sure that the forms would be fully compliant with the § 262.21(f) specifications. For example, we could not be sure of the extent to which the registrant's proposed ink color of the instructions might bleed through the front of the copies when photocopied, scanned, or faxed. We also may not be certain whether a registrant's proposed binding method will ensure that copies

do not become inadvertently detached during normal use of the form. There are different ways to bind copies together, some of which may not be effective. The only way for us to evaluate these aspects of the form confidently and fairly is for the registrant to submit form samples. Because of these reasons, the final rule includes the requirement for registrants to submit to the Registry three form samples that meet the § 262.21(f) specifications.

Under Section § 262.21(g), a generator or other waste handler may obtain its manifests from any registered source (*e.g.*, a state agency, commercial printer, or other waste handler). In completing its manifest, the generator also must determine whether the generator state or the consignment state for a shipment regulates any additional wastes (beyond those regulated Federally) as hazardous wastes under these states' authorized programs. Generators also must determine whether the consignment state or generator state requires the generator to submit any copies of the manifest to these states. In cases where the generator must supply copies to either the generator's state or the consignment state, the generator is responsible for supplying legible photocopies of the manifest to these states. As mentioned above, EPA intends to post or provide links to state-specific information on its Web site regarding copy distribution and state waste codes. Although this information is meant to assist waste handlers in completing their forms, they should note that there may be other sources of this information, and that it is the responsibility of the waste handlers to determine what state-specific information is required on their manifests.

Subsequent to its approval to print the manifest, a registrant may want to update or change its application approved under § 262.21(c) or its manifest or continuation sheet approved under 262.21(e). To this end, § 262.21(h) establishes procedures for updating or changing the approved application and form. Section 262.21(h)(1) provides that an approved registrant may update the information in the application approved under § 262.21(c) by revising and submitting it to EPA, along with an indication or explanation of the change. EPA does not expect that registrants will often make changes to the substantive portions of its application (*e.g.*, quality control procedures under § 262.21(b)(5)). Rather, EPA expects registrants will simply update certain pieces of information as necessary (*e.g.*, company name or phone number). EPA either will approve or deny any substantive revisions. If EPA denies a substantive revision, it will explain the reasons for the denial and request that the registrant modify its proposed substantive changes before EPA will consider issuing an approval.

Under § 262.21(h)(2), a registrant may request a new manifest tracking number suffix (*e.g.*, if it needs additional numbering capacity). The registrant must propose a new unique suffix, along with the reason for requesting it. EPA will either approve the suffix or deny the suffix and provide an explanation for the denial. EPA expects that a denial would be rare, since our Web site will identify suffixes that are already approved and therefore unavailable.

Section 262.21(h)(3) addresses changes to an approved registrant's manifest forms, continuation sheets, or manifest printing company. As provided in § 262.21(e), an approved registrant must print the manifest according to its application approved under § 262.21(c) and the manifest specifications in § 262.21(f). It also must print the manifest according to the paper type, paper weight, ink color of manifest instructions and binding method of its approved form. Section 262.21(h)(3) provides that, if an approved registrant would like to change its approved manifest or continuation sheet in regard to paper type, paper weight, ink color of manifest instructions, or binding method, it must submit revised samples to the Agency for review and approval. The registrant cannot use or distribute its revised forms until EPA approves them. The registrant must address the Agency's comments or questions before the revised forms can be used or distributed. In the meantime, the registrant can continue to use the forms for which it was originally approved.

We recognize that this approach may, at first glance, seem overly burdensome to some registrants. In speaking with commercial printers, we found some of them supportive of the requirement for form samples and others opposed to it. Printers opposed to the requirement expressed concern that submitting a form sample each time a registrant changes the specifications will be burdensome and delay its customers' print jobs. They also were concerned about the uncertainty associated with EPA review of forms that have already been printed and are ready for shipment to the customer.

As an initial point, EPA does not agree with the commercial printers that the requirements at 262.21(h)(3) are overly burdensome. EPA is allowing the registrant to run its print job as usual and requesting only that the registrant provide a few samples of the revised forms in the mail. If the registrant takes care in redesigning its manifest (*e.g.*, referring to EPA print guidance and testing its revised manifest before submittal to the Registry), the registrant should fully expect its revised forms to be approved.

Beyond this, EPA expects that most registrants will be forward-looking in their approach to printing the manifest. They will determine what their desired paper type, paper weight and other specifications are when they initially register, so that they will be comfortable with them under their approved registration. If a printing company seeking to register with EPA has two types of paper in its inventory, it may decide to submit two sets of samples to the Registry, to get approval for both paper types. A printing company also might want to get approved for two paper types so it has the flexibility to use one paper type or the other in the event that one paper type is discontinued by the manufacturer or goes up in price. There is nothing in the regulations to prevent a registrant from submitting multiple sets of samples under § 262.21(d). Further, EPA expects that some approved registrants will submit samples of their revised forms to the Registry in advance of their receiving customer orders for them. Obtaining EPA's approval of the revised forms in advance of customer requests will obviate any potential delay in printing the customer's order.

Section 262.21(h)(3) also requires a registrant to submit new manifest samples, along with the printer's qualifications to print multi-part forms, if it would like for a new company to print the manifest. For many of the same reasons explained above, the Agency understands that printers vary in their competence to print the forms. EPA believes it is essential to evaluate all companies that will print the manifest by reviewing its forms and print qualifications.

As provided by § 262.21(i), if, subsequent to its approval under § 262.21(e), a registrant typesets its manifest and continuation sheet instead of using the electronic file of the form provided by EPA, it must submit a sample of the manifest and continuation sheet to the Registry for approval. EPA recognizes that most registrants that get approved will print one or more batches of forms for use or sale. After the print jobs are done, the printer will destroy or recycle the printing plate and move on to the next print job. When it wishes to print more manifests, the printer will need to create a new printing plate. We are not requiring the registrant to resubmit a sample of its approved

manifests each time it develops a new printing plate. As mentioned earlier, we will provide each registrant with an electronic file of the manifest, continuation sheet, and manifest instructions. We fully expect them to save the file directly as an electronic image (or negative) of the forms in their computer system to recreate their printing plate when needed. In this way, the Agency expects minimal typesetting and therefore minimal risk of human error in replicating the appearance and format of EPA's forms. As long as all of the approved registrants use EPA's electronic file and avoid typesetting their forms, we do not see the need to approve the form each time the printer develops a new plate for them.

Section 262.21(j) provides that EPA may, at its discretion, exempt a registrant from the requirement to submit a form sample under Sections 262.21(d) or (h)(3). A registrant may request an exemption from EPA by indicating why an exemption is warranted. We envision several reasons why a registrant might request an exemption.

For example, it would not be unusual for two or more registrants to rely on the same commercial printer to print their forms under the Registry. If a commercial printer prints the manifest on behalf of an approved registrant and then, subsequently, a second registrant applies to use that same printer, we do not believe it is necessary for the second registrant to submit new form samples under § 262.21(d), so long as the same printer will be printing the manifest using the same paper type, paper weight, ink color of the instructions and binding method of the form samples approved for the first registrant. After the printer's forms get approved the first time, the second registrant could submit the printer's original form samples for evaluation under the Registry. Once approved under § 262.21(e), the second registrant must use that printer to print its forms according to the specifications at § 262.21(f), as well as the paper weight, paper type, ink color of the instructions, and binding method of the printer's originally approved form samples. It also must pre-print a unique manifest tracking number on each manifest using its approved suffix.

Another common situation would be where a registrant gets approved to print a manifest using a certain paper type, paper weight, ink color of the instructions, and binding method, and subsequently wants to change one or more of these specifications. Under § 262.21(h)(3), the registrant must submit three form samples and get EPA approval. As discussed earlier, we believe the § 262.21(h)(3) requirement is important for evaluating whether a registrant's revised manifest meets the specifications at § 262.21(f). However, there might be some exceptions to this. For example, we do not believe we need to evaluate a revised form sample if we are aware that the revised specifications have already been approved for another registrant. As we evaluate and approve form samples under §§ 262.21(e) and (h)(3), we may post approved form specifications (*e.g.*, paper type, paper weight) on our Web site. If an approved registrant would like to change one or more of its form's specifications to another approved specification on our Web site, the registrant may notify EPA that it intends to do so, in lieu of submitting revised form samples. EPA could then relieve the registrant of the requirement to submit revised form samples.

Section 262.21(k) provides that an approved registrant must notify EPA by phone or e-mail as soon as it becomes aware that it has duplicated tracking numbers on any manifests that have been used or distributed to other parties. The states have emphasized to EPA the importance of registrants notifying EPA of even minor duplications of tracking numbers. Therefore, EPA has included this requirement to ensure registrants notify EPA of such occurrences. Upon notification of a duplicated number, EPA will try to determine the location of the forms in question and contact the customer to prevent the use of the forms. If this is not possible, we will notify the state manifest programs that the forms are in circulation.

Under § 262.21(l), if, subsequent to approval of a registrant, EPA becomes aware that the registrant's approved form does not satisfactorily meet the print specifications in paragraph (f) of this section, EPA will contact the registrant and require modifications to the form as needed. As discussed earlier in this preamble, EPA will request and evaluate samples of the registrant's proposed form under § 262.21(e) to determine whether it satisfies the print specifications at § 262.21(f). In the vast majority of cases, we expect this evaluation to provide enough information for EPA to determine effectively whether the registrant's form, as designed, will satisfactorily meet all of the print specifications when produced by the registrant. In rare cases, however, we believe it is possible that, subsequent to our approval under paragraph (e), we may become aware that forms produced by a registrant do not meet all specifications in a satisfactory manner. In particular, we are fully aware of the limitations inherent in evaluating samples of a registrant's forms (*e.g.*, the quality of its forms may vary significantly from one batch to the next based on many factors). If we become aware that the forms produced and distributed by a registrant do not satisfactorily meet the specifications (*e.g.*, based on complaints from states or waste handlers), we will contact the registrant to learn more about the problem and, if needed, request changes to the form or printing operation.

Under § 262.21(m), EPA might suspend and, if necessary, revoke printing privileges if we find that the registrant (i) has used or distributed forms that deviate from its approved form samples in regard to paper weight, paper type, ink color of the instructions, or binding method; or (ii) exhibits a continuing pattern of behavior in using or distributing manifests that contain duplicate manifest tracking numbers. We will send a warning letter to the registrant that specifies the date by which it must come into compliance with the requirements. If the registrant does not come in compliance by the specified date, EPA will send a second letter notifying the registrant that EPA has suspended or revoked its printing privileges. EPA believes suspension or revocation of printing privileges will be very rare.

Section 262.21(m) also requires an approved registrant to provide information on its printing activities to EPA, if requested. EPA notes that the rule does not require registrants to submit any scheduled reports to the Agency that would enable us to evaluate whether they have used or distributed forms with duplicated tracking numbers. As an initial matter, registrants must follow the procedures of their approved applications to tightly control their tracking numbers. We expect these procedures to be effective in minimizing the potential for duplication of numbers. Further, in its communications with states and commercial printers, EPA has found that, if a commercial printer identifies a duplicated number in a batch, it will address the problem (*e.g.*, by destroying the manifests containing the error) in order to maintain a good relationship with its customers. EPA believes the same dynamic will occur under the Registry process. A registrant that is itself a commercial printer will have a strong incentive to minimize, detect and report any duplicated numbers on forms that have been used or distributed. This will ensure good relationships with its customers and maintain a clean track record under the Registry. Registrants that use an unaffiliated company to

print the manifest will itself be that printer's customer. In this case, the printer has a similarly strong incentive to minimize and detect tracking number duplications.

Moreover, it is common industry practice for customers that enter into contractual arrangements with a printer to include terms and conditions controlling against the potential duplication of numbers (*e.g.*, by using terms such as "no duplicated numbers") and requiring reports to the customer of missing numbers. In fact, a registrant may choose to incorporate relevant provisions of its application into its contract with the printer.

3. *Final Manifest Print Specifications.* EPA is publishing the final manifest print specifications at § 262.21(f). As intended, the print specifications are minimally prescriptive. They prescribe specifications only where needed to ensure a basic level of consistency across registrants' manifests (*e.g.*, prescribing that each manifest must include six copies). Beyond this, the rule sets forth performance-based requirements that all manifests must achieve (*e.g.*, "handwritten and typed impressions on the form must be legible on all six copies") and allow each registrant to design its manifest accordingly. EPA has chosen this approach in recognition of commenters' requests for flexibility under the Registry system. In addition, the Agency acknowledges that there are many different ways to design an acceptable manifest. It would have been unnecessarily arbitrary to prescribe a single specification for each aspect of the manifest. Under the approach being finalized today, each registrant has considerable flexibility to design its manifest according to its own printing capabilities, customer preferences, and available resources (*e.g.*, existing inventory of paper).

Applicants who print the manifest form must adhere to the following printing specifications:

- The form must be printed with the exact format and appearance as EPA Forms 8700–22 and 8700–22A. We believe registrants will easily achieve this requirement, since we will provide them with an electronic file of the manifest, continuation sheet, and manifest instructions. They will convert the file into a suitable electronic image of the forms in their computer system and create a printing plate. EPA will provide the forms in a software program that will ensure that the manifest is consistently replicated across registrants' systems.
- A unique manifest tracking number assigned in accordance with a numbering system approved by EPA must be pre-printed in Item 4 of the form. The tracking number must consist of a three-letter suffix following nine digits. Each registrant will need to select a unique three-letter suffix. If approved to print the manifest, the registrant will use this suffix to generate its unique tracking numbers. EPA will post on our Web site a list of suffixes that have previously been approved. A prospective registrant will need to refer to the list to identify those that are already in use and thus unavailable to new registrants. Manifest tracking numbers can be added using one of at least two methods: crash numbering (*i.e.*, imprinting the number on the first copy and letting the number impress on the other copies) or press numbering (*i.e.*, imprinting the number on each copy and subsequently assembling the copies into the manifest). EPA is not requiring either method of numbering. However, we believe that crash numbering will generally result in fewer numbering errors. Under press numbering, miscollation of copies subsequent to the printing process can occur. This could result in a manifest that contains one or more copies whose tracking number is incorrect. This risk is not present with crash numbering. Because of this, EPA strongly encourages the use of crash numbering over press numbering. If a registrant proposes to use press numbering, its application should describe quality control measures to ensure proper collation of manifest copies.
- The form must be printed on 8½ x 11-inch white paper, excluding common stubs (*e.g.*, top-or side-bound stubs). The paper must be durable enough to withstand normal use. EPA is not specifying paper type or weight. Registrants must select the appropriate paper type and weight to ensure legibility on all six copies and paper durability.
- The form, including manifest tracking number, must be printed in black ink that can be legibly photocopied, scanned, and faxed, except that the marginal words indicating copy distribution must be in red ink.
- The form must be printed as a six-copy form. Copy-to-copy registration must be exact within 1/32nd of an inch. Handwritten and typed impressions on the form must be legible on all six copies. Copies must be bound together by one or more common stubs that reasonably ensure that they will not become detached inadvertently during normal use. In our communications with the states, we learned of their deep concern that the sixth copy of manifests is often illegible. This is a concern because generators may need to photocopy or fax the sixth copy to states. If the copy is illegible, this limits the state's ability to perform its functions effectively. Because of this, we require that handwritten and typed impressions on the form must be legible on all six copies.
- If the form does not have very close copy-to-copy registration, this could result in impressions on the inner and bottom copies that do not fall within the appropriate blocks. This could limit states' and waste handlers' ability to interpret or scan the impression (*e.g.*, if it falls on a black line of the form). To address this, we require copy-to-copy registration within 1/32nd of an inch. This is a standard specification within the printing industry.
- The copies of each form must be bound together by one or more common stubs that reasonably ensure that they will not become detached inadvertently during normal use.
- Each copy of the manifest and continuation sheet must indicate how that copy must be distributed, as follows:

Page 1 (top copy): "Designated facility to destination State (if required)"

Page 2: "Designated facility to generator State (if required)"

Page 3: "Designated facility to generator"

Page 4: "Designated facility copy"

Page 5: "Transporter copy"

Page 6 (bottom copy): "Generator's initial copy"

- The instructions in the appendix to 40 CFR part 262 must appear legibly on the back of the manifest copies as provided in this paragraph. The instructions must not be visible through the front of the copy when scanned, photocopied, or faxed.

Manifest Form 8700–22:

- The "Instructions for Generators" on Copy 6;
- The "Instructions for International Shipment Block" and "Instructions for Transporters" on Copy 5; and,
- The "Instructions for Treatment, Storage and Disposal Facilities" on Copy 4.

Manifest Form 8700–22A:

- The "Instructions for Generators" on Copy 6;
- The "Instructions for Transporters" on Copy 5; and,
- The "Instructions for Treatment, Storage and Disposal Facilities" on Copy 4.

The purpose of the above requirement is to ensure that the manifest instructions are consistently displayed on the back of the manifest copies. In

addition, the requirement provides that instructions cannot show through the front of the forms when scanned, photocopied or faxed. If the paper weight is too light and/or the ink color of the instructions is too dark, the instructions might bleed through the front of the copies. If the ink color is too light, it may not be legible to waste handlers that may be filling out the manifest in dimly lit situations (*e.g.*, inside of a truck). Registrants must determine the appropriate ink color and the extent of screening of the ink, if needed, to minimize bleed through but ensure legibility.

The specifications at § 262.21(f) leave a number of decisions to the registrants's discretion that should be further clarified. These include the following:

Paper type. Registrants may select the appropriate type of paper to use for their manifest. As provided at § 262.21(d)(2)(i), EPA defines "paper type" to include the manufacturer of the paper and grade of paper. EPA has found that paper manufacturers generally provide a range of paper grades. These grades may be more or less appropriate for a six-part form. For example, the highest quality papers are generally the brightest (whitest), and hence, handwritten and typed imprints are generally most legible on them. In addition, the highest quality carbonless papers normally contain the highest amount of coating, which results in a more effective transmission of imprint from copy to copy. EPA believes it is important to hold registrants to their paper type selection, as provided under § 262.21(e), so that they do not switch paper types subsequent to approval of their forms, unless they seek EPA approval of the changes under § 262.21(h)(3).

