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Part V

Environmental Protection Agency

40 CFR Parts 262, 264, et al.

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

ENVIRONMENTAL PROTECTION AGENCY

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

[EPA–HQ–RCRA–2005–0018; FRL–8720–3]

RIN 2050–AE93

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

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend certain existing regulations promulgated under the hazardous waste provisions of the Resource Conservation and Recovery Act (RCRA) regarding the export and import of hazardous wastes from and into the United States. Specifically, we are proposing to modify: The requirements to implement the OECD framework concerning the transboundary movement of hazardous waste among countries belonging to the Organization for Economic Cooperation and Development (OECD), including reducing the number of control levels, exempting qualifying shipments sent for laboratory analyses from certain paperwork requirements, requiring recovery facilities to submit a certificate of recovery, adding provisions for the return or re-export of wastes subject to the Amber control procedures, and clarifying certain existing provisions that were identified as potentially ambiguous to the regulated community; the regulations regarding the management of spent lead-acid batteries being reclaimed to require appropriate notice and consent for those batteries intended for reclamation in a foreign country; the exception reporting requirements for hazardous waste exports to specify that all exception reports submitted to EPA be sent to the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, DC rather than to the Administrator; and the hazardous waste import requirements such that U.S. importers would give the initial transporter a copy of the EPA-provided documentation confirming EPA's consent to the import when they provide the RCRA hazardous waste manifest, and that the documentation would be submitted by the U.S. receiving facility to EPA along with the RCRA hazardous waste manifest within thirty days of import shipment delivery. Finally, separate from this proposed rule, EPA is publishing in *http://www.epa.gov/epawaste/hazard/international/oecd-slab-rule.htm* a draft guidance document on how U.S. receiving facilities may request EPA to identify them as pre-approved facilities to receive hazardous waste from OECD Member countries.

DATES: Comments must be received on or before December 5, 2008. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by OMB on or before November 5, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2005–0018, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: rcra-docket@epa.gov,* Attention Docket No. EPA–HQ–RCRA–2005–0018.
- Fax: (202) 566–9744, Attention Docket No. EPA–HQ–RCRA–2005–0018.
- Mail: RCRA Docket No. EPA–HQ–RCRA–2005–0018, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of 2 copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.
- Hand Delivery: RCRA Docket No. EPA–HQ–RCRA–2005–0018, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–RCRA–2005–0018. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the RCRA Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the RCRA Docket is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: Laura Coughlan, Hazardous Waste Identification Division, Office of Solid Waste (5304P), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 308–0005; fax number: (703) 308–0514; 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
BCI	Battery Council International
CBI	Confidential Business Information
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
FR	Federal Register
HSWA	Hazardous and Solid Waste Amendments
LAB	Lead-Acid Battery
NAICS	North American Industrial Classification System
NTTAA	National Technology Transfer and Advancement Act
NAFTA	North American Free Trade Agreement
OECD	Organization for Economic Cooperation and Development
OMB	Office of Management and Budget
OSWER	Office of Solid Waste and Emergency Response
RCRA	Resource Conservation and Recovery Act
RFA	Regulatory Flexibility Act
SIC	Standard Industrial Classification
SLAB	Spent Lead-Acid Battery
SBREFA	Small Business Regulatory Enforcement Fairness Act
TRI	Toxics Release Inventory
UMRA	Unfunded Mandates Reform Act

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

The authority to propose this rule is found in sections 1006, 1007, 2002(a), 3001–3010, 3013–3015, 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, 6921–6930, 6934–6936, and 6938.

C. Does this proposed rule apply to me?

1. OECD Revisions

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

Industry sector	NAICS	SIC
Utilities	221100	4939
Petroleum and Coal Products Manufacturing	324	29
Chemical Manufacturing	325100	28
Primary Metal Manufacturing	331	33
Fabricated Metal Product Manufacturing	332	34
Machinery Manufacturing	333	35
Computer and Electronic Product Manufacturing	334110	357
Electrical Equipment, Appliance, and Component Manufacturing	335	36
Transportation Equipment Manufacturing	336	37
Miscellaneous Manufacturing	339900	39
Scrap and Waste Materials	423930	5093
Materials Recovery Facilities	562920	4953

2. SLAB Revisions

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

Industry sector	NAICS	SIC
Hazardous Waste Collectors	562112	4212
Recyclable Material Hauling, Long-Distance	484230	4213
Batteries, automotive, merchant wholesalers	423120	5013
Lead-acid storage batteries, manufacturing	335911	3691
Automotive Parts, Accessories, and Tire Stores	441310	5013
Tire Dealers	441320	5014
All other General Merchandise Stores	452990	5399
New Car Dealers	441110	5511

