6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 263, 264, 265, 266, 267, 271 and 273

[EPA-HQ-RCRA-2015-0147; FRL-9926-94-OSWER]

RIN 2050-AG77

Hazardous Waste Export-Import Revisions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend our existing regulations in regards to the export and import of hazardous wastes from and into the United States. EPA is proposing these changes to: provide greater protection to human health and the environment by making existing export and import related requirements more consistent with the current import-export requirements for shipments between members of the Organization for Economic Cooperation and Development (OECD); enable electronic submittal of all export and import-related documents (e.g., export notices, export annual reports); and enable electronic validation of consent in the Automated Export System (AES) for export shipments subject to RCRA export consent requirements prior to exit.

DATES: Comments must be received on or before [**insert date 60 days after publication in the Federal Register**]. Under the Paperwork Reduction Act, comments on the information

collection provisions are best assured of having full effect if the Office of Management and Budget (OMB) receives a copy of your comments on or before [insert date thirty days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-RCRA-2015-0147, to the *Federal eRulemaking Portal:* http://www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit http://www2.epa.gov/dockets/commenting-epa-dockets.

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

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. GENERAL INFORMATION

A. List of acronyms used in this proposed rule

Acronym	Meaning
ACE	Automated Commercial Environment
AES	Automated Export System
AOC	Acknowledgment of Consent (issued by EPA)
CBI	Confidential Business Information
CBP	United States Customs and Border Protection
CDX	Central Data Exchange
CEC	Commission for Environmental Cooperation
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations

CROMERR	Cross-Media Electronic Reporting Regulation
CRT	Cathode Ray Tube
CY	Calendar Year
EPA	United States Environmental Protection Agency
FR	Federal Register
FTR	U.S. Census Bureau's Foreign Trade Regulations
HSWA	Hazardous and Solid Waste Amendments
ICR	Information Collection Request
ITDS	International Trade Data System
ITN	Internal Transaction Number (issued by AES)
LAB	Lead-Acid Battery
NAICS	North American Industrial Classification System
NCEDE	Notice and Consent Electronic Data Exchange
NTTAA	National Technology Transfer and Advancement Act
NAFTA	North American Free Trade Agreement
OECD	Organization for Economic Cooperation and Development
OMB	Office of Management and Budget
OSWER	Office of Solid Waste and Emergency Response
RCRA	Resource Conservation and Recovery Act
RFA	Regulatory Flexibility Act
SIC	Standard Industrial Classification
SLAB	Spent Lead-Acid Battery
SBREFA	Small Business Regulatory Enforcement Fairness Act

TRI Toxics Release Inventory

UMRA Unfunded Mandates Reform Act

B. What are the statutory authorities for this proposed rule?

The authority to propose this rule is found in sections 1002, 2002(a), 3001-3004, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), and as amended by the Hazardous and Solid Waste Amendments, 42 U.S.C. 6901 et.seq., 6912, 6921-6924, and 6938.

C. Does this proposed rule apply to me?

The revisions to export and import requirements in this proposed rule generally affect four (4) groups: (1) all persons who export or import (or arrange for the export or import) hazardous waste for recycling or disposal, including those hazardous wastes subject to the alternate management standards for (a) universal waste for recycling or disposal, (b) spent lead-acid batteries (SLABs) being shipped for reclamation, (c) industrial ethyl alcohol being shipped for reclamation, (d) hazardous waste samples of more than 25 kilograms being shipped for waste characterization or treatability studies, and (e) hazardous recyclable materials being shipped for precious metal recovery; (2) all recycling and disposal facilities who receive imports of such hazardous wastes for recycling or disposal; (3) all persons who export or arrange for the export of conditionally excluded cathode ray tubes being shipped for recycling; and (4) all persons who transport any export and import shipments described above. Potentially affected entities may include, but are not limited to:

NAICS CODE	**NAICS DESCRIPTION**
211	Oil and Gas Extraction
212	Mining (except Oil and Gas)

213	Support Activities for Mining
311	Food Manufacturing
324	Petroleum and Coal Products Manufacturing
325	Chemical Manufacturing
326	Plastics and Rubber Products Manufacturing
327	Nonmetallic Mineral Product Manufacturing
331	Primary Metal Manufacturing
332	Fabricated Metal Product Manufacturing
333	Machinery Manufacturing
334	Computer and Electronic Product Manufacturing
335	Electrical Equipment, Appliance, and Component Manufacturing
336	Transportation Equipment Manufacturing
339	Miscellaneous Manufacturing
423	Merchant Wholesalers, Durable Goods
424	Merchant Wholesalers, Nondurable Goods
441	Motor Vehicle and Parts Dealers
482	Rail transportation
483	Water transportation
484	Truck transportation
488	Support Activities for Transportation
531	Real Estate
541	Professional, Scientific, and Technical Services
561	Administrative and Support Services
562	Waste Management and Remediation Services
721	Accommodation
924	Administration of Environmental Quality Programs

The lists of potentially affected entities in the above tables may not be exhaustive. The Agency's aim is to provide a guide for readers regarding those entities that potentially could be

affected by this action. However, this action may affect other entities not listed in these tables. If you have questions regarding the applicability of this proposed rule to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT**.

D. What is the purpose of this proposed rule?

EPA is proposing certain amendments to the current RCRA regulations governing imports and exports of hazardous waste and certain other materials in part 262 in order improve protection of public health and the environment by achieving greater consistency in both procedures and documentation. Specifically, the proposed revisions of the existing regulations will consolidate and streamline some of the requirements and enhance the documentation of the movement and disposition of hazardous wastes and other materials, improving the Agency's ability to monitor compliance with applicable legal requirements; will enable regulated parties and the government to benefit from the electronic submission of data; and will consolidate the notification process with foreign governments for efficiency under a unified regulation, consistent with the requirements of the Organization for Economic Cooperation and Development Council Decision (OECD) controlling transboundary movements of hazardous waste. The proposed rule is one of the Agency's priority actions under its plan for periodic retrospective reviews of existing regulations, as called for by Executive Order 13563. Finally, certain other revisions to the regulations are needed in order to fulfill the direction set forth in Executive Order 13659 concerning the electronic management of international trade data by the U.S. Government as part of the International Trade Data System (ITDS).

EPA's determination that some revisions to the import/export regulations are needed is bolstered by the 2013 Commission for Environmental Cooperation (CEC) report and its

recommendations. The CEC report found that U.S. net exports of spent lead acid batteries (SLABs) to Mexico for recycling had increased by an estimated 449-525 percent, and that there were significant discrepancies between summary data on export shipments reported to the EPA annually and individual export shipment data collected under U.S. Census Bureau (Census) authority. Based on its findings, the CEC report recommended that the U.S. require the use of manifests for each international shipment of SLABs, require exporters to obtain a certificate of recovery from foreign recycling facilities, explore establishing an electronic export annual report, and better share import and export data between environmental and border agencies. For a more complete discussion of the report and EPA's related analysis, see Section VII.

EPA is particularly interested in input on this proposed action from persons who import and export hazardous waste, including those persons importing or exporting hazardous wastes managed under the special management standards in 40 CFR part 266 (e.g., spent lead acid batteries) and 40 CFR part 273 (e.g., universal waste batteries, universal waste mercury lamps).

E. Incorporation by Reference (IBR)

This action is proposing to update the IBR source material in § 260.11(g)(1) for the OECD amber and green waste lists, and their associated waste codes, which are used to identify a waste. The OECD waste lists, entitled "List of Wastes Subject to the Green Control Procedures" and "List of Wastes Subject to Amber Control Procedures," are set forth in Appendix 3 and Appendix 4, respectively, of the OECD Decision. The waste lists from the OECD Decision have been consolidated and incorporated in Annex B and C of the 2009 "Guidance Manual for the Implementation of Council Decision C(2001)107/FINAL, as Amended, on the Control of Transboundary Movements of Wastes Destined for Recovery Operations." Section 260.11(g)(1) currently references material from an old 1992 OECD

Council Decision, C(92)39/FINAL. We are proposing to update that reference to the most current listing, which is the 2009 "Guidance Manual for the Implementation of Council Decision C(2001)107/FINAL, as Amended, on the Control of Transboundary Movements of Wastes Destined for Recovery Operations." Sections 262.82(a), 262.83(b)(1)(xi), 262.83(d)(2)(vi), 262.83(g)(4)(iii), 262.84(b)(1)(xi), and 262.84(d)(2)(vi) will reference the IBR material in the proposed § 260.11(g)(1). EPA does not believe this proposed change will impact the regulated community, since the regulated community was already using the most current listings from the OECD as this IBR material is currently in the regulations under Section 262.89(d), for which this action proposes to redirect the citations to 260.11(g)(1). The material is available for inspection at: the U.S. Environmental Protection Agency, Docket Center Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004 (Docket # EPA-HQ-RCRA-2015-0147) and may be obtained from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue André Pascal, F-75775 Paris Cedex 16, France. The material is also available online (for free) at http://www.oecd.org/env/waste/42262259.pdf. To contact the EPA Docket Center Public Reading Room, call (202) 566-1744. To contact the OECD, call +33 (0) 1 45 24 81 67

II. BACKGROUND

A. RCRA general hazardous waste export and import requirements

EPA's general hazardous waste export and import regulations were originally promulgated in 1986 and are currently found in 40 CFR part 262 subparts E and F. 40 CFR part 262 subpart E established export requirements for manifested hazardous waste. These requirements include submitting an export notice to EPA, receiving EPA's Acknowledgement of Consent (AOC) letter documenting consent by the country of import and any countries of transit,

RCRA manifest related requirements for export shipments, submittal of export annual reports summarizing export shipments made in the previous calendar year, and recordkeeping. 40 CFR Part 262 Subpart F established manifest related requirements for hazardous waste import shipments. Conforming requirements related to the AOC letter and the RCRA manifest were added to Parts 263 (i.e., for transporters), 264 and 265 (i.e., for treatment, storage, and disposal facilities). While some limited changes have been made since 1986, the requirements related to individual shipment tracking remain solely based on RCRA manifest requirements.

B. RCRA OECD regulations

1. What is the OECD?

The OECD is an international organization established in 1960 to assist Member countries in achieving sustainable economic growth, employment, and an increased standard of living, while simultaneously ensuring the protection of human health and the environment. OECD Member countries are concerned with a host of international socio-economic and political issues, including environmental issues. To address these issues, the OECD Council may negotiate Council Decisions, which, except as otherwise provided, are international agreements that create legally-binding commitments on the United States and other OECD member countries under the terms Article 5 of the Convention on the Organisation for Economic Co-operation and Development (OECD Convention). A series of Council decisions, collectively referred to here as the "Amended 2001 OECD Decision," addresses the transboundary movement of wastes, which is the subject of this proposed rule. Of the thirty-four Member countries of the OECD, all but Chile participate in the Amended 2001 OECD Decision. These participating Member countries are as follows: Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Luxembourg,

Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, South Korea, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. The OECD country website for each Member country may be found at http://www.oecd.org/infobycountry/.

2. What OECD Decisions formed the basis for the existing regulations in 40 CFR part 262, subpart H?

On March 30, 1992, the OECD Council adopted the "Decision of the Council C(92)39/FINAL Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery" (hereinafter referred to as the 1992 Decision), which applied to the transboundary movements of wastes destined for recovery operations between OECD Member countries. The 1992 Decision provided a framework for OECD Member countries to control the transboundary movement of recoverable wastes in an environmentally sound and economically efficient manner. These revisions were implemented within RCRA in the April 12, 1996 direct final rule (61 FR 16290) that established 40 CFR part 262 subpart H (hereinafter referred to as OECD regulations or Subpart H regulations), and added a section to 40 CFR part 262 subpart E to detail when exporters and importers needed to comply with 40 CFR part 262 subpart H in lieu of complying with 40 CFR part 262 subpart E or F. As with the general RCRA export and import requirements, conforming requirements for exports and imports required to comply with 40 CFR part 262 subpart H were added to 40 CFR Parts 263-265.

On June 14, 2001, the OECD Council amended the 1992 Decision by adopting "Revision of Decision C(92)30/FINAL on the Control of Transboundary Movement of Wastes Destined for Recovery Operations"(hereafter referred to as the 2001 OECD Decision). The goal of the 2001 OECD Decision was to harmonize the procedures and requirements of the OECD with those of

the Basel Convention[1] and to eliminate duplicative activities between the two international organizations as much as practical. These changes included significant revisions to the original established framework (such as reducing the levels of control from a three-tiered system to a two-tiered system), while also adding entirely new provisions (for example, the new confirmation of recovery requirement). Subsequent to the 2001 OECD Decision, an addendum, C(2001)107/ADD1 (hereafter referred to as the 2001 OECD Addendum), which consists of revised versions of the notification and movement documents and the instructions to complete them, was adopted by the OECD Council on February 28, 2002. The addendum was incorporated into the 2001 OECD Decision as section C of Appendix 8, and the combined version was issued in May 2002 as C(2001)107/FINAL. On March 30, 2004, the OECD Council adopted C(2004)20 (hereafter referred to as the 2004 OECD Amendment), which updated the OECD waste lists, entitled "Appendix 3: List of Wastes Subject to the Green Control Procedure" (hereafter referred to as the Green list) and "Appendix 4: List of Wastes Subject to the Amber Control Procedure" (hereafter referred to as the Amber List). To the extent possible, the Green and Amber Lists were revised based on the amendments made to Annexes II, VIII, and IX of the Basel Convention in November 2003. The 2001 OECD Decision was further amended in November 2005 and November 2008. The OECD Council decisions are collectively referred to as the Amended 2001 OECD Decision, and the consolidated text is in the guidance manual for the Amended 2001 OECD Decision, available online at http://www.oecd.org/environment/waste/42262259.pdf.

[1] The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal is a comprehensive global environmental agreement on hazardous and other wastes. The Convention has 181 Member countries, also known as Parties, and aims to protect human health and the environment against the adverse effects that may result from the generation, management, transboundary movements and disposal of hazardous and other wastes. The United States is a signatory, but has not yet ratified the Convention. More information on the Basel Convention may be found at www.basel.int.

EPA published a final rule in the FEDERAL REGISTER entitled, "Revisions to the Requirements for: Transboundary Shipments of Hazardous Wastes Between OECD Member Countries, Export Shipments of Spent Lead-Acid Batteries, Submitting Exception Reports for Export Shipments of Hazardous Wastes, and Imports of Hazardous Wastes" (75 FR 1236, January 8, 2010) amending 40 CFR part 262 subpart H and making conforming requirements in 40 CFR Parts 263-266 and 271 to implement the specific provisions of the Amended 2001 OECD Decision. Under the OECD regulations, all export and import shipments for recycling of RCRA hazardous waste between the U.S. and an OECD member country other than Canada or Mexico are required to be shipped using notice and consent procedures, covered by contracts or equivalent arrangements that require the parties (e.g., exporter, destination facility) to comply with all the applicable requirements in the OECD regulations, accompanied by an international tracking document or movement document from the shipment's starting point in the country of export to the destination facility in the country of import, and recycled within one year of shipment delivery. For example, the contract with the foreign destination facility must specify that it sends copies of the signed movement document back to the exporter and to the competent authorities of the countries of export, import and transit to confirm receipt of the waste shipment. Further, the contract must specify that the foreign destination facility will subsequently send confirmation back to the exporter and to the competent authorities of the countries of export, import and transit that it has completed recycling the shipment.

3. Why did EPA retain the general RCRA export and import requirements along with the OECD regulations?

The OECD regulations apply to shipments of RCRA hazardous waste[2] sent for recovery between the United States and OECD member countries other than Canada and Mexico. Although Canada and Mexico are both OECD member countries, the U.S. has separate bilateral agreements with these countries that cover shipments for disposal in the U.S. and Canada, in addition to shipments for recycling in the U.S., Canada or Mexico. Because the bilateral agreements covered shipments for disposal and some import and export shipments occurred with non-OECD countries, EPA kept hazardous waste shipments with those countries subject to the general RCRA export and import requirements in 40 CFR Part 262 Subparts E and F.

In its comments on the proposed revisions to the OECD regulations in 2008, the Basel Action Network (BAN) commented that the U.S. had not yet implemented the 1986 OECD Decision-Recommendation,[3] and should do so immediately. The 1986 OECD Decision-Recommendation stated that OECD member countries should regulate hazardous waste movements with non-OECD countries no differently from movements with OECD member countries. BAN's comment was outside of the scope of the proposed rulemaking, and was noted as such by EPA in the January 8, 2010, final rule and the related response to comments document. EPA, at that time, considered the regulatory requirements in 40 CFR Part 262, subpart E to be sufficiently similar to those in 40 CFR Part 262, subpart H to comply with the legally binding elements of the 1986 OECD Decision-Recommendation. EPA concluded that this approach was reasonable as EPA had no data indicating that there were significant exports of RCRA hazardous waste that proceeded without consent of any kind.

[2] This includes import and export shipments of hazardous waste subject to the alternate management standards for universal waste, SLABs being shipped for reclamation, hazardous recyclable materials being shipped for precious metal recovery, industrial ethyl alcohol being shipped for reclamation, and hazardous waste samples of more than 25 kg being shipped for characterization or treatability studies.

[3] "Decision-Recommendation of the Council on Exports of Hazardous Wastes from the OECD area", C(86)64/ FINAL, issued June 5, 1986.

4. Why is EPA proposing to require that all exports and imports of hazardous waste comply with OECD-based requirements?

While EPA has updated the RCRA OECD regulations and some limited changes have been made to the general RCRA export and import regulations since 1996, EPA has determined that a more complete revision is needed at this time for a number of reasons.

First, the regulations are quite complex. Different procedures apply depending on whether the shipment is destined for recycling or disposal, whether the other country is a member of the OECD, and if so, whether the U.S. has a separate bilateral agreement with the OECD member country. In addition, the applicability of conforming requirements in 40 CFR Parts 263, 264, 265, 266 and 273 related to the general RCRA export and import regulations and the OECD regulations are sometimes unclear. The complexity of having two sets of export and import requirements creates confusion for the regulated community and leads to decreased compliance with RCRA requirements. In general, over ninety percent of the quantity of hazardous waste that is shipped between the United States and other countries occurs between the U.S., Canada and Mexico. Canada and Mexico are both OECD countries and under the same obligation to implement the Amended 2001 OECD Decision. Additionally, hazardous waste shipments between the United States and OECD countries other than Canada and Mexico already follow the Amended 2001 OECD Decision. Only 137 of the 54,152 hazardous waste import and export shipments in 2011 were between the United States and non-OECD countries.

Second, the general RCRA regulations in 40 CFR Part 262 Subparts E and F do not provide for complete tracking of individual shipment transport and management. As stated previously, under the OECD regulations an international movement document must accompany the shipment from the starting site in the country of export to the destination site in the country

of import, and copies of the signed movement document must be sent by the foreign destination facility to the exporter and to the countries of export, import, and transit to confirm receipt of the shipment. Such confirmation reduces the risk of shipments being misdirected to countries or facilities not approved to receive the shipments for disposal or recovery. It also highlights any incidents where the shipments are interrupted or misdirected, as the exporter and competent authorities will not receive the confirmation from the approved destination facility within expected timeframes.

While shipments of RCRA hazardous waste are already required to be accompanied by a RCRA hazardous waste manifest under the general RCRA export and import regulations, the focus of the RCRA manifest is domestic cradle-to-grave tracking. As a result, while it requires listing the foreign generator and U.S. port of entry for imports, and the foreign destination facility and U.S. port of exit for exports, it does not capture all of the information needed to track international shipments moving across two or more countries. For example, the RCRA manifest does not have the capability to capture customs processing in the countries of export, transit and import, and the RCRA manifest requires solely listing RCRA hazardous waste codes and U.S. biennial report management codes rather than requiring listing the applicable domestic and internationally accepted OECD/Basel Convention waste codes and the internationally accepted OECD/Basel Convention disposal/recycling operation codes. Moreover, the RCRA manifest is only required to be initiated for import shipments upon the first act of transportation within the United States or its territories.

Rather than try to further modify the RCRA manifest to capture all the required international items in addition to all the domestic items it already tracks (especially while EPA is in the midst of developing the e-manifest system) EPA is proposing to require the use of an

international movement document for all export and import shipments of hazardous waste. This would include universal waste, SLABs being shipped for reclamation, hazardous recyclable materials being shipped for precious metal recovery, industrial ethyl alcohol being shipped for reclamation, and hazardous waste samples of more than 25 kg being shipped for characterization or treatability studies.

Allowing the use of any international movement document, including but not limited to the widely accepted OECD/Basel Convention movement document or the Canadian movement document, will reduce the incremental burden of this requirement and prevent duplicative international tracking requirements. As when using the RCRA manifest, the movement document must list the name, address, telephone, fax numbers, and e-mail of the location from which the export shipment initiates if it is different from that of the exporter. This is currently required in 40 CFR 262.84(b)(2).

As listed above, management (i.e., treatment and disposal, recovery) of each shipment will be required to be completed within one year of shipment delivery, and the destination facility will be required to send confirmation of completing such management back to the exporter and to the competent authorities of the countries of export and import. This requirement should minimize speculative accumulation or abandonment of the waste shipments, and decrease the potential for associated damage to human health and the environment. Destination facilities can easily confirm completing management by signing and dating Block 19 of the OECD/Basel movement document, but may also use another document for this purpose, including but not limited to the Canadian "Confirmation of Disposal or Recycling" form.[4]

[4] Available for free download at http://www.ec.gc.ca/gdd-mw/8BBB8B31-BFDD-49AA-872D-1C1E8C46CB15/Certificate%20of%20disposal-Recycling-July%202010.pdf.