In addition, some papers may contain a range of recycled content. All commenters on the proposed rule believed EPA should take the lead on encouraging the use of recycled paper. In fact, one commenter recommended that EPA require registrants to use recycled paper for manifest forms. EPA has not taken this recommendation, which goes beyond the scope of today's rulemaking. EPA notes, however, that it has developed guidelines for federal procurement of recycled-content paper under section 6002 of RCRA and section 505 of Executive Order 13101. Under these guidelines, EPA requires procuring agencies to buy uncoated printing and writing grade papers, such as those used for manifest forms, containing 30% post-consumer fiber. The agency urges registrants to consider for the manifest recycled paper that meets the specifications at § 262.21(f).

Paper weight. Paper weight has several implications for the manifest. Lighter paper is generally thinner, and therefore, it is easier to make impressions copy-to-copy. However, if paper is too light, it is prone to tearing in normal use (*e.g.*, tearing in an automatic-feed copier or when detaching a copy from the manifest). Registrants must select a paper weight for each copy of the form that conveys handwritten and typed impressions onto all six copies, but that is also durable enough to withstand normal use. In evaluating existing manifest forms, EPA has found a number of forms with varying paper weights that transmit impressions effectively. Other forms consist of paper that is too heavy to produce legible bottom copies. We also have found forms with paper that is too fragile and tears easily. Because of the wide range of paper weights that result in legible bottom copies of the manifest, EPA has refrained from prescribing a paper weight and leaves this decision to the registrant. However, EPA believes it is important to hold registrants to their paper weight selection, as provided under § 262.21(e), so that they do not switch paper weights subsequent to approval of their forms, unless they seek EPA approval of the changes under § 262.21(h)(3).

Ink color of the manifest instructions. As described earlier, the instructions on the back of the manifest must be light enough so that they do not: (1) Show through on the front (*e.g.*, printed in black ink in a light enough screen to appear as light gray so that photocopiers and scanners do not pick up the text); or, (2) interfere with the transmission of the image from copy to copy (*e.g.*, from copy 4 to copy 5) when the manifest is filled out. The instructions also must be legible.

EPA has not prescribed an ink color or ink darkness. We recognize that the appropriate ink color and darkness will depend on, at the least, the paper weight of each copy. Because we do not prescribe paper weight, we do not prescribe ink color or darkness. However, we hold registrants to their ink color, as provided under § 262.21(e), so that they do not switch ink colors subsequent to approval of their forms, unless they seek EPA approval of the changes under § 262.21(h)(3).

Binding method of manifest copies. Some manifest forms are currently printed on continuous forms with side perforations. Others are printed on individual forms (unit sets), which are typically bound on top. Continuous forms generally are intended for use with continuous feed printers (such as impact printers), whereas unit sets are appropriate for typewriters and manual completion. Because some users prefer one type of binding or the other, we believe it would be too constraining to require only one type. Therefore, we leave the binding of the form to registrant discretion. However, we are concerned that some registrants might choose to crimp the sheets together but not glue them, thereby increasing the likelihood of the pages inadvertently separating during normal use. In addition, some registrants might bind top bound forms without a stub by "edge gluing." The edge gluing method is typically used for forms that have few pages, but could conceivably be tried for a six-part form. Edge-glued forms are unacceptable for manifest purposes and are not allowed because the sheets become loose when one ply is removed. Therefore, the rule provides that "copies must be bound together by one or more common stubs that reasonably ensure that they will not become detached inadvertently during normal use." Although we do not prescribe a binding method, we hold registrants to the binding method of their approved forms, as provided under § 262.21(e), so that they do not switch methods subsequent to EPA approval, unless they seek EPA approval of the changes under § 262.21(h)(3).

IV. Rejected Load and Container Residue Shipments

A.1. *Rejected Load and Container Residue Shipments—Introduction.* In the May 2001 NPRM, we proposed to improve the tracking of certain problematic hazardous waste shipments known as "rejected loads" or "container residues" by adding data elements to the manifest form for identifying rejected wastes and residues and by clarifying the manifest requirements and procedures for tracking these wastes. In the proposal, we discussed container residue as "the hazardous waste that remains in containers such as drums and in vehicles used for transport (such as tanker cars or box cars) after most of the contents of the container have been removed." These residues may be difficult to remove because the contents may have congealed and the receiving facility may not have the equipment to completely empty the container. As a result, the container may contain more waste than the regulatory threshold allows for meeting the RCRA definition of "empty," that is, more than 3% of a hazardous waste in a container less than or equal to 119 gallons, or more than 0.3% of a hazardous waste in a container greater than 119 gallons, and

that must be managed as hazardous waste.[3] The proposal also described a rejected load as a shipment of hazardous waste that a facility receives, but cannot accept, either because of restrictions in the facility's permit or capacity limitations. A rejected load includes all shipments a facility rejects, in whole or in part, whether rejection occurs before or after the facility has signed the manifest.

The proposed rule addressed both the manifest procedures that would track rejected wastes and residues to alternative facilities, and the procedures that would deal with the rare occasions when a facility must return rejected wastes or container residues to the generator. In all such cases, the proposed regulations would require facilities to note information about the rejected waste or regulated residue on the original manifest, to sign the original manifest certification and to issue a new manifest to continue the shipment of the rejected load or residue to another off-site destination. Detailed discussions of the new tracking procedures for a rejected load and container residue shipment and the proposed modifications to the manifest discrepancy provisions follow.

2. *Proposed Added Fields to Discrepancy Item.* As part of the new tracking procedures for rejected waste and container residues, we proposed to modify the Discrepancy field (*i.e.*, Item 19 on old manifest) by providing more explicit tracking specifications for regulated residues and rejected wastes. EPA also proposed to provide more space in the Discrepancy field for the designated facility to identify the material affected by the discrepancy and to explain the reason for the discrepancy. In addition, EPA provided additional space on the manifest form (titled "Manifest Tracking Number") for the rejecting facility to cross-reference the original manifest with the "new" Manifest Tracking Number associated with the new manifest form. On the new manifest, the facility also would reference the "old" manifest tracking number in the Special Handling field. The Discrepancy field and Facility Certification on the new manifest would be reserved for use by the next facility, if necessary (*e.g.*, if the shipment is rejected a second time).

EPA also proposed codifying the proposed changes at 40 CFR 264.71 and 264.72 (40 CFR 265.71 and 265.72 for interim status facilities), and 263.21(b) to provide more explicit requirements for tracking rejected wastes and regulated container residues. For instance, the proposal clarified in § 264.71(a) that a facility must sign the facility Owner or Operator Certification field on the manifest for both waste receipts and waste rejections. We emphasized in the proposal that the facility certification attests to the receipt of the hazardous wastes described on the manifest, except as noted in the Discrepancy field. The proposal also clarified that residues and rejected wastes, including full or partial load rejections, are discrepancies to be reported on the Discrepancy field. So, facilities must sign the Owner or Operator Certification field on every manifest relating to shipments brought to a facility for delivery, either to acknowledge receipt of all the materials on the manifest, or to acknowledge that those materials identified in the discrepancy space (including rejected wastes and residues) were not received for management at the facility.

The proposed modifications to the manifest regulations at 40 CFR 264.72 (265.72 for interim status facilities) reflect the changes proposed to the discrepancy space of the manifest form. The form includes new data fields in the discrepancy space to track rejected waste and residue shipments. Specifically, the Agency proposed to revise 40 CFR 264.72(a), to clarify that the scope of the term "manifest discrepancies" would be broadened to include not only the significant differences in waste quantities or types that are the subject of the current discrepancy regulation, but also rejected wastes and regulated container residues. We proposed to retain previous requirements for identifying, reconciling and reporting "significant discrepancies" at § 264.72(b) and (c), which would address these as "significant differences" in quantity or in type of wastes. We also proposed to codify the new procedures for addressing rejected wastes or regulated container residues as manifest discrepancies at new § 264.72(d), (e), (f), and (g) for permitted facilities, and in new § 265.72(d), (e), (f), and (g) for interim status facilities. The proposed tracking procedures for rejected waste shipment and container residues are detailed below.

3. *Proposed §§ 264.72(d) and 265.72(d).* The proposed requirements for 40 CFR 264.72(d) and 265.72(d) are as follows:

If you are . . .	You must . . .	And . . .	However,
A facility rejecting a waste or container residue that exceeds quantity limits for "empty" as defined in 40 CFR 261.7(b).	Contact the generator for instructions for forwarding the waste to an alternate facility.	Send the waste according to the generator's instructions.	If it is impossible to locate, in a timely manner, an alternate facility that can promptly receive the waste, you may return it to the generator, with the generator's consent.
A facility forwarding rejected waste or container residue to an alternate facility.	Ensure that either the delivering transporter maintains custody of the waste or, if the transporter leaves the premises, provide for secure temporary custody of the waste.	Prepare a new manifest according to the relevant requirements (§ 264.72(e) or (f) for permitted facilities; § 265.72(e) or (f) for interim status facilities.	N/A.

[3] As noted previously in the preamble to today's rule, the Agency is modifying the definition of bulk container from 110 gallons to 119 gallons to be consistent with the DOT regulations.

4. *Proposed §§ 264.72(e),(f) and 265.72(e),(f).* The proposed requirements for 40 CFR 264.72(e),(f) and 265.72(e),(f) are as follows:

If you are . . .	You must . . .	And . . .
A facility forwarding rejected wastes or container residues off-site to an alternate facility.	Prepare a new manifest in accordance with § 262.20(a).	Follow the relevant instructions in either § 264.72(e)(1) through (e)(6), or § 265.72(e)(1) through (e)(6).
A facility returning rejected waste to its generator.	Prepare a new manifest in accordance with § 262.20(a).	Follow the relevant instructions in either § 264.72(f)(1) through (f)(6), or § 265.72(f)(1) through (f)(6).

Because the rejecting facility was responsible for putting the reject waste back into transportation, we proposed to require them to sign the Generator's Certification field to verify that they are shipping or offering the wastes in transportation and would be liable, in this capacity, for the truth of the "shipper's certification" language included in the generator's certification statement. Since the rejecting facility is not the RCRA generator of the waste, it is not bound by the waste minimization certification language. In the 2001 NPRM, we requested comment on an alternative approach to signing the generator certification. That is, we took comment on requiring the rejecting facility to consult with the generator about the disposition of the rejected waste, and then sign the generator's certification "on behalf of" the initial generator. This would result in the manifest being completed in the same manner (*i.e.*, Items 1 and 4 and listing the destination facilities) as under the proposed approach. However, by signing the generator's certification "on behalf of" the initial generator, the generator would be bound by the rejecting facility's signature on the certification statement. The rejecting facility signs the certification as the generator's authorized agent, but would not be liable for the proper execution of any pre-transportation acts that it performed. (Arguably, however, the rejecting facility would meet the definition of an "offeror" under DOT's HMR and would not be relieved of liability.)

5. *Proposed §§ 264.72(g) and 265.72(g).* Paragraph (g), as proposed, would clarify manifest completion procedures for any designated facility that rejects a full or partial load or container residue shipment after it has signed and returned the original manifest to the generator. If, after signing and returning the original manifest, a facility rejects part or all of a shipment, or discovers regulated residues, it must send the generator and delivering transporter a revised copy of the original manifest, reflecting the rejected waste or residue information in the discrepancy space. The facility must also re-sign and date the manifest, certifying the facts as amended.

6. *Proposed Changes to § 263.21(b).* We proposed to amend 40 CFR 263.21(b) by adding paragraph (b)(2). Paragraph (b)(2) distinguishes between the transporter responsibilities for wastes characterized as "undeliverable" due to either emergency, rejection or container residues. We proposed to retain § 263.21(b)(1), the existing transporter requirements, that apply to shipments that cannot be delivered due to an emergency, such as a strike, fire or similar emergency event which closes the designated facility's or next transporter's operations or that otherwise precludes the transporter from delivering the waste. In such emergencies, the transporter that cannot deliver the waste shipment to the designated facility, alternate designated facility or next designated transporter must contact the generator for further directions and revise the manifest according to the generator's instructions. We did not reconsider, reopen or request comment on these existing requirements. We merely recodified the existing provision at § 263.21(b)(1). Our proposed changes to § 263.21(b)(2) addressed transporters' responsibilities with respect to rejected wastes. Transporters would need to obtain the facility owner's or operator's signed and dated certification identifying the rejection on the manifest. The transporter also would need to retain one copy of this manifest, and give any remaining copies of the manifest to the rejecting TSDF, who processes them in accordance with the new procedures at §§ 264.71 and 264.72.

7. *Proposed Generator Regulations at 40 CFR 262.34.* Furthermore, the proposal revised the hazardous waste generator accumulation provisions at 40 CFR 262.34 by adding paragraph (j). Paragraph (j) requires hazardous waste generators to manage a rejected load and container residue shipment according to 40 CFR 262.34(a) or 262.34(d) depending on whether the generator was subject to the 90-day or 180-day accumulation time provisions when the waste shipment was returned to the generator. Generators who are subject to the 90-day accumulation provisions have up to 90 days to send the rejected shipment or container residue to an alternate facility, as long as the generator received the shipment in accordance with the manifest discrepancy provisions at § 264.72 or 265.72; however, generators who are subject to the 180-day accumulation provisions have up to180 days (or 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) to send the rejected shipment or container residue to an alternate facility. In the preamble proposal, we incorrectly explained that the accumulation time for the returned shipment is based on the generator's status at the time the original shipment was sent to the TSDF. We also explained that generators would not be required to obtain a RCRA permit while the returned waste is on-site as long as they complied with § 262.34(a) (for generators with 1000 kg or more on-site at the time the waste is sent) or § 262.34(d) (for generators with less than 1000 kg on-site).

B.1. Final Tracking Procedures for Rejected Waste and Residue Shipments. EPA retained most of the manifest discrepancy provisions we originally proposed, including those provisions for rejected loads and container residue shipments. However, we are finalizing the proposed paragraph 262.34 (j) as new paragraph 262.34 (m) (New paragraph (k) and (l) were added to § 262.34 after the May 2001 proposal.) In addition, we altered certain provisions in response to suggestions from commenters. In general, most commenters supported our proposed tracking procedures for rejected waste and container residue shipments.

However, several commenters expressed concern and suggested changes to the proposed manifest discrepancy provisions, particularly in the following areas: (1) Preparing a second manifest in all rejected waste or residue scenarios; (2) Requiring the rejecting TSDF to sign the generator

certification; (3) Allowing the original generator who receives a rejected load back from the rejecting facility to accumulate that waste for 90 or 180 days before sending it off-site to an alternate TSDF; and, (4) Allowing the rejecting facility to stage the waste shipment before it forwards the shipment to an alternate facility or return the shipment back to the original generator. Detailed discussions on the final changes to the manifest discrepancy provisions are provided below.

2. *Comment Analysis and Final Provisions for Second Manifest.* Several commenters supported our proposed tracking procedures for rejected waste and container residue shipments. However, several commenters objected to the requirement that the designated facility prepare a second manifest in all rejected waste or residue scenarios because, in their view, preparing a second manifest imposes unnecessary burden and complexity to the system. Furthermore, commenters argued that preparing a second manifest will lead to double counting of hazardous waste; the original and new manifest cover the same quantity of waste (or a portion of it, in the case of residues). Consequently, states could potentially tax waste handlers again for the same shipment. These commenters argued that a second manifest is not necessary when a fully rejected load is returned to the generator or sent to an alternate facility. Many of these commenters suggested, as an alternative, that waste handlers note and sign the original manifest in such conditions. One commenter also suggested that EPA add an additional signature block in the Discrepancy field on the form (*i.e.*, Item 18c of new form) so that both the alternate facility and the original generator who receives a rejected load from the rejecting facility can sign the original form for return shipments.

In response to commenters' suggestions to allow designated facilities to note and sign the original manifest for full load rejections, we have modified §§ 264.72(e) (permitted facilities) and 265.72(e) (facilities with interim status). With today's action, the rejecting TSDF can use the original manifest to forward a rejected shipment or container residue to an alternate facility or original generator, provided that the following conditions are met: (1) The rejecting facility must reject the full shipment; and (2) The transporter attempting the delivery must still be at the facility at the time of the rejection, in order to continue transporting the rejected shipment to the alternate facility. In these limited circumstances, the final rule considers that the rejected waste shipment is continuing in transportation, such that all the information describing the source, types and quantities of waste shipped remains accurate, and only a new destination facility needs to be entered on the form. Today's final rule provides two new fields to implement this procedure: an alternate facility space (Item 18b) to identify the alternate facility (or the original generator if the shipment is being returned), and a new signature space (Item 18c) for the alternate facility (or the original generator if the shipment is being returned) to sign and date the form to indicate the receipt of the shipment.

Thus, today's action requires the TSDF to complete a second manifest only if it rejects a partial load or container residue shipment, or if it rejects a full load or container shipment at a point in time after the transporter attempting delivery has left the facility's premises. Paragraph (e)(7) describes the manifest close-out requirements for facilities that use the original manifest to forward a full load rejection to an alternate facility. Specifically, the rejecting facility must retain a manifest copy for its records, send a copy to the generator, and give the remaining copies of the manifest to the transporter to accompany the shipment. The Agency notes, however, that a manifest copy may not be available. In these cases, the facility must photocopy or fax the most legible copy of the form available to ensure that the extra manifest copy is legible.

Also, today's rule modifies our proposal for manifest discrepancy provisions, and allows the rejecting facility to note and sign the original manifest for full load rejections provided the transporter has not departed from the facility's premises. Also, EPA has modified the proposed Discrepancy field on the manifest form by adding a new item for use by an alternate facility or generator who receives a full load rejection or container residue shipment. They can sign the new Item 18c to close out the original manifest once they receive the hazardous waste shipment from the rejecting facility. Importantly, the manifest discrepancy provisions do not change the proposed requirement at 264.71(a) for permitted facilities or 265.71(a) for interim status facilities that a facility must sign and date the facility owner or operator certification on the manifest for both waste receipts and waste rejections. Therefore, the alternate facility (or the original generator if the shipment is being returned) must sign and date the manifest to acknowledge receipt of a shipment in Item 18c, but must note any discrepancies associated with that shipment either by hand in the alternate facility field, if space allows, or by attaching a separate sheet explaining the materials covered by the discrepancy and the reasons for the discrepancy or efforts to resolve it.