Industry sector	NAICS	SIC
Recyclable Material Wholesaler	423930	5093
Other Waste Collection	562119	4212
Recyclable Material Collection Services, Solid Waste Collection	562111	4212
Marinas	713930	4493
General Freight Trucking, Long-Distance, TL	484121	4213
General Freight Trucking, Long-Distance, LTL	484122	4213
Specialized Freight Trucking	484200	4213
Freight Carriers (except air couriers), Air Scheduled	481112	4512
Freight Charter Services, Air	481212	4522
Freight Railways, Line-Haul	482111	4011
Freight Transportation, Deep Sea, to and from Domestic Ports	483113	4424
Freight Transportation, Deep Sea, to or from Foreign Ports	483111	4412

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

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

Industry sector	NAICS	SIC
Utilities	221100	4939
Petroleum and Coal Products Manufacturing	324	29
Chemical Manufacturing	325100	28
Primary Metal Manufacturing	331	33
Fabricated Metal Product Manufacturing	332	34
Machinery Manufacturing	333	35
Computer and Electronic Product Manufacturing	334110	357
Electrical Equipment, Appliance, and Component Manufacturing	335	36
Transportation Equipment Manufacturing	336	37
Miscellaneous Manufacturing	339	39
Scrap and Waste Materials	423930	5093

4. Import Revisions

The import revisions in this proposed rule affect all persons importing hazardous waste from a foreign country that must comply with 40 CFR part 262, subpart F, and all facilities receiving imported hazardous waste from a foreign country that must comply with either 264.71(a)(3) or 265.71(a)(3). This includes those hazardous waste import shipments originating in OECD countries, as well as in non-OECD countries. Potentially affected entities may include, but are not limited to:

Industry sector	NAICS	SIC
Hazardous Waste Collectors	562112	4212
Recyclable Material Hauling, Long-Distance	484230	4213
Recyclable Material Wholesaler	423930	5093
Other Waste Collection	562119	4212
Recyclable Material Collection Services, Solid Waste Collection	562111	4212
General Freight Trucking, Long-Distance, TL	484121	4213
Scrap and Waste Materials	423930	5093
Materials Recovery Facilities	562920	4953

The lists of potentially affected entities in the above tables may not be exhaustive. The Agency's aim is to provide a guide for readers regarding those entities that potentially could be affected by this action. However, this action may affect other entities not listed in these tables. If you have questions regarding the applicability of this 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?

1. OECD Revisions

This proposed rule is intended to implement the OECD's ''Decision of the Council C(2001)107/FINAL, Concerning the Control of Transboundary Movements of Wastes Destined for Recovery Operations, as amended by C(2004)20'' (hereinafter referred to as the Amended 2001 OECD Decision), which amended the OECD Decision (1992) on the same subject. The purpose of these revisions was to encourage consistency and harmonization between the OECD and the Basel Convention,[1] which in turn, promotes economic

[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 170 Member countries, also known as Parties, and aims to protect human health and the environment against the adverse effects resulting from the generation, management, transboundary movements and disposal of hazardous and other wastes. More information on the Basel Convention may be found at *http://www.basel.int.*

efficiency and the recovery of waste in an environmentally sound manner.

The Amended 2001 OECD Decision was supported by the United States and imposes legally binding commitments on the United States pursuant to Articles 5(a) and 6 of the OECD Convention. By consenting to the Decision, the United States Government has agreed to promulgate regulations necessary to ensure that the United States can uphold the agreement.

Further, this proposed rule clarifies certain regulations to articulate more explicitly EPA's original intent in those regulations and to eliminate any confusion on the part of the regulated community.

2. SLAB Revisions

EPA also proposes to amend the RCRA hazardous waste regulations for SLABs specified in 40 CFR part 266, subpart G by requiring notification and consent for the export of SLABs in order to ensure that SLABs are sent to reclamation facilities in countries that can manage them in an environmentally sound manner. The notification and consent requirements are intended to: (1) Reduce potential risk to human health and the environment, including potential risk from the transboundary movement of pollution from other countries to the U.S., and (2) harmonize the notice and consent procedures with international practice (see II.B.4) and with the RCRA universal waste regulations for the export of SLABs, resulting in a more uniform practice for notification and consent for SLABs.