Taking these factors into consideration along with all the others discussed previously leads EPA to conclude that consolidating the RCRA import-export requirements under a unified regulation wholly consistent with the Amended 2001 OECD Decision is the best approach in this proposed rule. EPA is therefore proposing to make all imports and exports of hazardous waste, whether subject to manifest requirements or not (e.g., universal waste, SLABs being shipped for reclamation, hazardous recyclable materials being shipped for precious metal recovery, industrial ethyl alcohol being shipped for reclamation, and hazardous waste samples of more than 25 kg being shipped for characterization or treatability studies) subject to the RCRA OECD regulations implementing the Amended 2001 OECD Decision. This will ensure that all RCRA hazardous wastes that were previously subject to different export and import requirements will now be subject to more uniform procedures consistent with the 1986 OECD Decision-Recommendation, the Amended 2001 OECD Decision, and the Basel Convention.

Under the proposed revisions, all export and import shipments of RCRA hazardous waste will be required to be shipped using notice and consent procedures, covered by contracts or equivalent arrangements that require the parties (e.g., exporter, destination facility) to comply with all the applicable requirements implementing the OECD procedures, accompanied by an international tracking document or movement document from the shipment's starting point in the country of export to the destination facility in the country of import, and recycled or disposed of within one year of shipment delivery.

5. Why is EPA proposing to change the text of the OECD regulations in 40 CFR part 262 subpart H rather than propose to expand the applicability of the OECD regulations?

EPA is proposing to reorganize the regulations in Subpart H of part 262 and clarify certain portions, such as the contract requirements, to articulate more explicitly EPA's original

intent in those regulations and to eliminate any confusion on the part of the regulated community. We are also deleting older import and export requirements that are duplicative of or inconsistent with the OECD-based procedures (in the cases of exports to non-OECD countries), and clarifying certain definitions or requirements that are still needed.

An example of a duplicative regulation is 40 CFR 264.12(a)(1) in which a U.S. treatment, storage and disposal facility must submit the one-time notice to the Regional Administrator four weeks before the anticipated delivery of the first shipment of a hazardous waste from a foreign source. This regulation will be deleted, as it is duplicative with the notice and consent requirements that will now be required. More fundamentally, under the regulations in Subpart H of part 262, notice and consent is always required, so EPA currently receives notice of the U.S. facility's intent to receive the hazardous waste import for recycling for those cases where the OECD member country listed in 40 CFR 262.58(a)(1) does not control the proposed shipments as hazardous waste exports under 40 CFR 262.82(a)(2)(ii)(B). Under the proposed rule, U.S. importers will be required to submit an export notice directly to EPA, requesting consent to the proposed shipments in place of the foreign exporter, in those instances when any country of export does not control the proposed shipments as hazardous waste exports subject to notice and consent requirements. Maquiladora[5] shipments of hazardous waste from Mexico are a good example of shipments that will be affected by this provision. Mexico considers them to be return shipments to the United States (and thus, not subject to any notice and consent requirements) while the U.S. regulates them as import shipments (and thus subject to notice and consent

[5] In general, a maquiladora is a Mexican assembly or manufacturing operation that can be partly or wholly foreign-owned. Maquiladora facilities typically import raw materials and equipment under reduced or zero Mexican duties so long as the facilities comply with special requirements under Mexican law. One such requirement is that hazardous wastes generated during the production process must be returned to the country of origin. U.S.-owned maquiladoras must therefore ship hazardous wastes back to the United States for treatment and disposal or recycling. More information is available at http://www.bordercenter.org/mexico/mexgenreturn.htm and http://www.borderplexalliance.org/regional-data/ciudad-juarez/twin-plant/maquiladora-faq.

requirements). As with export notices, these import notices will be able to cover multiple shipments over a 12-month period.

Because under this proposed rule EPA will get notices for all import and export shipments subject to the regulations in Subpart H of part 262, the 264.12(a)(1) notice is no longer necessary. The requirement for the U.S. importer to submit a notice to EPA should only affect U.S. importers who intend to import shipments of hazardous wastes that are not controlled in Mexico or non-OECD countries as exports of hazardous waste. These countries do not currently submit notices to EPA for such exports. Canadian regulations[6] currently require submittal of export notices (including the intended U.S. destination facility) for all proposed exports even in cases when only the country of import regulates the waste as hazardous. Similarly, proposed import shipments for recycling from OECD countries other than Canada and Mexico that are not controlled as exports of hazardous waste by those countries are already subject to the regulations under 40 CFR 262.82(a)(2)(ii)(B) and, in those cases, the U.S. importers are already sending notices to EPA. Based on the RCRA manifests for import shipments from Mexico and non-OECD countries that could not be matched to an EPA consent to a foreign notice, we estimate that U.S. importers will need to submit roughly 28 notices per year due to this change. We ask for comment on the accuracy of this estimate.

Another proposed change is to delete the requirement for an exporter providing a copy of EPA's Acknowledgment of Consent (AOC) letter for the transporter to carry with each shipment in 40 CFR 262.52(c). Instead, under this proposed rule the movement document will list the notification/consent number under which the shipment is covered and include a signed

[6] See item (1)(g) in the Canadian definition of hazardous waste and item 2(g) in the Canadian definition of hazardous recyclable material, "Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations," Canada Gazette Part II, Vol. 139, No. 11, June 1, 2005. More information on the Canadian regulations are available at http://ec.gc.ca/lcpe-cepa/eng/regulations/detailReg.cfm?intReg=84.

certification statement that all contracts are in place and all necessary consents have been obtained. The information in the movement document will therefore include all the necessary information for the countries of export, transit and import to match the movement documents for the individual shipments with the relevant notification and consent documents. Because RCRA manifests track certain domestic items (e.g., biennial reporting management codes) that are not captured by the OECD movement document, we are not proposing to delete the RCRA manifest requirements for import and export shipments. However, we are proposing to replace the requirement to attach copies of the relevant EPA import consent documentation to RCRA manifests for import shipments in 40 CFR 264.71(a)(3) and 265.71(a)(3), with a requirement that the U.S. importer list the relevant consent number for each waste stream in the RCRA manifest section titled "Special Handling Instructions and Additional Information". EPA should have consented in all cases, either to a notice forwarded by the country of export or a notice submitted by the U.S. importer/receiving facility; therefore, requiring the receiving facility to list the consent numbers will provide the needed information to enable EPA to match the RCRA manifest for the import shipment with the relevant consent information. While EPA will continue to send copies of its consent to the listed U.S. destination facility for imports, these facilities will no longer be required to make copies of the documentation and attach a copy to the RCRA manifest for each import shipment.

EPA considered proposing to limit the number of RCRA waste codes that can be listed in an export or import notice or an export annual report for a specific hazardous waste. Currently, the regulations do not limit the number of RCRA hazardous waste codes that can be submitted on a notice of intent to export or import or on an export annual report, which means an exporter can submit an export or import notice or an export annual report listing every RCRA hazardous

waste code for each specific hazardous waste. Of the 1,684 export notices received by EPA in calendar year 2013, at least 200 notices were submitted with hundreds of RCRA hazardous waste codes listed for each of the hazardous wastes in the notice. EPA does not believe that all (or close to all) of the RCRA hazardous waste codes could actually apply to a single waste stream. Listing more (or all) hazardous waste codes for a waste stream does not appreciably increase the quality of the waste stream data or prevent the destination facility from rejecting a poorly characterized hazardous waste. This practice does impair EPA's oversight and tracking accuracy of exported hazardous wastes.

The export notices and export annual reports where EPA has observed all (or close to all) of the RCRA waste codes have been listed for each waste stream are associated with proposed or actual hazardous waste export shipments to Canada. Canadian import and export regulations require Canadian importers and exporters to list the applicable RCRA hazardous waste code[7], but do not explicitly limit the number of waste codes to list per waste stream. As already stated, EPA has concerns over the practice of listing more (or all) hazardous waste codes for a waste stream where the waste codes may not be applicable. EPA asks for feedback from exporters on what waste streams would actually require listing all (or close to all) RCRA hazardous waste codes and why. EPA also seeks to learn what steps those exporters are taking to review their practices in this regard in order to produce a more limited and accurate listing of the RCRA hazardous waste codes that actually pertain to the shipments they propose to make, for the purposes of reducing the burden on their own operations as well as on the operations of the governments involved in the transboundary control process in order for the process to operate more efficiently.

[7] See item 8(j)(v) under Part 1 of the Canadian regulations, "Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations," Canada Gazette Part II, Vol. 139, No. 11, June 1, 2005. More information on the Canadian regulations are available at http://ec.gc.ca/lcpe-cepa/eng/regulations/detailReg.cfm?intReg=84.

Based on the feedback received, EPA may consider limiting the number of RCRA hazardous waste codes listed for a specific hazardous waste, for example, to a maximum of six codes consistent with the current waste code limit for the RCRA hazardous waste manifest in the instructions for Item 13 in the Appendix to 40 CFR part 262, or may consider requiring the conditional submittal of information justifying the listing of all (or close to all) RCRA hazardous waste codes for a waste stream at the time the export notice, import notice, or export annual report is submitted.

EPA also considered proposing to limit the number of notice amendments that an exporter could submit within the one-year period of consent established by EPA's AOC letter. Under the existing notice requirements in 40 CFR 262.53, exporters are required to submit a notice amendment and obtain an amended consent concerning any changes to information listed in the notice other than changes to the exporter's contact phone number, changes to the means of transportation, or decreases to the planned export quantity. Under existing notice requirements in 40 CFR part 262 subpart H and the proposed revisions, the ports of exit and transporter companies the exporter plans to use during the consent period are required to be listed in the export notice, and exporters will have to submit a notice amendment requesting consent before using any additional ports or transporters not listed in the original notice and EPA AOC letter. Because amendments may be necessary, and even multiple amendments may be unavoidable, EPA decided not to propose limiting the number of amendments that an exporter can submit to request changes to the terms of an issued AOC letter during the one-year consent period. However, it is important to note that EPA must prioritize export documents it receives to help ensure that the system continues to operate efficiently and avoid delays in shipments. Because having consent to ship is most critical, processing by EPA of initial export notices to obtain

consent to ship is the highest priority, and processing amendments to add ports or transporters to an issued AOC is a much lower priority. EPA therefore encourages exporters to submit notices that contain all potential ports and transporters reasonably expected to be used, to avoid the need to request amendments to add ports or transporters, particularly because there is no limit to the number of transporters or ports that can be listed in the export notice.

EPA is not proposing to expand the applicability of the revised regulations in subpart H of part 262 beyond those RCRA hazardous wastes already subject to the current export requirements in 40 CFR part 262. Under RCRA Section 3017, EPA's authority to prohibit exports and establish regulatory requirements to implement international waste agreements is limited to waste regulated as hazardous under RCRA. This proposed rule does not affect wastes that are not regulated as RCRA hazardous waste (i.e., not subject to 40 CFR part 262), but that may still be considered amber wastes (i.e., internationally hazardous) under the Amended 2001 OECD Decision, such as municipal solid waste or medical waste. The 1992 OECD Decision and the Amended 2001 OECD Decision both include provisions that make allowances for individual member countries controlling various OECD amber wastes as green (i.e., internationally non-hazardous) wastes. This was discussed in more detail in the April 12, 1996, preamble to the original rule implementing the 1992 OECD Decision (61 FR 16290– 16316).

EPA is also not proposing to address requirements for shipments that transit through the United States beyond what is currently required for return of shipments transiting the United States in 40 CFR part 262 subpart H. The OECD Decision (see Chapter II, Section (D)(2)(Case 1)(j)) and the Basel Convention (see Article 4, Section (7)(c)) both require movement documents from the starting point in the country of export to the recycling or disposal facility in the country of import. Shipments that transit the United States may therefore be accompanied by an

international movement document while in transit in the United States under requirements established by the country of export and/or the country of import if those countries are OECD countries or party to the Basel Convention. However, the EPA does not require such transits to be accompanied by an international movement document.

Lastly, EPA would like to note that the existing U.S.-Canada bilateral agreement, the U.S.-Mexico bilateral agreement, and the three import-only bilateral agreements between the United States and Malaysia, Costa Rica, and the Philippines remain in place and are not affected by these proposed revisions. While the proposed revisions, if finalized, would change the applicable requirements for hazardous waste shipments with these countries, the additional requirements being proposed are fully consistent with the bilateral agreements.

6. Why is EPA proposing to require electronic submittal of nine major export and import documents?

Currently all import and export submittals to EPA are paper-based. As part of EPA's Next Generation Compliance initiative and electronic reporting policy,[8] EPA is working to convert paper submittals to EPA with electronic submittals that comply with the applicable requirements in EPA's Cross-Media Electronic Reporting Regulation (CROMERR).[9] Under 40 CFR Parts 261, 262, 264 through 266, and 273, the following paper documents are required to be submitted to EPA related to imports and exports:

(a) Export notices for hazardous waste (40 CFR 262.53 and 262.83) or CRTs being shipped for recycling (40 CFR 261.39(a)(5));

[8] http://www2.epa.gov/compliance/next-generation-compliance-delivering-benefits-environmental-laws
[9] http://www.epa.gov/cromerr/epa.html

(b) Import notices for cases where country of export does not control as hazardous waste export and EPA has not received notice from country of export (40 CFR 262.82(a)(2)(ii)(B));

(c) Export annual reports for hazardous waste (40 CFR 262.56 and 262.87(a)) or CRTs being shipped for recycling (40 CFR 261.39(a)(5)(x));

(d) Export exception reports (40 CFR 262.55 and 262.87(b), in lieu of exception reporting required under 40 CFR 262.42);

(e) Export confirmations of receipt (submittal by foreign recycling facility required in 40 CFR 262.54(f), 262. 84(e), and required implicitly by 40 CFR 262.85);

(f) Export confirmations of completing recovery (submittal by foreign recycling facility required implicitly by 40 CFR 262.85);

(g) Import confirmations of receipt (40 CFR 262.60(e), 262.84(e), 264.12(a)(2), 265.12(a)(2), 264.71(a)(3), 265.71(a)(3), 264.71(d), 265.71(d));

(h) Import confirmations of completing recovery (40 CFR 262.83, 264.12(a)(2), 265.12(a)(2));

(i) Import notifications regarding need to make alternate arrangements or need to return waste shipment (40 CFR 262.82(d)(1), 262.85(c)(1));

(j) Import notifications of expected initial import shipment of a specific hazardous waste from a specific foreign source (40 CFR 264.12(a)(1)); and

(k) Transporter notifications regarding need to return shipment transiting U.S. to country of export (40 CFR 262.83(e)(1)).

Not all of the items listed above occur in sufficient numbers to justify converting to electronic submittal. For example, EPA has never received a transporter notification listed in

item (k) regarding the need to return a shipment transiting the United States to the country of export, likely because there are so few transboundary shipments that solely transit the United States. Additionally, EPA is proposing to delete the one-time import notification requirement listed in item (j). We are therefore not proposing to require electronic submittal of items (j) and (k). But the remaining nine submittals do occur regularly, and for these nine existing submittals EPA is proposing a mandatory requirement that submittal be made electronically on or after the effective date of the final rule. As part of this proposal, EPA will consider exemptions to this requirement if most regulated entities impacted by this rule are expected to be located in areas with limited broadband access as defined by the Federal Communications Commission (FCC) or there are unique circumstances that make paper submittals more efficient.

EPA's waste import/export database is currently used to process and track all import notices annually transmitted to EPA by foreign governments or U.S. importers (when the country of export does not regulate as hazardous waste export subject to notice and consent requirements), and all export notices submitted annually to EPA by U.S. exporters. EPA received 769 import notices and 1,684 export notices in Calendar Year (CY) 2013. When EPA receives a paper export or import notice, an EPA notice officer must first review it for completeness, and then once it is deemed complete, manually enter the data from the notice into the tracking system. The 718 import notices transmitted by Canada and Mexico in CY2013 were received electronically through the Notice and Consent Electronic Data Exchange (NCEDE) using EPA's Central Data Exchange (CDX),[10] but all other import notices and all export notices must be manually entered by an EPA notice officer. Export notices often are missing required information, and require lengthy communications with the exporter via phone, email or fax to

[10] http://www.epa.gov/cdx/about/index.htm

correct missing or invalid entries. Converting to an electronic web-based notice entry will enable automating checks for all required information and the use of drop down lists (i.e., a list of valid entries from which the submitter will be able to choose one or more entries) to reduce invalid entries. Assuming a web-based notice entry process, EPA estimates that the submitter will need to enter the following:

(a) Three initial fields for receiving country, disposal or recovery, and general waste material type, using radio buttons and drop down lists, to determine the required fields for the notice;

(b) Eight required fields on the notice page: first departure date (calendar); last departure date (calendar); technology employed (open text); name of notice signer (open text); signature date (calendar); import, exporter, and receiving facility (drop down list from type ahead feature or open text for facilities not already in the system – open text has roughly nine required fields for each: company name, address, EPA ID number, zip code, country, city, phone, fax, email);

(c) Six required fields on the transportation page: mode of transport (drop down list); packaging type (drop down list), shipment frequency (number field); ports of entry (drop down list), ports of exit (drop down list); transporter (drop down list – but allows for manual entry of the nine required fields for transporters not already in the system);

(d) Nine fields (eight required) for each waste stream: Waste material type (drop down list); management method code (drop down list); DOT/UN ID, shipping name, and hazard class (drop down list – one entry selected populates all three); EPA waste codes (drop down list); Basel Convention codes (optional entry, uses drop down list); OECD codes (drop down list);

waste description (open text); waste quantity (number); unit of measure for waste quantity (drop down list); and

(e) Three required fields on the transit country page: transit country (drop down list); port of entry (drop down list); and port of exit (drop down list).

Reduced errors and electronic submittal of notice data will substantially decrease the time needed for EPA to review and process the notices, and the time needed for the U.S. submitter to correct the notice deficiencies, which will make the notice process more efficient for the U.S. exporter and U.S. importer submitting notices to EPA. Additionally, U.S. exporters and importers submitting notices electronically will be able to duplicate previous notices when seeking to renew consent to export with a minimum of changes, and then simply edit the fields which would change. EPA estimates that as many as 60 percent of submitted export notices would benefit from the duplication feature, which would reduce the required data entry down to editing roughly 2 to 14 fields. Additional benefits to the U.S. submitter will be the elimination of mailing or courier fees needed to submit the notices, the elimination of the risk of losing the submittal in the mail, and the ability for the U.S. submitter to log in and obtain information on the status of all submitted notices without needing to request the information from EPA via phone or email. Lastly, electronic export notices will enable the transmittal of all EPA reference data needed to validate consent for each shipment under ITDS (see Section II.C. for more information on ITDS). EPA requests comment on this potential notice entry process, and further requests comment on how many exporters currently use an automated system to generate notices and the estimated burden reduction if EPA developed an option to submit notices electronically using a system-to-system based approach using XML through EPA's CDX.

Export annual reports must be submitted to EPA by March 1 of each year and detail all export shipments made under consent during the previous calendar year. Currently, exporters must generate these reports and submit them in paper form. In order to conduct any meaningful analysis of the quantity and types of waste exported, EPA must review the export annual reports submitted each year for completeness and manually enter the data from the export annual reports. EPA received 378 export annual reports concerning shipments made in CY2011. Converting to electronic submittal of the data will again reduce EPA's review time and manual entry time, and will reduce the time needed for U.S. exporters to correct any export annual report deficiencies. An additional benefit to converting to electronic submittal of the export annual report would be that the tracking system could build a draft report listing the required information regarding all wastes under consent that were approved to ship during the previous calendar year. The exporter could then simply enter the total quantities for each waste using the same reporting units of measurement listed in the notice. The tracking system could potentially also build a draft report listing the total quantities exported for each waste based on the data EPA will receive from the AES on successfully validated export shipments that were cleared for departure during the previous calendar year. The exporter would still need to review the draft report, and either edit it to reflect any returns or corrections needed, or electronically confirm that the generated draft report was accurate and complete. Either approach would also require the exporter to enter a description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated in an open text field, and a description of the changes in volume and toxicity of the waste actually achieved during the year (in comparison to previous years to the extent such information is available for years prior to 1984) in an open text field, consistent with the biennial reporting requirements in 40 CFR 262.41(a)(6) and (7), and required for export

annual reports in 40 CFR 262.56(a)(5) and 262.87(a)(5). The electronic process should save the exporter considerable time by creating the draft report for the exporter, and should additionally eliminate the cost of sending the report via U.S. mail or courier service and the risk of losing the report in the mail. With respect to EPA, electronic reporting will reduce the time currently needed to review and manually enter the export annual report data. EPA asks for feedback from exporters on the hours and costs they currently incur to prepare paper export annual reports.

Export exception reports occur less frequently, but the roughly 20 reports submitted to EPA each year must still be matched to the relevant consent and filed by EPA. Converting this submittal to electronic assuming a web-based entry would require entry of the following data fields: (i) manifest tracking number, (ii) EPA consent number, (iii) check box for one of the three exception report types (see 40 CFR 262.87(b)(1) through (3)), and (iv) an open text field for the exporter to describe the situation. Electronic submittal should save EPA the time needed to match the exception report to the relevant consent and file the paper report, and for the exporter would again save at a minimum the costs of mailing the exception report to EPA, and eliminate the risk of losing the exception report in the mail. EPA asks for comment on the accuracy of the estimated number of exception reports submitted annually, and the expected benefits.