Other commenters suggested that the rejecting facility should use the original form for all rejected load and container residue scenarios. EPA limited use of the original manifest to track full and immediate rejections, because this is a fairly simple scenario that the original manifest form should be able to track without introducing complexity or confusion to the form. Moreover, the immediate, full load rejection presents facts that are consistent with the view that the rejected waste shipment is continuing in transportation. The generator information, the transporter information, and description of the types and quantities of wastes shipped remains accurate, and only the information on the destination facility is being revised. Since the transportation of the waste continues, the rejecting facility is not offering the shipment in transportation under these facts, and it is not acting as an offeror. Thus, we concluded that the rejecting facility should not be required to initiate and sign a new manifest as the offeror.

When a waste shipment is partially rejected, on the other hand, only part of the original shipment is re-introduced into transportation. These facts require that the shipping paper (manifest) be revised to accurately describe the contents of the re-shipment. In some of these cases, the materials being re-shipped also may require re-packaging, re-labeling, and re-marking as well. In any case, we believe that these facts support the view that there is a new movement with respect to the partially rejected waste, and that the rejecting facility must complete a new manifest and sign the certification statement to indicate that the materials are properly described and are being offered in proper condition for transportation. Also, except in the most simple examples of partially rejected loads, it would be very difficult to correct the shipping descriptions for the items shipped under the original manifest by trying to delete items or otherwise trying to markup these descriptions to sort out what items and quantities were received, what items and quantities were rejected and were being re-shipped, etc. Since we believe it is essential to present an accurate and unambiguous description of the wastes being re-shipped, and since we believe that it is appropriate that the facility

rejecting a partial shipment assume the role of offeror with respect to the wastes being re-shipped, we conclude that these purposes are best served by the initiation of a new manifest for all partial rejections.

Also, when a full load is rejected, but temporarily staged by the rejecting facility after the delivering transporter has left the premises, the original transportation of the waste shipment has ended. Therefore, it will require a new movement of the waste shipment to reintroduce the rejected wastes in transportation. Under today's rule, the rejecting facility initiates this new movement by completing a new manifest and signing it as the one offering the wastes in transportation. Since several days or weeks might pass while the materials are staged at the rejecting facility, it is important that the rejecting facility certify that the materials are properly described and in proper condition for transportation at the time the new movement begins. Also, under these facts, the information on transporters and destination facilities must be updated to reflect the new arrangements for the rejected shipment. We conclude that these purposes are best served again by requiring a new manifest to be initiated by the rejecting facility in all cases where rejected wastes are temporarily staged at the facility. In addressing the issues in this section, we introduced the idea that a rejecting TSDF may be offering these rejected wastes in transportation when they are re-shipped. The offeror concept is explained in greater detail in the following preamble section.

3. *Comments Analysis and Final Generator Certification Block.* Commenters were divided on our proposal to require the rejecting facility offering the waste in transportation to sign the shipper's certification as the party offering the wastes in transportation. Generators expressed strong support for the proposal, and greatly preferred the proposal to the alternative under which the rejecting TSDF would be viewed as signing the new manifest "on behalf of" or as the agent of the generator. The commenters supporting this offeror approach encouraged EPA to adopt the proposed regulatory language at § 264.72(d)(1) and (e)(6), which would require the TSDF to explain to the original generator its reasons for rejecting the waste and to consult with the generator and determine where the rejected waste or container residue shipments should be sent. After doing so, the rejecting facility would then initiate the new manifest for the new movement of the shipment in transportation by signing the Generator's Certification in the capacity as offeror of the shipment.

Several commenters in the TSDF sector criticized this approach, arguing that the rejecting facility would appear to be assuming full generator liabilities for the waste by virtue of signing the Generator's Certification. Other TSDF commenters also objected to the proposed approach because it seemed to suggest that the rejecting TSDF acting as "offeror" could in fact be liable for the proper performance of *all* the pre-transportation acts, including those already performed by the initial generator. In general, these commenters argued that under the "offeror" proposal, the responsibility for properly packaging and re-shipping the waste would now appear to fall on the TSDF, when the generator already may have selected and filled the container, and may be more aware than the rejecting TSDF of the exact nature of the material. Therefore, these commenters contend that the rejecting facility cannot really attest to the packaging and other pre-transportation requirements performed by the generator, and so should not be held responsible for their performance when re-shipping rejected wastes.

In general, those TSDF commenters that criticized the proposed approach tended to support the alternative approach requiring TSDFs to sign "on behalf of" the initial generator. One TSDF commenter, however, noted that a TSDF rejecting and re-shipping waste would be liable as offeror regardless of the "on behalf of" language, since the TSDF is initiating the new shipment. Another trade organization (the Environmental Technology Council) that represents TSDFs supported the offeror proposal, if the form were revised to make it more explicit that the TSDF is signing the manifest as an offeror, not a generator.

While the TSDFs objecting to the proposal tended to support the alternative approach under which the rejecting TSDF would sign the new manifest "on behalf of" the generator, the generators that commented on the proposed rule submitted strong comments opposing this alternative. These commenters in the generator sector argued that this "on behalf of" alternative would cause generators to be liable under DOT regulations for any pre-transportation functions performed improperly by the rejecting facility. They argued further that the generator could not possibly supervise from a distance the proper execution of the pre-transportation acts that the rejecting facility might perform before signing the certification statement, so it would be unfair to have the generator become bound by the TSDF's signing the form as the generator's agent.

In response, we are codifying in today's final rule the manifest signature requirements at § 264.72(d)(1) and (e)(6). As explained in section II.G.4. above, we also are modifying the Generator's Certification field by renaming it the "Generator's/Offeror's Certification," in order to clarify that either the generator or an offeror may sign the certification. The generator's signature certifies to both the waste minimization and shipper's certification statements, while a rejecting facility signing as an offeror of a shipment certifies only to the content of the shipper's certification language, as it applies to information the offeror knows or has a reason to know.

Today's action also clarifies that any rejecting facility that prepares and signs a new manifest to re-ship a rejected waste will be subject to liability only for the limited "offeror" or pre-transportation requirements. In such cases, the rejecting facility acting as an offeror is not considered a "generator" of the rejected waste, and generally is not subject to the full hazardous waste generator requirements under 40 CFR part 262.

We are finalizing the proposed approach concerning rejecting facilities signing new manifests because we believe that this approach is the outcome required under the Hazardous Materials Regulations (HMRs), and because we believe that it addresses the rejecting facility's responsibilities for re-shipments more appropriately. We agree with the generator comments to the effect that rejecting TSDFs should not be viewed as agents of the generators when they re-ship rejected wastes and sign the manifest to initiate a new movement of the rejected materials. If a shipment, for example, has been partially received and partially rejected by a TSDF, it is fitting that the TSDF rejecting a partial load be responsible for ensuring that the portion of the waste to be re-shipped is properly described on the new manifest, and that the packages are in good condition and properly marked and labeled at the time the rejected waste again moves in commerce. Also, if the facility has rejected a full load and staged it temporarily at its facility pending new arrangements for re-shipment, it is appropriate that the rejecting facility, when it initiates the new movement of the shipment by signing the new manifest, verify that the shipment is properly described and in proper condition for transportation at the time the new movement begins. This is accomplished when the rejecting facility signs as offeror of the re-shipped

wastes, as the offeror is then certifying to the proper performance of the pre-transportation functions. Moreover, we believe that this is the result required under the applicable requirements of the HMRs as implemented by DOT for the transportation of hazardous materials in commerce. These hazardous waste shipments are subject to the HMRs, and as we discussed above in section II.G.4. of this preamble, DOT recently has issued a final rule which clarifies the responsibilities of shippers, carriers, and other offerors for performance of the pre-transportation functions, and the significance of the offeror's signature in certifying that a hazmat shipment has been prepared in accordance with the HMRs. See 68 FR 61906 at 61908—61912 (October 30, 2003). RCRA hazardous waste transportation requirements must be implemented consistently with the HMRs. The HMRs require that facilities which re-ship rejected wastes (either partial load rejections or full loads that have been staged for a time and then reintroduced in transportation) to assume the offeror responsibilities for the re-shipments, since the re-shipment of the waste is a new movement. In each case, there is a new movement of the hazardous waste, and the shipper's certifications must be current at the time the new movement of the rejected wastes begins. On the other hand, when a facility rejects immediately a full waste shipment, and directs the transporter to forward the rejected waste to an alternate facility (or back to the generator) by completing the Alternate Facility item on the revised form, there is not a new movement of the waste. Rather, the waste shipment in such a case remains in transportation, and the rejecting facility does not need to sign the Generator's/Offeror's Certification, as it has not engaged in any pre-tranportation functions with respect to a fully and immediately rejected waste shipment.

Moreover, with respect to the TSDF comments that objected to the offeror approach because they would be responsible for pre-transportation acts (*e.g.*, selecting, filling, marking containers) that already were performed by the original generator, we wish to provide additional clarification of their offeror liability under the final rule. In the October 30, 2003 final rule codifying the pre-transportation functions, DOT confronted similar issues from brokers, freight forwarders, and other 3rd party intermediaries who handle hazmat shipments. These intermediaries similarly questioned the fairness of subjecting them to full compliance with the pre-transportation functions, when the intermediaries might perform only limited pre-transportation functions of their own (*e.g.*, issue a house bill of lading), while relying heavily on the information supplied and functions previously performed by shippers or underlying carriers. See 68 FR 61906 at 61911. In responding to this comment, DOT stated that it agreed with the commenters that it would be unfair to hold the intermediaries liable for errors made by parties over which they have no operational control. Instead, DOT explained that intermediaries who prepare shipping papers and sign the shipper's certification assume responsibility for compliance with the pre-transportation requirements "for all aspects of that shipment about which he knew or should have known." Id. In its explanation of this issue, DOT stated that it was proper for the intermediary preparing a shipping paper to rely upon the information supplied by the original shipper, unless it conflicts with other information he obtains about the shipment. Id.

Since hazardous waste handlers also are subject to these HMR provisions, we believe that this discussion from the October, 2003 DOT rule addresses fairly the concerns expressed by RCRA TSDFs who reject and re-ship wastes. The TSDF that signs a new manifest as offeror of a rejected waste shipment is responsible for performing properly any of the pre-transportation functions that it actually performs (*e.g.*, repackaging and marking specific containers, completing the manifest), but the TSDF may reasonably rely upon the information supplied and pre-transportation functions previously performed by the original generators or transporters. If the TSDF knows of an error, for example, in classifying or describing a specific waste, or if it should know that a container is leaking or is not properly labeled, it must correct these problems before reintroducing the rejected wastes into transportation. However, the TSDF re-shipping such wastes is not responsible for errors made by previous waste handlers in their performance of pre-transportation functions, if the errors are such that it can be said that the TSDF neither knew, nor should have known, about the errors. We believe that this policy mitigates any concerns that TSDFs might have about the unfairness of their being asked to certify to the proper performance of the pre-transportation functions. The TSDF will be able to rely upon what has been done already and supplied by previous handlers, as long as they do not have a reason to believe the information provided by previous handlers is false. The rejecting TSDF need not re-perform all of the offeror responsibilities; it need only re-perform those activities that it knows or should know are necessary to bring a shipment into compliance with the pre-transportation functions in the HMRs.

4. *Comments Analysis and Final Returned Shipments.* In general, commenters supported our proposals to allow generators to receive rejected shipments from the rejecting facility, and to allow them additional on-site accumulation time to locate an alternate facility and send the rejected shipment there. Industry and state commenters both tended to support the proposed rule's clarification that in the case of a return shipment of rejected waste to a generator, the generator may be shown on the manifest as the designated facility for the receipt of the returned waste. However, several state agency commenters suggested that this policy would be further strengthened and clarified if the definition of "designated facility" in 40 CFR 260.10 were amended to include generators taking back their rejected wastes. EPA agrees with these comments, and today's final rule amends the definition of "designated facility" in 40 CFR 260.10 to clarify explicitly that generators receiving waste shipments that are being returned to the generator after a rejection by a TSDF are another type of designated facility that may be named on the hazardous waste manifest to receive these types of waste shipments.

Other commenters supported returning the rejected shipment back to the generator, but did not support granting the generator another 90 or 180 day accumulation period. These commenters argued that extra time would not help to prevent problem shipments or sham activities. One commenter suggested that EPA grant generators 30 additional days. The commenter argued that the reduced timeframe would help to ensure that problem shipments would not occur, because generators would review designated facilities more closely to make sure they had the means to remove residues from the containers. The commenter further argued that the approach would foster improved management of the waste and would not lead to a situation where a small quantity generator could not take back rejected wastes, because it would exceed their site accumulation limitation.

We understand these commenters' concerns, but believe it is more appropriate to grant generators the

additional 90/180 days to locate an alternate facility. First, the 90/180 day timeframe already exists under the existing 40 CFR 262.34 accumulation provisions, and we do not believe we have sufficient record to support a shorter time frame. Second, given that the generator will have to make new arrangements with a hauler to transport the waste off-site and arrange with an alternate facility to receive the shipment, it has essentially begun a new event. Therefore, the contingencies and timing affecting the original time frame no longer applies to the returned shipment. Based on these factors, today's rule grants generators an additional 90/180 days to send the waste shipment to an alternate facility.

5. *Comment Analysis and Final Staging of Waste at the Rejecting Facility.* In general, commenters supported our proposal, but some expressed concern that the qualitative term "timely manner" has too broad a range of interpretation, since the term is not clearly defined. EPA agrees with these commenters and has thus revised § 264.72(d)(1) to include a default timeframe of 60 days. Commenters differed on the length of time that EPA should grant a rejecting facility to stage the rejected load or container residue shipment. Several commenters suggested that EPA grant the rejecting facility 90 days to stage the rejected waste or container residue so that they could reconcile the problem shipment with the generator, forward it to an alternate facility or return it to the generator. These commenters stated that without adequate time, the rejecting facility would have no choice but to return the shipment to the generator. Other commenters suggested shorter timeframes, ranging from 10 to 30 days, pointing out that the TSDF can return the waste to the generator if they can not locate an alternate facility.

After analyzing comments, EPA believes 60 days is sufficient time for the rejecting TSDF to consult with the generator, locate an alternate facility and forward the shipment or return it to the generator. While we understand that there is some precedent for a 90-day accumulation period for generators when they initially accumulate their wastes on-site, we believe that there are distinguishing features which we believe support a 60-day limit on staging by a rejecting TSDF. First, there are very few management controls on temporary staging of rejected wastes by TSDFs, as opposed to the detailed technical requirements that apply to generator accumulation under 40 CFR 262.34(a). Since there are few requirements imposed on TSDF staging, we believe that a shorter time period for temporary staging of rejected wastes is appropriate, particularly given that such wastes may be rejected because the TSDF lacks authorization to manage them under its RCRA permit. Second, TSDFs rejecting waste are usually much more familiar with the waste management industry than are generators. TSDFs deal with waste transporters and other waste management facilities as a matter of course, so the logistics of arranging the forwarding or return of temporarily staged wastes should not raise difficult issues for the TSDF. Finally, in most cases, the rejecting TSDF can return the staged waste to the generator, if it is not able to find an alternate facility. We have also revised the regulation to clarify that the TSDF does not need permission to return the shipment to the generator.

We are aware that some states currently allow TSDFs to stage rejected waste shipments at their facility, but by regulation or by permit restrict the staging times to significantly less than 60 days. We acknowledge that a staging timeframe of less than 60 days (*e.g.*, 10 or 30 days) may be adequate time in some instances. However, based on comments, we believe that scheduling difficulties, preparation of new waste profiles, or other unforseen circumstances may arise that could require TSDFs to stage a rejected waste or residue for a number of weeks. In such instances, a shorter timeframe would not afford the TSDF adequate time to reconcile the rejected shipment or residue. We believe the default 60-day time limit will provide rejecting facilities sufficient time to reconcile such shipments and forward them to an alternate facility.

V. Final Unmanifested Waste Reporting Requirements

In the May 2001 NPRM, EPA proposed to revise the unmanifested waste reporting requirement at §§ 264.76 for permitted facilities and 265.76 for interim status facilities. Sections 264.76 and 265.76 currently require TSDFs to submit an unmanifested waste report to the Regional Administrator on EPA form 8700–13B within 15 days after they have received a waste shipment without a manifest. Specifically, the proposal removed the requirement that the TSDF use EPA form 8700–13B to submit its unmanifested report, and proposed that the TSDF submit either a typed, handwritten or electronic note. The typed, handwritten or electronic note must be legible, and must contain the following information: (a) The EPA ID Number, name and address of the facility; (b) The date the facility received the waste; (c) The EPA ID Number, name, and address of the generator and the transporter, if available; (d) A description and the quantity of each unmanifested hazardous waste the facility received; (e) The method of treatment, storage, or disposal for each hazardous waste; (f) The certification signed by the owner or operator of the facility or his authorized representative; and (g) A brief explanation of why the waste was unmanifested, if known.

We explained in the proposal that the unmanifested requirements the Agency announced in the January 28, 1983 FR that it was deleting EPA form 8700–13B and its predecessor, EPA form 8700–13, which had appeared in the May 19, 1980 FR. Although both forms were linked to annual reporting requirements at that time and were supposed to be adapted for unmanifested waste reporting, we deleted them due to the change from annual to biennial reporting. We never published a new form for unmanifested waste reporting and the form now required for biennial reporting, EPA form 1300–A/B, "Hazardous Waste Report Instructions and Forms," is not adaptable for unmanifested waste reporting. Although we never published a replacement form for reporting unmanifested waste, the regulations still required this form which is generally unavailable to those seeking a copy.

The final rule retains the proposed unmanifested reporting requirements at 40 CFR 264.76 and 265.76. Commenters generally supported our unmanifested reporting approach. However, several commenters expressed concern or raised suggestions on the proposed procedures for unmanifested wastes reports. A number of commenters suggested that EPA revise the manifest so that an unmanifested report could be "unsubmitted" using a manifest (*e.g.*, using a check box). While we appreciate this suggestion, EPA does not believe that it is a workable option. One commenter expressed concern that the proposed procedures did not offer a standard reporting approach, which could lead to data quality problems. The commenter suggested that TSDFs provide a report using company letterhead and signed by a company official. We do not agree with the suggestion and are not convinced that data entry problems may result from the proposed approach.