Notification of potential exports of hazardous waste destined for recovery in another country is a key component of multilateral environmental systems for appropriate governmental oversight to ensure proper management of the waste. The notification mechanism allows for all concerned countries (i.e., exporting, importing, and transit) to determine whether the hazardous waste can be handled safely based on the requirements of their waste management systems. Specifically, the importing country has the opportunity to confirm that the particular facility that is designated to receive the waste is qualified to manage it in a safe and environmentally sound manner, and has all appropriate approvals, permits, or licenses. Furthermore, the notice and consent process is the fundamental tool that is employed in transboundary waste arrangements to provide business certainty for legitimate trade.

Risks to human health and the environment derived from improper SLAB recycling techniques are of major concern internationally. The Basel Convention has developed two guidance documents [2] [3] to assist governments, transporters, and recyclers to achieve environmentally sound management of SLABs. Indeed, the Basel Convention considers transboundary movement of SLABs to be ''illegal traffic'' if it occurs without prior notification. Similar guidance was developed by the Commission for Environmental Cooperation [4] (CEC) for use by North American countries to promote sound management of SLABs.[5] A 1996 OECD Ministerial Declaration on risk reduction from lead called on Member countries to take domestic and international action to reduce human exposure to lead from a variety of sources.[6] Further, the Report of the Special Rapporteur of the U.N. Commission on Human Rights [7] expressed concerns that ''the United States system does not impose export regulations on SLABs destined for recycling,'' and suggests that ''the recycling of lead-acid batteries is one of the greatest potential sources of risk, especially for exposed workers in the informal sector in many developing countries.''

For economic and efficiency reasons, some highly industrialized countries may ship their SLABs to less industrialized countries for SLAB breaking, draining, component separation, slag generation and lead refining. Human health and environmental risk issues can arise when these recycling processes are performed with insufficient human health or environmental safety controls. The results could include: (1) Significant increases in elevated blood lead levels in facility workers and their families; (2) increases in uncontrolled releases of lead-laden slag to soil, surface water and ground water sources; and (3) lead air-emissions from lead smelting without the proper air-emissions controls.

EPA would like to focus on the use of preventative measures to decrease the proportionate risks to human health and the global environment. There are inherent human health and environmental hazards associated with a significant amount of SLABs being exported across borders without the knowledge and consent of receiving countries and/or SLABs being exported to countries with substandard smelting infrastructures. Amending the current RCRA hazardous waste regulations to include the notification and consent requirements would help ensure that SLABs are exported to countries with the capacity to handle them in an environmentally sound manner and to aid countries with tracking the movements and life-cycle management of SLABs inside their borders. EPA believes that the notification and consent approach is an effective way of preventing the export of SLABs to countries and to facilities that do not have the capability of safely managing the SLABs by providing the receiving country with the necessary information about the proposed shipment and requiring its consent before the export can proceed. In addition, by providing the receiving country with this information, they can monitor and track the export and the facility's management of the SLABs for safe management. The purpose of the notification and consent requirements for SLABs destined for reclamation in this proposed rule is consistent with the purpose of the notification and consent requirements in RCRA section 3017. Congress, in enacting section 3017, considered it important to require notification and consent for exports of hazardous wastes. The legislative history for section 3017 indicates that Congress felt that prior notification of an export to the receiving country would allow that country to make an informed decision as to whether it would accept the waste and, if so, how it would safely manage that waste. Congress noted that problems, such as harm to human health and the environment arise when wastes are sent to countries that do not want to receive them, or lack sufficient information to manage them properly.

EPA believes that the potential reduction in risk to human health and the environment with this proposed modification will outweigh the incremental increase in burden to SLAB exporters. Moreover, because the

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[2] *Basel Convention Training Manual: National Management Plans for Used Lead Acid Batteries*, SBC No. 2004/5, 2004.

[3] *Technical Guidelines for the Environmentally Sound Management of Waste Lead-acid Batteries*, SBC No. 2003/9, 2003.

[4] The Commission for Environmental Cooperation 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 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).

[5] *Practices and Options for Environmentally Sound Management of Spent Lead-acid Batteries within North America*, Commission for Environmental Cooperation, December 2007.

[6] *The Global Pursuit of the Sound Management of Chemicals*, The World Bank, February 2004.

[7] *Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights*, U.N. Commission on Human Rights, Economic and Social Council, E/CN.4/2003/56/Add.1, 10 January 2003, p. 17.

notification and consent requirements are intended to ensure that the receiving country has the necessary advance knowledge of a proposed shipment of SLABs to a facility in that country, the country can properly consent (or object) to this shipment based on its knowledge of the capabilities of the particular facility and its ability to manage the batteries in a safe and environmentally sound manner.