Under the Amended 2001 OECD Decision and the current contract provisions of subpart H in 40 CFR 262.85, the exporter is required to have contract terms with all other parties involved in the transaction to ensure that the OECD procedures are carried out. With respect to export shipments, the contract should therefore require the foreign facility to submit copies of export confirmations of receipt and confirmations of completing recycling to EPA and the U.S. exporter. The foreign facility is supposed to submit the confirmation of receipt within three days of shipment delivery, and submit the confirmation of completing recycling as soon as possible,

but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following shipment delivery. Based on export annual reports on 2011 export shipments, 2,466 export shipments were subject to part 262 subpart H requirements, and 48,752 export shipments were subject to part 262 subpart E requirements. Under this proposal, EPA expects to receive one confirmation of receipt and one confirmation of completing disposal or recycling for each of the 48,752 shipments that would now be subject to the OECD regulations. Converting submittals to electronic, and assuming a web-based approach, foreign facilities would simply enter the EPA consent number and then upload a PDF copy of the confirmation of receipt or confirmation of completing recycling/disposal. Given that the likelihood that the facility would wish to submit multiple confirmations at a single time, the planned design would include the option to upload multiple confirmations of receipt and multiple confirmations of completing recycling/disposal in one action. Benefits to electronic submittal for EPA would be the reduced time needed to match incoming paper confirmations with the relevant consents and file the paper documents. Benefits to the foreign facility would be more timely submittals to EPA, elimination of the costs for mailing the confirmations to EPA, and elimination of the risk of losing the exception report in the international mail. Importantly, exporters would be able to view all submitted confirmations submitted under their consents, improving their oversight of the foreign facility's compliance with the terms of the contract or equivalent arrangements. EPA asks for comment on the planned approach and expected benefits, and on foreign facilities submitting these confirmations system-to-system using XML through EPA's CDX.

U.S. importers/recycling facilities are similarly required to submit confirmations of receipt and completing recycling to EPA under the current OECD regulations. Based on the RCRA manifests submitted to EPA for import shipments received in CY2011, 62 import

shipments were subject to part 262 subpart H requirements, and 2,872 import shipments were subject to part 262 subpart F requirements. Under this proposal, U.S. importers/receiving facilities for all hazardous waste import shipments would become subject to these requirements, resulting in the submittal of confirmations of receipt and completing recycling or disposal for an additional 2,872 shipments. Converting these submittals to electronic would use the same data entry-upload approach as for the export confirmations. Expected benefits to EPA of electronic submittal would be the reduced time needed to match the incoming paper confirmations with the relevant consent and file the documents. Expected benefits to the importer/receiving facility would be more timely submittals to EPA, elimination of the costs for mailing the confirmations to EPA via U.S. mail or courier service, and elimination of the risk of losing the exception report in the mail. EPA asks for comment on the accuracy of the estimated increase in confirmations, the expected benefits, and the possibility of the facilities submitting these confirmations system-to-system using XML through EPA's CDX.

U.S. importers/recycling facilities are required under current Subpart H regulations to notify EPA in writing of the need to make alternate arrangements to manage a given shipment of waste or to return the shipment to the country of export when it cannot be managed per the terms of the notice and consent. Based on the three notifications submitted to EPA between 2011 and 2013 concerning the need to make alternate arrangements for a shipment, and the lack of such notifications concerning the need to return a shipment to the country of export, EPA estimates that one such notification will be made each year. Converting this submittal to electronic means would, assuming a web-based approach, require the entry of the following data fields: (i) manifest tracking number, (ii) EPA consent number, (iii) check box for one of the two notification types (i.e., need for return or alternate arrangements), and (iv) an open text field for

the importer/receiving facility to describe the situation. Electronic submittal should enable sharing of the notification with the relevant EPA regional office import-export personnel, and would enable forwarding to the relevant state agency contacts. Expected benefits for the importer/receiving facility would again be eliminating the costs of mailing the import notification to EPA, and eliminating the risk of losing the notification in the mail. EPA asks for comment on the accuracy of the estimated number of notifications submitted annually, and the expected benefits.

Electronic submittal would require that all submitters register within EPA's CDX system. Doing so would then register them for any subsequent electronic submittal under any EPA program office's e-reporting requirement. The registration is done for the individual submitting the electronic documents, so any change in the employee submitting the information would require CDX registration for the new submitting employee. But any employee already registered in CDX to submit other program office's e-reporting (e.g., Toxics Release Inventory (TRI) e-reporting) would not need to re-register to submit RCRA export and import documents electronically. When contact information for U.S. RCRA exporters and importers was compared with contact information for current CDX registrants, 84 out of the total 423 current exporters and importers appeared to be already registered in CDX. All others would need to become registered within CDX, which can be done via a fully online registration and identity verification process, or via a paper process if/when the online process is unable to verify identity (according to the Office of Environmental Information, roughly 80% of U.S. submitters successfully registered via the online process). In order to be able to submit confirmations electronically per their contract requirements with the U.S. exporter, foreign submitters might also need to register in CDX, probably using the paper process. EPA asks for comment on the number of exporter and

importer submitters that are currently registered in CDX due to e-reporting for another EPA program office (e.g., TRI e-reporting, Chemical Data Reporting under Section 8(a) of the Toxic Substances Control Act).

EPA is proposing to require electronic submittal of the nine major import and export documents on or after the effective date of the final rule. This assumes that the necessary system changes will be able to be completed in 2015 and tested by volunteer companies before the issuance of the final rule. Electronic submittals established in the final rule will be compliant with CROMERR to the extent that it applies. Other EPA e-reporting rulemakings, such as the July 30, 2013, proposed rule concerning e-reporting under the National Pollutant Discharge Elimination System (NPDES)[11] proposed a two-year transition period, and EPA requests comment on the need for any transition period, and the appropriate length of such a transition period.

EPA estimates that all exporters and almost all importers have broadband internet access, given that exporters or U.S. authorized agents currently file data electronically into the AES, and many exporters and importers currently file electronic data under another EPA program such as TRI. But in case there are RCRA exporters or importers that do not have broadband internet access, or have other unique circumstances that would prevent them from being able to submit RCRA import and export data electronically, or would experience an unreasonable burden or economic impact to their company if required to submit the data electronically after the transition period, EPA is proposing to allow these companies to request a temporary waiver from the electronic reporting requirements being proposed.

[11] http://www2.epa.gov/compliance/proposed-national-pollutant-discharge-elimination-system-npdes-electronic-reporting-rule

Similar to the process established by the Securities and Exchange Commission (SEC) [17 CFR 232.202(a)] to its (rare) granting of continued hardship exemptions for electronic filing, EPA could grant temporary waivers from e-reporting for each exporter or importer that meets criteria demonstrating that such electronic reporting of RCRA export or import information would pose an unreasonable burden or expense to the exporter or importer. The SEC process requires the submission of a written request made at least ten business days before the required due date of the submission. As identified in 17 CFR 232.202(b), this written request shall include, but not be limited to: (i) the reason(s) that the necessary hardware and software are not available without unreasonable burden and expense; (ii) the burden and expense associated with using alternative means to make the electronic submission or posting, as applicable; and/or (iii) the reasons for not submitting the document, group of documents or Interactive Data File electronically, or not posting the Interactive Data File, as well as the justification for the requested time period. Under the SEC process, the temporary exemption is not deemed granted until the SEC notifies the applicant. Although the SEC has successfully required electronic reporting from various sized companies for the majority of its reports since 1993, it is still possible that a small number of RCRA exporters or importers might claim that they either do not have computers on-site, do not have computer-savvy individuals available, or are a considerable distance away from a location where they could get computer access. EPA is therefore considering the possible use of temporary waivers from electronic reporting of RCRA import and export information for such entities, although technological advances and computer access are such that there may be few valid instances of such situations. EPA may consider establishing a similar procedure for such temporary waivers if the criteria for such temporary waivers are broadened, in response to comments, beyond that in the proposed rule.

In addition to these possible temporary "continued hardship" waivers for RCRA exporters and importers from electronic reporting, EPA also recognizes that there may be a need for incident-specific one-time waivers or other adjustments for situations that are beyond the control of the reporting facility (e.g., tornados, floods, EPA or state data system disruptions). In 17 CFR 232.201, the possibility of a temporary hardship exemption from electronic reporting to the SEC is described. In the SEC regulations, under this temporary hardship exemption, the electronic filer may instead file a written copy of the report or, preferably, be granted the use of a one-time change to the filing due date rather than rely upon a temporary hardship exemption where the situation is beyond the control of the filer. EPA proposes to utilize one-time changes to due dates rather than waivers from electronic reporting in these types of emergency situations.

EPA requests comment on the need for such temporary waivers or exemptions, as well as which criteria should apply for the granting of such temporary exemptions. For comparison, while EPA's August 13, 2010 proposed rule (75 FR 49656) regarding Toxic Substance Control Act (TSCA) Inventory Update Reporting Modifications requested comment on whether there were any circumstances in which a company may not have Internet access to report the required data electronically, the August 16, 2011 final rule (76 FR 50815) required electronic reporting with no exceptions or process for requesting a waiver from electronic reporting.

7. Why is EPA proposing to require that recognized traders obtain EPA ID Numbers before arranging for import or export?

Recognized traders are those persons that only arrange for the import or export of RCRA waste subject to notice and consent requirements and do not otherwise physically generate, transport, store, treat or dispose of the waste. As such, a recognized trader is not required or even typically able to obtain EPA ID numbers under current RCRA regulations, even though he or she

is subject to existing RCRA export and import requirements and plays a central role in the transboundary movement of the waste. EPA is proposing to require that such persons notify EPA of their hazardous waste activity as recognized traders and obtain EPA ID numbers to better track recognized trader activities and their compliance with the hazardous waste import and export process.

EPA ID numbers are issued by authorized state agencies and EPA Regional Offices, and provide a consistent, reliable way for state agencies and EPA to track companies or individuals based on their site (or business) address and activities declared in EPA's Notification of Regulated Waste Activity (EPA Form 8700-12). Matching company names and addresses in an electronic system is difficult due to the multiple ways a given company's name or address can be entered (e.g., "INC" vs. "Inc.") or address (e.g., "123 Main ST" vs "123 Main Street"). EPA proposes to require that all such persons, known as "recognized traders" under the Amended 2001 OECD Decision, obtain an EPA ID number before arranging for the export or import of hazardous waste. Exporters and importers that otherwise physically handle (e.g., generate, transport, recycle) hazardous wastes should already have an EPA ID number issued by their authorized state agency or EPA Regional Office. We have estimated that roughly one percent of all exporters and importers are recognized traders as defined under the Amended 2001 OECD Decision, and that four of the current exporters and importers will need to request an EPA ID number using EPA Form 8700-12 under this proposed change; EPA requests comment on the accuracy of this estimate.

EPA Form 8700-12 and its associated instructions and information collection request (ICR)[12] will have to be revised to enable recognized traders to request an EPA ID number based solely on arranging for export or import.

C. RCRA hazardous waste export integration with ITDS

1. What is ITDS and how does it impact RCRA hazardous waste imports and exports?

In 2006, U.S. Customs and Border Protection (CBP) began automating processes for the import and export of goods to improve the control of what enters and leaves the US, as well as to become much more efficient. Launched under the Security and Accountability for Every Port Act of 2006 (SAFE Port Act, Public Law 109-347) and the 2007 Import Safety Executive Order 13439, the multi-agency program called the International Trade Data System (ITDS)[13] assists the 48 Federal agencies with import/export responsibilities in their efforts to integrate import and export cargo processing with CBP's Automated Commercial Environment (ACE) for imports, and the Automated Export System[14] (AES) for exports.

Under ITDS, agencies with existing paper-based import and export clearance procedures at the port of exit or entry are working with CBP to enable electronic filing and processing of the export or import shipments based on one set of submitted data that can then be checked against all relevant U.S. agency requirements.

While RCRA regulates hazardous waste imports, there is no analogous provision in RCRA explicitly prohibiting import of hazardous waste absent consent that would enable EPA to stop entry of possible hazardous waste shipments at the port unless there is an imminent and substantial risk of damage to human health and the environment. As a result, EPA does not

[12] http://www.epa.gov/osw/inforesources/data/form8700/8700-12.pdf
[13] http://www.itds.gov/xp/itds/home.html
[14] On April 5, 2014, the Automated Export System (AES) was re-engineered under the umbrella of the Automated Commercial Environment (ACE) trade processing system, but is still referred to as AES.

currently have paper-based entry procedures for hazardous waste import shipments. Because there are no entry procedures to automate, EPA's import-related ITDS work does not include automating entry procedures for hazardous waste import shipments. However, EPA does have clear authority under RCRA Section 3017 to stop export shipments of RCRA waste subject to notice and consent requirements at the port and we are working with CBP to establish automated checks in the Automated Export System (AES) against EPA consent-based reference data for all shipments declared by the exporter to be subject to RCRA notice and consent requirements.

On February 19, 2014, the White House issued Executive Order 13659 titled "Streamlining the Export/Import Process for America's Businesses". Under Executive Order 13659, participating agencies must have all requirements in place and in effect to utilize the ITDS and supporting systems like the ACE and the AES for receiving documentation required for the release of imported cargo and the clearance of cargo for export no later than December 31, 2016.

2. How is EPA proposing to integrate RCRA hazardous waste export requirements with ITDS?

First, EPA proposes to require that exporters or U.S. authorized agents additionally file key export consent data into the Automated Export System (AES) to validate EPA's consent covering each export shipment before each shipment exits the country. (The term "EPA's consent," in the context of these proposed requirements for exporters to validate key data in the AES, means EPA's AOC letter.) Second, EPA proposes to require that exporters submit electronic export notices into EPA's waste import/export database to enable transmittal of all reference data needed for validation from EPA to AES (for more information on electronic export notices, see Section II.B.6).

As discussed previously, the CEC recommended that the U.S. border and environmental agencies coordinate more closely on export shipments. Part of the difficulty in sharing data with U.S. Customs and Border Protection (CBP) has been that CBP has typically based any export filing errors or flags on information linked to the Commodity classification number, while EPA's authority to prohibit export absent consent under Section 3017 of RCRA is based on RCRA waste type (e.g., RCRA hazardous waste codes) and intended management. In addition to the differing basis for prohibiting or flagging export shipments, rail cars, truckloads, or shipping containers of hazardous waste do not typically look like containers of hazardous waste needing EPA's consent from the outside. Absent some obvious hazard (e.g., fire, leaking contents), CBP has not had an express basis to check shipments for EPA consent. Under current RCRA transporter regulations in 40 CFR 263.20(g), the transporter carrying a RCRA manifested hazardous waste export shipment to the port of exit must sign and date the RCRA manifest to indicate the date the shipment is leaving the country, keep one copy, send one copy back to the generator, and give one copy to the CBP official at the "…point of departure from the United States." But this requirement has not enabled meaningful checks for EPA consent at the border.

Per the Census Bureau's Foreign Trade Regulations (FTR) in 15 CFR Part 30, all exporters (or their authorized filers) that ship goods subject to an export license, defined in FTR section 30.1, [15] are currently required to file Electronic Export Information (EEI) in the AES for each export shipment regardless of value or country of ultimate destination. EPA's AOC letter

[15] Export license. A controlling agency's document authorizing export of particular goods in specific quantities or values to a particular destination. Issuing agencies include, but are not limited to, the U.S. Department of State; the U.S. Department of Commerce's Bureau of Industry and Security; the Bureau of Alcohol, Tobacco, and Firearms; and the Drug Enforcement Administration permit to export.

meets the FTR definition of an export license, [16] so all exporters shipping waste subject to RCRA notice and consent conditions (i.e., cathode ray tubes being shipped for recycling) or requirements (e.g., RCRA manifested hazardous waste, SLABs being shipped for recovery of lead) are already required to file export data in the AES. The AES has over 100 elements[17] that potentially apply to an export shipment. In place of the transporter requirement in 40 CFR 263.20(g)(4), EPA is proposing to require exporters or U.S. authorized agent to file the following EPA data in the AES:

(a) EPA license code (to declare shipment is subject to RCRA export notice and consent requirements)

(b) Commodity classification code (10 digit, numeric description of the commodity)

(c) EPA consent number (specific to waste)

(d) Country of ultimate destination

(e) Date of export

(f) RCRA hazardous waste manifest tracking number (if required; universal waste, CRTs being shipped for recycling, industrial ethyl alcohol being shipped for reclamation, and SLABs being shipped for recovery of lead are exempt from RCRA manifest requirements under existing RCRA regulations)

(g) Quantity of waste in shipment and units for reported quantity (units established by commodity classification number)

[16] Per email dated April 11, 2014 from Joe Cortez, chief of regulations outreach and education branch in the Foreign Trade Division of the U.S. Census Bureau, EPA's AOC letter meets the regulatory definition of an export license in 15 CFR 30.1.

[17] https://www.census.gov/foreign-trade/aes/documentlibrary/aesparticipantsdata.html.

(h) EPA net quantity and units for reported quantity (if required, must be reported in kilograms if solid waste, and in liters if liquid waste; only required if commodity classification number does not require quantity to be reported in weight or volume units)

Of the items listed above, only the "EPA license code", "EPA consent number", "RCRA hazardous waste manifest tracking number", "EPA net quantity", and "EPA net quantity units of measurement" are not already required to be filed in the AES under the FTR. Of these five items, one item is only required if the waste is subject to RCRA manifesting requirements and the remaining two items are only required in cases where the commodity classification number-based quantity reporting does not require that the quantity of the commodity in the shipment be reported in weight or volumetric units (e.g., kg or L). Because an EPA license, or an EPA consent number, is required, AES will require the five additional items to be filed, and will validate the import country code and expected date of shipment departure against EPA-supplied reference data for the entered EPA consent number. If the consent number is not in the correct format, AES will provide a fatal error message for the filer that specifies the error in the filing. The filer will then need to correct and resubmit the filing to correct it. If the import country does not match the country of import for the consent number, AES will provide a fatal error message for the filer that specifies the error in the filing. The filer will then need to correct and resubmit the filing. If the expected date of shipment departure does not fall within the start date and end date for the consent number, AES will provide a fatal error message for the filer that specifies the error in the filing. The filer will then need to correct and resubmit the filing. If a RCRA manifest is required for the consent number and the filer does not enter a correctly formatted RCRA manifest number (i.e., nine digits followed by three letters), AES will provide a fatal error message for the filer that specifies the error in the filing. The filer will then need to correct and

resubmit the filing. Lastly, if the EPA net shipping quantity is required to be entered based on the commodity classification number entered and the filer does not enter that quantity, the AES will provide a fatal error message for the filer that specifies the error in the filing. The filer will then need to correct and resubmit the filing. AES will not issue an Internal Transaction Number (ITN) to indicate successful completion until the filing passes all validations. The exporter and transporter will be in violation of the FTR if the shipment is exported without a valid ITN. When the shipment is validated and the ITN issued, the shipment will be cleared to leave the port of exit. The AES will transmit the EPA data listed above to EPA's hazardous waste import/export database, so that EPA will get shipment data for each consent number and will be able to track total quantity exported against the approved total quantity for that waste stream level consent number. In addition, EPA will be able to use the shipment data from AES to build draft export annual reports that are required in Section 3017 of the statute (for more information on electronic export annual reports, see Section II.B.6). Exporters with valid consents will be able to efficiently validate their EPA consent with CBP as part of their regular AES filing, and any typographical errors should be able to be quickly corrected and the entry resubmitted. Exporters with expiring or expired consent numbers, or exporters that have already met or exceeded their approved total export quantity for the consent number, will need to submit an export notice or export notice amendment to EPA to renew their consent under a new consent number or increase their approved total export quantity for the current consent number. EPA plans to modify its AOC letter to include guidance on how to enter the EPA-only items in the AES once the regulations are effective to reduce inadvertent AES filing errors. CBP and EPA have already made changes to the AES that reflect this validation, changes that were reflected in the AES

instructions updated on October 3, 2014.[18] However, these changes will remain optional until the AES changes have been fully tested, and EPA's proposed regulations become final and are effective. Two SLAB exporters are working with EPA and CBP to pilot test the validation process.

EPA considered attempting to validate exporter names and addresses, but ultimately decided against doing so because of the previously discussed problem of trying to match highly variable text fields for exporter name and address from EPA export notice data with data filed in AES. EPA also considered validating against the commodity classification number expected for the waste stream linked to the consent number, but decided against it due to the difficulty in uniquely mapping the one waste to one commodity classification number in all cases. As discussed in Section VII, the commodity classification numbers may not contain sufficient detail to match with the RCRA waste codes and intended management. If commenters know of ways to reliably match commodity classification numbers with the combination of EPA waste type and intended management, please provide this information, and EPA may consider this in the final rule.

Requiring electronic export notices and filing the additional items in the AES will ensure that export shipments of declared RCRA wastes subject to RCRA notice and consent requirements only depart the country when going to the approved country within the approved window of export, with a minimum of additional burden to the exporter. It should therefore further reduce illegal exports of hazardous waste and the potential risk to human health and the environment that may result. It will also ensure compliance with Executive Order 13659 that requires implementation of all ITDS requirements by December 31, 2016.