VI. Administration and Enforcement of These Regulatory Changes in the States

A. *Uniform Applicability of Revised Manifest Requirements in All States.* In

the May, 2001 proposed rule, EPA explained how the revised manifest requirements would apply in authorized states, in the context of the statutory and regulatory authorities that govern generally the authorization of state hazardous waste programs for revisions to EPA's Subtitle C regulations. However, the hazardous waste manifest is based on both RCRA authority and the hazardous materials statutes and regulations administered by DOT. As we explained when we issued the Uniform Manifest Rule in March, 1984, the joint RCRA/hazmat basis for the manifest gives rise to unique implementation consequences.

The most significant consequence of the joint RCRA/Hazmat authority for the manifest is that the revised manifest requirements announced in today's rule will be implemented in all states on the delayed compliance date of September 5, 2006. This result follows from the hazardous materials laws that require consistency in the use of hazardous materials shipping papers such as the manifest. Just as we indicated with respect to the applicability of the Uniform Manifest Rule (see 49 FR 10490 at 10493, March 20, 1984), EPA continues to believe that a uniform implementation date is an important part of the manifest system. Therefore, based again on the requirements in Hazmat law for consistency in the content and use of shipping papers, the revised manifest form and procedures announced in today's final rule will be implemented uniformly on September 5, 2006, regardless of any state's authorization status under RCRA. This means that, with one minor exception (the changes to the waste minimization certification requirements discussed below), implementation and enforcement of the revised manifest in authorized states will be based solely on federal hazmat law, rather than RCRA authority, until the states have obtained authorization for the program revisions included in today's rule.

The remainder of this section discusses the state authorization implications for today's revised manifest requirements. While the revised manifest will be implemented in all states under the hazardous materials authorities on the delayed compliance date, the revised manifest requirements will be implemented in the states as RCRA requirements as well, depending upon a state's authorization status and its progress in revising its laws and obtaining approval from EPA for these manifest program revisions.

B. *General Policy on RCRA Applicability of Federal Rules in Authorized States.* Under Section 3006 of RCRA, EPA may authorize qualified states to administer the RCRA hazardous waste program within the State. Following authorization, the State requirements authorized by EPA apply in lieu of the equivalent Federal RCRA requirements and become Federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA Sections 3007, 3008, 3013, and 7003. Authorized States also have independent authority to bring enforcement actions under State law. A State may receive authorization by following the approval process described under 40 CFR Part 271. See 40 CFR 271 for the overall standards and requirements for authorization.

After a State receives initial authorization, new Federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that State under RCRA authority until the State adopts and receives authorization for equivalent State requirements. The State must generally adopt such requirements to maintain authorization.

In contrast, under RCRA Section 3006(g) (42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect under RCRA in authorized States at the same time that they take effect in unauthorized States. Although authorized States are still required to update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA-based requirements and prohibitions in authorized States, including the issuance of new permits implementing those requirements, until EPA authorizes the States to do so.

Authorized States generally are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope 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(i). Therefore, authorized States are generally not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent. However, as we explain below, the hazardous waste manifest is not governed by this policy, but is instead subject to special program consistency requirements which require all states to maintain consistency with the Federal manifest, regardless of whether any Federal changes could be considered more stringent or less stringent than existing requirements.

C. *Authorization of States for Today's Final Rule.* Except for one provision, we are promulgating today's final rule mainly under non-HSWA statutory authority. The section of today's rule that is promulgated under HSWA authority (specifically, RCRA Section 3002(b)) is § 262.27, which consists of the new regulatory provision that codifies the waste minimization certification language which previously was set out in full on the face of the manifest form itself. Therefore, we are adding this section of the rule to Table 1 in 40 CFR 271.1(j), which identifies all the Federal program requirements that are promulgated pursuant to the statutory authority that was added by HSWA. States may apply for final authorization for the HSWA provisions in Table 1, as discussed in the following section of this preamble.

EPA emphasizes that this rule's codification of the full waste minimization certification in § 262.27 is intended only for convenience, and is not intended as a substantive change to the manifest requirements. This final rule provision contains the same waste minimization certification language which is on the current manifest form, but which the revised form incorporates by reference to § 262.27. Generators are still required to certify to the same waste minimization statements they previously certified to each time a manifest is initiated, but much of the actual language now appears in the regulation rather than on the form.

Because Congress established the waste minimization certification requirement in the 1984 HSWA statute, EPA must designate any regulatory changes that affect the waste minimization certification as a HSWA-based regulatory revision and identify it as such in Table 1 of 40 CFR 271.1(j). Therefore, since § 262.27 is the only component of today's final rule that is based on HSWA authority, we are clarifying that only this provision will be implemented as a HSWA requirement. The impact of the HSWA designation is that the waste minimization requirements appearing in § 262.27 will be effective immediately under Federal RCRA authority in all authorized States, before the states become authorized for their equivalent requirements under state law. Thus, when new manifest forms which do not contain the full waste minimization certification are distributed, the full requirements for the waste minimization certification will continue to be in effect under Federal law, even if a state is delayed in adopting these

changes under its state law authorities. That is the only significant or practical outcome that results from this one regulatory provision being designated a HSWA-based requirement.

All the other parts of today's final rule are based on pre-HSWA authority, so they will be implemented under RCRA authority in authorized States only when these states revise their programs and receive authorization for the final rule requirements. For users of the manifest, the reliance on pre-HSWA authority for most of the content of today's rule is largely a moot point, since the new form and requirements will be implemented in all states on the delayed compliance date (i.e., 18 months after publication) based on Federal hazardous materials law. To regulatory agencies, the point is significant, since it means that the new manifest requirements cannot be implemented and thus enforced under RCRA authority until the states have received authorization for the necessary revisions to their authorized hazardous waste programs.

D. *Consistency Requires Adoption of Revised Manifest in All States.* Under today's rule, authorized States will be required to adopt the revised Uniform Manifest form and requirements. To obtain and maintain authorization, States and territories are required to be consistent with the federal program and other State programs. Although sections 3006 and 3009 of RCRA allow States to have regulations that are different than the Federal requirements, as long as they are equivalent to or more stringent, section 3006(b) also requires States to have regulations that are consistent with the federal regulations. The requirements of this statutory provision are codified in 40 CFR 271.4, which specifically applies the consistency requirement to the manifest system under 40 CFR 271.4(c). When EPA originally promulgated the Uniform Manifest in 1984, we found that consistency was extremely important where requirements addressing transportation are concerned. We found during the early years of implementing the RCRA program that a proliferation of many State-specific manifest forms could hamper the movement of hazardous waste to waste management facilities, and that differing manifest use and information requirements between States caused added burdens and confusion among those trying to comply with the Subtitle C regulations. See 49 FR 10490 at 10491 (March 20, 1984). Therefore, in 1984, EPA announced that consistency in the use of the Uniform Manifest would be required from authorized States, and that, with the exception of the limited State information that was allowed then in the optional fields, authorized States could not require any other manifest or information to accompany a waste shipment. Id. Based on nearly 20 years of experience with the Uniform Manifest, EPA has concluded that variability in the current manifest system must be reduced further, since the current level of variability under the 1984 Uniform Manifest continues to produce excessive burden, confusion, and compliance problems. Therefore, EPA emphasizes that program consistency considerations under RCRA section 3006 and 40 CFR 271.4(c) demand that all authorized States must require the use of the revised manifest form and requirements as set out in today's final rule.

Under 40 CFR 271.4(c) and 271.10(f) and (h), in order to be consistent with the federal program, and receive approval from EPA, States must have a manifest system that includes a manifest format that follows the Federal format required in 40 CFR 262.20(a) and 262.21. Today's rule amends § 271.10(h) to correspond with the changes to the revised manifest format and the procedures for its use. Key among these amendments are form revisions that would eliminate all optional fields and establish a new procedure for obtaining a standard manifest form from registered printers or distributors. The new, standard manifest format and the corresponding federal printing specification will not provide areas of potential variability for users and states. The final rule thus amends § 271.10(h) to eliminate provisions addressing States' ability to supplement the form. The States will, however, retain the authority to require the entry of state-specific waste codes that are not redundant with federal codes, and the authority to require the submission of manifest copies to state offices for use in their data systems.

Because the revised uniform manifest is (except for § 262.27 as explained above) being promulgated pursuant to non-HSWA authority, it will not become effective as a RCRA requirement in authorized States until those States revise their programs and receive authorization.

EPA has involved the authorized States, as co-implementers of the RCRA program, in the development of today's rule. We believe that there is general support among the States for these manifest revisions that will result in a truly standardized manifest form. EPA also believes that the States will generally be able to revise their RCRA programs to include the revised manifest within the final rule's transition period. However, should any states experience delays in adopting the program revisions corresponding to today's rule, we emphasize that the revised form and requirements will apply uniformly in all states on this rule's delayed compliance date, under the authority of the federal hazardous materials laws. Thus, any delays at the state level in adopting state program revisions will not impair the ability of users to obtain the benefits of the new form, nor impede the accomplishment of a truly standardized manifest form.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order No. 12866 (58 FR 51735, October 4, 1993), Federal agencies must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may: "(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or, (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

Pursuant to the terms of Executive Order 12866, we determined that this rule is a "significant regulatory action" because it contains novel policy issues, although it is not economically significant. As such, this action was submitted to the Office of Management and Budget (OMB) for review. Changes made in response to OMB suggestions or recommendations are documented in the docket for today's rule.

In order to estimate the anticipated economic effects of today's final rule, we conducted an evaluation of the potential effects of this rule on hazardous waste handlers and on State government regulatory agencies: "Economics Background Document: Economic Analysis of the USEPA's Final Rule Revisions to the RCRA Hazardous Waste Manifest Form," Mark

Eads, Office of Solid Waste, 24 November 2004, 67 pages (available to the public from the EPA Docket at *http://www.epa.gov/edocket*).

We estimate that upwards of 139,000 facilities in the United States generate, transport or manage (i.e. treat, recycle, store, dispose) RCRA hazardous waste. About 12 million tons of hazardous waste (non-wastewaters and wastewaters) per year are manifested for shipment (i.e. transport by truck, rail or barge), involving 2.4 to 5.1 million hazardous waste shipment manifests for off-site management annually, requiring about 4.4 to 9.2 million waste handler labor hours, costing about $187 to $733 million annually. In addition, twenty-three state governments reportedly spend 199,000 to 416,000 labor hours costing $6.3 to $37 million annually to administer the current RCRA hazardous waste manifest program, which when added to waste handler burden, totals to 4.6 to 9.7 million hours ($193 to $770 million) per year in baseline national paperwork burden.

Relative to this paperwork burden baseline, we estimate that today's final rule revisions to the RCRA manifest form and acquisition, are expected to produce a national total of $12.7 to $20.6 million in average annual paperwork burden reduction benefits associated with a reduction of 249,000 to 397,000 annual burden hours. This represents a 4% to 5% burden hour reduction compared to the national burden hour baseline of 4.6 to 9.7 million hours as estimated in the "Economics Background Document" (EBD). In comparison to these burden estimates, the next section presents an alternative estimate of baseline paperwork burden and expected burden reduction for today's final rule, based on OMB's "Information Collection Request" (ICR) paperwork burden estimation method. The ICR burden estimation method purposedly excludes manifest burden to Federal facilities and excludes manifest burden for state-only regulated hazardous wastes, whereas the burden estimates of the EBD include manifest burden to both Federal facilities and non-Federal facilities, as well as paperwork burden associated with manifesting both RCRA-regulated and state-only regulated hazardous wastes. Consequently, the burden hour estimates in the next section are less than the estimates presented above in this section.

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.

According to the estimates provided in the 2004 ICR Nr. 801.15 Supporting Statement for this final rule (available from the EPA Docket at http://www.epa.gov/edocket), EPA expects today's final rule revisions to the RCRA manifest form to produce an average annual net reduction of 375,000 hours in paperwork burden to RCRA hazardous waste handlers and to state governments. This expected burden reduction represents a 12% reduction in annual burden hours compared to the ICR baseline burden of 3.2 million hours per year (note that this baseline burden estimate is less than the baseline estimate of the "Economics Background Document" (EBD) summarized in the previous section, because the ICR methodology excludes manifest burden associated with Federal facilities and state-only hazardous wastes, and does not include the EBD's alternative upper-bound estimate of annual manifests).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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 Analysis

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, 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 that is defined by the Small Business Administration by category of business using North America Industrial Classification System (NAICS) and codified 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. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

Today's final rule includes both regulatory and deregulatory features. However, the net effect of these changes should reduce, not increase, the paperwork and related burdens of the RCRA hazardous waste manifest. For businesses in general, including all small businesses, the changes in the RCRA manifest form, although required, are designed to reduce the long-term labor time and other costs of acquiring, completing, and submitting hazardous waste manifests. We have therefore concluded that today's final rule will relieve regulatory burden for all 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, Federal agencies generally must prepare a written analysis, 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. Moreover, section 205 allows Federal agencies 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 promulgating a rule for which a written statement is needed, section 205 of the UMRA requires Federal agencies 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. Before a Federal agency 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 to have meaningful and timely input in the development of regulatory proposals, and informing, educating and advising small governments on compliance with the regulatory requirements.

This final rule does not include a Federal mandate that may result in expenditures of $100 million or more to State, local, or tribal governments in the aggregate, because the UMRA generally excludes from the definition of "Federal intergovernmental mandate" duties that arise from participation in a voluntary federal program. States are not legally required to have or maintain a RCRA authorized program. Therefore, today's final rule is not subject to the requirements of sections 202 or 205 of UMRA. Furthermore, public data sources we reviewed in 2003 indicate that 12 state governments (AR, CA, CT, DE, IL, LA, MD, MI, MO, NH, NJ, PA) collect revenues from direct assessment of fees during distribution of state-printed RCRA manifests, totaling an estimated $1.16 to $2.44 million per year (see "Economics Background Document" for basis of this estimate). However, more recently as 2004, we estimate there may only be seven states collecting manifest printing and distribution fees. Today's rule will override existing requirements for hazardous waste shippers to acquire state-printed RCRA manifests and thus reduce the existing direct fee assessment mechanism in these 7 to 12 states. In cases where states lose revenue as a result of this rule, they may reconfigure their hazardous waste manifest fee assessments to maintain these existing annual revenues such as by charging fees to process collected manifests, or by altering waste management fee mechanisms. In addition, this final rule contains no regulatory requirements that might significantly or uniquely affect small governments under section 203 of UMRA. Therefore, EPA does not believe that this final rule would have a significant or unique effect on small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires Federal agencies to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." The Executive Order defines "policies that have federalism implications" to include regulations that 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." This final rule does not have federalism implications. It would 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.

The final rule would alter the information that a State may require a generator or transporter to submit on the Uniform Manifest, and it would also alter the States' current role in distributing manifests. However, these changes represent relatively minor adjustments to the current manifest system, and they do not alter substantially the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. The manifest would remain a tracking document and shipping paper that is primarily based on Federal requirements found in RCRA and in the hazardous materials transportation laws administered by DOT. As with existing hazardous waste manifest requirements, States would retain the authority to require generators and treatment, storage, and disposal facilities to provide additional information related to the hazardous waste shipment under separate cover, so long as such requirements are not inconsistent with the Hazardous Materials Transportation Act (HMTA) or HMTA regulations.

In addition, the final rule does not impose substantial direct costs on States and localities. Although States with manifest data tracking programs may incur some start-up costs in converting their tracking systems to accept the revised paper manifest, the final rule does not mandate that States collect manifests, as a part of their programs. Thus, Executive Order 13132 does not apply to this final rule.

Although Section Six of Executive Order 13132 does not apply to this rule, EPA consulted substantially with representatives of State government in developing this rule prior to finalization. The Agency invited State representatives to participate in two public meetings during which we presented our rulemaking objectives and strategies, and solicited comments and concerns. EPA conducted these public meetings on December 10–11, 1997, and on January 7–8, 1998. Representatives of 23 States and Territories participated in these meetings. In addition, State representatives were invited to participate in the meetings of the EPA work group which developed this rule. Representatives from five States (IN, MI, NH, PA and RI) were selected to participate in the work group meetings, and these States discussed rule options and draft rule language extensively with EPA throughout the development of both the proposed and final rules.

During our consultations with States on this rule, the State representatives identified several concerns about: (1) The reductions in the optional fields which States have used to require additional information from facilities; and (2) the changes for printing and acquiring manifests. A summary of the concerns raised during consultations with the States, and EPA's response to those concerns, is provided elsewhere in this preamble, as well as in our "Response to Comments" document (available to the public from the EPA Docket).

F. Executive Order 13175: Consultation With Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), 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 final rule does not have tribal implications, as specified in Executive Order 13175. It does not impose any new requirements on tribal officials nor does it impose substantial direct compliance costs on them. This rule does not create a mandate for tribal governments, nor does it impose any enforceable duties on these entities. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children—Applicability of Executive Order 13045

The Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered.

This final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. In addition, the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children, because the RCRA manifest does not itself give rise to environmental media transfer issues. The manifest serves as a tracking device which creates clear lines of accountability among the participants in the hazardous waste manifest system. It also serves to protect human health and the environment during the transportation of hazardous waste by providing information about the waste to persons handling the waste and to emergency response personnel.

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

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, Section 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 rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. 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 September 6, 2005.

List of Subjects

40 CFR Part 260

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, 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.

40 CFR Part 264

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

40 CFR Part 265

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

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements.

Dated: January 27, 2005.

Stephen L. Johnson,

Acting Administrator.

■ For the reasons stated in the preamble, title 40, chapter 1 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.

Subpart B—Definitions

■ 2. Section 260.10 is amended by removing the definition of "Manifest document number," by revising the definitions of "Designated facility" and "Manifest," and by adding the definition of "Manifest tracking number" in alphabetical order to read as follows:

§ 260.10 Definitions.

* * * * *

Designated facility means:

(1) A hazardous waste treatment, storage, or disposal facility which:

(i) Has received a permit (or interim status) in accordance with the

requirements of parts 270 and 124 of this chapter;

(ii) Has received a permit (or interim status) from a State authorized in accordance with part 271 of this chapter; or

(iii) Is regulated under § 261.6(c)(2) or subpart F of part 266 of this chapter; and

(iv) That has been designated on the manifest by the generator pursuant to § 262.20.