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

EPA proposes to amend the exception reporting requirements in 40 CFR part 262, subparts E and H, to specify that all exception reports be submitted to the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, DC rather than to the Administrator.[8] The Agency proposes this change because it believes that a more specific address should assist in proper delivery of the exception report to the appropriate EPA office. The more general requirement in the existing regulation to send this report to the ''Administrator'' may have not provided sufficiently specific instruction for those exporters trying to notify EPA of returned shipments, which could reduce EPA's ability to provide oversight on such exports. Directing that all exception reports submitted to EPA pursuant to the requirements in 40 CFR part 262, subparts E and H, be sent to a specific address should ensure better oversight of (1) return shipments into the U.S. and (2) compliance with the exception report requirements without additional regulatory burden.

4. Import Revisions

Finally, EPA proposes to amend the import requirements specified in 40 CFR part 262, subpart F. This change would require that the U.S. importer provide the transporter with a copy of documentation provided by EPA, confirming EPA's consent to the hazardous waste import under a specific notice. This documentation would then accompany each RCRA hazardous waste manifested import shipment and be submitted by the receiving facility in the U.S. to EPA along with the RCRA hazardous waste manifest in accordance with §§ 264.71(a)(3) and 265.71(a)(3). While EPA currently requires that receiving facilities in the U.S. submit a copy of the hazardous waste manifest to EPA to document individual import shipments, it has been difficult for EPA to match an individual manifest for a hazardous waste import shipment with the related notice of intent to export from a foreign country for which EPA has provided consent. One major reason for this difficulty is because a given destination facility in the U.S. could be receiving the same hazardous waste from the same foreign exporter under more than one notice. Adding this requirement will enable EPA to better match the individual import shipments against the related notice from the foreign exporting country for which EPA has provided consent, and facilitate our oversight of such imports.

[8] The Office of Enforcement and Compliance Assurance is the office within EPA that implements the notice and consent scheme for hazardous waste transboundary shipments.

II. Background

A. OECD Revisions

1. What is the OECD?

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

2. What OECD Decision 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.

3. Why did EPA establish the existing regulations in 40 CFR part 262, subpart H?

Due to the legally binding nature of the 1992 Decision, the United States, as an OECD Member country, was required to implement the terms of the decision in accordance with Articles 5(a) and 6 of the OECD Convention. (A copy of the OECD Convention is included in the docket to this proposed rule.) In order to implement the specific provisions of the 1992 Decision, EPA published a final rule in the **Federal Register** entitled, ''Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision C(92)39 Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations'' (61 FR 16289, April 12, 1996)(hereafter referred to as EPA's OECD rule). These regulations appear primarily in 40 CFR part 262, subpart H.

4. What OECD Decisions form the basis of the revisions in this proposed rule?

On June 14, 2001, the OECD Council amended the 1992 Decision by passing ''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 and to eliminate duplicative activities between the two international organizations as much as practical. These changes include 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 certificate of recovery requirement). Subsequent to the 2001 OECD Decision, an addendum, C(2001)107/ADD1 (hereafter referred to as the 2001 OECD Addendum), which consists of revised versions of the notification and movement documents and the instructions to complete them, was adopted by the OECD Council on February 28, 2002. The addendum was incorporated into the 2001 OECD Decision as section C of Appendix 8, and the combined version was issued in

May 2002 as C(2001)107/FINAL. Finally, 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 OECD Council decisions are collectively referred to as the Amended 2001 OECD Decision.

5. How does EPA propose to revise the existing regulations to implement the latest OECD Decisions?

This rule proposes to amend EPA's OECD rule to reflect the procedural and substantive amendments in the 2001 OECD Decision, the applicable changes to the new notification and movement documents presented in the 2001 OECD Addendum, and the changes to the OECD waste lists as presented in the 2004 OECD Amendment, collectively referred to as the Amended 2001 OECD Decision. This proposed rule also seeks to clarify certain existing regulatory provisions that have been identified as potentially ambiguous to the regulated community.

As noted previously, OECD Council Decisions are international agreements that create binding commitments on the United States, unless otherwise provided in the Articles to the 1960 Convention. Therefore, by consenting to the Amended 2001 OECD Decision, the United States Government has agreed to establish legal measures necessary to ensure that the United States can uphold the agreement. EPA believes that RCRA contains adequate authority to promulgate the requirements of the Amended 2001 OECD Decision.