[18] http://www.cbp.gov/trade/aes/aestir/introduction-and-guidelines

D. RCRA hazardous waste export and import regulations and Executive Order 13563 for the Retrospective Review of Existing Regulations

On January 18, 2011, President Obama issued Executive Order 13563, which directed all federal agencies to perform periodic retrospective reviews of existing regulations to determine whether any should be modified, streamlined, expanded, or repealed.[19] EPA made its preliminary plan available for public review and comment during the spring of 2011 and released the final version of the plan in August 2011.[20] Though EPA and its partners have made great progress in protecting the environment, the Agency is committed to continual improvement. EPA has a long history of thoughtfully examining its existing regulations to make sure they are effectively and efficiently meeting the needs of the American people. Both statutory and judicial obligations have compelled some of our reviews. Others arise from independent EPA decisions to improve upon existing regulations. Just as EPA intends to apply the principles and directives of Executive Order 13563 to the priority actions listed in the plan, we intend to likewise apply the Executive Order's principles and directives to the regulatory reviews that appear in the Regulatory Agenda. This proposed rule is one of the priority actions included in EPA's July 2015 progress report to OMB. [21]

III. SUMMARY OF THIS PROPOSED RULE

A. Changes to Section 260.10

In order to require that anyone acting as an exporter or importer, who does not otherwise physically handle hazardous waste, obtain an EPA ID number prior to arranging for export or

[19] For a copy of Executive Order 13563, please see: http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf
[20] US EPA. Improving Our Regulations: Final Plan for Periodic Retrospective Reviews of Existing Regulations. http://www.epa.gov/regdarrt/retrospective/documents/eparetroreviewplan-aug2011.pdf
[21] https://www.whitehouse.gov/sites/default/files/omb/inforeg/regreform/retroplans/july-2015/epa-retrospective-review.pdf

import, it is necessary to add a definition that EPA Form 8700-12 can then reference. EPA is therefore proposing to define such persons as recognized traders, specifically as "a person domiciled in the United States, by site of business, who acts to arrange and facilitate transboundary movements of wastes destined for recovery or disposal operations, either by purchasing from and subsequently selling to U.S. and foreign facilities or by acting under arrangements with a U.S. waste facility to arrange for the export or import of the wastes." EPA believes that this definition is consistent with the Amended 2001 OECD Decision's recognized trader definition of "a person who, with appropriate authorization of countries concerned, acts in the role of principal to purchase and subsequently sell wastes; this person has legal control of such wastes from time of purchase to time of sale; such a person may act to arrange and facilitate transboundary movements of wastes." EPA had originally considered establishing a definition for "brokers," but decided to use "recognized trader" to minimize confusion as there are brokers who make manifest-related arrangements for wholly domestic shipments of hazardous waste.

EPA requests comment on these changes and what definitions would be clearest to U.S. stakeholders.

B. Changes to Section 260.11(g)(1)

EPA is proposing to replace the obsolete reference to the 1992 OECD Decision waste lists with the correct reference to the Amended 2001 OECD Decision waste lists. This is a necessary technical correction.

C. Changes to Sections 261.4(d) and 261.4(e)

EPA is proposing to add an additional condition for samples being exported to a foreign laboratory or imported from a foreign source that the exporter or importer wishes to manage under the waste characterization exclusion of § 261.4(d) or the treatability study exclusion of §

261.4(e). Specifically, EPA is proposing to require that any such samples being exported or imported be limited to a maximum quantity of 25 kilograms in addition to the other conditions already required. This change is being proposed to match the 25 kg limit for samples being excluded from the export and import requirements currently in § 262.82(g) of the OECD regulations, and is thus a clarification and not a new requirement for sample export and import shipments currently subject to 40 CFR part 262 subpart H. It will be a new requirement for sample export and import shipments being exchanged with Canada, Mexico, and any non-OECD country under RCRA regulations. While Canada currently reflects the 25 kg sample exclusion in its exclusion to the definition for hazardous waste recyclables in Section 2(2)(d) of the Canadian regulations[22] when being shipped between Canada and a country that is party to the Amended 2001 OECD Decision "…for the purpose of conducting measurements, tests or research with respect to the recycling of that material," it is unclear to what extent the Canadian limits have impacted U.S. exporters and importers of such samples. EPA requests comments on the number of such samples that were exchanged with Canada, Mexico, or a non-OECD country for such testing in the last three years, and how many were over 25 kg and thus would be required to comply with the OECD regulations for exports or imports.

D. Changes to Section 261.6(a)

EPA is proposing to revise the text in § 261.6(a)(3)(i) concerning imports and exports of industrial ethyl alcohol being shipped for reclamation to reflect the proposed removal of regulations in 40 CFR part 262 subpart E, and the proposal to require all export and import shipments of RCRA hazardous waste and recyclable materials currently subject to export and

[22] "Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations (SOR/2005-149)," issued in Canada Gazette on June 5, 2005, available online at http://ec.gc.ca/lcpe-cepa/eng/regulations/detailReg.cfm?intReg=84.

import requirements to comply with regulations in 40 CFR part 262 subpart H. This is a conforming amendment.

Similarly, EPA is proposing conforming changes to the text in § 261.6(a)(5) concerning the applicability of 40 CFR part 262 subpart H requirements to all exports and imports of hazardous wastes being shipped for recycling.

E. Changes to Section 261.39(a)(5)

EPA is proposing changes to § 261.39(a)(5)(ii), (vi) and (xi) to reflect that export notifications, export renotifications and export annual reports concerning CRTs being shipped for recycling being submitted to EPA must be submitted electronically using EPA's hazardous waste import/export database on or after the effective date of the final rule. This proposed requirement assumes that the system changes can be completed in 2015 and tested by volunteer companies before issuance of the final rule. EPA requests comments on whether any transition period for electronic submittal into EPA's system is needed, an appropriate length for a transition period if one is needed, and whether any exporter would need a waiver from electronic filing requirements due to lack of broadband access or other unique circumstances that would make electronic filing an undue financial burden.

Additionally, EPA is proposing to add the requirement in § 261.39(a)(5)(v) that exporters or U.S. authorized agents must file EPA-required information into the AES prior to departure in accordance with the deadlines specified in 15 CFR 30.4 (e.g., for truck shipments, no less than one hour prior to the arrival of the truck at the U.S. border to go foreign) and provide the ITN documenting the successful filing to the outgoing transporter. The same U.S. authorized agents that currently file in the AES are intended to be allowed to continue such filings, but the RCRA exporter is ultimately responsible for ensuring that such filing occurs and that the ITN is

provided to the outgoing transporter. AES system changes were made and posted in October 2014 and testing should be completed in 2015. Exporters or U.S. authorized agents using the AES will need to modify their filing software to incorporate the filing changes that will remain optional until EPA's final regulations become effective, but should be able to do so in the months between issuance of the final rule and the effective date of December 31, 2016 required to comply with Executive Order 13659. EPA is therefore proposing to require filing of EPA-specific information into the AES from the effective date of the final rule without any transition period. EPA requests comment on whether exporters currently file shipment data into the AES prior to departure, whether they or their U.S. authorized agents use the AES or AESDirect to file their shipment data, and whether a transition period would still be appropriate.

F. Changes to Section 262.10(d)

EPA is proposing conforming amendments to § 262.10(d) concerning the applicability of 40 CFR part 262 subpart H requirements to all exports and imports of hazardous wastes.

Additionally, EPA is proposing to add the requirement that all such importers and exporters comply with the EPA ID number requirements in § 262.12. Currently importers and exporters who also generate, transport, treat, store or dispose of hazardous wastes are already required to obtain an EPA ID number because they generate, transport, treat, store or dispose of hazardous wastes. All importers, even those who do not also generate, transport, treat, store or dispose of hazardous wastes, are required to obtain EPA ID numbers because § 262.10(e) explicitly requires all importers to comply with the generator requirements. But it is unclear how many recognized traders arranging for import actually obtain an EPA ID number from the authorized state or EPA Regional office where their place of business is located. Moreover, recognized traders arranging for export that do not otherwise generate, transport, treat, store or

dispose of hazardous wastes have no way to obtain an EPA ID number, as EPA Form 8700-12 does not cover such persons. This requirement will therefore impact such persons. EPA requests comment on how many persons arranging for import or export of hazardous wastes, including those wastes under the management standards of 40 CFR parts 266 and 273, do not currently have EPA ID numbers issued by their authorized state or EPA Regional office.

G. Changes to Section 262.12

EPA is proposing to add new paragraph (d) to § 262.12 to require that recognized traders arranging for export and import obtain an EPA ID number from their authorized state or EPA Regional office before arranging for export or import. As discussed above, it is unclear how many persons will be affected by this requirement. EPA has assumed 1% of all current exporters and importers are recognized traders, and requests comment on the number of recognized traders that do not currently have EPA ID numbers. EPA further requests comment on how best to include such recognized traders in EPA Form 8700-12 and its associated instructions, and how or whether to reflect the recognized trader role in the EPA ID number itself (e.g., disposal facility numbers typically have a "D" in the EPA ID number).

H. Changes to Section 262.41(b)

EPA is proposing conforming amendments to § 262.41(b) replacing the current citation to export annual report requirements in § 262.56 with the new location for export annual report requirements in § 262.83(g).

I. Changes to 40 CFR part 262 subpart E

EPA is proposing to remove 40 CFR part 262 subpart E and reserve for future use. The export requirements that are currently in 40 CFR part 262 subpart E that are still needed but not already covered under the current 40 CFR part 262 subpart H regulations are proposed to be

moved to, and integrated in, the new 40 CFR part 262 subpart H regulations. For example, the definition in § 262.51 for EPA's AOC letter has been revised to more accurately reflect that the letter documents the consent of the importing country and any transit countries and moved to § 262.81 definitions. While the text of the Amended OECD 2001 Decision and the OECD regulations established in 1996 and amended in 2010 included exporters potentially receiving responses directly back from the countries of import and transit, in practice the notice and consent process under both 40 CFR part 262 subpart E and 40 CFR part 262 subpart H is solely a government to government process and all country responses are sent to EPA, which then documents those consents in the EPA AOC letter to the exporter. To more accurately reflect the actual process currently followed for both 40 CFR part 262 subparts E and H, Sections 262.53(e) and (f) detailing how EPA will forward complete notifications in conjunction with the Department of State as appropriate, address any claims of confidentiality made concerning any of the information listed in the notification, send the AOC letter to the exporter, and similarly send any country's objection or withdrawal of previous consent have been moved to § 262.83(b)(5) and (6). The text was modified slightly to reflect that the Amended 2001 OECD Decision requires that the country of import and the countries of transit all consent to the notification before shipment occurs. The older 40 CFR part 262 subpart E procedures technically allowed for issuance of the AOC letter based solely on the country of import's consent (see Section III.B.1 51 FR 28664 issued August 8, 1986). These changes reflect the actual process that currently takes place and should have no impact on exporters.

In addition, the list of OECD member countries that are party to the Amended 2001 OECD Decision in § 262.58(a)(1) has been moved to a new definition for "OECD Member

countries" in § 262.81. The implicit requirement in § 262.52(c) that the exporter obtain an EPA AOC letter prior to shipment has been made explicit and moved to § 262.83(a)(3).

Renotification requirements originally listed in § 262.53(c) have been modified and moved to § 262.83(b)(4) to reflect that OECD notification procedures under the Amended 2001 OECD Decision do not exempt any changes to the original notification from needing consent to the changes. Under 40 CFR part 262 subpart E, changes to the exporter's phone number, decreases to the maximum requested export quantity and changes to the means of transport for the shipment were exempted from requiring renotification so long as nothing else in the notification changed. It is unclear how many such changes would be impacted by this requirement (i.e., would be required to renotify and obtain consent to the renotification before shipping). EPA assumed zero additional renotifications due to this change and requests comment on the number of such exempted changes under 40 CFR part 262 subpart E that have occurred in the last three years and would be subject to renotification requirements under the proposed revisions.

Currently, § 262.84(c) requires exporters to comply with § 262.54(a), (b), (c), (e) and (i) of the 40 CFR part 262 subpart E manifest requirements. Section § 262.54 has been moved to § 262.83(c) with some modifications to reflect that (1) the requirement to attach a copy of the EPA AOC letter has been replaced with the requirement to list the consent number specified in the EPA AOC letter for each waste listed on the RCRA manifest; (2) in cases where the exporter must instruct the transporter to return the waste to a facility in the United States and modify the manifest, such instructions must be made via email, fax or mail so that a written record of the instructions exist; and (3) the exporter needs to supply an extra copy of the RCRA manifest to the transporter only for cases where the exporter has chosen to use paper manifests rather than

use the e-manifest system, as the requirement for the transporter to give a copy of the paper RCRA manifest to the CBP officer at the port of exit is being replaced with a requirement for the exporter to electronically file EPA-specific data in the AES to validate consent data prior to exit. The extra copy of the paper manifest is needed so that the transporter can send a copy of the manifest to the e-Manifest system using the allowable methods listed in 40 CFR § 264.71(a)(2)(v), thus ensuring that the data from the paper manifest is captured in the e-manifest system.

The exception reporting, annual reporting and recordkeeping sections of 40 CFR part 262 subpart E are duplicative of current 40 CFR part 262 subpart H requirements, and so did not additionally need to be moved to the new 40 CFR part 262 subpart H requirements.

EPA requests comments on these proposed changes.

J. Changes to 40 CFR part 262 subpart F

EPA is proposing to remove 40 CFR part 262 subpart F and reserve for future use. The import RCRA manifest requirements in 40 CFR part 262 subpart F are required under the current 40 CFR part 262 subpart H requirements, and are therefore proposed to be moved to § 262.84(c) in the new 40 CFR part 262 subpart H requirements, with the added requirement for the importer to note that the shipment is an import and the shipment's point of entry (i.e., port of entry and state) into the United States. While this requirement was not listed in 40 CFR part 262 subpart F, this is an existing requirement listed in the manifest instructions in the Appendix to Part 262 for item 16 of the RCRA manifest, and therefore should not result in any new burden. It has been added to the manifest requirements for import shipments in the new 40 CFR part 262 subpart H for clarity.

EPA requests comments on these proposed changes.

K. Changes to 40 CFR part 262 subpart H

In general, EPA has reorganized and clarified exporter, importer, transporter and receiving facility requirements under 40 CFR part 262 subpart H. EPA's intent was to more accurately reflect the current procedures, expand applicability to all exports and imports of RCRA hazardous waste, and clearly spell out existing requirements for exports and imports. When the OECD procedures were originally incorporated into RCRA in 1996 and then updated in 2008, EPA largely used the text from the OECD Decision in the 40 CFR part 262 subpart H regulations. While this ensured that OECD procedures required under the 1992 OECD Decision and the Amended 2001 OECD Decision were fully reflected in the 40 CFR part 262 subpart H regulations, the resulting regulatory text made very generic references to country of export and country of import, without always clearly spelling out U.S. exporter and U.S. importer obligations and procedures. For example, under the current § 262.82(a)(2)(ii)(B), U.S. importers are required to assume the duties of the foreign exporter if the proposed waste shipment is RCRA hazardous waste but the country of export does not control the shipment as an export of hazardous waste. But the current 40 CFR part 262 subpart H requirements do not explicitly spell out what the U.S. importer would be required to comply with in such cases. Renotifications are not explicitly prohibited but neither are they explicitly allowed in the current 40 CFR part 262 subpart H, unlike the current 40 CFR part 262 subpart E. In practice, such renotifications have been done for exports subject to 40 CFR part 262 subpart H. EPA's intent in these changes and the others previously discussed is to clarify existing responsibilities for exports and imports, and not to increase requirements beyond that which is currently required in 40 CFR part 262 subpart H.

In the new 40 CFR part 262 subpart H, retitled to reflect covering all transboundary shipments of hazardous waste for recovery or disposal, the sections for general applicability, definitions, and general conditions not specific to exports or imports remain in § 262.80, § 262.81, and § 262.82 respectively. But EPA proposes to amend § 262.83 from covering generic notification and consent to covering exports of hazardous waste, and to amend § 262.84 from covering generic movement document requirements to covering imports of hazardous waste. Within the new § 262.83 are subsections for (a) general export requirements, (b) notification requirements, including renotifications and notifications for re-export to a third country, (c) RCRA manifest instructions for export shipments, (d) OECD movement document requirements for export shipments, (e) the exporter's duty to return or re-export (to a third country) export shipments of waste that cannot be managed in accordance with the terms of the contract or consent and cannot be managed at an alternate facility in the country of import, (f) contract requirements, (g) annual reporting requirements, (h) exception reporting requirements, and (i) recordkeeping requirements. Within the new § 262.84 are subsections for (a) general import requirements, (b) notification requirements that apply only when the country of export does not control the proposed shipment as an export of hazardous waste, (c) RCRA manifest instructions for import shipments, (d) OECD movement document requirements for import shipments, (e) duty to return or re-export (to a third country) import shipments of waste that cannot be managed in accordance with the terms of the contract or consent and cannot be managed at an alternate facility in the United States, (f) contract requirements, (g) requirements for U.S. recycling or disposal facilities to issue confirmations of recovery or disposal for each import shipment, and (h) recordkeeping requirements for import shipments. Sections 262.85, 262.86, 262.87 and 262.88 are reserved for future use. Section 262.89 is amended from covering the OECD waste

lists and the incorporation by reference of the OECD waste lists to also being reserved for future use. The incorporation by reference of the OECD waste lists will be covered under § 260.11(g),

Under the revised definitions section, the older 40 CFR part 262 subpart H "exporter" definition has been broken into [U.S.] "exporter" and "foreign exporter". Similarly, the "importer" definition has been split into [U.S.] importer and foreign importer, as has receiving facility. As under the current 40 CFR part 262 subpart H, exporters must be domiciled in the United States. To reflect that Canadian regulations uses wording for several recovery and disposal operation codes that differ from the description used in the OECD recovery and disposal codes, the list of operation codes included in the definitions for recovery and disposal codes have been revised to reflect that such Canada-only codes will start with a "RC" or a "DC".

For export and import notifications, the use of (1) the ISO standard 3166 country name 2-digit code and (2) OECD/Basel competent authority code are required to be listed for the relevant country of import or export and their respective competent authorities. Use of these codes is widely accepted internationally and the ISO standard 3166 country name 2-digit code is consistent with the country codes required in the AES.

In cases where shipments cannot be delivered to the foreign receiving facility for any reason, the exporter is currently required to submit an exception report to EPA. Under the proposed revisions, the exporter is now required to submit the exception report to EPA within 30 days of the transporter missing the 45-day deadline to confirm the departure of the shipment from the United States or the foreign receiving facility missing the 90-day deadline to confirm receipt of the shipment, and required to submit the exception report to EPA within 30 days of being notified of the need to return the shipment, or one day prior to the initiation of the return

shipment, whichever is sooner. EPA requests comments on whether the 30-day period is sufficient to ascertain what has happened to the export shipment.

EPA requests comments on the reorganization and text changes, and whether additional revisions are needed to further clarify requirements for exports and imports while still ensuring compliance with procedures equivalent to those required for shipments currently subject to 40 CFR part 262 subpart H.

As with the proposed changes to part 261 sections, EPA is proposing changes to export and import requirements in 40 CFR part 262 subpart H to reflect that export notifications, export renotifications, export annual reports, export exception reports, export confirmations of receipt, export certifications of recovery or disposal, import notifications, import confirmations of receipt, and import certifications of recovery or disposal being submitted to EPA must be submitted electronically using EPA's hazardous waste import/export database on or after the effective date of the final rule. EPA requests comments on whether any transition period for electronic submittal into EPA's system is needed, an appropriate length for a transition period if one is needed, and whether any exporter would need a waiver from electronic filing requirements due to lack of broadband access or other unique circumstances that would make electronic filing an undue financial burden.

Additionally, EPA is similarly proposing to add the requirement in § 262.83(a)(6) that exporters or U.S. authorized agents must file EPA-required information into the AES prior to departure in accordance with the deadlines specified in 15 CFR 30.4 (e.g., for truck shipments, no less than one hour prior to the arrival of the truck at the U.S. border to go foreign) and provide the ITN documenting the successful filing to the outgoing transporter. The same U.S. authorized agents that currently file in AES are intended to be allowed to continue such filings, but the

RCRA exporter is ultimately responsible for ensuring that such filing occurs and that the ITN is provided to the outgoing transporter. AES system changes were made and posted in October 2014 and testing should be completed in 2015. Exporters or U.S. authorized agents using the AES will need to modify their filing software to incorporate the filing changes that will remain optional until EPA's final regulations become effective, but should be able to do so in the months between issuance of the final rule and the effective date of December 31, 2016 required to comply with Executive Order 13659. EPA is therefore proposing to require filing of EPA-specific information into the AES from the effective date of the final rule without any transition period. EPA requests comment on whether exporters currently file shipment data in the AES prior to departure, whether they or their U.S. authorized filing agents use the AES or AESDirect to file their shipment data, and whether a transition period would still be appropriate.

L. Changes to the Appendix to Part 262

EPA is proposing conforming amendments to revise the instructions for Item 16 of the RCRA manifest instructions to reflect that transporters carrying export shipments will no longer be required to deliver a signed and dated copy of the RCRA manifest to CBP at the port of exit. This requirement is being replaced with the exporter requirement to file EPA consent-specific information as part of their Electronic Export Information filing in the AES so that the consent can be validated within the AES prior to departure.

M. Conforming Changes to Parts 263 through 267, 271, and 273

1. Conforming Changes to Standards Applicable to Transporters of Hazardous Waste in Part 263

EPA proposes to delete the last paragraph in the note to § 263.10(a). The last paragraph was included as part of the note in the original 1980 RCRA rulemaking to ease compliance, but was not removed or revised during the 1986 regulation amendments to reflect additional

requirements in part 263, such as the export provisions in § 263.20(a). Additionally, the last paragraph cites obsolete regulatory sections in U.S Department of Transportation regulations. EPA consulted with U.S. Department of Transportation (DOT), and DOT approves deleting the last paragraph in the note[23]. EPA does not anticipate any change in burden due to this change, and requests comment on this change.

Additionally, EPA proposes conforming amendments to § 263.10(d) to reflect the expanded and clarified applicability of 40 CFR part 262 subpart H requirements and the new 40 CFR part 262 subpart H sections for OECD movement document requirements for export and import shipments. EPA also proposes conforming amendments to § 263.20(a)(2), (c), (e)(2), (f)(2), and (g) to reflect that transporters will only be required to carry the OECD movement document and RCRA manifest for export and import shipments, will not be required to carry the EPA AOC letter with export shipments, and will not be required to give a copy of the RCRA manifest to CBP at the port of exit prior to departure. Transporters carrying a paper RCRA manifest for an export shipment will however be required to send a copy of the paper manifest to the e-manifest system using the allowable methods listed in 40 CFR 264.71(a)(2)(v) to ensure that data from export shipments using paper RCRA manifests are captured in the e-manifest system.