(2) *Designated facility* also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with § 264.72(f) or § 265.72(f) of this chapter.

(3) If a waste is destined to a facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving State to accept such waste.

* * * * *

Manifest means: The shipping document EPA Form 8700–22 (including, if necessary, EPA Form 8700–22A), originated and signed by the generator or offeror in accordance with the instructions in the appendix to 40 CFR part 262 and the applicable requirements of 40 CFR parts 262 through 265.

Manifest tracking number means: The alphanumeric identification number (*i.e.*, a unique three letter suffix preceded by nine numerical digits), which is pre-printed in Item 4 of the Manifest by a registered source.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 3. 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.

Subpart A—General

■ 4. Section 261.7 is amended by revising paragraph (b)(1)(iii) to read as follows:

§ 261.7 Residues of hazardous waste in empty containers.

* * * * *

(b)(1) * * *

(iii)(A) No more than 3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 119 gallons in size; or

(B) No more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 119 gallons in size.

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

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

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

Subpart B—The Manifest

■ 6. Section 262.20 (a) is revised to read as follows:

§ 262.20 General requirements.

(a)(1) A generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, must prepare a Manifest (OMB Control number 2050–0039) on EPA Form 8700–22, and, if necessary, EPA Form 8700–22A, according to the instructions included in the appendix to this part.

(2) The revised Manifest form and procedures in 40 CFR 260.10, 261.7, 262.20, 262.21, 262.27, 262.32, 262.33, 262.34, 262.54, 262.60, and the appendix to part 262, shall not apply until September 5, 2006. The Manifest form and procedures in 40 CFR 260.10, 261.7, 262.20, 262.21, 262.32, 262.33, 262.34, 262.54, 262.60, and the appendix to part 262, contained in the 40 CFR, parts 260 to 265, edition revised as of July 1, 2004, shall be applicable until September 5, 2006.

* * * * *

■ 7. Section 262.21 is revised (including the Section heading) to read as follows:

§ 262.21 Manifest tracking numbers, manifest printing, and obtaining manifests.

(a)(1) A registrant may not print, or have printed, the manifest for use or distribution unless it has received approval from the EPA Director of the Office of Solid Waste to do so under paragraphs (c) and (e) of this section.

(2) The approved registrant is responsible for ensuring that the organizations identified in its application are in compliance with the procedures of its approved application and the requirements of this section. The registrant is responsible for assigning manifest tracking numbers to its manifests.

(b) A registrant must submit an initial application to the EPA Director of the Office of Solid Waste that contains the following information:

(1) Name and mailing address of registrant;

(2) Name, telephone number and email address of contact person;

(3) Brief description of registrant's government or business activity;

(4) EPA identification number of the registrant, if applicable;

(5) Description of the scope of the operations that the registrant plans to undertake in printing, distributing, and using its manifests, including:

(i) A description of the printing operation. The description should include an explanation of whether the registrant intends to print its manifests in-house (*i.e.*, using its own printing establishments) or through a separate (*i.e.*, unaffiliated) printing company. If the registrant intends to use a separate printing company to print the manifest on its behalf, the application must identify this printing company and discuss how the registrant will oversee the company. If this includes the use of intermediaries (*e.g.*, prime and subcontractor relationships), the role of each must be discussed. The application must provide the name and mailing address of each company. It also must provide the name and telephone number of the contact person at each company.

(ii) A description of how the registrant will ensure that its organization and unaffiliated companies, if any, comply with the requirements of this section. The application must discuss how the registrant will ensure that a unique manifest tracking number will be pre-printed on each manifest. The application must describe the internal control procedures to be followed by the registrant and unaffiliated companies to ensure that numbers are tightly controlled and remain unique. In particular, the application must describe how the registrant will assign manifest tracking numbers to its manifests. If computer systems or other infrastructure will be used to maintain, track, or assign numbers, these should be indicated. The application must also indicate how the printer will pre-print a unique number on each form (*e.g.*, crash or press numbering). The application also must explain the other quality procedures to be followed by each establishment and printing company to ensure that all required print specifications are consistently achieved and that printing violations are identified and corrected at the earliest practicable time.

(iii) An indication of whether the registrant intends to use the manifests for its own business operations or to distribute the manifests to a separate company or to the general public (*e.g.*, for purchase).

(6) A brief description of the qualifications of the company that will print the manifest. The registrant may use readily available information to do so (*e.g.*, corporate brochures, product samples, customer references, documentation of ISO certification), so long as such information pertains to the establishments or company being proposed to print the manifest.

(7) Proposed unique three-letter manifest tracking number suffix. If the registrant is approved to print the manifest, the registrant must use this suffix to pre-print a unique manifest tracking number on each manifest.

(8) A signed certification by a duly authorized employee of the registrant that the organizations and companies in its application will comply with the procedures of its approved application and the requirements of this Section and that it will notify the EPA Director of the Office of Solid Waste of any duplicated manifest tracking numbers on manifests that have been used or distributed to other parties as soon as this becomes known.

(c) EPA will review the application submitted under paragraph (b) of this section and either approve it or request additional information or modification before approving it.

(d)(1) Upon EPA approval of the application under paragraph (c) of this section, EPA will provide the registrant an electronic file of the manifest, continuation sheet, and manifest instructions and ask the registrant to submit three fully assembled manifests and continuation sheet samples, except as noted in paragraph (d)(3) of this section. The registrant's samples must meet all of the specifications in paragraph (f) of this section and be printed by the company that will print the manifest as identified in the application approved under paragraph (c) of this section.

(2) The registrant must submit a description of the manifest samples as follows:

(i) Paper type (*i.e.*, manufacturer and grade of the manifest paper);

(ii) Paper weight of each copy;

(iii) Ink color of the manifest's instructions. If screening of the ink was used, the registrant must indicate the extent of the screening; and

(iv) Method of binding the copies.

(3) The registrant need not submit samples of the continuation sheet if it will print its continuation sheet using the same paper type, paper weight of each copy, ink color of the instructions, and binding method as its manifest form samples.

(e) EPA will evaluate the forms and either approve the registrant to print them as proposed or request additional information or modification to them before approval. EPA will notify the registrant of its decision by mail. The registrant cannot use or distribute its forms until EPA approves them. An approved registrant must print the manifest and continuation sheet according to its application approved under paragraph (c) of this section and the manifest specifications in paragraph (f) of this section. It also must print the forms according to the paper type, paper weight, ink color of the manifest instructions and binding method of its approved forms.

(f) Paper manifests and continuation sheets must be printed according to the following specifications:

(1) The manifest and continuation sheet must be printed with the exact format and appearance as EPA Forms 8700–22 and 8700–22A, respectively. However, information required to complete the manifest may be pre-printed on the manifest form.

(2) A unique manifest tracking number assigned in accordance with a numbering system approved by EPA must be pre-printed in Item 4 of the manifest. The tracking number must consist of a unique three-letter suffix following nine digits.

(3) The manifest and continuation sheet must be printed on 8½ x 11-inch white paper, excluding common stubs (*e.g.*, top- or side-bound stubs). The paper must be durable enough to withstand normal use.

(4) The manifest and continuation sheet must be printed in black ink that can be legibly photocopied, scanned, and faxed, except that the marginal words indicating copy distribution must be in red ink.

(5) The manifest and continuation sheet must be printed as six-copy forms. Copy-to-copy registration must be exact within 1/32nd of an inch. Handwritten and typed impressions on the form must be legible on all six copies. Copies must be bound together by one or more common stubs that reasonably ensure that they will not become detached inadvertently during normal use.

(6) Each copy of the manifest and continuation sheet must indicate how the copy must be distributed, as follows:

(i) Page 1 (top copy): "Designated facility to destination State (if required)".

(ii) Page 2: "Designated facility to generator State (if required)".

(iii) Page 3: "Designated facility to generator".

(iv) Page 4: "Designated facility's copy".

(v) Page 5: "Transporter's copy".

(vi) Page 6 (bottom copy): "Generator's initial copy".

(7) The instructions in the appendix to 40 CFR part 262 must appear legibly on the back of the copies of the manifest and continuation sheet as provided in this paragraph (f). The instructions must not be visible through the front of the copies when photocopied or faxed.

(i) Manifest Form 8700–22.

(A) The "Instructions for Generators" on Copy 6;

(B) The "Instructions for International Shipment Block" and "Instructions for Transporters" on Copy 5; and

(C) The "Instructions for Treatment, Storage, and Disposal Facilities" on Copy 4.

(ii) Manifest Form 8700–22A.

(A) The "Instructions for Generators" on Copy 6;

(B) The "Instructions for Transporters" on Copy 5; and

(C) The "Instructions for Treatment, Storage, and Disposal Facilities" on Copy 4.

(g)(1) A generator may use manifests printed by any source so long as the source of the printed form has received approval from EPA to print the manifest under paragraphs (c) and (e) of this section. A registered source may be a:

(i) State agency;

(ii) Commercial printer;

(iii) Hazardous waste generator, transporter or TSDF; or

(iv) Hazardous waste broker or other preparer who prepares or arranges shipments of hazardous waste for transportation.

(2) A generator must determine whether the generator state or the consignment state for a shipment regulates any additional wastes (beyond those regulated Federally) as hazardous wastes under these states' authorized programs. Generators also must determine whether the consignment state or generator state requires the generator to submit any copies of the manifest to these states. In cases where the generator must supply copies to either the generator's state or the consignment state, the generator is responsible for supplying legible photocopies of the manifest to these states.

(h)(1) If an approved registrant would like to update any of the information provided in its application approved under paragraph (c) of this section (*e.g.*, to update a company phone number or name of contact person), the registrant must revise the application and submit it to the EPA Director of the Office of Solid Waste, along with an indication or explanation of the update, as soon as practicable after the change occurs. The Agency either will approve or deny the

revision. If the Agency denies the revision, it will explain the reasons for the denial, and it will contact the registrant and request further modification before approval.

(2) If the registrant would like a new tracking number suffix, the registrant must submit a proposed suffix to the EPA Director of the Office of Solid Waste, along with the reason for requesting it. The Agency will either approve the suffix or deny the suffix and provide an explanation why it is not acceptable.

(3) If a registrant would like to change the paper type, paper weight, ink color of the manifest instructions, or binding method of its manifest or continuation sheet subsequent to approval under paragraph (e) of this section, then the registrant must submit three samples of the revised form for EPA review and approval. If the approved registrant would like to use a new printer, the registrant must submit three manifest samples printed by the new printer, along with a brief description of the printer's qualifications to print the manifest. EPA will evaluate the manifests and either approve the registrant to print the forms as proposed or request additional information or modification to them before approval. EPA will notify the registrant of its decision by mail. The registrant cannot use or distribute its revised forms until EPA approves them.

(i) If, subsequent to its approval under paragraph (e) of this section, a registrant typesets its manifest or continuation sheet instead of using the electronic file of the forms provided by EPA, it must submit three samples of the manifest or continuation sheet to the registry for approval. EPA will evaluate the manifests or continuation sheets and either approve the registrant to print them as proposed or request additional information or modification to them before approval. EPA will notify the registrant of its decision by mail. The registrant cannot use or distribute its typeset forms until EPA approves them.

(j) EPA may exempt a registrant from the requirement to submit form samples under paragraph (d) or (h)(3) of this section if the Agency is persuaded that a separate review of the registrant's forms would serve little purpose in informing an approval decision (*e.g.*, a registrant certifies that it will print the manifest using the same paper type, paper weight, ink color of the instructions and binding method of the form samples approved for some other registrant). A registrant may request an exemption from EPA by indicating why an exemption is warranted.

(k) An approved registrant must notify EPA by phone or email as soon as it becomes aware that it has duplicated tracking numbers on any manifests that have been used or distributed to other parties.

(l) If, subsequent to approval of a registrant under paragraph (e) of this section, EPA becomes aware that the approved paper type, paper weight, ink color of the instructions, or binding method of the registrant's form is unsatisfactory, EPA will contact the registrant and require modifications to the form.

(m)(1) EPA may suspend and, if necessary, revoke printing privileges if we find that the registrant:

(i) Has used or distributed forms that deviate from its approved form samples in regard to paper weight, paper type, ink color of the instructions, or binding method; or

(ii) Exhibits a continuing pattern of behavior in using or distributing manifests that contain duplicate manifest tracking numbers.

(2) EPA will send a warning letter to the registrant that specifies the date by which it must come into compliance with the requirements. If the registrant does not come in compliance by the specified date, EPA will send a second letter notifying the registrant that EPA has suspended or revoked its printing privileges. An approved registrant must provide information on its printing activities to EPA if requested.

Subpart B—[Amended]

■ 8. Subpart B is amended by adding new § 262.27 to read as follows:

§ 262.27 Waste minimization certification.

A generator who initiates a shipment of hazardous waste must certify to one of the following statements in Item 15 of the uniform hazardous waste manifest:

(a) "I am a large quantity generator. I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment;" or

(b) "I am a small quantity generator. I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford."

Subpart C—Pre-Transport Requirements

■ 9. Section 262.32 is amended by revising paragraph (b) to read as follows:

§ 262.32 Marking.

* * * * *

(b) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must mark each container of 119 gallons or less used in such transportation with the following words and information in accordance with the requirements of 49 CFR 172.304:

HAZARDOUS WASTE—Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

Generator's Name and Address _____.

Generator's EPA Identification Number _____.

Manifest Tracking Number _____.

■ 10. Section 262.33 is revised to read as follows:

§ 262.33 Placarding.

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must placard or offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous materials under 49 CFR part 172, subpart F. If placards are not required, a generator must mark each motor vehicle according to 49 CFR 171.3(b)(1).

■ 11. Section 262.34 is amended by adding new paragraph (m) to read as follows:

§ 262.34 Accumulation time.

* * * * *

(m) A generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of § 264.72 or § 265.72 of this chapter may accumulate the returned waste on-site in accordance with paragraphs (a) and (b) or (d), (e) and (f) of this section, depending on the amount of hazardous waste on-site in that calendar month. Upon receipt of the returned shipment, the generator must:

(1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

Subpart E—Exports of Hazardous Waste

■ 12. Section 262.54 is amended by revising paragraphs (c) and (e) to read as follows:

§ 262.54 Special manifest requirements.

* * * * *

(c) In the International Shipments block, the primary exporter must check the export box and enter the point of exit (city and State) from the United States.

* * * * *

(e) The primary exporter may obtain the manifest from any source that is registered with the U.S. EPA as a supplier of manifests (*e.g.*, states, waste handlers, and/or commercial forms printers).

* * * * *

Subpart F—Imports of Hazardous Waste

■ 13. Section 262.60 is amended by revising paragraph (c) and by adding paragraphs (d) and (e) to read as follows:

§ 262.60 Imports of hazardous waste.

* * * * *

(c) A person who imports hazardous waste may obtain the manifest form from any source that is registered with the U.S. EPA as a supplier of manifests (*e.g.*, states, waste handlers, and/or commercial forms printers).

(d) In the International Shipments block, the importer must check the import box and enter the point of entry (city and State) into the United States.

(e) The importer must provide the transporter with an additional copy of the manifest to be submitted by the receiving facility to U.S. EPA in accordance with § 264.71(a)(3) and § 265.71(a)(3) of this chapter.

■ 14. The Appendix to Part 262 is revised to read as follows:

Appendix to Part 262—Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700–22 and 8700–22A and Their Instructions)

U.S. EPA Form 8700–22

Read all instructions before completing this form.

1. This form has been designed for use on a 12-pitch (elite) typewriter which is also compatible with standard computer printers; a firm point pen may also be used—press down hard.

2. Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, and disposal facilities to complete this form (8700–22) and, if necessary, the continuation sheet (8700–22A) for both inter- and intrastate transportation of hazardous waste.

Manifest 8700–22

The following statement must be included with each Uniform Hazardous Waste Manifest, either on the form, in the instructions to the form, or accompanying the form:

Public reporting burden for this collection of information is estimated to average: 30 minutes for generators, 10 minutes for transporters, and 25 minutes for owners or operators of treatment, storage, and disposal facilities. This includes time for reviewing instructions, gathering data, completing, reviewing and transmitting the form. Send comments regarding the burden estimate, including suggestions for reducing this burden, to: Chief, Information Policy Branch (2136), U.S. Environmental Protection Agency, Ariel Rios Building; 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Instructions for Generators

Item 1. Generator's U.S. EPA Identification Number

Enter the generator's U.S. EPA twelve digit identification number, or the State generator identification number if the generator site does not have an EPA identification number.

Item 2. Page 1 of __

Enter the total number of pages used to complete this Manifest (*i.e.*, the first page (EPA Form 8700–22) plus the number of Continuation Sheets (EPA Form 8700–22A), if any).

Item 3. Emergency Response Phone Number

Enter a phone number for which emergency response information can be obtained in the event of an incident during transportation. The emergency response phone number must:

1. Be the number of the generator or the number of an agency or organization who is capable of and accepts responsibility for providing detailed information about the shipment;

2. Reach a phone that is monitored 24 hours a day at all times the waste is in transportation (including transportation related storage); and

3. Reach someone who is either knowledgeable of the hazardous waste being shipped and has comprehensive emergency response and spill cleanup/incident mitigation information for the material being shipped or has immediate access to a person who has that knowledge and information about the shipment.

Note: Emergency Response phone number information should only be entered in Item 3 when there is one phone number that applies to all the waste materials described in Item 9b. If a situation (*e.g.*, consolidated shipments) arises where more than one Emergency Response phone number applies to the various wastes listed on the manifest, the phone numbers associated with each specific material should be entered after its description in Item 9b.

Item 4. Manifest Tracking Number

This unique tracking number must be pre-printed on the manifest by the forms printer.

Item 5. Generator's Mailing Address, Phone Number and Site Address

Enter the name of the generator, the mailing address to which the completed manifest signed by the designated facility should be mailed, and the generator's telephone number. Note, the telephone number (including area code) should be the number where the generator or his authorized agent may be reached to provide instructions in the event of an emergency or if the designated and/or alternate (if any) facility rejects some or all of the shipment. Also enter the physical site address from which the shipment originates only if this address is different than the mailing address.