It is important to recognize that the OECD Decision allows a Member country to determine if a waste on an OECD list is hazardous based on its ''national procedures.'' EPA has determined that a waste is hazardous under U.S. ''national procedures''—and therefore subject to the OECD provisions of Subpart H—if the waste meets the following requirements under RCRA: (a) Meets the Federal definition of hazardous waste in 40 CFR 261.3; and (b) is subject to either the Federal hazardous waste manifesting requirements in 40 CFR 262, or to the universal waste management standards of 40 CFR part 273, or to State requirements analogous to Part 273. This determination was set forth in § 262.89(a), and additional discussion on how this provision impacts transboundary movements of wastes subject to RCRA exemptions, exclusions and recycling provisions can be found in the April 12, 1996, preamble to the original OECD rule (61 FR 16290–16316).

6. How does EPA propose to implement future OECD revisions?

(a) Changes to OECD Member Country List

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

In order to accommodate changes in OECD membership as quickly as possible, EPA intends to publish in the **Federal Register** any future amendments to the list of OECD Member countries set forth in § 262.58(a)(1), as the OECD adds new Member countries or otherwise amends its list in the future. EPA intends to publish notices of these future amendments to § 262.58(a)(1) as a final rule without prior notice and opportunity for comment. EPA believes that the Agency would be able to make a ''good cause'' finding under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) to make these future amendments without prior notice and comment. EPA believes notice and an opportunity for comment on future amendments to § 262.58(a)(1) to reflect the updates to the OECD list of Member countries would be unnecessary, because the United States, as an OECD Member country, is legally obligated to implement OECD Decisions with respect to all OECD Member countries.

(b) Changes to OECD Waste List

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

B. SLAB Revisions

1. What are SLABs?

Lead-acid batteries are secondary, wet cell batteries that contain liquid and can be recharged for many uses. They are the most widely used rechargeable batteries in the world and are mainly used as starting, lighting, and ignition (SLI) power batteries found in automobiles and other vehicles. A rechargeable SLAB is spent if it no longer performs effectively and cannot be recharged. Battery failure is most commonly attributed to water loss and grid corrosion during normal use. SLABs are considered both solid and hazardous wastes under Subtitle C of RCRA, because they are classified as spent materials that exhibit the toxicity characteristic for lead, and the corrosivity characteristic for the sulfuric acid electrolyte in the battery.

Lead-acid batteries are typically composed of an outside plastic casing and six inner cells containing lead strips and positive and negative lead terminals. Each cell is made up of two lead frameworks, the positive plate being lead dioxide and the negative plate being spongy lead (a metallic lead in a high-surface-area porous structure). Each cell is filled with sulfuric acid as the electrolyte. When the battery is in use, the spongy lead, sulphuric acid, and lead dioxide react to produce an electrical current. Both electrodes are converted to lead sulfate, a process which is reversed during recharge.

2. How are SLABs currently managed?

Currently, SLABs are either reclaimed for their lead value or disposed of. The Battery Council International (BCI) reported a 99.2 percent domestic SLAB reclamation rate for the years 1999–2003, making lead-acid batteries one of the most recycled consumer products. When a SLAB is collected, it is sent to a reclaimer where the SLABs are cracked through various means, such as

a hammermill in order to separate out the lead, battery casing, plate separators, and sulfuric acid components into recycling streams and disposal streams. Specifically, the lead plates, lead oxide paste and other lead parts are cleaned and then melted together in smelting furnaces to produce lead ingots along with residual lead dross and slag. The residual lead dross and slag may be reclaimed further or disposed of in a landfill. Used sulphuric acid can be (1) Sent for acid regeneration, where the acid is cleaned for re-use as electrolyte in the battery manufacturing process, (2) neutralized and released into a public sewer system once it meets Clean Water Act standards, or (3) converted into sodium sulfate, an odorless white powder that's used in laundry detergent, glass and textile manufacturing. If it is a plastic-cased battery, the plastic is either cleaned and recycled as new battery casings or disposed of at a landfill. If the battery casing is made of rubber or other materials, it can be used as a fuel at the smelter. Other materials from batteries are either recycled or disposed of in a landfill.

Lead is a highly toxic heavy metal naturally occurring in the environment. For this reason, proper management of lead and lead-containing products is essential to the protection of human health and the environment. In the U.S., the Occupational Safety and Health Administration (OSHA) has developed standards to address and minimize workplace exposure to lead (29 CFR § 1910.1025). These standards establish permissible exposure limits; exposure monitoring, respiratory protection and safety procedures; and proper warning and sign-age requirements for facilities processing lead. Proper ventilation, training and safety procedures also are necessary. In less developed countries, these precautions may be overlooked, leading to dangerous conditions. (See ''A Study of the Lead-Acid Battery Industry and Spent Lead-Acid Battery Exports,'' June 2003, a copy of which is included in the RCRA docket established for this proposed rule.)