EPA requests comments on these changes and whether any additional clarification is needed.

2. Conforming Changes to Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities in Part 264

[23] April 22, 2014 email from Dirk DerKinderen of U.S. Department of Transportation to Bryan Groce of EPA's Office of Resource Conservation and Recovery.

EPA proposes conforming amendments to § 264.12 to reflect the expanded and clarified applicability of 40 CFR part 262 subpart H requirements, and the importer requirements in § 262.84. Additionally, EPA proposes deleting the requirement in § 264.12(a)(1) as it will be duplicative of notifications submitted by either the foreign exporter or the U.S. importer in cases where the country of export does not control the shipment as a hazardous waste export as this requirement would now, in this rule, apply to hazardous waste imports and exports with all foreign countries (including Canada and Mexico), and not just with OECD countries.

Under the manifest requirements in § 264.71, EPA proposes conforming amendments to reflect the expanded applicability of 40 CFR part 262 subpart H, and further proposes replacing the current requirement (to attach a copy of the relevant EPA documentation of consent to the RCRA manifest) with the new requirement (to list the consent number for each waste from the relevant EPA documentation of consent in Item 14 of the RCRA manifest followed by the relevant list number for the waste from block 9b in parentheses) before submitting the manifest within thirty (30) days of shipment delivery to confirm receipt. This conforming amendment should enable compliance even when using the e-manifest system in the future, as the consent numbers could be typed into the text field for Item 14. Facilities using the e-manifest system to submit the RCRA manifest to confirm receipt would not need to send a separate copy to EPA's International Compliance Assurance Division. As under current 40 CFR part 262 subpart H procedures, facilities would need to submit copies of the signed movement document to confirm tracking from the shipment initiation in the country of export to the arrival at the U.S. facility, using the allowable submittal methods listed in 40 CFR part 262 subpart H.

EPA requests comments on these changes and whether any additional clarification is needed.

3. Conforming Changes to Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities in Part 265

EPA similarly proposes conforming amendments to § 265.12 to reflect the expanded and clarified applicability of 40 CFR part 262 subpart H requirements, and the importer requirements in § 262.84. Additionally, EPA proposes deleting the requirement in § 265.12(a)(1) as it is duplicative of notifications submitted by either the foreign exporter or the U.S. importer in cases where the country of export does not control the shipment as a hazardous waste export under 40 CFR part 262 subpart H (which will now apply to hazardous waste imports and exports with all foreign countries (including Canada and Mexico), and not with OECD countries only).

Under the manifest requirements in § 265.71, EPA proposes conforming amendments to reflect the expanded applicability of 40 CFR part 262 subpart H, and further proposes replacing the current requirement (to attach a copy of the relevant EPA documentation of consent to the RCRA manifest) with the new requirement (to list the consent number for each waste from the relevant EPA documentation of consent in Item 14 of the RCRA manifest followed by the relevant list number for the waste from block 9b in parentheses) before submitting the manifest within thirty (30) days of shipment delivery to confirm receipt. This conforming amendment should enable compliance even when using the e-manifest system in the future, as the consent numbers could be typed into the text field for Item 14. Facilities using the e-manifest system to submit the RCRA manifest to confirm receipt would not need to send a separate copy to EPA's International Compliance Assurance Division. As under current 40 CFR part 262 subpart H procedures, facilities would need to submit copies of the signed movement document to confirm tracking from the shipment initiation in the country of export to the arrival at the U.S. facility, using the allowable submittal methods listed in 40 CFR part 262 subpart H.

EPA requests comments on these changes and whether any additional clarification is needed.

4. Conforming Changes to the Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities in Part 266

EPA proposes conforming amendments to § 266.70, § 266.80(a) to reflect the expanded and clarified applicability of 40 CFR part 262 subpart A EPA ID number requirements and 40 CFR part 262 subpart H requirements to exports and imports of precious metal bearing hazardous waste and spent lead-acid batteries. With respect to spent lead-acid batteries, RCRA manifesting will continue to not be required, but the movement document requirements will apply to import and export shipments. Canadian requirements and current 40 CFR part 262 subpart H requirements already impose the movement document requirements upon U.S. recycling facilities, so this change should only result in additional burden for import shipments of spent lead-acid batteries from Mexico and non-OECD countries. SLAB exporters and importers will be required obtain EPA ID numbers, but this should impact only those SLAB exporters and importers who do not otherwise generate, transport, treat, store or dispose of hazardous wastes.

EPA requests comments on these changes, the number of shipments under 40 CFR part 266 subparts F and G impacted by these changes, and whether any additional clarification is needed.

5. Conforming Changes to the Standards for Owners and Operators of Hazardous Waste Facilities Operating under a Standardized Permit in Part 267

EPA proposes conforming amendments to the manifest requirements in § 267.71 to reflect the expanded applicability of 40 CFR part 262 subpart H, and further proposes requiring

the facility to list the consent number for each waste from the relevant EPA documentation of consent in Item 14 of the RCRA manifest (followed by the relevant list number for the waste from block 9b in parentheses) before submitting the RCRA manifest to confirm receipt. This conforming amendment should enable compliance even when using the e-manifest system in the future, as the consent numbers could be typed into the text field for Item 14. Facilities using the e-manifest system to submit the RCRA manifest to confirm receipt would not need to send a separate copy to EPA's International Compliance Assurance Division. As under current 40 CFR part 262 subpart H procedures, facilities would need to submit copies of the signed movement document to confirm tracking from the shipment initiation in the country of export to the arrival at the U.S. facility, using the allowable submittal methods listed in 40 CFR part 262 subpart H.

EPA requests comments on these changes and whether any additional clarification is needed.

6. Conforming Changes to the Requirements for Authorization of State Hazardous Waste Programs in Part 271

EPA proposes conforming amendments to § 271.1, § 271.10 and § 271.11 to reflect the proposed changes to 40 CFR part 262 subparts E, F, and H, and the transfer of required export and import responsibilities to the new 40 CFR part 262 subpart H. For a more detailed discussion on EPA's expected impact to State authorization as a result of the proposed changes, please see the Authorized State discussion in Section V.B of this action.

EPA requests comments on the impact of these changes, and whether any additional clarification is needed.

7. Conforming Changes to the Standards for Universal Waste Management in Part 273

EPA proposes conforming amendments to § 273.20, § 273.40, § 273.56, and § 273.70 to reflect the proposed expanded and clarified applicability of 40 CFR part 262 subpart H requirements to small and large quantity handlers exporting universal waste, transporters and receiving facilities. Additionally, EPA proposes to revise § 273.39 and § 273.62 to explicitly allow large quantity handlers and destination facilities to use the movement document to comply with the record requirements for individual universal waste shipment tracking.

EPA requests comments on the impact of these changes, the number of universal waste shipments affected by these changes, and whether any additional clarification is needed.

IV. COSTS AND BENEFITS OF THE PROPOSED RULE

A. Introduction

The Agency's economic assessment conducted in support of this proposed action evaluates costs, cost savings, benefits, and other impacts, such as environmental justice, children's health, unfunded mandates, regulatory takings, and small entity impacts. To conduct this analysis, we developed and implemented a methodology for examining impacts, and followed appropriate guidelines and procedures for examining equity considerations, children's health, and other impacts.

B. Analytical Scope

This economic analysis assesses the costs and cost savings of the proposed rule. It estimates the unit costs for each provision of the rule and applies these values to the number of affected entities, and it employs a "model entity" approach to estimate the cost and cost savings associated with the proposed rule, applying average costs by entity type (i.e., exporter, importer, transporter, or recognized trader) and foreign trade partner. The costs (and cost savings) of the

proposed rule are estimated over a twenty-year time horizon and using a seven percent discount rate.

The analysis conducted for this proposal is a simple cost assessment. We do not attempt to estimate the social costs and benefits associated with this action. This is consistent with Executive Order 12866, which requires a full Regulatory Impact Analysis only for actions having an estimated impact on society of greater than $100 million per year.

C. Cost Impacts

Industry will incur costs to familiarize itself with the requirements of the rule and comply with each of the provisions described in the summary of the proposed rule and changes. The most significant costs to industry under the proposed rule are associated with the movement document and the confirmation of recovery/disposal requirements. As a result of the rule, the annualized costs to industry are estimated to be about $1.5 million with roughly $450,000 in annualized cost savings, or $1.0 million in annualized net costs, using a 7 percent discount rate.

EPA will also incur costs review and maintain records of movement documents and confirmations of recovery or disposal, issue EPA ID numbers to recognized traders, and develop and maintain enhancements to WIETS to facilitate electronic submittal of export and import-related documents. The one-time, initial WIETS development costs will be between approximately $230,000 and $380,000. After the electronic system is fully operational (i.e., after the first year), the proposed rule will result in Agency costs of between approximately $760,000 and $880,000. EPA will also experience Agency cost savings including the burden reduction associated with no longer responding to exporter inquiries via telephone and avoided manual data entry of export notices and annual reports in WIETS. These cost savings will be approximately $230,000 each year. Thus, the proposed rule will result in annualized Agency

costs of between $770,000 and $890,000 and cost savings of $230,000, or between $530,000 and $660,000 in annualized net costs, using a 7 percent discount rate.

D. Benefits

In addition to the $450k in savings to the industry and $230k to the Agency, there are a number of qualitative benefits associated with the rule. Due to data availability, EPA could not quantify all the benefits, such as human health benefits from increased compliance with the rule. In addition, the rule will:

- Enhance EPA tracking of exporter, importer, and recognized trader activities;
- Reduce risks associated with recovery and disposal of hazardous wastes;
- Improve the ability to acquire information regarding the quantities of hazardous waste shipments exported from the United States and the destination facilities to which the shipments are exported;
- Increase regulatory efficiency;
- Achieve full consistency with export and import requirements for OECD countries for all exports and imports with Canada, Mexico and non-OECD countries; and
- Time savings for industry and EPA related to electronic submittal.

V. STATE AUTHORIZATION

A. Applicability of Rules in Authorized States

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

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

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

Authorized States are required to modify their programs only when EPA enacts federal requirements that are more stringent 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). Therefore, authorized States may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

B. Effect on State Authorization

Because of the federal government's special role in matters of foreign policy, EPA does not authorize States to administer Federal import/export functions in any section of the RCRA hazardous waste regulations. This approach of having Federal, rather than State, administering of the import/export functions promotes national coordination, uniformity and the expeditious transmission of information between the United States and foreign countries.

Although States do not receive authorization to administer the Federal government's export functions in 40 CFR part 262 subpart E, import functions in 40 CFR part 262 subpart F, import/export functions in 40 CFR part 262 subpart H, or the import/export relation functions in any other section of the RCRA hazardous waste regulations, State programs are still required to adopt the provisions in this rule to maintain their equivalency with the Federal program (see 40 CFR 271.10(e) which will also be amended in this rule).

This rule contains many amendments to 40 CFR part 262 subpart H, both for clarity and organization, and replaces the regulations that are currently in 40 CFR part 262 subparts E and F with the more stringent 40 CFR part 262 subpart H regulations. The rule also contains conforming import and export-related amendments to 40 CFR parts 260, 261, 262, 263, 264, 265, 266, 267, 271 and 273, almost all of which are more stringent.

The States that have already adopted 40 CFR part 262 subparts E, F and H, 40 CFR part 263, 40 CFR part 264, 40 CFR part 265, and any other import/export related regulations must adopt the provisions listed above.

When a State adopts the import/export provisions in this rule (if final), they must not replace Federal or international references or terms with State references or terms.

The provisions of this rule, if final, would take effect in all States on the effective date of the rule, since these import and export requirements will be administered by the Federal government as a foreign policy matter, and will not be administered by States.

Finally, EPA would make conforming amendments to 40 CFR 271.10(e) of EPA's state authorization regulations to remove the references to 40 CFR part 262 subparts E and F, and to replace them with a reference to 40 CFR part 262 subpart H. As currently written, state programs are required to provide "requirements respecting international shipments which are equivalent to those at 40 CFR part 262 subparts E and F, except that …" This current language would no longer be accurate since this rule, if final, would eliminate 40 CFR part 262 subparts E and F and replace them with 40 CFR part 262 subpart H, along with any other import/export related regulations.

VI. STATUTORY AND EXECUTIVE ORDER REVIEWS

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review, because it may raise novel legal or policy issues [3(f)(4)] arising out of legal mandates, although it is not economically significant. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an economic analysis of the potential costs and benefits associated with this action. This analysis, titled "Economic Assessment: EPA's 2014 RCRA Proposed Rule Hazardous Waste Export-Import Revisions," is available in the docket. Interested persons, including those persons currently importing and exporting hazardous waste, are encouraged to read and comment on the accuracy of the assumptions and the burden estimates presented in this document (e.g., for

hiring or training of additional staff, including legal counsel or external consultants, to comply with the finalized requirements).

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2519.01. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The requirements covered in this ICR are necessary for EPA to oversee the international trade of hazardous wastes. EPA is promulgating the above regulatory changes/amendments under the authority of Sections 1006, 1007, 2002(a), 3001 through 3010, 3013 through 3015, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), and as amended by the Hazardous and Solid Waste Amendments, 42 U.S.C. 6905, 6906, 6912, 6921 through 6930, 6934, and 6938.

The Office of Enforcement and Compliance Assurance, U.S. EPA, uses the information provided by each U.S. exporter, receiving facility, transporter, and recognized trader to determine compliance with the applicable RCRA regulatory provisions. In addition, the information is used to determine the number, origin, destination, and type of exports from and imports to the U.S. for tracking purposes and for reporting to the OECD. This information also is used to assess the efficiency of the program.

Most of the information required by the regulations covered by this ICR is not available from any source but the respondents. In certain occasions, such as the notification of intent to

export hazardous waste, EPA allows the primary exporter to submit one notice that covers activities over a period of twelve months.

Except as described below, the proposed rule does not result in the collection of duplicate data. Although some of the information required for the hazardous waste manifest and the movement document is substantively the same, up to six pieces of additional information are required for the movement document. In addition, these two documents serve different purposes. A signed copy of the hazardous waste manifest, which is not valid beyond U.S. borders, is dropped off at the U.S. Customs check point when the shipment leaves the U.S. to verify pertinent information, including point of departure, date, destination, and contents of the shipment. The movement document must accompany the shipment until it reaches the foreign recovery facility. The signed movement document is subsequently returned to EPA and the U.S. exporter to acknowledge receipt of the shipment.

In certain cases, some of the information on the tracking document also may be collected by the Department of Commerce in its Census Bureau form titled "Shipper's Export Declaration" (15 CFR Part 30). This form, which is required for all shipments that have a value in excess of $2,500, must be filed at the U.S. port of exit, similar to the current export requirements. However, the information currently contained in the Census Bureau's form is not adequate for EPA's purpose of tracking and identifying the export of hazardous waste from the U.S. For example, the wastes are identified by tariff codes that are less precise than the waste codes required by the tracking document.

Section 3007(b) of RCRA and 40 CFR Part 2, subpart B, which defines EPA’s general policy on public disclosure of information, contain provisions for confidentiality. However, the Agency does not anticipate that businesses will assert a claim of confidentiality covering all or

part of the proposed rule. If such a claim were asserted, EPA must and will treat the information in accordance with the regulations cited above. EPA also will assure that this information collection complies with the Privacy Act of 1974 and OMB Circular 108.

Respondents/affected entities: Importers, exporters, and recycling and disposal facilities.

Respondent's obligation to respond: Mandatory (RCRA 3002 (42 USC 6922) and RCRA 3003 (42 USC 6923)).

Estimated number of respondents: 1,305.

Frequency of response: Annual or on occasion.

Total estimated burden: 43,212 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: For the affected entities, the average total burden costs in the first three years, including operations and maintenance, are estimated to be $1.1 million.

There are no capital costs associated with the proposed rule.

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 the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to oria_submissions@omb.eop.gov, Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than [insert date 30 days after publication in the Federal Register]. The EPA will respond to any ICR-related comments in the final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action are exporters, importers, transporters, and recognized traders. The Agency has determined that between 30 and 38 percent of exporters, importers, and recognized traders, and approximately 80 percent of transporters, are small entities, for a total of 590 small entities, may experience an impact of approximately $40 to $22,000 per year, or between 0.1 and 0.3 percent of annual revenues. Thus, the average costs of the proposed rule, on a per entity basis, will not exceed one percent of annual revenues for any respondent. Details of this analysis are presented in the document titled "Economic Assessment: EPA's 2014 RCRA Proposed Rule Hazardous Waste Export-Import Revisions," which is available in the docket.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. Further, UMRA does not apply to the portions of this action concerning application of OECD import and export procedures because those portions are necessary for the national security or the ratification or implementation of international treaty obligations (i.e., the 1986 OECD Decision-Recommendation and the Amended 2001 OECD Decision).

E. Executive Order 13132: Federalism

This action does not have federalism implications because the state and local governments do not administer the export and import requirements under RCRA. It will not have substantial direct effects on the states, on the relationship between the national government and

the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. No exporters, importers or transporters affected by this action are known to be owned by Tribal governments or located within or adjacent to Tribal lands. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The procedural requirements in this action should prevent mismanagement of hazardous wastes in foreign countries and better document proper management of imported hazardous wastes in the United States.

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

This action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This action will have little to no effect on the supply, distribution, or use of energy, as this action is intended to prevent

mismanagement of hazardous wastes in foreign countries and better document proper management of imported hazardous wastes in the United States.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because this action should prevent mismanagement of hazardous wastes in foreign countries and better document proper management of imported hazardous wastes in the United States. Specifically, this action is designed to increase tracking of individual hazardous waste import and export shipments, improve regulatory efficiency and improve information collection on imports and exports of hazardous wastes subject to RCRA notice and consent requirements.

K. Executive Order 13659: Streamlining the Export/Import Process for America's Businesses

Executive Order 13659, titled "Streamlining the Export/Import Process for America's Business" (79 FR 10657, February 25, 2014), establishes federal executive policy on improving the technologies, policies, and other controls governing the movement of goods across our national borders. It directs participating agencies to have capabilities, agreements, and other requirements in place by December 31, 2016, to utilize the ITDS and supporting systems as the primary means of receiving from users the standard set of data and other relevant documentation (exclusive of applications for permits, licenses, or certifications) required for the release of imported cargo and clearance of cargo for export. To meet the requirement of the Executive

Order, portions of this proposed action directly propose requiring exporters subject to RCRA export consent requirements to electronically file consent related data within the AES, the supporting IT system for exports under the ITDS. Additionally, this action improves regulatory efficiency related to hazardous waste imports and exports by consolidating import and export procedures for hazardous waste into one set of procedures that are widely accepted by other countries, and by replacing existing submittals to EPA of paper documentation related to hazardous waste imports and exports with electronic submittal into EPA's hazardous waste import/export database. Thus, this action is consistent with the purpose of Executive Order 13659, and is a necessary first step in complying with it.

VII. 2013 CEC Report on Spent Lead Acid Batteries and Related Analysis

On February 8, 2012, the Secretariat for the CEC[24] began to examine the environmental and public health issues associated with the transboundary movement of SLABs across North America. EPA provided data to the CEC and submitted technical comments on the CEC's draft report released on November 30, 2012. The CEC's final report,[25] issued on April 15, 2013, included the following conclusions: Mexico's existing regulatory framework covering secondary lead smelters has significant gaps and is the furthest from the United States' standards, which has the most stringent overall regulatory framework of the three countries; between 2004 and 2011, U.S. net exports to Mexico increased by an estimated 449 to 525 percent; and, there were significant discrepancies between summary data on export shipments reported to the EPA

[24] The Commission for Environmental Cooperation (CEC) is an international organization created by Canada, Mexico and the United States under the North American Agreement on Environmental Cooperation (NAAEC). The CEC was established, among other things, to address regional environmental concerns, help prevent potential trade and environmental conflicts, and to promote the effective enforcement of environmental law. The Agreement complements the environmental provisions of the North American Free Trade Agreement (NAFTA). More information on the CEC is available on its website at www.cec.org.

[25] http://www.cec.org/Storage/149/17479_CEC_Secretariat-SLABs_Report_may7_en_web.pdf

annually and individual export shipment data collected under U.S. Census Bureau (Census) authority.

The CEC's review of the EPA and Census data found that the Census data on SLAB exports to Mexico in 2011 was 47.35 million kg lower than the data from EPA, which could indicate that exporters of SLABs may not be correctly applying the proper harmonized tariff code. Additionally, the CEC's review found that 2.1 million kg of SLABs were exported to 47 countries where EPA had no record of having obtained consent from those countries to receive SLABs while 571.55 million kg of SLABs total were exported with EPA and the receiving country's consent.

The final report recommended that the U.S. require the use of manifests for each international shipment of SLABs, and require exporters to obtain a certificate of recovery from recycling facilities to better track individual shipments and thereby ensure that shipments go to the approved destination facility and are recycled in a timely manner. Further, the report recommended that the U.S. explore establishing a system to allow exporters to submit export annual report data electronically to reduce the time and resources needed by the agency to manually enter the data from the paper export annual reports. Lastly, the report recommended that the U.S. work to share the import and export data maintained by its respective environmental and border agencies to identify trends that may require a policy response or that may raise compliance issues.