Item 6. Transporter 1 Company Name, and U.S. EPA ID Number

Enter the company name and U.S. EPA ID number of the first transporter who will transport the waste. Vehicle or driver information may not be entered here.

Item 7. Transporter 2 Company Name and U.S. EPA ID Number

If applicable, enter the company name and U.S. EPA ID number of the second transporter who will transport the waste. Vehicle or driver information may not be entered here.

If more than two transporters are needed, use a Continuation Sheet(s) (EPA Form 8700–22A).

Item 8. Designated Facility Name, Site Address, and U.S. EPA ID Number

Enter the company name and site address of the facility designated to receive the waste listed on this manifest. Also enter the facility's phone number and the U.S. EPA twelve digit identification number of the facility.

Item 9. U.S. DOT Description (Including Proper Shipping Name, Hazard Class or Division, Identification Number, and Packing Group)

Item 9a. If the wastes identified in Item 9b consist of both hazardous and nonhazardous materials, then identify the hazardous materials by entering an "X" in this Item next to the corresponding hazardous material identified in Item 9b.

Item 9b. Enter the U.S. DOT Proper Shipping Name, Hazard Class or Division, Identification Number (UN/NA) and Packing Group for each waste as identified in 49 CFR 172. Include technical name(s) and reportable quantity references, if applicable.

Note: If additional space is needed for waste descriptions, enter these additional descriptions in Item 27 on the Continuation Sheet (EPA Form 8700–22A). Also, if more than one Emergency Response phone number applies to the various wastes described in either Item 9b or Item 27, enter applicable Emergency Response phone numbers immediately following the shipping descriptions for those items.

Item 10. Containers (Number and Type)

Enter the number of containers for each waste and the appropriate abbreviation from Table I (below) for the type of container.

TABLE I.—TYPES OF CONTAINERS

BA = Burlap, cloth, paper, or plastic bags.
CF = Fiber or plastic boxes, cartons, cases.
CM = Metal boxes, cartons, cases (including roll-offs).
CW = Wooden boxes, cartons, cases.
CY = Cylinders.
DF = Fiberboard or plastic drums, barrels, kegs.
DM = Metal drums, barrels, kegs.
DT = Dump truck.
DW = Wooden drums, barrels, kegs.
HG = Hopper or gondola cars.
TC = Tank cars.
TP = Portable tanks.
TT = Cargo tanks (tank trucks).

Item 11. Total Quantity

Enter, in designated boxes, the total quantity of waste. Round partial units to the nearest whole unit, and *do not* enter decimals or fractions. To the extent practical, report quantities using appropriate units of measure that will allow you to report quantities with precision. Waste quantities entered should be based on actual measurements or reasonably accurate estimates of actual quantities shipped. Container capacities are not acceptable as estimates.

Item 12. Units of Measure (Weight/Volume)

Enter, in designated boxes, the appropriate abbreviation from Table II (below) for the unit of measure.

TABLE II.—UNITS OF MEASURE

G = Gallons (liquids only).
K = Kilograms.
L = Liters (liquids only).
M = Metric Tons (1000 kilograms).
N = Cubic Meters.
P = Pounds.
T = Tons (2000 pounds).
Y = Cubic Yards.

Note: Tons, Metric Tons, Cubic Meters, and Cubic Yards should only be reported in connection with very large bulk shipments, such as rail cars, tank trucks, or barges.

Item 13. Waste Codes

Enter up to six federal and state waste codes to describe each waste stream identified in Item 9b. State waste codes that are not redundant with federal codes must be entered here, in addition to the federal waste codes which are most representative of the properties of the waste.

Item 14. Special Handling Instructions and Additional Information.

1. Generators may enter any special handling or shipment-specific information necessary for the proper management or tracking of the materials under the generator's or other handler's business processes, such as waste profile numbers, container codes, bar codes, or response guide numbers. Generators also may use this space to enter additional descriptive information about their shipped materials, such as chemical names, constituent percentages, physical state, or specific gravity of wastes identified with volume units in Item 12.

2. This space may be used to record limited types of federally required information for which there is no specific space provided on the manifest, including any alternate facility designations; the manifest tracking number of the original manifest for rejected wastes and residues that are re-shipped under a second manifest; and the specification of PCB waste descriptions and PCB out-of-service dates required under 40 CFR 761.207. Generators, however, cannot be required to enter information in this space to meet state regulatory requirements.

Item 15. Generator's/Offeror's Certifications

1. The generator must read, sign, and date the waste minimization certification statement. In signing the waste minimization certification statement, those generators who have not been exempted by statute or regulation from the duty to make a waste minimization certification under section 3002(b) of RCRA are also certifying that they have complied with the waste minimization requirements. The Generator's Certification also contains the required attestation that the shipment has been properly prepared and is in proper condition for transportation (the shipper's certification). The content of the shipper's certification statement is as follows: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national governmental regulations. When a party other than the generator prepares the shipment for transportation, this party may also sign the shipper's certification statement as the offeror of the shipment.

2. Generator or Offeror personnel may preprint the words, "On behalf of" in the signature block or may hand write this statement in the signature block prior to signing the generator/offeror certification, to indicate that the individual signs as the employee or agent of the named principal.

Note: All of the above information except the handwritten signature required in Item 15 may be pre-printed.

II. Instructions for International Shipment Block

Item 16. International Shipments

For export shipments, the primary exporter must check the export box, and enter the point of exit (city and state) from the United States. For import shipments, the importer must check the import box and enter the point of entry (city and state) into the United States. For exports, the transporter must sign and date the manifest to indicate the day the shipment left the United States. Transporters of hazardous waste shipments must deliver a copy of the manifest to the U.S. Customs when exporting the waste across U.S. borders.

III. Instructions for Transporters

Item 17. Transporters' Acknowledgments of Receipt

Enter the name of the person accepting the waste on behalf of the first transporter. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt. Only one signature per transportation company is required. Signatures are not required to track the movement of wastes in and out of transfer facilities, unless there is a change of custody between transporters.

If applicable, enter the name of the person accepting the waste on behalf of the second transporter. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

Note: Transporters carrying imports, who are acting as importers, may have responsibilities to enter information in the International Shipments Block. Transporters carrying exports may also have responsibilities to enter information in the International Shipments Block. See above instructions for Item 16.

IV. Instructions for Owners and Operators of Treatment, Storage, and Disposal Facilities

Item 18. Discrepancy

Item 18a. Discrepancy Indication Space

1. The authorized representative of the designated (or alternate) facility's owner or operator must note in this space any discrepancies between the waste described on the Manifest and the waste actually received at the facility. Manifest discrepancies are: significant differences (as defined by §§ 264.72(b) and 265.72(b)) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives, rejected wastes, which may be a full or partial shipment of hazardous waste that the TSDF cannot accept, or container residues, which are residues that exceed the quantity limits for "empty" containers set forth in 40 CFR 261.7(b).

2. For rejected loads and residues (40 CFR 264.72(d), (e), and (f), or 40 CFR 265.72(d), (e), or (f)), check the appropriate box if the shipment is a rejected load (*i.e.*, rejected by the designated and/or alternate facility and is sent to an alternate facility or returned to the generator) or a regulated residue that cannot be removed from a container. Enter the reason for the rejection or the inability to remove the residue and a description of the waste. Also, reference the manifest tracking number for any additional manifests being used to track the rejected waste or residue shipment on the original manifest. Indicate the original manifest tracking number in Item 14, the Special Handling Block and Additional Information Block of the additional manifests.

3. Owners or operators of facilities located in unauthorized States (*i.e.*, states in which the U.S. EPA administers the hazardous waste management program) who cannot resolve significant differences in quantity or type within 15 days of receiving the waste

must submit to their Regional Administrator a letter with a copy of the Manifest at issue describing the discrepancy and attempts to reconcile it (40 CFR 264.72(c) and 265.72(c)).

4. Owners or operators of facilities located in authorized States (*i.e.*, those States that have received authorization from the U.S. EPA to administer the hazardous waste management program) should contact their State agency for information on where to report discrepancies involving "significant differences" to state officials.

Item 18b. Alternate Facility (or Generator) for Receipt of Full Load Rejections

Enter the name, address, phone number, and EPA Identification Number of the Alternate Facility which the rejecting TSDF has designated, after consulting with the generator, to receive a fully rejected waste shipment. In the event that a fully rejected shipment is being returned to the generator, the rejecting TSDF may enter the generator's site information in this space. This field is not to be used to forward partially rejected loads or residue waste shipments.

Item 18c. Alternate Facility (or Generator) Signature

The authorized representative of the alternate facility (or the generator in the event of a returned shipment) must sign and date this field of the form to acknowledge receipt of the fully rejected wastes or residues identified by the initial TSDF.

Item 19. Hazardous Waste Report Management Method Codes

Enter the most appropriate Hazardous Waste Report Management Method code for each waste listed in Item 9. The Hazardous Waste Report Management Method code is to be entered by the first treatment, storage, or disposal facility (TSDF) that receives the waste and is the code that best describes the way in which the waste is to be managed when received by the TSDF.

Item 20. Designated Facility Owner or Operator Certification of Receipt (Except As Noted in Item 18a)

Enter the name of the person receiving the waste on behalf of the owner or operator of the facility. That person must acknowledge receipt or rejection of the waste described on the Manifest by signing and entering the date of receipt or rejection where indicated. Since the Facility Certification acknowledges receipt of the waste except as noted in the Discrepancy Space in Item 18a, the certification should be signed for both waste receipt and waste rejection, with the rejection being noted and described in the space provided in Item 18a. Fully rejected wastes may be forwarded or returned using Item 18b after consultation with the generator. Enter the name of the person accepting the waste on behalf of the owner or operator of the alternate facility or the original generator. That person must acknowledge receipt or rejection of the waste described on the Manifest by signing and entering the date they received or rejected the waste in Item 18c. Partially rejected wastes and residues must be re-shipped under a new manifest, to be initiated and signed by the rejecting TSDF as offeror of the shipment.

Manifest Continuation Sheet

Instructions—Continuation Sheet, U.S. EPA Form 8700–22A

Read all instructions before completing this form. This form has been designed for use on a 12-pitch (elite) typewriter; a firm point pen may also be used—press down hard.

This form must be used as a continuation sheet to U.S. EPA Form 8700–22 if:

- More than two transporters are to be used to transport the waste; or
- More space is required for the U.S. DOT descriptions and related information in Item 9 of U.S. EPA Form 8700–22.

Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, or disposal facilities to use the uniform hazardous waste manifest (EPA Form 8700–22) and, if necessary, this continuation sheet (EPA Form 8700–22A) for both interstate and intrastate transportation.

Item 21. Generator's ID Number

Enter the generator's U.S. EPA twelve digit identification number or, the State generator identification number if the generator site does not have an EPA identification number.

Item 22. Page __—

Enter the page number of this Continuation Sheet.

Item 23. Manifest Tracking Number

Enter the Manifest Tracking number from Item 4 of the Manifest form to which this continuation sheet is attached.

Item 24. Generator's Name—

Enter the generator's name as it appears in Item 5 on the first page of the Manifest.

Item 25. Transporter—Company Name

If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 3 Company Name. Also enter the U.S. EPA twelve digit identification number of the transporter described in Item 25.

Item 26. Transporter—Company Name

If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 4 Company Name. Each Continuation Sheet can record the names of two additional transporters. Also enter the U.S. EPA twelve digit identification number of the transporter named in Item 26.

Item 27. U.S. D.O.T. Description Including Proper Shipping Name, Hazardous Class, and ID Number (UN/NA)

For each row enter a sequential number under Item 27b that corresponds to the order of waste codes from one continuation sheet to the next, to reflect the total number of wastes being shipped. Refer to instructions for Item 9 of the manifest for the information to be entered.

Item 28. Containers (No. And Type)

Refer to the instructions for Item 10 of the manifest for information to be entered.

Item 29. Total Quantity

Refer to the instructions for Item 11 of the manifest form.

Item 30. Units of Measure (Weight/Volume)

Refer to the instructions for Item 12 of the manifest form.

Item 31. Waste Codes

Refer to the instructions for Item 13 of the manifest form.

Item 32. Special Handling Instructions and Additional Information

Refer to the instructions for Item 14 of the manifest form.

Transporters

Item 33. Transporter—Acknowledgment of Receipt of Materials

Enter the same number of the Transporter as identified in Item 25. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 25. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

Item 34. Transporter—Acknowledgment of Receipt of Materials

Enter the same number of the Transporter as identified in Item 26. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 26. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

Owner and Operators of Treatment, Storage, or Disposal Facilities

Item 35. Discrepancy Indication Space

Refer to Item 18. This space may be used to more fully describe information on discrepancies identified in Item 18a of the manifest form.

Item 36. Hazardous Waste Report Management Method Codes

For each field here, enter the sequential number that corresponds to the waste materials described under Item 27, and enter the appropriate process code that describes how the materials will be processed when received. If additional continuation sheets are attached, continue numbering the waste materials and process code fields sequentially, and enter on each sheet the process codes corresponding to the waste materials identified on that sheet.

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

■ 15. The authority citation for part 263 is revised to read as follows:

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

■ 16. Section 263.20 is amended by revising paragraphs (a) and (g) to read as follows:

§ 263.20 The manifest system.

(a)(1) *Manifest requirement.* A transporter may not accept hazardous waste from a generator unless the transporter is also provided with a manifest signed in accordance with the requirements of § 262.23.

(2) *Exports.* In the case of exports other than those subject to subpart H of 40 CFR part 262, a transporter may not accept such waste from a primary exporter or other person if he knows the shipment does not conform to the EPA Acknowledgment of Consent; and unless, in addition to a manifest signed by the generator as provided in this section, the transporter shall also be provided with an EPA Acknowledgment of Consent which, except for shipments by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)). For exports of hazardous waste subject to the requirements of subpart H of 40 CFR part 262, a transporter may not accept hazardous waste without a tracking document that includes all information required by 40 CFR 262.84.

(3) *Compliance Date for Form Revisions.* The revised Manifest form and procedures in 40 CFR 260.10, 261.7, 263.20, and 263.21, shall not apply until September 5, 2006. The Manifest form and procedures in 40 CFR 260.10, 261.7, 263.20, and 263.21, contained in the 40 CFR, parts 260 to 265, edition revised as of July 1, 2004, shall be applicable until September 5, 2006.

* * * * *

(g) Transporters who transport hazardous waste out of the United States must:

(1) Sign and date the manifest in the International Shipments block to indicate the date that the shipment left the United States;

(2) Retain one copy in accordance with § 263.22(d);

(3) Return a signed copy of the manifest to the generator; and

(4) Give a copy of the manifest to a U.S. Customs official at the point of departure from the United States.

* * * * *

■ 17. Section 263.21 is amended by revising paragraph (b) to read as follows:

§ 263.21 Compliance with the manifest.

* * * * *

(b)(1) If the hazardous waste cannot be delivered in accordance with paragraph (a) of this section because of an emergency condition other than rejection of the waste by the designated facility, then the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

(2) If hazardous waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter must obtain the following:

(i) For a partial load rejection or for regulated quantities of container residues, a copy of the original manifest that includes the facility's date and signature, and the Manifest Tracking Number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue in the discrepancy block of the original manifest. The transporter must retain a copy of this manifest in accordance with § 263.22, and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter must obtain a new manifest to accompany the shipment, and the new manifest must include all of the information required in 40 CFR 264.72(e)(1) through (6) or (f)(1) through (6) or 40 CFR 265.72(e)(1) through (6) or (f)(1) through (6).

(ii) For a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection in the discrepancy block of the manifest, and the name, address, phone number, and Identification Number for the alternate facility or generator to whom the shipment must be delivered. The transporter must retain a copy of the manifest in accordance with § 263.22, and give a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter must obtain a new manifest for the shipment and comply with 40 CFR 264.72(e)(1) through (6) or 40 CFR 265.72(e)(1) through (6).

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

■ 18. The authority citation for part 264 is revised to read as follows:

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

Subpart E—Manifest System, Recordkeeping, and Reporting

■ 19. Section 264.70 is revised to read as follows:

§ 264.70 Applicability.

(a) The regulations in this subpart apply to owners and operators of both on-site and off-site facilities, except as § 264.1 provides otherwise. Sections 264.71, 264.72, and 264.76 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources, nor to owners and operators of off-site facilities with respect to waste military munitions exempted from manifest requirements under 40 CFR 266.203(a). Section 264.73(b) only applies to permittees who treat, store, or dispose of hazardous wastes on-site where such wastes were generated.

(b) The revised Manifest form and procedures in 40 CFR 260.10, 261.7, 264.70, 264.71. 264.72, and 264.76, shall not apply until September 5, 2006. The Manifest form and procedures in 40 CFR 260.10, 261.7, 264.70, 264.71. 264.72, and 264.76, contained in the 40 CFR, parts 260 to 265, edition revised as of July 1, 2004, shall be applicable until September 5, 2006.

■ 20. Section 264.71 is amended by revising paragraphs (a) and (b)(4) and adding paragraph (e) to read as follows:

§ 264.71 Use of manifest system.

(a)(1) If a facility receives hazardous waste accompanied by a manifest, the owner, operator or his/her agent must sign and date the manifest as indicated in paragraph (a)(2) of this section to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

(2) If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator or his agent must:

(i) Sign and date, by hand, each copy of the manifest;

(ii) Note any discrepancies (as defined in § 264.72(a)) on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the manifest;

(iv) Within 30 days of delivery, send a copy of the manifest to the generator; and

(v) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(3) If a facility receives hazardous waste imported from a foreign source, the receiving facility must mail a copy of the manifest to the following address within 30 days of delivery: International Compliance Assurance Division, OFA/OECA (2254A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(b) * * *

(4) Within 30 days after the delivery, send a copy of the signed and dated manifest or a signed and dated copy of the shipping paper (if the manifest has not been received within 30 days after delivery) to the generator; and

* * * * *

(e) A facility must determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated Federally) as hazardous wastes under its state hazardous waste program. Facilities must also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states.

■ 21. Section 264.72 is revised to read as follows:

§ 264.72 Manifest discrepancies.