Recent data show that the primary factors influencing decisions to export SLABs from the United States include the price of scrap lead, worldwide supply and demand for lead, and the relative price of virgin lead compared to the price of scrap lead. BCI estimates that in 1995, approximately 1,078,674 tons of recoverable lead was available from batteries consumed domestically. BCI also reports that, based on Department of Commerce data, approximately 104,614 tons of battery scrap lead were exported in 1995. In contrast, approximately 269,171 metric tons of SLABs were exported in 2006 based on more recent data from the International Trade Commission, Environment Canada, and Secretaria de Medio Ambiente y Recursos Naturales (SEMARNAT). Such a large increase in exports may be in large part due to recent increases in the domestic and international price of lead.

According to the annual ''Mineral Commodity Summaries'' published by the U.S. Geological Survey (USGS), the average price of lead for North American producers increased by 77% from 43.7 cents/pound in 1999 to 77.8 cents/pound in 2006. The average price as reported on the London Metal Exchange increased by 154% during those same years from 22.8 cents/pound to 58.0 cents/pound. In addition, while export shipments destined for locations in many countries are subject to duties or tariffs on any exported SLABs, Canadian and Mexican importers are allowed, under the conditions of the North American Free Trade Agreement (NAFTA), to import SLABs without the usual surcharge. Indeed, data show that Canada and Mexico are the major destination countries to which U.S. SLABs have been exported in recent years. For example, in 2006 U.S. SLAB exports to Mexico and Canada were estimated to be 199,000 metric tons and 66,000 metric tons, respectively (based on data from Mexican and Canadian government sources). Comparing this information to data from the U.S. International Trade Commission, it is estimated that only 1.8% of SLAB exports are destined for countries other than Mexico or Canada. (See the EPA Cost Assessment [9] prepared in support of this proposed action.)

3. How are SLABs currently regulated in the United States?

Under the current Federal hazardous waste regulations established pursuant to RCRA, SLABs are hazardous wastes if the batteries exhibit one or more of the characteristics of hazardous waste provided in 40 CFR 261, subpart C (e.g., corrosivity (D001), or toxicity for lead (D008)). SLABs typically exhibit the toxicity characteristic for lead and, therefore, are defined as hazardous wastes.

(a) SLABs Sent for Disposal Within the United States

If a generator disposes, rather than reclaims, SLABs, the SLABs would need to be managed in compliance with the Subtitle C hazardous waste management regulations, which could include the part 273 universal waste rules. However, in all instances, SLABs that are disposed of must be managed at a RCRA Subtitle C disposal facility and are subject to the Land Disposal Restriction requirements of 40 CFR part 268.

The universal waste regulations, promulgated on May 11, 1995, were created to provide a streamlined set of management regulations governing the collection and management of certain widely generated hazardous wastes, such as spent batteries. For the purposes of the universal waste regulations, the definition of ''battery'' includes SLABs. While SLABs managed as universal waste may be drained of sulphuric acid, the battery casings must be intact. SLABs that have partially or wholly crushed casings cannot be managed as universal waste.

A universal waste handler is required to ensure that the SLABs do not spill or leak and that they are stored in a structurally sound container. In addition, depending upon the amount of SLABs that are accumulated, a battery handler may be required to track shipments of the SLABs sent off-site for reclamation or other management. Universal waste handlers are not allowed to treat their waste; however, they can conduct certain activities (e.g., sorting, regeneration [10], etc.) provided the battery casings remain intact.

Other general provisions to which all universal waste handlers are subject include labeling/marking, accumulation time limits, employee training, and response to releases of hazardous waste. Off-site shipments of universal wastes do not require a hazardous waste manifest, provided they are sent to another universal waste handler or a specified destination facility, and are shipped by an authorized universal waste transporter.

(b) SLABs Sent for Reclamation Within the United States

When reclaimed, SLABs are exempt from most of the RCRA Subtitle C hazardous waste regulations, but are subject to the regulations in part 266, subpart G. (See 40 CFR § 261.6(a)(2)(iv).) Alternatively, they can also be managed as a universal waste and subject to the universal waste regulations in 40 CFR part 273. Thus, generators that send SLABs off-site for reclamation may choose to manage their SLABs either as a universal waste, in accordance with

[9] *Cost Assessment for the Proposed Rule on Exports and Imports of Hazardous Waste Destined for Recovery Among OECD Countries and Exports of Spent Lead-Acid Batteries from the U.S.*

[10] Regeneration under 40 CFR part 266, subpart G, includes only replacing drained electrolyte fluids and replacing ''bad'' battery cells. (See 48 FR at 14496.)

the management standards in 40 CFR part 273, or in accordance with the management standards in 40 CFR part 266, subpart G.