After reviewing the CEC report, EPA independently compared SLAB export annual report data submitted to EPA and Census data on exports of SLABs being shipped for recovery

of lead[26] from 2012. The results were very similar to the analysis of the 2011 EPA and Census data conducted by the CEC. While most of the tons of SLABs exported for recycling in 2012 occurred with the consent of Mexico, Canada, Korea and Spain, a much smaller total quantity of SLABs was shipped to 48 countries apparently without consent. Specifically looking at SLAB export shipments to Mexico, 51,805 tons of SLABs were exported with consent but without declaring the correct Schedule B commodity classification number. Export shipment declarations that misclassify the hazardous waste are of concern because the misclassification can cause confusion for the Customs offices in the various countries. Also, if the misclassification is shared with the shipping company taking the shipment out of the United States, the misclassification can complicate any emergency response to an incident involving the shipment while it is in transit. The data appear to indicate that misclassification accounts for most or nearly all of the discrepancies in the case of SLAB exports to Mexico. Nevertheless, significant discrepancies on SLAB shipment data when comparing export annual report data reported to EPA with data compiled from exporter declarations reported to the U.S. Census Bureau, suggest export shipments have occurred that are not in compliance with EPA's notice and consent procedures.

Subsequent efforts to compare EPA's export annual report data and U.S. Census Bureau data for other exported hazardous wastes proved to be much more difficult. Exports of a number of chemical industry related wastes are not currently required to report exported quantities based on their Schedule B commodity codes.[27] Exports of other hazardous wastes, such as hazardous

[26] Shipments were classified as 8548.10.0540 ("lead-acid storage batteries of a kind used for starting engines, for the recovery of lead") and 8548.10.0580 ("spent primary cells, spent primary batteries, & spent electric storage batteries for recovery of lead, other than lead-acid storage batteries for starting engines"), under the U.S. Census Bureau's Schedule B commodity classifications ("Schedule B: Statistical Classification of Domestic and Foreign Commodities Exported from the United States"), http://www.census.gov/foreign-trade/schedules/b/

[27] Reporting units for Schedule B commodity codes 3825.41.0000 (Halogenated waste of organic solvents), 3825.49.0000 (Waste of organic solvents, NESOI), 3825.50.0000 (Waste of metal-pickling liquors, hydraulic fluids, brake fluids and anti-freeze fluids), 3825.61.0000 (Wastes from the chemical or allied industry consisting mainly of

waste spent catalysts, could be declared under Schedule B commodity codes[28] that cover exports of new catalysts as well as export of spent catalysts subject to RCRA export requirements. However, given the discrepancies between SLAB export annual report data submitted to EPA and SLAB export data from the U.S. Census Bureau, it is possible that similar differences are occurring for other exported hazardous wastes.

When hazardous waste is shipped across multiple countries to be disposed or recycled, there can be a higher risk of mismanagement that could result in damage to the environment and human health in the surrounding communities. This higher risk is due to the increased number of custodial transfers that international shipments incur, the entry and exit procedures (and associated temporary storage) at the ports and border crossings for the countries of export, transit and import, and the varying levels of environmental controls and worker safety practices at the destination facilities. The risk is highest when shipments are sent to unapproved facilities. According to the executive summary for the October 2012 OECD publication titled "Illegal Trade in Environmentally Sensitive Goods"[29] the economic and environmental impacts of illegal hazardous waste disposal include (1) the undermining of legitimate hazardous waste treatment and disposal companies, (2) lead poisoning, (3) cancer, (4) and lung and kidney disease. World Health Organization fact sheets[30] on the effects of exposures to cadmium, lead, mercury and arsenic make clear the significant potential impact to public health from releases to the environment from illegal management of hazardous waste.

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organic constituents, NESOI), 3825.69.0000 (Wastes from the chemical or allied industries, NESOI), and 3825.90.0000 (Wastes, as specified in note 6 to chapter 38, NESOI) are "X", indicating reporting shipment quantities in the Automated Export System is not required.

[28] 3815.11.0000 (Supported catalysts: with nickel or nickel compounds as the active substance), 3815.12.0000 (Supported catalysts: with precious metal or precious metal compounds as the active substance), 3815.19.0000 (Supported catalysts, NESOI).

[29] http://www.oecd.org/tad/envtrade/ExecutiveSummaryIllegalTradeEnvSensitiveGoods.pdf

[30] http://www.who.int/mediacentre/factsheets/en/

The concerns with lead exposures from SLAB recycling in other countries have been relatively well documented, and were generally discussed in the October 6, 2008, rulemaking proposing to make SLAB exports subject to notice and consent requirements (see section D.2 in 74 FR 58388). The 2013 CEC report also discussed in some detail the potential damage to human health and the environment when the lead exposures are not kept to a minimum. Domestic examples of damage from mismanagement at recycling operations were examined in the Definition of Solid Waste proposed rule published on July 22, 2011 (see 76 FR 44094), and in the 2014 final rule published on January 13, 2015 (see 80 FR 1694). In Exhibit 8B of the Regulatory Impact Analysis for EPA's 2014 Revisions to the Industrial Recycling Exclusions of the RCRA Definition of Solid Waste,[31] based on the cleanup costs associated with 115 of the 250 Industrial Recycling Environmental Damage Cases that occurred in the United States between 1982 and 2011, the nationwide average cleanup expenditure per damage case was $7.8 million (in 2012 dollars). These damage cases included facilities recycling batteries, mercury wastes, and spent solvents. It is likely that similar or worse damage cases from these types of facilities exist in other countries.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Incorporation by reference.

[31] "Regulatory Impact Analysis: EPA's 2014 Revisions to the Industrial Recycling Exclusions of the RCRA Definition of Solid Waste", November 26, 2014, http://www.regulations.gov/#!documentDetail;D=EPA-HQ-RCRA-2010-0742-0369.

40 CFR Part 261

Environmental protection, Hazardous materials, Intergovernmental relations, Recycling, Waste treatment and disposal.

40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, International organizations, Labeling, Packaging and containers, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 263

Environmental protection, Exports, Hazardous materials transportation.

40 CFR Part 264

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

40 CFR Part 265

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

40 CFR Part 266

Environmental protection, Exports, Hazardous recyclable materials, Imports, Precious metal recovery, Recycling, Spent Lead-Acid Batteries, Waste treatment and disposal.

40 CFR Part 267

Environmental protection, Hazardous waste, Imports, Reporting and recordkeeping requirements

40 CFR Part 271

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

40 CFR Part 273

Environmental protection, Exports, Imports, Universal waste.

Dated: September 24, 2015.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, title 40, chapter 1 of the Code of Federal Regulations is proposed to be 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.

2. Amend § 260.10 by adding, in alphabetical order, the definition "Recognized trader" to read as follows:

§ 260.10 Definitions.

* * * * *

Recognized trader means a person domiciled in the United States, by site of business, who acts to arrange and facilitate transboundary movements of wastes destined for recovery or disposal operations, either by purchasing from and subsequently selling to United States and foreign facilities, or by acting under arrangements with a United States waste facility to arrange for the export or import of the wastes.

* * * * *

3. Amend § 260.11 by revising paragraphs (g) and (g)(1) to read as follows:

§ 260.11 Incorporation by reference.

* * * * *

(g) The following materials are available for purchase from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue André Pascal, F-75775 Paris Cedex 16, France.

(1) The OECD waste lists, as set forth in Annex B ("Green List") and Annex C ("Amber List") (collectively "OECD waste lists") of the 2009 "Guidance Manual for the Implementation of Council Decision C(2001)107/FINAL, as Amended, on the Control of Transboundary Movements of Wastes Destined for Recovery Operations," IBR approved for 262.82(a), 262.83(b), 262.83(d), 262.83(g), 262.84(b), 262.84(d) of this chapter.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

4. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

5. Amend §261.4 by:

a. Revising paragraph (d)(1) introductory text;

b. Adding paragraph (d)(4);

c. Revising paragraph (e)(1) introductory text; and

d. Adding paragraph (e)(4).

The revisions and additions read as follows:

§ 261.4 Exclusions.

* * * * *

(d) *Samples.* (1) Except as provided in paragraphs (d)(2) and (d)(4) of this section, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this part or parts 262 through 268 or part 270 or part 124 of this chapter or to the notification requirements of section 3010 of RCRA, when:

* * * * *

(4) In order to qualify for the exemption in paragraphs (d)(1) (i) and (ii) of this section, samples that will be exported to a foreign laboratory or that will be imported to a U.S. laboratory from a foreign source must weigh no more than 25 kg.

(e) *Treatability Study Samples*. (1) Except as provided in paragraphs (e)(2) and (e)(4) of this section, persons who generate or collect samples for the purpose of conducting treatability studies as defined in section 260.10, are not subject to any requirement of parts 261 through 263 of this chapter or to the notification requirements of Section 3010 of RCRA, nor are such samples included in the quantity determinations of § 261.5 and § 262.34(d) when:

* * * * *

(4) In order to qualify for the exemption in paragraph (e)(1) (i) of this section, samples that will be exported to a foreign laboratory or testing facility, or that will be imported to a U.S. laboratory or testing facility from a foreign source must weigh no more than 25 kg.

* * * * *

6. Amend §261.6 by revising paragraphs (a)(3)(i) and (a)(5) to read as follows:

§ 261.6 Requirements for recyclable materials.

(a) * * *

(3) * * *

(i) Industrial ethyl alcohol that is reclaimed except that exports and imports of such recyclable materials must comply with the requirements of 40 CFR part 262, subpart H.

* * * * *

(5) Hazardous waste that is exported or imported for purpose of recovery is subject to the requirements of 40 CFR part 262, subpart H.

* * * * *

7. Amend § 261.39 by revising paragraphs (a)(5)(ii), (v), (vi), and (xi) to read as follows:

§ 261.39 Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling.

(a) * * *

(5) * * *

(ii) Notifications must be submitted electronically using EPA's hazardous waste import/export database.

* * * * *

(v) The export of CRTs is prohibited unless all of the following occur:

(A) The receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the CRTs, EPA will forward an Acknowledgment of Consent to Export CRTs to the exporter. Where the receiving country objects to receipt of the CRTs or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries.

(B) The exporter or a U.S. authorized agent:

(1) Submits Electronic Export Information (EEI) for each shipment to the Automated Export System (AES), under the International Trade Data System (ITDS) platform, in accordance with 15 CFR 30.4(b).

(2) Includes the following items in the EEI, along with the other information required under 15 CFR 30.6:

(i) EPA license code;

(ii) Commodity classification code per 15 CFR 30.6(a)(12);

(iii) EPA consent number;

(iv) Country of ultimate destination per 15 CFR 30.6(a)(5);

(v) Date of export per 15 CFR 30.6(a)(2);

(vi) Quantity of waste in shipment and units for reported quantity, if required reporting units established by value for the reported commodity classification number are in units of weight or volume per 15 CFR 30.6(a)(15); or

(vii) EPA net quantity reported in units of kilograms, if required reporting units established by value for the reported commodity classification number are not in units of weight or volume.

(vi) When the conditions specified on the original notification change, the exporter must provide EPA with a written renotification of the change using the allowable methods listed in paragraph (a)(5)(ii) of this section, except for changes to the telephone number in paragraph (a)(5)(i)(A) of this section and decreases in the quantity indicated pursuant to paragraph (a)(5)(i)(C) of this section. The shipment cannot take place until consent of the receiving country to the changes has been obtained (except for changes to information about points of entry and departure and transit countries pursuant to paragraphs (a)(5)(i)(D) and (a)(5)(i)(H) of this section) and the exporter of CRTs receives from EPA a copy of the Acknowledgment of Consent to Export CRTs reflecting the receiving country's consent to the changes.

* * * * *

(xi) Annual reports must be submitted to the office listed using the allowable methods specified in paragraph (a)(5)(ii) of this section. Exporters must keep copies of each annual report for a period of at least three years from the due date of the report.

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

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

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

9. Amend § 262.10 by revising paragraph (d) to read as follows:

§ 262.10 Purpose, scope, and applicability.

* * * * *

(d) Any person who exports or imports hazardous wastes must comply with § 262.12 and subpart H of this part.

* * * * *

10. Amend § 262.12 by adding paragraph (d) to read as follows:

§ 262.12 EPA identification numbers.

* * * * *

(d) A recognized trader must not arrange for import or export of hazardous waste without having received an EPA identification number from the Administrator.

11. Amend § 262.41 by revising paragraph (b) to read as follows:

§ 262.41 Biennial report.

* * * * *

(b) Exports of hazardous waste to foreign countries are not required to be reported on the Biennial Report form. A separate annual report requirement is set forth at 40 CFR 262.83(g) for hazardous waste exporters.

Subpart E—[Removed and Reserved]

12. Remove and reserve subpart E, consisting of §§262.50 through 262.58.

Subpart F—[Removed and Reserved]

13. Remove and reserve subpart F, consisting of §262.60.

14. Subpart H is revised to read as follows:

Subpart H—TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTE FOR RECOVERY OR DISPOSAL

Sec.
262.80 Applicability.
262.81 Definitions.
262.82 General conditions.
262.83 Exports of hazardous waste.
262.84 Imports of hazardous waste.
262.85 [Reserved].
262.86 [Reserved].
262.87 [Reserved].
262.88 [Reserved].
262.89 [Reserved].

§ 262.80 Applicability.

(a) The requirements of this subpart apply to transboundary movements of hazardous wastes.

(b) Any person (including exporter, importer, disposal facility operator, or recovery facility operator) who mixes two or more wastes (including hazardous and non-hazardous wastes) or otherwise subjects two or more wastes (including hazardous and non-hazardous wastes) to

physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under RCRA and any exporter duties, if applicable, under this subpart.

§ 262.81 Definitions.

In addition to the definitions set forth at 40 CFR 260.10, the following definitions apply to this subpart.

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

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

Country of export means any country from which a transboundary movement of hazardous wastes is planned to be initiated or is initiated.

Country of import means any country to which a transboundary movement of hazardous wastes is planned or takes place for the purpose of submitting the wastes to recovery or disposal operations therein.

Country of transit means any country other than the country of export or country of import across which a transboundary movement of hazardous wastes is planned or takes place.

Disposal operations means activities which do not lead to the possibility of resource recovery, recycling, reclamation, direct re-use or alternate uses, which include:

D1 Release or Deposit into or onto land, other than by any of operations D2 through D5 or D12.

D2 Land treatment, such as biodegradation of liquids or sludges in soils.

D3 Deep injection, such as injection into wells, salt domes or naturally occurring repositories.

D4 Surface impoundment, such as placing of liquids or sludges into pits, ponds or lagoons.

D5 Specially engineered landfill, such as placement into lined discrete cells which are capped and isolated from one another and the environment.

D6 Release into a water body other than a sea or ocean, and other than by operation D4.

D7 Release into a sea or ocean, including sea-bed insertion, other than by operation D4.

D8 Biological treatment not specified elsewhere in operations D1 through D12, which results in final compounds or mixtures which are discarded by means of any of operations D1 through D12.

D9 Physical or chemical treatment not specified elsewhere in operations D1 through D12, such as evaporation, drying, calcination, neutralization, or precipitation, which results in final compounds or mixtures which are discarded by means of any of operations D1through D12.

D10 Incineration on land.

D11 Incineration at sea.

D12 Permanent storage.

D13 Blending or mixing, prior to any of operations D1 through D12.

D14 Repackaging, prior to any of operations D1 through D13.

D15 (or DC17 for transboundary movements with Canada only) Interim Storage, prior to any of operations D1 through D12.

DC15 Release, including the venting of compressed or liquified gases, or treatment, other than by any of operations D1 to D12 (for transboundary movements with Canada only).

DC16 Testing of a new technology to dispose of a hazardous waste (for transboundary movements with Canada only).

EPA Acknowledgment of Consent (AOC) means the letter EPA sends to the exporter documenting the specific terms of the country of import's consent and the country(ies) of transit's consent(s). The AOC meets the definition of an export license in U.S. Census Bureau regulations 15 CFR 30.1.

Export means the transportation of hazardous waste from a location under the jurisdiction of the United States to a location under the jurisdiction of another country, or a location not under the jurisdiction of any country, for the purposes of recovery or disposal operations therein.

Exporter, also known as primary exporter on the RCRA hazardous waste manifest, means the person domiciled in the United States who is required to originate the movement document in accordance with 40 CFR 262.83(d) or the manifest for a shipment of hazardous waste in accordance with 40 CFR part 262, subpart B, or equivalent State provision, which specifies a foreign receiving facility as the facility to which the hazardous wastes will be sent, or any recognized trader who proposes export of the hazardous wastes for recovery or disposal operations in the country of import.

Foreign Exporter means the person under the jurisdiction of the country of export who has, or will have at the time the planned transboundary movement commences, possession or other forms of legal control of the hazardous wastes and who proposes shipment of the hazardous wastes to the United States for recovery or disposal operations.

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

Foreign Receiving Facility means a facility which, under the importing country's applicable domestic law, is operating or is authorized to operate in the country of import to receive the hazardous wastes and to perform recovery or disposal operations on them.

Import means the transportation of hazardous waste from a location under the jurisdiction of another country to a location under the jurisdiction of the United States for the purposes of recovery or disposal operations therein.

Importer means the person to whom possession or other form of legal control of the hazardous waste is assigned at the time the imported hazardous waste is received in the United States.

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

OECD means the Organization for Economic Cooperation and Development.

OECD Member country means the countries that are members of the OECD and participate in the Amended 2001 OECD Decision. (EPA provides a list of OECD Member countries at [cite to URL of EPA's website that will maintain OECD member country list].

Receiving facility means a U.S. facility which, under RCRA and other applicable domestic laws, is operating or is authorized to operate to receive hazardous wastes and to perform recovery or disposal operations on them.

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

R1 Use as a fuel (other than in direct incineration) or other means to generate energy.

R2 Solvent reclamation/regeneration.

R3 Recycling/reclamation of organic substances which are not used as solvents.

R4 Recycling/reclamation of metals and metal compounds.

R5 Recycling/reclamation of other inorganic materials.

R6 Regeneration of acids or bases.

R7 Recovery of components used for pollution abatement.

R8 Recovery of components used from catalysts.

R9 Used oil re-refining or other reuses of previously used oil.

R10 Land treatment resulting in benefit to agriculture or ecological improvement.

R11 Uses of residual materials obtained from any of the operations numbered R1 through R10 or RC14 (for transboundary shipments with Canada only).

R12 Exchange of wastes for submission to any of the operations numbered R1 through R11 or RC14 (for transboundary shipments with Canada only).

R13 Accumulation of material intended for any operation numbered R1 through R12 or RC14 (for transboundary shipments with Canada only).

RC14 Recovery or regeneration of a substance or use or re-use of a recyclable material, other than by any of operations R1 to R10 (for transboundary shipments with Canada only).

RC15 Testing of a new technology to recycle a hazardous recyclable material (for transboundary shipments with Canada only).

RC16 Interim storage prior to any of operations R1 to R11 or RC14 (for transboundary shipments with Canada only).

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

§ 262.82 General conditions.

(a) Scope. The level of control for exports and imports of waste is indicated by assignment of the waste to either a list of wastes subject to the Green control procedures or a list of wastes subject to the Amber control procedures and whether the waste is or is not hazardous waste. The OECD Green and Amber lists are incorporated by reference in § 260.11.

(1) Green list wastes. (i) Green wastes that are not hazardous wastes are subject to existing controls normally applied to commercial transactions, and are not subject to the requirements of this subpart.

(ii) Green wastes that are hazardous wastes are subject to the requirements of this subpart.

(2) Amber list wastes. (i) Amber wastes that are hazardous wastes are subject to the requirements of this subpart, even if they are imported to or exported from a country that does not consider the waste to be hazardous or control the transboundary shipment as a hazardous waste import or export.

(A) For exports, the exporter must comply with § 262.83.

(B) For imports, the recovery or disposal facility and the importer must comply with § 262.84.

(ii) Amber wastes that are not hazardous wastes, but are considered hazardous by the other country are subject to the Amber control procedures in the country that considers the waste hazardous, and are not subject to the requirements of this subpart. All responsibilities of the importer or exporter shift to the foreign importer or foreign exporter in the other country that considers the waste hazardous unless the parties make other arrangements through contracts.

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

(3) Mixtures of wastes. (i) A Green waste that is mixed with one or more other Green wastes such that the resulting mixture is not hazardous waste is not subject to the requirements of this subpart.

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

(ii) A Green waste that is mixed with one or more Amber wastes, in any amount, de minimis or otherwise, or a mixture of two or more Amber wastes, such that the resulting waste mixture is hazardous waste is subject to the requirements of this subpart.

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

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

(i) If such wastes are hazardous wastes, such wastes are subject to the requirements of this subpart.

(ii) If such wastes are not hazardous wastes, such wastes are not subject to the requirements of this subpart.

(b) General conditions applicable to transboundary movements of hazardous waste:

(1) The hazardous waste must be destined for recovery or disposal operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the country of import;

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

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

(3) Any transit of hazardous waste through one or more countries must be conducted in compliance with all applicable international and national laws and regulations.

(c) Duty to return wastes subject to the Amber control procedures during transit through the United States. When a transboundary movement of hazardous wastes transiting the United States and subject to the Amber control procedures does not comply with the requirements of the notification and movement documents or otherwise constitutes illegal shipment, and if alternative arrangements cannot be made to recover or dispose of these wastes in an environmentally sound manner, the waste must be returned to the country of export. The U.S. transporter must inform EPA at the specified mailing address in paragraph 262.82(e) of the need to return the shipment. EPA will then inform the competent authority of the country of export, citing the reason(s) for returning the waste. The U.S. transporter must complete the return within

ninety (90) days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned countries.

(d) Laboratory analysis exemption. Export or import of a hazardous waste sample is exempt from the requirements of this subpart if the sample is destined for laboratory analysis to assess its physical or chemical characteristics, or to determine its suitability for recovery or disposal operations, does not exceed twenty-five kilograms (25 kg) in quantity, and is appropriately packaged and labeled, and complies with the conditions of 40 CFR 260.4(d) or (e).

(e) EPA Address for submittals by postal mail or hand delivery. Submittals required in this subpart to be made by postal mail or hand delivery should be sent to the following addresses:

(1) For postal mail delivery, the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460.