(a) Manifest discrepancies are:

(1) Significant differences (as defined by paragraph (b) of this section) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives;

(2) Rejected wastes, which may be a full or partial shipment of hazardous waste that the TSDF cannot accept; or

(3) Container residues, which are residues that exceed the quantity limits for "empty" containers set forth in 40 CFR 261.7(b).

(b) Significant differences in quantity are: For bulk waste, variations greater than 10 percent in weight; for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant differences in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(c) Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (*e.g.*, with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Regional Administrator a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

(d)(1) Upon rejecting waste or identifying a container residue that exceeds the quantity limits for "empty" containers set forth in 40 CFR 261.7(b), the facility must consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste or residue to the generator. The facility must send the waste to the alternative facility or to the generator within 60 days of the rejection or the container residue identification.

(2) While the facility is making arrangements for forwarding rejected wastes or residues to another facility under this section, it must ensure that either the delivering transporter retains custody of the waste, or, the facility must provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under paragraph (e) or (f) of this section.

(e) Except as provided in paragraph (e)(7) of this section, for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest in accordance with § 262.20(a) of this chapter and the following instructions:

(1) Write the generator's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

(2) Write the name of the alternate designated facility and the facility's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a) of this chapter.

(5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(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.

(7) For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the Alternate Facility space. The facility must retain a copy of this manifest 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 (e)(1), (2), (3), (4), (5), and (6) of this section.

(f) Except as provided in paragraph (f)(7) of this section, for rejected wastes and residues that must be sent back to the generator, the facility is required to prepare a new manifest in accordance with § 262.20(a) of this chapter and the following instructions:

(1) Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

(2) Write the name of the initial generator and the generator's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

(5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offeror's Certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation.

(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), and (6) of this section.

(g) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for "empty" containers set forth in 40 CFR 261.7(b) after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator, the facility must amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility must also copy the manifest tracking number from Item 4 of the new manifest to the Discrepancy space of the amended manifest, and must re-sign and date the manifest to certify to the information as amended. The facility must retain the amended manifest for at least three years from the date of amendment, and must within 30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to their being amended.

■ 22. Section 264.76 is revised to read as follows:

§ 264.76 Unmanifested waste report.

(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described by § 263.20(e) of this chapter, and if the waste is not excluded from the manifest requirement by this chapter, then the owner or operator must prepare and submit a letter to the Regional Administrator within 15 days after receiving the waste. The unmanifested waste report must contain the following information:

(1) The EPA identification number, name and address of the facility;

(2) The date the facility received the waste;

(3) The EPA identification number, name and address of the generator and the transporter, if available;

(4) A description and the quantity of each unmanifested hazardous waste the facility received;

(5) The method of treatment, storage, or disposal for each hazardous waste;

(6) The certification signed by the owner or operator of the facility or his authorized representative; and,

(7) A brief explanation of why the waste was unmanifested, if known.

(b) [Reserved]

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

■ 23. The authority citation for part 265 is revised to read as follows:

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

Subpart E—Manifest System, Recordkeeping, and Reporting

■ 24. Section 265.70 is revised to read as follows:

§ 265.70 Applicability.

(a) The regulations in this subpart apply to owners and operators of both on-site and off-site facilities, except as § 265.1 provides otherwise. Sections 265.71, 265.72, and 265.76 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources, nor to owners and operators of off-site facilities with respect to waste military munitions exempted from manifest requirements under 40 CFR 266.203(a).

(b) The revised Manifest form and procedures in 40 CFR 260.10, 261.7, 265.70, 265.71. 265.72, and 265.76, shall not apply until September 5, 2006. The Manifest form and procedures in 40 CFR 260.10, 261.7, 265.70, 265.71. 265.72, and 265.76, contained in the 40 CFR, parts 260 to 265, edition revised as of July 1, 2004, shall be applicable until September 5, 2006.

■ 25. Section 265.71 is amended by revising paragraphs (a) and (b)(4) and adding paragraph (e) to read as follows:

§ 265.71 Use of manifest system.

(a)(1) If a facility receives hazardous waste accompanied by a manifest, the owner, operator or his/her agent must sign and date the manifest as indicated in paragraph (a)(2) of this section to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

(2) If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator or his/her agent must:

(i) Sign and date, by hand, each copy of the manifest;

(ii) Note any discrepancies (as defined in § 265.72(a)) on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the manifest;

(iv) Within 30 days of delivery, send a copy of the manifest to the generator; and

(v) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(3) If a facility receives hazardous waste imported from a foreign source, the receiving facility must mail a copy of the manifest to the following address within 30 days of delivery: International Compliance Assurance Division, OFA/OECA (2254A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(b) * * *

(4) Within 30 days after the delivery, send a copy of the signed and dated manifest or a signed and dated copy of the shipping paper (if the manifest has not been received within 30 days after delivery) to the generator; and

* * * * *

(e) A facility must determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated Federally) as hazardous wastes under its state hazardous waste program. Facilities must also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states.

■ 26. Section 265.72 is revised to read as follows:

§ 265.72 Manifest discrepancies.

(a) Manifest discrepancies are:

(1) Significant differences (as defined by paragraph (b) of this section) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives;

(2) Rejected wastes, which may be a full or partial shipment of hazardous waste that the TSDF cannot accept; or

(3) Container residues, which are residues that exceed the quantity limits for "empty" containers set forth in 40 CFR 261.7(b).

(b) Significant differences in quantity are: For bulk waste, variations greater than 10 percent in weight; for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant differences in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic

constituents not reported on the manifest or shipping paper.

(c) Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (*e.g.*, with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Regional Administrator a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

(d)(1) Upon rejecting waste or identifying a container residue that exceeds the quantity limits for "empty" containers set forth in 40 CFR 261.7(b), the facility must consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste or residue to the generator. The facility must send the waste to the alternative facility or to the generator within 60 days of the rejection or the container residue identification.

(2) While the facility is making arrangements for forwarding rejected wastes or residues to another facility under this section, it must ensure that either the delivering transporter retains custody of the waste, or the facility must provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under paragraph (e) or (f) of this section.

(e) Except as provided in paragraph (e)(7) of this section, for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest in accordance with § 262.20(a) of this chapter and the following instructions:

(1) Write the generator's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space in Item 5.

(2) Write the name of the alternate designated facility and the facility's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a) of this chapter.

(5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(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.

(7) For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the Alternate Facility space. The facility must retain a copy of this manifest 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 (e)(1), (2), (3), (4), (5), and (6) of this section.

(f) Except as provided in paragraph (f)(7) of this section, for rejected wastes and residues that must be sent back to the generator, the facility is required to prepare a new manifest in accordance with § 262.20(a) of this chapter and the following instructions:

(1) Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

(2) Write the name of the initial generator and the generator's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment,

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a),

(5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offeror's Certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation,

(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 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), and (6) of this section.

(g) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for "empty" containers set forth in 40 CFR 261.7(b) after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator, the facility must amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility must also copy the manifest tracking number from Item 4 of the new manifest to the discrepancy space of the amended manifest, and must re-sign and date the manifest to certify to the information as amended. The facility must retain the amended manifest for at least three years from the date of amendment, and must within 30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to their being amended.

■ 27. Section 265.76 is revised to read as follows:

§ 265.76 Unmanifested waste report.

(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described by § 263.20(e) of this chapter, and if the waste is not excluded from the manifest requirement by this chapter, then the owner or operator must prepare and submit a letter to the Regional Administrator within fifteen days after receiving the waste. The unmanifested waste report must contain the following information:

(1) The EPA identification number, name and address of the facility;

(2) The date the facility received the waste;

(3) The EPA identification number, name and address of the generator and the transporter, if available;

(4) A description and the quantity of each unmanifested hazardous waste the facility received;

(5) The method of treatment, storage, or disposal for each hazardous waste;

(6) The certification signed by the owner or operator of the facility or his authorized representative; and

(7) A brief explanation of why the waste was unmanifested, if known.

(b) [Reserved]

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

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

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

■ 29. Section 271.1(j) is amended by adding the following entries to Table 1 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
*	*	*	*
Mar. 4, 2005	Waste Minimization Certification in the Revised Manifest Rule.	[Insert FR page numbers]	Sept. 6, 2005.
*	*	*	*

■ 30. Section 271.10 is amended by revising paragraphs (f)(1), (f)(2), (f)(3), and (h) introductory text, (h)(1), and (h)(2) to read as follows:

§ 271.10 Requirements for generators of hazardous wastes.

* * * * *

(f) * * *

(1) Use a manifest system that ensures that interstate and intrastate shipments of hazardous waste are designated for delivery and, in the case of intrastate shipments, are delivered to facilities that are authorized to operate under an approved State program or the federal program. The manifest system must require the use of the manifest format as required by § 262.20(a). No other manifest form, shipping document, or information, other than that required by federal law, may be required by the State to travel with the shipment.

(2) Initiate the manifest and designate on the manifest the treatment, storage or disposal facility to which the waste is to be shipped.

(3) Ensure that all wastes offered for transportation are accompanied by a manifest, except:

(i) Shipments subject to 40 CFR 262.20(e) or (f);

(ii) Shipments by rail or water, as specified in 40 CFR 262.23(c) and (d).

* * * * *

(h) The State must follow the Federal manifest format for the form and instructions (40 CFR 262.20 and the appendix to part 262).

(1) A state may require the entry of waste codes associated with particular wastes that are regulated as hazardous wastes by the state, if the state codes are not redundant with a federally required code for the same waste. No state, however, may impose enforcement sanctions on a transporter during transportation of the shipment for failure of the form to include a state-required waste code.

(2) Either the State to which a shipment is manifested (consignment State) or the State in which the generator is located (generator State), or both, may require that copies of the manifest form be submitted to the State.

* * * * *

■ 31. Section 271.11 is amended by revising paragraph (c) to read as follows:

§ 271.11 Requirements for transporters of hazardous waste.

* * * * *

(c)(1) The State must require transporters to carry the manifest during transport, except in the case of shipments by rail or water, transporters may carry a shipping paper, as specified in 40 CFR 263.20(e) and (f);

(2) The State must require the transporter to deliver waste only to the facility designated on the manifest, which in the case of return shipments of rejected wastes or regulated container residues, may also include the original generator of the waste shipment.

(3) The State program must provide requirements for shipments by rail or water equivalent to those under 40 CFR 263.20(e) and (f).

(4) For exports of hazardous waste, the state must require the transporter to refuse to accept hazardous waste for export if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent, to carry an EPA Acknowledgment of Consent to the shipment, to sign and date the International Shipments Block of the manifest to indicate the date the shipment leaves the U.S., and to provide a copy of the manifest to the U.S. Customs official at the point the waste leaves the United States.

* * * * *

■ 32. Section 271.12 is amended by revising paragraph (i) to read as follows:

§ 271.12 Requirements for hazardous waste management facilities.

* * * * *

(i) Compliance with the manifest system including the requirement that facility owners or operators return a signed copy of the manifest:

(1) To the generator to certify delivery of the hazardous waste shipment or to identify discrepancies; and

(2) To EPA's International Compliance Assurance Division program, at the address referenced in 40 CFR 264.71(a)(3) and 265.71(a)(3), to indicate the receipt of a shipment of hazardous waste imported into the U.S. from a foreign source.

* * * * *

[FR Doc. 05–1966 Filed 3–3–05; 8:45 am]

BILLING CODE 6560–50–P

West Virginia Department of Environmental Protection

ADVISORY COUNCIL MEETING MINUTES

Wednesday - June 8, 2005
601 57th Street, SE, Charleston, WV
Dolly Sods Conference Room – 1st Floor

ATTENDEES:

Advisory Council Members:
Larry Harris
Jackie Hallinan
Rick Roberts
Lisa Dooley
Bill Raney
Karen Price

DEP:
Stephanie R. Timmermeyer, Cabinet Secretary
Karen G. Watson, Assistant General Counsel
Ken Ellison, Director - Division of Land Restoration
Lisa McClung, Director – Division of Water and Waste Management
John Benedict, Director – Division of Air Quality
Mike Zeto, WVDEP
Charlie Sturey, WVDEP
Jessica Greathouse, Chief Communication Officer – WVDEP – Public Information Office
James Martin, Chief, WVDEP - Office of Oil & Gas
Brett Loflin, WV Oil and Gas Conservation Commission
Dave Bassage- WVDEP
Greg Adolpson – WVDEP
Jim Mason – WVDEP
Fred Durham – WVDEP
Jim Mason – WVDEP
Mike Johnson – WVDEP

VISITORS:

Linda Tennant, Spilman, Thomas, Battle
Don Garvin – WVEC
Bob Asplund - Dominion

Karen Watson, WVDEP – Assistant General Counsel, called the meeting to order at 10:00 a.m.

Proposed rules for the 2006 legislative session are as follows:

- **45CSR1 "Control and Reduction of Nitrogen Oxides from Non-Electric Generating Units as a Means to Mitigate Transport of Ozone Precursors"**

  This rule partially fulfills the State's obligations in response to U.S. EPA's final rule, *Findings of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group region for Purposes of Reducing Regional Transport of Ozone* 27 Oct 1998, herein referred to as the *NO_x SIP Call*). Essentially, the federal rule requires that large emitters of Nitrogen Oxides (NO_x) significantly reduce emissions and constrains them to set budgets, starting in 2004 and maintaining them thereafter. Flexibility is built in through market-based "cap and trade" provisions which allow sources to buy/sell NO_x emission allowances from /to other program participants. For example, a source which has emitted NO_x in excess of its NO_x allowance allocation may purchase NO_x allowances under the federal NO_x Budget Trading Program to obtain the needed NO_x emission allowances to cover its actual NO_x emissions during an ozone season. Conversely, a source which emits fewer tons of NO_x than its NO_x allowance allocation may either bank or sell (trade) the excess NO_x allowances to another sources which needs them to cover its excess NO_x emissions.

  45CSR1 applies to large fossil fuel-fired stationary sources (large industrial boilers) with heat inputs greater than 250 mmBtu/hr. The Department of Environmental Protection, Division of Air Quality (DAQ) addresses Electric Generation Units (EGUs) in a separate rulemaking, 45CSR26. 45CSR1 also applies to large cement kilns and internal combustion engines which emitted more than one ton per day of NO_x from May 1 through September 30, 1995, although these sources are not subject to the NO_x Budget Trading Program.

  Comments:

  How will this relate to the new rule 40?

  Rule 40 will repeal Rule 1 in 2009.

  Are these kinds of trading effective in lowering NO_x emission?

  Yes, West Virginia has dropped from one of the highest to one of the lowest states.

  If one is testing, how do you see which sources account for improvement?

  Have CEMS on stacks so we can analyze data.

- **45CSR15 – "Emission Standards for Hazardous Air Pollutants Pursuant to 40CFR Part 61"**

  This rule establishes and adopts national emission standards for hazardous air pollutant (NESHAPO) and other regulatory requirements promulgated by the United States Environmental Protection Agency (USEPA) pursuant to 40CFR part 61 and section 112 of

the federal clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement emission standards for stationary sources that emit (or have the potential to emit) one or more to the eight substances listed as hazardous air pollutants in 40 CFR §61.01(a). The rule incorporated by reference the NESHAP standards of 40 CFR Parts 61 and 65 (consolidated Federal Air Rule), to the extent referenced in 40CFR part 61, promulgated as of June 1, 2005. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CSR parts 61 and 65. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 CFR Part 61 must comply with the applicable NESHAPS and this rule.

45CSR15, in conjunction with 45CSR34, establishes general provisions for emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by USEPA pursuant to section 112 of the federal Clean Air Act, as amended. 45CSR34 incorporates hazardous air pollutant standards codified by USEPA under 40CFR part 63 whereas 45CSR15, incorporates hazardous air pollutant standards promulgated by USEPA under 40 CFR Part 61.

This revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of June 1, 2005: National Emission Standards for Hazardous Air Pollutants for Asbestos.

No Comments

- **45CSR16 – "Standards of Performance for New Stationary Sources Pursuant to 40CFR Part 60"**

This rule establishes and adopts national standards of performance for new stationary sources and other regulatory requirements promulgated by the United States Environmental Protection Agency (USEPA) pursuant to section 111(b) of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement standards of performance for new stationary sources set forth in 40 CFR Part 60. The rule incorporates by reference New Sources Performance Standards (NSPS) promulgated as of June 1, 2005. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to such standards. Any person who constructs, modifies, reconstructs or operates an affected facility after the effective date of any NSPS under 40 CFR Part 60 must comply with the applicable NSPS and this rule.

This revised rule incorporates by reference the following new or revised NSPS standards promulgated as of July 1, 2005: Standards of performance for Industrial-Commercial-Institutional Steam Generating units; Stationary Gas Turbines: Steel Plants; and new and Existing Stationary Sources: Electric Utility Steam Generating Units (CAMR).

No Comments

- **45CSR25 – "To Prevent and Control Air Pollution from Hazardous Waste Treatment Storage or Disposal Facilities."**

  This rule establishes and adopts national standards of performance for new stationary sources and other regulatory requirements promulgated by the United States Environmental Protection Agency (USEPA) pursuant to the Resource Conservation and Recovery Act, as amended (RCRA). This rule codifies general procedures and criteria to implement emission standards set forth in the Code of Federal Regulations as listed in Table 25-A of the rule. The rule also adopts associated appendices, reference methods, performance specifications and other test methods, which are appended to these standards. Any person, who constructs, reconstructs, modifies or operates any hazardous waste treatment, storage, or disposal facility must comply with the West Virginia Hazardous Waste management Program, the codified federal emission standards, and this rule.

  45CSR25 establishes a program of regulation over the treatment, storage, and disposal of hazardous wastes in order to achieve and maintain such levels of air quality as will protect the public health and safety and the environment from the effects of improper, inadequate, or unsound treatment, storage, or disposal of hazardous wastes.

  This revised rule incorporates by reference the following provisions of 40 CFR Part 262 promulgated as of June 1, 2005: National Environmental Performance Track Program.

  Comments:

  What does the term "constituents" mean and how does one decide whether a source has prevented emissions that would cause harm under section 1.1.b of the rule?

  > *Look at the definition of "hazardous waste" and prevention language is meant to set forth overall purpose of the rule.*

  Does the agency consult with DHHR or other public health officials?