Under the provisions of 40 CFR part 266, subpart G, persons who generate, collect, transport, or store SLABs for direct regeneration or reclamation are exempt from the bulk of the RCRA hazardous waste regulations (40 CFR parts 262 through 266, 270, 124 and the EPA notification and identification number requirements). However, 40 CFR part 266, subpart G imposes certain requirements on reclaimers of SLABs who do not store prior to reclamation, and on facilities that store SLABs destined for reclamation, but do not conduct any reclamation. In addition, owners or operators of facilities that both store and reclaim SLABs are required to comply with the EPA notification and identification number requirements and all applicable hazardous waste management facility provisions in parts 264/265, 270, and 124, and are subject to 40 CFR parts 261, § 262.11, and applicable provisions under part 268.

4. What international agreements apply to the export of SLABs?

There are two major international agreements that expressly address the export of SLABs: (1) The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention); and (2) the Amended 2001 OECD Decision (see II.A.4 for more information). This proposal would harmonize the EPA SLAB export requirements with both of these international agreements.

As noted in footnote 1, the Basel Convention is a multilateral international agreement governing the transboundary movements of hazardous wastes. Among other things, the Basel Convention includes a requirement for notice and written consent for transboundary movements of hazardous waste between trading countries. SLABs are covered under the Basel Convention as a hazardous waste and are thus subject to the notice and consent requirements of the Basel Convention. The United States is a signatory to the Convention, but has not yet ratified it and is therefore not legally bound to its requirements.

The Amended 2001 OECD Decision regulates the transboundary movements of hazardous wastes (e.g. wastes subject to Amber control procedures) destined for recovery within OECD Member countries. The Amended 2001 OECD Decision lists SLABs, whether whole or crushed, as subject to the Amber control procedures.

Currently, under the RCRA hazardous waste regulations, SLABs can be managed either in accordance with the special regulations under 40 CFR part 266, subpart G or in accordance with the universal waste regulations, as discussed above. Under part 266, subpart G, SLABs that are destined for reclamation are currently exempt from the RCRA export requirements in 40 CFR part 262, subpart E and subpart H (including the notice and consent requirements).

On the other hand, under the universal waste regulations, exporters of SLABs for reclamation are subject to the export requirements in 40 CFR part 273 (including the notice and consent requirements) or, if the SLABs will be exported to an OECD Member country for recovery, the export requirements (including notice and consent) in 40 CFR part 262, subpart H, apply. In addition, even in situations where U.S. exporters are not subject to the notice and consent requirements, U.S. exporters may still be required to notify the importing OECD Member country of their intention to export batteries, pursuant to contracts with foreign consignees. This is because SLABs, identified by the Amended 2001 OECD Decision as wastes subject to Amber control procedures, are generally considered to be hazardous waste under the national procedures of the importing Member countries.

5. How does EPA propose to revise the SLAB regulations under 40 CFR part 266, subpart G?

EPA proposes to amend the SLAB regulations under 40 CFR part 266, subpart G, to require that exporters and transporters handling SLABs destined for reclamation in a foreign country to comply with the same requirements specified in the universal waste regulations under 40 CFR part 273. Specifically, an exporter who sends the SLABs to a foreign destination other than to those OECD countries specified in 40 CFR 262.58(a)(1) would have to:

(a) Comply with the requirements applicable to a primary exporter in 40 CFR 262.53, 262.56(a) (1) through (4), (6), 262.56(b) and 262.57; (b) export such SLABs only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in subpart E of 40 CFR part 262 of this chapter; and (c) provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export. In addition, a transporter transporting a shipment of SLABs to a foreign destination other than to those OECD countries specified in 40 CFR 262.58(a)(1) would not be able to accept a shipment if the transporter knew the shipment does not conform to the EPA Acknowledgment of Consent, and would have to ensure that: (a) a copy of the EPA Acknowledgment of Consent accompanies the SLAB export shipment; and (b) the shipment is delivered to the facility designated by the person initiating the SLAB export shipment.

For SLABs destined for reclamation in OECD countries specified in 40 CFR 262.58(a)(1), exporters and transporters would be subject to the requirements of 40 CFR part 262, subpart H, the requirements governing hazardous waste shipments to OECD countries.