(2) For hand-delivery, the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, William Jefferson Clinton South Bldg., Room 6144, 12th St. and Pennsylvania Ave., NW., Washington, DC 20004.

§ 262.83 Exports of hazardous waste.

(a) General export requirements. Export of hazardous waste is prohibited unless:

(1) The exporter complies with the contract requirements in paragraph (f) of this section;

(2) The exporter complies with the notification requirements in paragraph (b) of this section;

(3) The exporter receives an AOC from EPA documenting consent from the countries of import and transit (and original country of export if exporting previously imported hazardous waste);

(4) The exporter ensures compliance with the movement documents requirements in paragraph (d) of this section;

(5) The exporter ensures compliance with the manifest instructions for export shipments in paragraph (c) of this section; and

(6) The exporter or a U.S. authorized agent:

(i) Submits Electronic Export Information (EEI) for each shipment to the Automated Export System (AES), under the International Trade Data System (ITDS) platform, in accordance with 15 CFR 30.4(b).

(ii) Includes the following items in the EEI, along with the other information required under 15 CFR 30.6:

(A) EPA license code;

(B) Commodity classification code for each hazardous waste per 15 CFR 30.6(a)(12);

(C) EPA consent number for each hazardous waste;

(D) Country of ultimate destination code per 15 CFR 30.6(a)(5);

(E) Date of export per 15 CFR 30.6(a)(2);

(F) RCRA hazardous waste manifest tracking number, if required; (G) Quantity of each hazardous waste in shipment and units for reported quantity, if required reporting units established by value for the reported commodity classification number are in units of weight or volume per 15 CFR 30.6(a)(15); or

(H) EPA net quantity for each hazardous waste reported in units of kilograms if solid or in units of liters if liquid, if required reporting units established by value for the reported commodity classification number are not in units of weight or volume.

(b) Notifications. (1) General Notifications. At least sixty (60) days before the first shipment of hazardous waste is expected to leave the United States, the exporter must provide notification in English to EPA of the proposed transboundary movement. Notifications must be submitted electronically using EPA's hazardous waste import/export database. The notification may cover up to one year of shipments of one or more hazardous wastes being sent to the same recovery or disposal facility, and must include all of the following information:

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

(ii) Foreign receiving facility name, address, telephone, fax numbers, e-mail address, technologies employed, and the applicable recovery or disposal operations as defined in § 262.81;

(iii) Foreign importer name (if not the owner or operator of the foreign receiving facility), address, telephone, fax numbers, and e-mail address;

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

(v) "US" as the country of export name, "USA01" as the relevant competent authority code, and the intended U.S. port(s) of exit;

(vi) The ISO standard 3166 country name 2-digit code, OECD/Basel competent authority code, and the ports of entry and exit for each country of transit;

(vii) The ISO standard 3166 country name 2-digit code, OECD/Basel competent authority code, and port of entry for the country of import;

(viii) Statement of whether the notification covers a single shipment or multiple shipments;

(ix) Start and End Dates requested for transboundary movements;

(x) Means of transport planned to be used;

(xi) Description(s) of each hazardous waste, including whether each hazardous waste is regulated universal waste under 40 CFR part 273, or the state equivalent, spent lead-acid batteries being exported for recovery of lead under 40 CFR part 266, subpart G, or the state equivalent, or industrial ethyl alcohol being exported for reclamation under 40 CFR § 261.6(a)(3)(i), or the state equivalent, estimated total quantity of each waste in either metric tons or cubic meters, the applicable RCRA waste code(s) for each hazardous waste, the applicable OECD waste code from the list incorporated by reference in § 260.11, and the United Nations/U.S. Department of Transportation (DOT) ID number for each waste;

(xii) Specification of the recovery or disposal operation(s) as defined in § 262.81.

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

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

Name:

Signature:

Date:

(2) Exports to pre-consented recovery facilities in OECD Member countries. If the recovery facility is located in an OECD member country and has been pre-consented by the competent authority of the OECD member country to recover the waste sent by exporters located in other OECD member countries, the notification may cover up to three years of shipments. Notifications proposing export to a pre-consented facility in an OECD member country must include all information listed in paragraphs (b)(1)(i) through (b)(1)(xiii) and additionally state that the facility is pre-consented. Exporters must submit the notification to EPA using the allowable methods listed in paragraph (b)(1) of this section at least ten days before the first shipment is expected to leave the United States.

(3) Notifications listing interim recycling operations or interim disposal operations. If the foreign receiving facility listed in paragraph (b)(1)(ii) of this section will engage in any of the interim recovery operations R12 to R13 or interim disposal operations D13 through D15, or in the case of transboundary movements with Canada, any of the interim recovery operations R12 to R13, or RC16, or interim disposal operations D13 to D14, or DC17, the notification submitted according to paragraph (b)(1) must also include the final foreign recovery or disposal facility name, address, telephone, fax numbers, e-mail address, technologies employed, and which of the applicable recovery or disposal operations R1 through R11 and D1 through D12, or in the case of transboundary movements with Canada, which of the applicable recovery or disposal operations R1 through R11, RC14 to RC15, D1 through D12, and DC15 to DC16 will be employed at the final foreign recovery or disposal facility.

(4) Renotifications. When the exporter wishes to change any of the information specified on the original notification (including increasing the estimate of the total quantity of hazardous waste specified in the original notification or adding transporters), the exporter must submit a

renotification of the changes to EPA using the allowable methods in paragraph (b)(1) of this section. Any shipment using the requested changes cannot take place until the countries of import and transit consent to the changes and the exporter receives an EPA AOC letter documenting the countries' consents to the changes.

(5) For cases where the proposed country of import and recovery or disposal operations are not covered under an international agreement to which both the United States and the country of import are parties, EPA will coordinate with the Department of State to provide the complete notification to country of import and any countries of transit. In all other cases, EPA will provide the notification directly to the country of import and any countries of transit. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraph (b)(1)(i) through (b)(1)(xiii) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by paragraphs (b)(1)(i) through (b)(1)(xiii) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(6) Where the countries of import and transit consent to the proposed transboundary movement(s) of the hazardous waste(s), EPA will forward an EPA AOC letter to the exporter documenting the countries' consents. Where any of the countries of import and transit objects to the proposed transboundary movement(s) of the hazardous waste or withdraws a prior consent, EPA will notify the exporter.

(7) Export of hazardous wastes for recycling or disposal operations that were originally imported into the United States for recycling or disposal operations in a third country is prohibited unless an exporter in the United States complies with the export requirements in § 262.83, including providing notification to EPA in accordance with paragraph (b)(1) of this

section. In addition to listing all required information in paragraphs (b)(1)(i) through (b)(1)(xiii) of this section, the exporter must provide the original consent number issued for the initial import of the wastes in the notification, and receive an AOC from EPA documenting the consent of the competent authorities in new country of import, the original country of export, and any transit countries prior to re-export.

(8) Upon request by EPA, the exporter must furnish to EPA any additional information which the country of import requests in order to respond to a notification.

(c) RCRA Manifest instructions for export shipments. The exporter must comply with the manifest requirements of 40 CFR 262.20 through 262.23 except that:

(1) In lieu of the name, site address and EPA ID number of the designated permitted facility, the exporter must enter the name and site address of the foreign receiving facility;

(2) In the International Shipments block, the exporter must check the export box and enter the U.S. port of exit (city and State) from the United States.

(3) In the Special Handling Instructions or Additional Information block, the exporter must list the consent number from the AOC for each hazardous waste listed on the manifest, followed by the relevant list number for the hazardous waste from block 9b in parentheses. If additional space is needed, the exporter should use a Continuation Sheet(s) (EPA Form 8700-22A).

(4) The 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).

(5) The exporter must require the foreign receiving facility to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies (as defined in 40 CFR 264.72(a)) between the manifest and the shipment. A copy of the manifest or

the movement document required in paragraph (d) of this section signed by the foreign receiving facility may be used to confirm delivery of the hazardous waste.

(6) In lieu of the requirements of § 262.20(d), where a shipment cannot be delivered for any reason to the foreign receiving facility listed in the EPA AOC, the exporter must instruct the transporter in writing via fax, email or mail to:

(i) Return the hazardous waste to the exporter in the United States or designate another facility within the country of import (if allowed by the country of import) or within the United States; and

(ii) Revise the manifest in accordance with the exporter's instructions.

(d) Movement document requirements for export shipments. (1) All exporters must ensure that a movement document meeting the conditions of paragraph (d)(2) of this section accompanies each transboundary movement of hazardous wastes from the initiation of the shipment until it reaches the foreign receiving facility, including cases in which the hazardous waste is stored and/or sorted by the foreign importer prior to shipment to the foreign receiving facility, except as provided in paragraphs (d)(1)(i) and (d)(1)(ii) of this section.

(i) For shipments of hazardous waste within the United States solely by water (bulk shipments only), the exporter must forward the movement document to the last water (bulk shipment) transporter to handle the hazardous waste in the United States if exported by water.

(ii) For rail shipments of hazardous waste within the United States which start from the company originating the export shipment, the exporter must forward the movement document to the next non-rail transporter, if any, or the last rail transporter to handle the hazardous waste in the United States if exported by rail.

(2) The movement document must include the following paragraphs (d)(2)(i) through (d)(2)(xv) of this section:

(i) The corresponding consent number(s) and hazardous waste number(s) for the listed hazardous waste from the relevant EPA AOC(s);

(ii) The shipment number and the total number of shipments from the EPA AOC;

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

(iv) Foreign receiving facility name, address, telephone, fax numbers, e-mail address, technologies employed, and the applicable recovery or disposal operations as defined in § 262.81;

(v) Foreign importer name (if not the owner or operator of the foreign receiving facility), address, telephone, fax numbers, and e-mail address;

(vi) Description(s) of each hazardous waste, quantity of each hazardous waste in the shipment, applicable RCRA hazardous waste code(s) for each hazardous waste, applicable OECD waste code for each hazardous waste from the list incorporated by reference in § 260.11, and the United Nations/U.S. Department of Transportation (DOT) ID number for each hazardous waste;

(vii) Date movement commenced;

(viii) Name (if not exporter), address, telephone, fax numbers, and e-mail of company originating the shipment;

(ix) Company name, EPA ID number, address, telephone, fax, and e-mail address of all transporters;

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

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

(xii) Certification/declaration signed and dated by the exporter that the information in the movement document is complete and correct;

(xiii) Appropriate signatures for each custody transfer (e.g., transporter, importer, and owner or operator of the foreign receiving facility);

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

(xv) As part of the contract requirements per paragraph (f) of this section, the exporter must require that the foreign receiving facility send a copy of the signed movement document to confirm receipt within three working days of shipment delivery to the exporter, to EPA using the allowable methods listed in paragraph (b)(1) of this section, and to the competent authorities of the countries of import and transit.

(e) Duty to return or re-export hazardous wastes. When a transboundary movement of hazardous wastes cannot be completed in accordance with the terms of the contract or the consent(s) and alternative arrangements cannot be made to recover the waste in an environmentally sound manner in the country of import, the exporter must ensure that the hazardous waste is returned to the United States or re-exported to a third country. If the waste must be returned, the exporter must provide for the return of the hazardous waste shipment within ninety days from the time the country of import informs EPA of the need to return the

waste or such other period of time as the concerned countries agree. In all cases, the exporter must submit an exception report to EPA in accordance with paragraph (h) of this section.

(f) Export Contract Requirements. (1) Exports of hazardous waste are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the exporter, foreign importer (if different from the foreign receiving facility), and the owner or operator of the foreign receiving facility, and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangements.

(2) Contracts or equivalent arrangements must specify the name and EPA ID number, where available, of paragraph (f)(2)(i) through (f)(2)(iv) of this section:

(i) The company from where each export shipment of hazardous waste is initiated;

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

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

(iv) The foreign receiving facility.

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

(i) The transporter or foreign receiving facility having actual possession or physical control over the hazardous wastes will immediately inform the exporter, EPA, and either the

competent authority of the country of transit or the competent authority of the country of import of the need to make alternate management arrangements; and

(ii) The person specified in the contract will assume responsibility for the adequate management of the hazardous wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of hazardous wastes and, as the case may be, shall provide the notification for re-export to the competent authority in the country of import and include the equivalent of the information required in paragraph (b)(1) of this section, the original consent number issued for the initial export of the hazardous wastes in the notification, and obtain consent from EPA and the competent authorities in the new country of import and any transit countries prior to re-export.

(4) Contracts must specify that the foreign receiving facility send a copy of the signed movement document to confirm receipt within three working days of shipment delivery to the exporter, to EPA using the allowable methods listed in paragraph (b)(1) of this section, and to the competent authorities of the countries of import and transit.

(5) Contracts must specify that the foreign receiving facility shall send a copy of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the exporter, to EPA using the allowable methods listed in paragraph (b)(1) of this section, and to the competent authority of the country of import.

(6) Contracts must specify that the foreign importer or the foreign receiving facility that performed interim recycling operations R12 through R13 or RC16, or interim disposal operations D13 through D15 or DC17, as appropriate, will:

(i) provide the notification required in paragraph (f)(3)(ii) prior to any re-export of the hazardous wastes to a final foreign recovery or disposal facility in a third country; and

(ii) promptly send copies of the confirmation of recovery or disposal that it receives from the final foreign recovery or disposal facility within one year of shipment delivery to the final foreign recovery or disposal facility that performed one of recovery operations R1 through R11, or RC16, or one of disposal operations D1 through D12, DC15 or DC16 to EPA using the allowable methods listed in paragraph (b)(1) of this section, and to the competent authority of the country of import.

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

NOTE TO PARAGRAPH (f)(7): Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD Member countries and other foreign countries do. It is the responsibility of the exporter to ascertain and comply with such requirements; in some cases, persons or facilities located in those OECD Member countries or other foreign countries may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

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

(9) Upon request by EPA, U.S. exporters, importers, or recovery facilities must submit to EPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted in

accordance with 40 CFR 2.203(b) will be treated as confidential and will be disclosed by EPA only as provided in 40 CFR 260.2.

(g) Annual reports. The exporter shall file an annual report with EPA, using the allowable methods listed in paragraph (b)(1) of this section, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. The annual report must include all of the following paragraphs (g)(1) through (6) of this section specified as follows:

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

(2) The calendar year covered by the report;

(3) The name and site address of each foreign receiving facility;

(4) By foreign receiving facility, for each hazardous waste exported:

(i) A description of the hazardous waste;

(ii) The applicable EPA hazardous waste code(s) (from 40 CFR part 261, subpart C or D) for each waste;

(iii) The applicable waste code from the appropriate OECD waste list incorporated by reference in § 260.11;

(iv) The applicable DOT ID number;

(v) The name and U.S. EPA ID number (where applicable) for each transporter used over the calendar year covered by the report; and

(vi) The consent number(s) under which the hazardous waste was shipped, and for each consent number, the total amount of the hazardous waste and the number of shipments exported during the calendar year covered by the report;

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

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

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

(6) A certification signed by the exporter that states:

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

(h) Exception reports. The exporter must file an exception report in lieu of the requirements of § 262.42 (if applicable) with EPA, using the allowable methods listed in paragraph (b)(1) of this section, if any of the following occurs:

(1) The exporter has not received a copy of the RCRA hazardous waste manifest (if applicable) signed by the transporter identifying the point of departure of the hazardous waste from the United States, within forty-five (45) days from the date it was accepted by the initial transporter, in which case the exporter must file the exception report within the next thirty (30) days;

(2) The exporter has not received a written confirmation of receipt from the foreign receiving facility in accordance with paragraph (d) of this section within ninety (90) days from the date the waste was accepted by the initial transporter in which case the exporter must file the exception report within the next thirty (30) days; or

(3) The foreign receiving facility notifies the exporter, or the country of import notifies EPA, of the need to return the shipment to the US, in which case the exporter must file the exception report within thirty (30) days of notification, or one (1) day prior to the date the return shipment commences, whichever is sooner.

(i) Recordkeeping. (1) The exporter shall keep the following records in paragraphs (i)(1)(i) through (i)(1)(v) of this section:

(i) A copy of each notification of intent to export and each EPA AOC for a period of at least three (3) years from the date the hazardous waste was accepted by the initial transporter;

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

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

(iv) A copy of each confirmation of recovery or disposal sent by the foreign receiving facility to the exporter for at least three (3) years from the date that the foreign receiving facility completed interim or final processing of the hazardous waste shipment.

(v) A copy of each contract or equivalent arrangement established per § 262.85 for at least three (3) years from the expiration date of the contract or equivalent arrangement.

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

§ 262.84 Imports of hazardous waste.

(a) General import requirements. (1) Any person who imports hazardous waste from a foreign country into the United States must comply with the requirements of this part and the special requirements of this subpart.

(2) In cases where the country of export does not require the foreign exporter to submit a notification and obtain consent to the export prior to shipment, the importer must submit a notification to EPA in accordance with paragraph (b) of this section.

(3) The importer must comply with the contract requirements in paragraph (f) of this section.

(4) The importer must ensure compliance with the movement documents requirements in paragraph (d) of this section; and

(5) The importer must ensure compliance with the manifest instructions for import shipments in paragraph (c) of this section.

(b) Notifications. In cases where the competent authority of the country of export does not regulate the waste as hazardous waste and, thus, does not require the foreign exporter to submit to it a notification proposing export and obtain consent from EPA and the competent authorities for the countries of transit, but EPA does regulate the waste as hazardous waste: (1) The importer is required to provide notification in English to EPA of the proposed transboundary movement of hazardous waste at least sixty (60) days before the first shipment is expected to depart the country of export. Notifications submitted on or after [Effective date of final rule]

must be submitted electronically using EPA's hazardous waste import/export database. The notification may cover up to one year of shipments of one or more hazardous wastes being sent from the same foreign exporter, and must include all of the following information:

(i) Foreign exporter name, address, telephone, fax numbers, and e-mail address;

(ii) Receiving facility name, EPA ID number, address, telephone, fax numbers, e-mail address, technologies employed, and the applicable recovery or disposal operations as defined in § 262.81;

(iii) Importer name (if not the owner or operator of the receiving facility), EPA ID number, address, telephone, fax numbers, and e-mail address;

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

(v) "US" as the country of import, "USA01" as the relevant competent authority code, and the intended U.S. port(s) of entry;

(vi) The ISO standard 3166 country name 2-digit code, OECD/Basel competent authority code, and the ports of entry and exit for each country of transit;

(vii) The ISO standard 3166 country name 2-digit code, OECD/Basel competent authority code, and port of exit for the country of export;

(viii) Statement of whether the notification covers a single shipment or multiple shipments;

(ix) Start and End Dates requested for transboundary movements;

(x) Means of transport planned to be used;

(xi) Description(s) of each hazardous waste, estimated total quantity of each hazardous waste, the applicable RCRA hazardous waste code(s) for each hazardous waste, the applicable

OECD waste code from the list incorporated by reference in § 260.11, and the United Nations/U.S. Department of Transportation (DOT) ID number for each hazardous waste;

(xii) Specification of the recovery or disposal operation(s) as defined in § 262.81; and

(xiii) Certification/Declaration signed by the importer that states:

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

Name:

Signature:

Date:

NOTE TO PARAGRAPH (b)(1)(xiii): The United States does not currently require financial assurance for these waste shipments.

(2) Notifications listing interim recycling operations or interim disposal operations. If the receiving facility listed in paragraph (b)(1)(ii) of this section will engage in any of the interim recovery operations R12 to R13 or interim disposal operations D13 through D15, the notification submitted according to paragraph (b)(1) of this section must also include the final recovery or disposal facility name, address, telephone, fax numbers, e-mail address, technologies employed, and which of the applicable recovery or disposal operations R1 through R11 and D1 through D12, will be employed at the final recovery or disposal facility.

(3) Renotifications. When the foreign exporter wishes to change any of the conditions specified on the original notification (including increasing the estimate of the total quantity of hazardous waste specified in the original notification or adding transporters), the importer must submit a renotification of the changes to EPA using the allowable methods in paragraph (b)(1) of this section. Any shipment using the requested changes cannot take place until EPA and the

countries of transit consent to the changes and the importer receives an EPA AOC letter documenting the consents to the changes.

(4) A notification is complete when EPA determines the notification satisfies the requirements of paragraph (b)(1)(i) through (xiii) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by paragraphs (b)(1)(i) through (xiii) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(5) Where EPA and the countries of transit consent to the proposed transboundary movement(s) of the hazardous waste(s), EPA will forward an EPA AOC letter to the importer documenting the countries' consents and EPA's consent. Where any of the countries of transit or EPA objects to the proposed transboundary movement(s) of the hazardous waste or withdraws a prior consent, EPA will notify the importer.

(6) Export of hazardous wastes originally imported into the United States. Export of hazardous wastes that were originally imported into the United States for recycling or disposal operations is prohibited unless an exporter in the United States complies with the export requirements in § 262.83(b)(7).

(c) RCRA Manifest instructions for import shipments. (1) When importing hazardous waste, the importer must meet all the requirements of § 262.20 for the manifest except that:

(i) In place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's name, address and EPA identification number must be used.

(ii) In place of the generator's signature on the certification statement, the importer or his agent must sign and date the certification and obtain the signature of the initial transporter.

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

(3) 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.

(4) 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.

(5) In lieu of the requirements of § 262.20(d), where a shipment cannot be delivered for any reason to the receiving facility, the importer must instruct the transporter in writing via fax, email or mail to:

(i) Return the hazardous waste to the foreign exporter or designate another facility within the United States; and

(ii) Revise the manifest in accordance with the importer's instructions.

(d) Movement document requirements for import shipments.