  > *No, the agency uses a risk-based approach and has a toxicologist employed. It also looks to EPA.*

- **45CSR33 – "Acid Rain Provisions and Permits"**

  This r ule e stablishes a nd a dopts t he g eneral p rovisions and operating permit program requirements for affected sources under the Acid Rain Program promulgated by the4 United States Environmental Protection Agency (USEPA) undertitle IV of the Clean Air Act, as amended (CAA). The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these provisions.

Under the Acid Rain Program and 45CSR33, no person may construct, modify, or operate or cause to be constructed, modified, or operated, an Acid Rain Source in violation of 40CFR Parts 72 through 77.
Title IV of the CAA requires each state to implement an operating permit system conforming to Title IV and Title V of the CAA, as amended. 45CSR33 incorporates by reference the federal counterpart regulation 40 CFR Parts 72 through 77. USEPA approved West Virginia's Acid Rain Program with its approval of the state's Title V Operating Permit Program on December 15, 1995.

This revised rule incorporates by reference the following revisions to 40CFR Parts 72 through 77 promulgated as of June 1, 2005: Permits Regulation, Sulfur Dioxide Allowance System, Sulfur Dioxide Opt-Ins, continuous Emission Monitoring, Excess Emissions (CAIR & CAMR).

No Comments

- **45CSR34 – "Emission Standards for Hazardous Air Pollutants For Source Categories Pursuant to 40 CFR Part 63**

This rule establishes and adopts national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to section 112 of the federal Clean Air Act, as amended (CAA). This rule codifies general procedures and criteria to implement emission standards for stationary sources that emit, or have the potential to emit, one or more of the hazardous air pollutants set forth in section 112(b) of the CAA. The rule incorporates by reference the NESHAP standards of 40 CFR Parts 63 and 65 (Consolidated Federal Air Rule), to the extent referenced in 40 CFR Part 63, promulgated as of June 1, 2005. The rule also adopts associated appendices, reference methods, performance specifications and other test methods which are appended to these standards and contained in 40 CFR Parts 63 and 65. Any person who constructs, reconstructs, modifies or operates any source subject to the provisions of 40 CFR Part 63 must comply with the applicable NESHAPS and this rule.

45CSR34, in conjunction with 45CSR15, establishes general provisions for emission standards for hazardous air pollutants and other regulatory requirements promulgated by U.S. EPA pursuant to section 112 of the federal Clean Air Act, as amended. 45CSR34 incorporates hazardous air pollutant standards codified by U.S. EPA under 40 CFR Part 63 whereas 45CSR15 incorporates hazardous air pollutant standards promulgated by U.S. EPA under 40 CFR Part 61.

This revised rule incorporates by reference the following new or revised NESHAP standards promulgated as of June 1, 2005: National Environmental Performance Track Program, National Emission Standards for Hazardous Air Pollutants for Source Categories, Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, Plywood & Composite Wood Products; Effluent Limitations Guidelines and Standards for Timber Products Point Source Category; List of HAPs, Lesser Quantity Designations, Source Category List, Printing, Coating & Dyeing of Fabrics and Other

Textiles, Stationary Combustion Turbines, Solvent Extraction for Vegetable Oil Production, Industrial, Commercial, Institutional Boilers and Process Heaters, Secondary Aluminum Production, Coke Ovens: Pushing, Quenching, and Battery Stacks, List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List; Petition to Delist of Ethylene Glycol Monobutyl Ether, Organic Hazardous Air Pollutants from Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipments Leaks, Coke Ovens: Pushing, Quenching, and Battery Stacks, Leather Finishing Operations, Petroleum Refineries: Catalytic C racking U nits, Catalytic Reforming Units, and Sulfur Recovery Units, Revision of December 2000 Regulatory Finding on the Emissions of HAPs from Electric Utility Steam Generating Units & Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units from Section 112(c) List, Generic MACT; Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations, Coke Oven Batteries, Miscellaneous Coating Manufacturing, Pharmaceuticals Production, Asphalt Processing & Asphalt Roofing Manufacturing and Iron and Steel Foundries.

No Comments

- **45CSR37 – "Mercury Budget Trading Program to Reduce Mercury Emissions"**

This rule establishes the general provisions and designated representative, permitting, allowance and monitoring provisions for the Mercury (Hg) Budget Trading Program, as a means of reducing national mercury emissions, pursuant to the federal Clean Air Mercury Rule (CAMR) established under Section 111 of the Clean Air Act (CAA) and 40 CFR 60, Subpart HHHH.

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units* (15 March 2005, at FR XXXXX). The federal rule establishes standards of performance for mercury (Hg) for new and existing coal-fired electric utility steam generating units (utility units). This rule establishes a mechanism by which Hg emissions from new and existing coal-fired utility units are capped at specific nation-wide levels. U.S. EPA has specified that annual Hg emission reductions be implemented in two phases. The first phase of Hg reductions starts in 2010 and the second phase begins in 2018, and continues thereafter. Flexibility is built in through market-based "cap and trade" provisions which allow sources to buy or sell Hg emission allowances from or to other program participants.

45CSR37 applies to coal-fired electric utility steam generating units that have greater than 25 MW_e generating capacity.

Comments:

How will this affect Industrial boilers?

The rule does not cover these sources.

What kind of monitoring is required?

Have to install CEMS.

What happens when there is litigation?

If court remands, we would withdraw the rule.

Does the rule apply to natural gas-fired units?

No, only coal-fired.

Does the rule establish new fees?

No.

John Benedict informed the Council of the following reductions:

Nationally

2010 – 22%
2018 – 69%

WV:

2010 – 43%
2018 – 77%

- **45CSR39 – "Control of Annual Nitrogen Oxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Nitrogen Oxides"**

This rule establishes general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR NO_X Annual Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AA through II, and 40 CFR §51.123 for state implementation plans as a means of mitigating interstate transport of fine particulates and nitrogen oxides (NO_X).

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to*

Acid Rain Program; Revisions to the NO_X SIP Call (12 May 2005, at FR 25162). The federal rule requires that large emitters of NO_X reduce annual emissions through the constraint of set budgets. U.S. EPA is specifying that annual NO_X emission reductions be implemented in two phases. The first phase of NO_X reductions starts in 2009; the second phase starts in 2015, and continues thereafter. The NO_X emission reduction requirements are based on controls that are known to be highly cost effective for electric generating units. Flexibility is built in through market-based "cap and trade" provisions which allow sources to buy or sell NO_X emission allowances from or to other program participants. Reducing upwind NO_X emissions will assist downwind $PM_{2.5}$ and 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

45CSR39 applies to large fossil fuel-fired electric generating units that have greater than 25 MW_e generating capacity. The CAIR NO_X Ozone Season Trading Program requirements are set forth in 45CSR40.

Comments:

How will this affect industrial boilers?

It will not. It only affects electric utilities.

Is there a set-aside provision?

Yes.

Agency should consider using the money to clean up streams impacted by acid rain.

- **45CSR40 – "Control of Ozone Season Nitogen Oxide Emissions to Mitigate Interstate Transport of Ozone and Nit5rogen Oxides"**

This rule establishes the general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR NO_X Ozone Season Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AAAA through IIII, and 40 CFR §51.123 for state implementation plans as a means of mitigating interstate transport of ozone and nitrogen oxides (NO_X).

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of NO_X reduce ozone season emissions through the constraint of set budgets. U.S. EPA is specifying that ozone season NO_X emission reductions be implemented in two phases. The first phase of ozone season NO_X reductions starts in 2009; the second phase starts in 2015, and continues thereafter. The NO_X emission

reduction requirements are based on controls that are known to be highly cost effective for electric generating units and large industrial boilers. Flexibility is built in through market-based "cap and trade" provisions which allow sources to buy or sell NO_X emission allowances from or to other program participants. Reducing upwind ozone season NO_X emissions will assist downwind 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

Because CAIR subsumes the ozone season NO_X SIP Call trading program, existing NO_X SIP Call rules 45CSR1 and 45CSR26 and their ozone season NO_X reduction provisions must be "sunsetted" by January 1, 2009. Therefore, 45CSR40 contains a repeal clause which effectively "sunsets" these rules, meeting the approvability requirement for implementing CAIR.

45CSR40 applies to large fossil fuel-fired electric generating units that have greater than 25 MW_e generating capacity and large fossil fuel-fired industrial boilers with a heat input greater than 250 mmBtu/hr. This rule also applies to affected cement kilns and internal combustion engines, by retaining the NO_X SIP Call ozone season NO_X emission reduction requirements for these sources from 45CSR1. These existing requirements do not provide for inclusion in any cap and trade program for cement kilns and internal combustion engines. The CAIR NO_X Annual Trading Program requirements are set forth in 45CSR39.

No Comments.

- **33CSR41 – "Control of Annual Sulfur Dioxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Sulfur Dioxide"**

This rule establishes general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the state CAIR SO_2 Trading Program pursuant to the federal Clean Air Interstate Rule (CAIR) under Section 110 of the Clean Air Act (CAA), 40 CFR Part 96, Subparts AAA through III, and 40 CFR §51.124 for state implementation plans as a means of mitigating interstate transport of fine particulates and sulfur dioxide (SO_2).

This rule partially fulfills the State's obligations in response to the United States Environmental Protection Agency's (U.S. EPA) final rule, *Rule t o R educe Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call* (12 May 2005, at FR 25162). The federal rule requires that large emitters of SO_2 reduce annual emissions based upon the implementation of retirement ratios for SO_2 allowances allocated under the Acid Rain Program. U.S. EPA is specifying that annual SO_2 emission reductions be implemented in two phases. The first phase of SO_2 reductions starts in 2010 and requires retiring SO_2 allowances at a 2:1 ratio; the second phase starts in 2015 and requires retiring SO_2 allowances at a 2.86:1 ratio, and continues thereafter. The SO_2 emissions reductions requirements are based on controls that are known to be highly cost effective for electric generating units. Flexibility is built in through market-based "cap and trade" provisions

which allow sources to buy or sell SO_2 emission allowances from or to other program participants. Reducing upwind SO_2 emissions will assist downwind $PM_{2.5}$ and 8-hour ozone nonattainment areas in achieving the National Ambient Air Quality Standards (NAAQS).

45CSR41 applies to large fossil fuel-fired electric generating units that have greater than 25 MW_e generating capacity.

How was the fiscal note derived?

It is based on how many persons will be necessary to implement the rule.

When will these rules be filed with EPA?

September of 2006 for the CAIR rules and November 2006 for the mercury rule.

- **33CSR1 – "Solid Waste Management Rule"**

This legislative rule establishes requirements for the siting (including location standards), financial assurance, installation, establishment, construction, design, groundwater monitoring, modification, operation, permitting, closure and post-closure care of any solid waste facility that processes, recycles, composts, transfers or disposes of solid waste pursuant to W. Va. Code §22-15-1 et seq. The rule revision will clarify that the State Division of Highways is subject to an exemption from permitting for its construction/demolition wastes associated with highway construction. The rule will also clarify that the beneficial reuse of clean bituminous concrete (asphalt) is not subject to permitting requirements, just as the beneficial reuse of Portland cement is not subject to permitting.

Comments:

Has the agency worked with the Division of Highways on the rule?

Yes.

- **33-CSR20 – "Hazardous Waste Management"**

The purpose of this rule is to provide for the regulation of 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. The rule changes pick up two new federal regulations.

No Comments.

- **35CSR3 – "Coalbed Methane Wells Rule"**

This rule applies to coalbed methane wells. The rule changes are necessary to conform to recent statutory revisions related to spacing. The changes also address new technology allowing for the horizontal drilling of wells.

Comments:

Are operators required to sample both water quality and quantity?

Just quality.

A question was raised about the 100' and 1000' distance requirements from water wells and the agency explained how these provisions work.

A comment was made that landowners are confused by the rule's requirements and some further explanations would be helpful.

- **39CSR1 – "Rules of the Commission"**

The rule is designed to prevent waste, protect correlative rights and to conserve oil and gas in the State of West Virignia and is applicable to all activities subject to the jurisdiction of the Oil and Gas Conservation Commission. Where special field rules apply, the special field rules shall govern to the extent of any conflict. The rule changes are to clarify the agency can enter consent agreements and establish escrow accounts.

No comments.

- **60CSR8 "Environmental Excellence Program Rule"**

This legislative rule establishes the eligibility, procedures, standards and legal documents required for establishing a voluntary environmental excellence program, consisting of incentives to reward facilities that go beyond regulatory requirements.

Comments:

Will the reports that are filed be shared with the public?

Yes, they will be posted on the internet.

Will people pay the $1000 fee?

From pre-comments, most are willing to pay some amount. The administrative fund will cover the agency's operating costs.

A comment was made that there should be more programs like this, where companies are rewarded for good performance.

Lisa McClung, Director of DWWM, presented several rules under the water program that will be filed in the future. One was the concentrated animal feeding operation (CAFO) rule that was withdrawn by the agency in

the 2005 session. As soon as EPA repromulgates its rule, the State will need to do so, perhaps by an emergency rule.

Then the new law transferring the authority to adopt water quality standards to the DEP was discussed. A question was raised concerning the public's involvement in the process. Ms. McClung responded that the process would be somewhat different from the agency's normal rulemaking.

Karen Watson then presented a list of bills passed by the Legislature during the 2005 regular session and signed by the Governor as follows:

1. SB 428. Creating the Revitalization Environmental Action Plan.

This legislation transfers the litter control and recycling programs from DNR to DEP and transfers the waste tire remediation program from DOH to DEP. The legislation was amended by the House to require the excess funds to be transferred to the state road fund rather than the solid waste reclamation and environmental response fund. SB 428 bill also incorporates the provisions of Senate Bill 42 at 22-15A-12(f) and (k). These provisions provide liability protection on waste tire remediation to bona fide purchasers of property containing waste tires..

2. SB 603. Higher Education Bill – Brownfield Assistance Centers.

This legislation creates a provision in W.Va. Code § 18B11-7 that authorizes Marshall University and West Virginia University to each create Brownfield Assistance Centers for the purpose of acquiring and developing property; seeking federal brownfield assistance funds; and providing assistance to municipalities and local governments for brownfields development.

Comments:

The Council discussed the funding mechanisms under the new law.

3. HB 3354. Oil and Gas Permit Fee Increase.

This legislation increases the permit fees for shallow wells from $250 to $400; the permit fees for deep wells from $250 to $650; and the reclamation fees for all well activity from $100 to $150. This legislation also includes some technical amendments to the statutes governing oil and gas and coal bed methane drilling and production. As introduced, the legislation increased the permit fees for coal bed methane wells from $250 to $650 but the legislation was amended by the Senate to eliminate this permit fee increase. In total, this legislation will generate approximately $350,000 for the Office of Oil and Gas.

4. SB 406. Uniform Environmental Covenant Act.

This legislation clarifies that environmental covenants containing affirmative obligations issued pursuant to the Voluntary Remediation and Redevelopment Act or other federal or state response actions are enforceable and perpetual; provides notice requirements for those placing environmental covenants on

real property; and authorizes the department and local governments to enforce environmental covenants.

Comments:

A question was raised as to local governments.

The agency responded that they are included and have authority under the new law.

5. **HB 2723. Environmental Rules Bundle.**

This legislation consolidates the rules proposed by DEP and EQB. The DEP rules include revisions to the air, waste, water and mining programs. The EQB's rule relates to water quality standards. The EQB's rule was amended to eliminate Fill Hollow Creek in Preston County that the Board recommended to be included on the Tier 2.5 list. Tier 2.5 waters are waters of special concern and include naturally reproducing trout streams.

6. **HB 3236. Thin Seam Coal Tax Applicability.**

This legislation clarifies that the special tax on coal production and the special reclamation tax apply to coal produced from thin seams.

7. **HB 2333. Environmental Good Samaritan Act.**

This legislation protect landowners, groups and individuals who volunteer to reclaim abandoned mineral extraction lands and abate water pollution caused by abandoned mine lands from civil and environmental liability provided such activities are approved by the department and implemented in accordance with the plans approved by the department.

8. **HB 3033. Continuation of Special Reclamation Tax.**

This legislation extends the temporary special reclamation tax of seven cents for an additional eighteen months thereby maintaining the total special reclamation tax at fourteen cents per ton of coal produced. The legislation also requires the Secretary to evaluate and consider additional bonding mechanisms, such as full cost bonding and the creation of a water quality trust fund.

9. **SB 154. Beneficial Reuse of Water Treatment Plant Sludge.**

This legislation authorizes the beneficial reuse of water treatment plant sludge and requires the department to develop rules establishing criteria for the beneficial reuse of water treatment plant sludge.

10. **SB 287. Transfer of Rulemaking Authority for Water Quality Standards.**

This legislation transfers the authority to promulgate water quality standards and the authority to grant remining variances from the Environmental Quality Board to the department.

11. SB 748. Credit for Mitigation.

This legislation authorizes the secretary to grant credit for mitigation required by the Corps of Engineers pursuant to permit issued under Section 404 of the Clean Water Act when such mitigation satisfies mitigation required by the West Virginia Water Pollution Control Act.

12. SB 700. Creation of the Community Infrastructure Investment Program.

This legislation authorizes department to grant approval for the construction of privately financed water and sewage treatment facilities without the requirement of a certificate of need and convenience from the Public Service Commission provided that the project results in economic development and improvement of water quality. This legislation also authorizes municipal utilities and public service districts to enter into community service agreements with private developers for the purpose of constructing or expanding public utilities. This legislation also requires the secretary to promulgate emergency rules to implement the program.

Comments:

Two members expressed interest in the future rulemaking efforts and any stakeholders group.

13. HB 3356. Increasing authority of the Solid Waste Management.

This legislation requires the SWMB to conduct biannual performance reviews of county and regional solid waste authorities and grants the SWMB with the authority to supersede or exercise the powers granted to county or regional solid waste authorities that operate a solid waste facility

14. SB 455. Financing of Environmental Control Activities.

This Legislation authorizes the public service commission to review and approve the use of environmental control bonds for environmental control activities by certain qualified electric utilities.

The next meeting date was scheduled for September 15, 2005 – 1:00 p.m. – 3:00 p.m. – Trish will contact everyone with room location and agenda.

Karen Watson adjourned the meeting.