(1) The importer must ensure that a movement document meeting the conditions of paragraph (d)(2) of this section accompanies each transboundary movement of hazardous wastes from the initiation of the shipment in the country of export until it reaches the receiving facility, including cases in which the hazardous waste is stored and/or sorted by the importer prior to shipment to the receiving facility, except as provided in paragraphs (d)(1)(i) and (d)(1)(ii) of this section.

(i) For shipments of hazardous waste within the United States by water (bulk shipments only), the importer must forward the movement document to the last water (bulk shipment) transporter to handle the hazardous waste in the United States if imported by water.

(ii) For rail shipments of hazardous waste within the United States which start from the company originating the export shipment, the importer must forward the movement document to the next non-rail transporter, if any, or the last rail transporter to handle the hazardous waste in the United States if imported by rail.

(2) The movement document must include the following paragraphs (d)(2)(i) through (d)(2)(xv) of this section:

(i) The corresponding AOC number(s) and waste number(s) for the listed waste;

(ii) The shipment number and the total number of shipments under the AOC number;

(iii) Foreign exporter name, address, telephone, fax numbers, and e-mail address;

(iv) Receiving facility name, EPA ID number, address, telephone, fax numbers, e-mail address, technologies employed, and the applicable recovery or disposal operations as defined in § 262.81;

(v) Importer name (if not the owner or operator of the receiving facility), EPA ID number, address, telephone, fax numbers, and e-mail address;

(vi) Description(s) of each hazardous waste, quantity of each hazardous waste in the shipment, applicable RCRA hazardous waste code(s) for each hazardous waste, the applicable OECD waste code for each hazardous waste from the lists incorporated by reference in § 260.11, and the United Nations/U.S. Department of Transportation (DOT) ID number for each hazardous waste;

(vii) Date movement commenced;

(viii) Name (if not the foreign exporter), address, telephone, fax numbers, and e-mail of the foreign company originating the shipment;

(ix) Company name, EPA ID number, address, telephone, fax, and e-mail address of all transporters;

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

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

(xii) Certification/declaration signed and dated by the foreign exporter that the information in the movement document is complete and correct;

(xiii) Appropriate signatures for each custody transfer (e.g., transporter, importer, and owner or operator of the receiving facility);

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

(xv) The receiving facility must send a copy of the signed movement document to confirm receipt within three working days of shipment delivery to the foreign exporter, to EPA using the allowable methods listed in paragraph (b)(1) of this section, and to the competent authorities of the countries of export and transit.

(e) Duty to return or export hazardous wastes. When a transboundary movement of hazardous wastes cannot be completed in accordance with the terms of the contract or the consent(s) and alternative arrangements cannot be made to recover the hazardous waste in an environmentally sound manner in the United States, the hazardous waste must be returned to the country of export or exported to a third country. The provisions of paragraph (b)(6) of this section apply to any hazardous waste shipments to be exported to a third country. If the hazardous waste must be returned, the importer must inform EPA, using the allowable methods

listed in paragraph (b)(1) of this section, and the foreign exporter of the need to return the shipment. EPA will then inform the competent authorities of the original country of export and any countries of transit for the return shipment's route, citing the reason(s) for returning the waste. The importer must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned countries. If the return shipment will cross any transit country, the return shipment may only occur after EPA provides notification to and obtains consent from the competent authority of the country of transit, and provides a copy of that consent to the importer.

(f) Import Contract Requirements. (1) Imports of hazardous waste must occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the foreign exporter, importer, and the owner or operator of the receiving facility, and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangements.

(2) Contracts or equivalent arrangements must specify the name and EPA ID number, where available, of paragraph (f)(2)(i) through (iv) of this section:

(i) The foreign company from where each import shipment of hazardous waste is initiated;

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

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

(iv) The receiving facility.

(3) Contracts or equivalent arrangements must specify the use of a movement document in accordance with § 262.84(d).

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

(i) The transporter or receiving facility having actual possession or physical control over the hazardous wastes will immediately inform the foreign exporter and importer, and the competent authority where the shipment is located of the need to arrange alternate management or return; and

(ii) The person specified in the contract will assume responsibility for the adequate management of the hazardous wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of the hazardous wastes and, as the case may be, shall provide the notification for re-export required in § 262.83(b)(7).

(5) Contracts must specify that the importer or the receiving facility that performed interim recycling operations R12 to R13 or RC16, or interim disposal operations D13 through D15 or DC15 through DC17, as appropriate, will provide the notification required in § 262.83(b)(7) prior to the re-export of hazardous wastes.

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

NOTE TO PARAGRAPH (f)(6): Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where

arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD Member countries or other foreign countries do. It is the responsibility of the importer to ascertain and comply with such requirements; in some cases, persons or facilities located in those countries may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

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

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

(g) Confirmation of Recovery or Disposal. The receiving facility must do the following:

(1) Send copies of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to EPA using the allowable methods listed in paragraph (b)(1) of this section, and to the competent authority of the country of export.

(2) If the receiving facility performed any of recovery operations R12, R13, or RC16, or disposal operations D13 through D15, or DC17, the receiving facility shall promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that

performed one of recovery operations R1 through R11, or RC14 to RC15, or one of disposal operations D1 through D12, or DC15 to DC16 to EPA using the allowable methods listed in paragraph (b)(1) of this section, and to the competent authority of the country of export.

(h) Recordkeeping. (1) The importer shall keep the following records: (i) a copy of each notification of intent to export that the importer sends to EPA under paragraph (b)(1) of this section and each EPA AOC it receives in response for a period of at least three (3) years from the date the hazardous waste was accepted by the initial foreign transporter; and

(ii) A copy of each contract or equivalent arrangement established per paragraph (f) of this section for at least three (3) years from the expiration date of the contract or equivalent arrangement.

(2) The receiving facility shall keep the following records:

(i) A copy of each confirmation of delivery (i.e., movement document) that the receiving facility sends to the foreign exporter for at least three (3) years from the date it received the hazardous waste;

(ii) A copy of each confirmation of recovery or disposal that the receiving facility sends to the foreign exporter for at least three (3) years from the date that it completed processing the waste shipment; and

(iii) For the receiving facility that performed any of recovery operations R12 to R13, or RC16, or disposal operations D13 through D15, or DC17, a copy of each confirmation of recovery or disposal that the final recovery or disposal facility sent to it for at least three (3) years from the date that the final recovery or disposal facility completed processing the waste shipment.

(iv) A copy of each contract or equivalent arrangement established per paragraph 262.84(f) of this section for at least three (3) years from the expiration date of the contract or equivalent arrangement.

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

§ 262.85 [Reserved]

§ 262.86 [Reserved]

§ 262.87 [Reserved]

§ 262.88 [Reserved]

§ 262.89 [Reserved]

15. Amend the Appendix to Part 262, of the manifest instructions, under "II Instructions for International Shipment Block" by revising Item 16 to read as follows:

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

* * * * *

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.

* * * * *

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

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

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

17. Amend § 263.10 by:

a. Removing from paragraph (a), in the Note, the last paragraph; and

b. Revising paragraph (d).

The revisions read as follows:

§ 263.10 Scope.

* * * * *

.

(d) A transporter of hazardous waste that is being imported from or exported to any other country for purposes of recovery or disposal is subject to this Subpart and to all other relevant requirements of subpart H of 40 CFR part 262, including, but not limited to, 40 CFR 262.83(d) and 262.84(d) for movement documents.

* * * * *

18. Amend § 263.20 by revising paragraphs (a)(2), (c), (e)(2), (f)(2), and (g) to read as follows:

§ 263.20 The manifest system.

(a)(1) * * *

(2) Exports. 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 manifest signed by the generator in accordance with this section, as appropriate, and a movement document that includes all information required by § 262.83(d).

* * * * *

(c) The transporter must ensure that the manifest accompanies the hazardous waste. In the case of exports, the transporter must ensure that a movement document that includes all information required by § 262.83(d) also accompanies the hazardous waste. In the case of imports, the transporter must ensure that a movement document that includes all information required by § 262.84(d) also accompanies the hazardous waste.

* * * * *

(e) * * *

(2) A shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports or imports, a movement document that includes all information required by 40 CFR 262.83(d) or 40 CFR 262.84(d) accompanies the hazardous waste; and

* * * * *

(f) * * *

(2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports or imports, a movement document that includes all information

required by 40 CFR 262.83(d) or 40 CFR 262.84(d) accompanies the hazardous waste at all times.

* * * * *

(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) For paper manifests only, send a copy of the Manifest to the e-Manifest system in accordance with the allowable methods specified in 40 CFR 264.71(a)(2)(v).

* * * * *

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

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

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

20. Amend § 264.12 by revising paragraph (a) to read as follows:

§ 264.12 Required notices.

(a) The owner or operator of a facility that is arranging or has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H from a foreign source must submit the following required notices:

(1) As per § 262.84(b), for imports where the competent authority of the country of export does not require the foreign exporter to submit to it a notification proposing export and obtain consent from EPA and the competent authorities for the countries of transit, such owner or

operator of the facility, if acting as the importer, must provide notification of the proposed transboundary movement in English to EPA using the allowable methods listed in § 262.84(b)(1) at least 60 days before the first shipment is expected to depart the country of export. The notification may cover up to one year of shipments of wastes having similar physical and chemical characteristics, the same United Nations classification, the same RCRA waste codes and OECD waste codes, and being sent from the same foreign exporter.

(2) As per § 262.84(d)(2)(xv), a copy of the movement document bearing all required signatures to the foreign exporter; to EPA using the allowable methods listed in § 262.84(b)(1); and to the competent authorities of the countries of export and transit within three (3) working days of receipt of the shipment. The original of the signed movement document must be maintained at the facility for at least three (3) years.

(3) As per § 262.84(e), if the waste must be returned to the country of export and the owner or operator of the facility is acting as the importer, such owner or operator of the facility must inform EPA, using the allowable methods listed in § 262.84(b)(1) of the need to return the shipment.

(4) As per § 262.84(f), such owner or operator shall:

(i) Send copies of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to EPA using the allowable methods listed in § 262.84(b)(1), and to the competent authority of the country of export.

(ii) If the facility performed any of recovery operations R12, R13, or RC16, or disposal operations D13 through D15, or DC17, promptly send copies of the confirmation of recovery or

disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC16, or one of disposal operations D1 through D12, to EPA using the allowable methods listed in § 262.84(b)(1), and to the competent authority of the country of export.

* * * * *

21. Amend § 264.71 by revising paragraphs (a)(3) and (d) to read as follows:

§ 264.71 Use of manifest system.

(a)(1) * * *

(3) The owner or operator of a facility receiving hazardous waste subject to 40 CFR part 262, subpart H from a foreign source must:

(i) Additionally list the relevant consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest, followed by the relevant list number for the waste from block 9b in parentheses. If additional space is needed, the owner or operator should use a Continuation Sheet(s) (EPA Form 8700-22A); and

(ii) Send a copy of the manifest within thirty (30) days of delivery to EPA using the allowable methods listed in § 262.84(b)(1).

* * * * *

(d) As per § 262.84(d)(xv), within three (3) working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the exporter, to EPA using the allowable methods listed in § 262.84(b)(1), and to the competent authorities of the countries of

export and transit. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature.

* * * * *

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

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

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

23. Amend **§** 265.12 by revising paragraph (a) to read as follows:

§ 265.12 Required notices.

(a) The owner or operator of a facility that is arranging or has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H from a foreign source must submit the following required notices:

(1) As per § 262.84(b), for imports where the competent authority of the country of export does not require the foreign exporter to submit to it a notification proposing export and obtain consent from EPA and the competent authorities for the countries of transit, such owner or operator of the facility, if acting as the importer, must provide notification of the proposed transboundary movement in English to EPA using the allowable methods listed in § 262.84(b)(1) at least 60 days before the first shipment is expected to depart the country of export. The notification may cover up to one year of shipments of wastes having similar physical and chemical characteristics, the same United Nations classification, the same RCRA waste codes and OECD waste codes, and being sent from the same foreign exporter.

(2) As per § 262.84(d)(xv), a copy of the movement document bearing all required signatures to the foreign exporter; to EPA using the allowable methods listed in § 262.84(b)(1);

and to the competent authorities of the countries of export and transit within three (3) working days of receipt of the shipment. The original of the signed movement document must be maintained at the facility for at least three (3) years.

(3) As per § 262.84(e), if the waste must be returned to the country of export and the owner or operator of the facility is acting as the importer, such owner or operator of the facility must inform EPA, using the allowable methods listed in § 262.84(b)(1) of the need to return the shipment.

(4) As per § 262.84(f), such owner or operator shall:

(i) Send copies of the signed and dated confirmation of recovery or disposal, using either block 19 on the OECD/Basel "Movement document for transboundary movements/shipments of waste" or the Canadian "Confirmation of Disposal or Recycling" form, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to EPA using the allowable methods listed in § 262.84(b)(1), and to the competent authority of the country of export.

(ii) If the facility performed any of recovery operations R12, R13, or RC16, or disposal operations D13 through D15, or DC17, promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC16, or one of disposal operations D1 through D12, to EPA using the allowable methods listed in § 262.84(b)(1), and to the competent authority of the country of export.

* * * * *

24. Amend § 265.71 by revising paragraphs (a)(3) and (d) to read as follows:

§ 265.71 Use of manifest system.

(a)(1) * * *

(3) The owner or operator of a facility that receives hazardous waste subject to 40 CFR part 262, subpart H from a foreign source must:

(i) Additionally list the relevant consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest, followed by the relevant list number for the waste from block 9b in parentheses. If additional space is needed, the owner or operator should use a Continuation Sheet(s) (EPA Form 8700-22A); and

(ii) Send a copy of the manifest to EPA using the allowable methods listed in § 262.84(b)(1) within thirty (30) days of delivery.

* * * * *

(d) As per § 262.84(d)(xv), within three (3) working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the exporter, to EPA using the allowable methods listed in § 262.84(b)(1), and to the competent authorities of the countries of export and transit. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature.

* * * * *

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

25. The authority citation for part 266 continues to read as follows:

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

26. Amend § 266.70 by revising paragraph (b) to read as follows:

§ 266.70 Applicability and requirements.

* * * * *

(b) Persons who generate, transport, or store recyclable materials that are regulated under this subpart are subject to the following requirements:

(1) Notification requirements under section 3010 of RCRA;

(2) Subpart B of part 262 (for generators), §§ 263.20 and 263.21 (for transporters), and §§ 265.71 and 265.72 (for persons who store) of this chapter; and

(3) For precious metals exported to or imported from other countries for recovery, subpart H of part 262 and § 265.12.

* * * * *

27. Amend § 266.80 by:

a. Revising paragraph (a) table entries 6 and 7, and

b. Adding paragraph (a) table entries 8, 9, and 10.

The revisions and additions to the table read as follows:

§ 266.80 Applicability and requirements.

(a) * * *

If your batteries …	And if you …	Then you …	And you …
* * * * * * *			
(6) Will be reclaimed through	export these batteries for reclamation in a foreign	are exempt from 40 CFR parts parts 262 (except for § 262.11, § 262.12 and	are subject to 40 CFR part 261, § 262.11, § 262.12,

regeneration or any other means	country	subpart H), 263, 264, 265, 266, 268, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	and 40 CFR part 262, subpart H.
(7) Will be reclaimed through regeneration or any other means	Transport these batteries in the U.S. to export them for reclamation in a foreign country	are exempt from 40 CFR parts 263, 264, 265, 266, 268, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	must comply with applicable requirements in 40 CFR part 262, subpart H.
(8) Will be reclaimed other than through regeneration	Import these batteries from foreign country and store these batteries but you aren't the reclaimer	are exempt from 40 CFR parts 262 (except for § 262.11, § 262.12 and subpart H), 263, 264, 265, 266, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA	are subject to 40 CFR parts 261, § 262.11, § 262.12, part 262 subpart H, and applicable provisions under part 268.
(9) Will be reclaimed other than through regeneration	Import these batteries from foreign country and store these batteries before you reclaim them	must comply with 40 CFR 266.80(b) and as appropriate other regulatory provisions described in 266.80(b)	are subject to 40 CFR parts 261, § 262.11, § 262.12, part 262 subpart H, and applicable provisions under part 268.
(10) Will be reclaimed other than through regeneration	Import these batteries from foreign country and don't store these batteries before you reclaim them	are exempt from 40 CFR parts 262 (except for § 262.11, § 262.12 and subpart H), 263, 264, 265, 266, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA	are subject to 40 CFR parts 261, § 262.11, § 262.12, part 262 subpart H, and applicable provisions under part 268.

* * * * *

PART 267—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT

28. The authority citation for part 267 continues to read as follows:

Authority: 42 U.S.C. 6902, 6912(a), 6924-6926, and 6930.

29. Amend § 267.71 by:

a. Revising paragraphs (a)(4) and (5);

b. Adding paragraph (a)(6); and

c. Revising paragraph (d).

The revisions and additions read as follows:

§ 267.71 Use of the manifest system.

(a)* * *

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

(5) Retain at the facility a copy of each manifest for at least three years from the date of delivery; and

(6) If a facility receives hazardous waste subject to 40 CFR part 262, subpart H from a foreign source, the receiving facility must:

(i) Additionally list the relevant consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest, followed by the relevant list number for the waste from block 9b in parentheses. If additional space is needed, the receiving facility should use a Continuation Sheet(s) (EPA Form 8700-22A); and

(ii) Mail a copy of the manifest to EPA using the allowable methods listed in § 262.84(b)(1) within thirty (30) days of delivery.

* * * * *

(d) As per § 262.84(d)(xv), within three (3) working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the exporter, to EPA using the allowable methods listed in § 262.84(b)(1), and to the competent authorities of the countries of export and transit. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

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

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

31. Amend § 271.1 (j)(2) by:

a. Adding an entry to Table 1 in chronological order by "Promulgation date" and

b. Adding an entry to Table 2 in chronological order by "Effective date".

The additions read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

(2) * * *

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

Promulgation date	**Title of regulation**	**Federal Register reference**	**Effective date**
* * * * * * *			
[*Date of publication of final rule in the Federal Register (FR)*].	Hazardous Waste Export-Import Revisions	[*Insert FR page numbers*]	[*Date of X months from date of publication of final rule*].

* * * * *

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

Effective date	**Self-implementing provision**	**RCRA citation**	**Federal Register reference**
* * * * * * *			
[*Date X days after of publication of final*	Hazardous Waste Export-Import	3017(a)	[*Federal Register citation*].

rule in the Federal Register (FR)].	Revisions		

* * * * *

32. Amend § 271.10 by revising paragraph (e),

The revision reads as follows:

§ 271.10 Requirements for generators of hazardous wastes.

* * * * *

(e) The State program shall provide requirements respecting international shipments which are equivalent to those at 40 CFR part 262 subpart H, and other import and export regulations, except that States shall not replace EPA or international references with State references.

* * * * *

33. Amend § 271.11 by revising paragraph (c)(4) to read as follows:

§ 271.11 Requirements for transporters of hazardous wastes.

(c) * * *

(4) For exports of hazardous waste, the state must require the transporter to refuse to accept hazardous waste for export if the exporter has not provided the movement document, a manifest listing the consent numbers for the hazardous waste shipment, and the ITN number for the hazardous waste shipment, to carry a movement document and manifest with 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 send a copy of the manifest, if in paper form, to the e-Manifest system using the allowable methods listed in § 264.71(a)(2)(v).

* * * * *

34. Amend § 271.12 by revising paragraph (i)(2) to read as follows:

§ 271.12 Requirements for hazardous waste management facilities.

* * * * *

(i) * * *

(2) To EPA using the allowable methods listed in § 262.84(b)(1) to indicate the receipt of a shipment of hazardous waste imported into the U.S. from a foreign source.

* * * * *

PART 273—STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

35. The authority citation for part 273 continues to read as follows:

Authority: 42 U.S.C. 6922, 6923, 6924, 6925, 6930, and 6937.

36. Revise § 273.20 to read as follows:

§ 273.20 Exports.

A small quantity handler of universal waste who sends universal waste to a foreign destination is subject to the requirements of 40 CFR part 262, subpart H.

37. Amend § 273.39 by revising introductory paragraphs (a) and (b) to read as follows:

§ 273.39 Tracking universal waste shipments.

(a) Receipt of shipments. A large quantity handler of universal waste must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, movement document or other shipping document. The record for each shipment of universal waste received must include the following information:

* * * * *

(b) Shipments off-site. A large quantity handler of universal waste must keep a record of each shipment of universal waste sent from the handler to other facilities. The record may take the form of a log, invoice, manifest, bill of lading, movement document or other shipping document. The record for each shipment of universal waste sent must include the following information:

* * * * *

38. Revise § 273.40 to read as follows:

§ 273.40 Exports.

A large quantity handler of universal waste who sends universal waste to a foreign destination is subject to the requirements of 40 CFR part 262, subpart H.

39. Revise § 273.56 to read as follows::

§ 273.56 Exports.

A universal waste transporter transporting a shipment of universal waste to a foreign destination is subject to the requirements of 40 CFR part 262, subpart H.

40. Amend § 273.62 by revising introductory paragraph (a) to read as follows:

§ 273.62 Tracking universal waste shipments.

(a) The owner or operator of a destination facility must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, movement document or other shipping document. The record for each shipment of universal waste received must include the following information:

* * * * *

41. Revise § 273.70 to read as follows:

§ 273.70 Imports.

Persons managing universal waste that is imported from a foreign country into the United States are subject to the requirements of 40 CFR part 262 subpart H and the applicable requirements of this part, immediately after the waste enters the United States, as indicated in paragraphs (a) through (c) of this section:

(a) A universal waste transporter is subject to the universal waste transporter requirements of subpart D of this part.

(b) A universal waste handler is subject to the small or large quantity handler of universal waste requirements of subparts B or C, as applicable.

(c) An owner or operator of a destination facility is subject to the destination facility requirements of subpart E of this part.

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