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

EPA proposes to replace ''EPA Administrator'' with ''the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460'' in both § 262.55 and in § 262.87(b).

By providing a specific address for the submission of all exception reports required by 40 CFR part 262, subparts E and H, EPA can ensure better oversight of (1) return shipments to the U.S. and (2) compliance with the exception reporting requirements without any additional regulatory burden for U.S. exporters. In this proposed rule, EPA is making very clear that submission of these export exception reports must be to the same specific EPA address that receives all export notifications and export annual reports, and with no substitution for comparable State agencies. States that are interested in receiving a parallel copy of the exception report will still be able to require the submission of a copy to their State Director in addition to sending it to the above federal address.

D. Import Revisions

EPA proposes to amend the import requirements specified in § 262.60(e) to require that the U.S. importer provide the transporter with a copy of the documentation confirming EPA's consent to the hazardous waste import, specified under a notice submitted by the competent authority of the country of export. This documentation must accompany each RCRA hazardous waste shipment and be submitted by the U.S. receiving facility to EPA along with the RCRA hazardous waste manifest as

required under §§ 264.71(a)(3) and 265.71(a)(3).

While EPA currently requires that U.S. receiving facilities submit a copy of the hazardous waste manifest to EPA to document individual hazardous waste import shipments, it has proved difficult to match individual hazardous waste import shipments against a given approved notice of intent to export from a foreign country. In part, this is because a given destination facility in the United States could be receiving the same hazardous waste from the same foreign exporter under more than one approved notice. Adding this requirement will enable EPA to match the submitted RCRA hazardous waste manifests for individual import shipments against the approved import notice that typically covers the twelve months of imports. Being able to do so will enable EPA to determine when any import shipments claiming coverage under that specific notice would or would not be in accordance with the terms of the approved notice, thus improving our oversight of such imports.

EPA currently responds to specific notices of intent to export hazardous waste from a foreign country into the United States with either a written response (e.g., written consent or objection) or a tacit consent. Tacit consents are allowable for imports subject to EPA's OECD regulations, as specified in 40 CFR part 262, subpart H. For such imports, the exporting country may assume tacit consent to the proposed shipments by EPA if no written response from EPA has been received by the exporting country thirty working days from the date EPA sends the exporting country a letter acknowledging receipt of the notice. Because EPA's consents are currently either tacit or sent in writing only to the competent authority of the exporting country, EPA will need to provide or otherwise make available to U.S. importers documentation confirming the Agency's consent. EPA is considering and soliciting comments on what would provide adequate documentation of the Agency's written or tacit consent to a specific notice, and how best to provide that information to U.S. importers.

III. Summary of This Proposed Rule and Changes

A. Changes to 40 CFR Part 262, Subpart E

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

B. Changes to 40 CFR 262.60(e), Subpart F

This proposed rule includes the requirement that a U.S. importer provide the transporter a copy of the documentation confirming EPA's consent to the import of hazardous waste when the importer provides the transporter with an additional copy of the manifest.

C. Changes to 40 CFR Part 262, Subpart H

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

1. Changes in Terminology

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

(a) ''Transfrontier'' to ''transboundary'';

(b) ''Tracking document'' to ''movement document'';

(c) ''Amber-list controls'' to ''Amber control procedures'';

(d) ''Notifier'' to ''exporter''; and

(e) ''Consignee'' to ''importer.'' [11]

2. The Number of Different Levels of Control Is Reduced From Three (Green, Amber, and Red) to Two (Green and Amber) and the Waste Lists Have Been Updated

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

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

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

U.S. importers and exporters of hazardous waste subject to the subpart H requirements of 40 CFR part 262 should be aware that wastes listed in Part I of both the new OECD Amber and Green waste lists have not retained their OECD waste codes. Consequently, the relevant Basel waste codes should be used instead. However, wastes listed in Part II of both the new OECD Amber and Green waste lists do retain their original OECD waste codes, as listed in the 1992 Decision. This two-part system is

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

necessary to ensure that wastes not yet explicitly listed under the Basel Convention will continue to have the same level of control applied to them when destined for recovery under the Amended 2001 OECD Decision.

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

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

Section 262.83(d) currently addresses the general notification requirements for unlisted wastes. This rule first proposes to renumber this section to § 262.83(c) since the current § 262.83(c) addresses ''red-list wastes'' and is no longer needed. This proposal also replaces the term ''unlisted wastes'' with ''wastes not covered in Appendices 3 and 4 of the OECD Decision, [12]'' so that wastes not on these lists are not automatically subject to the Amber control procedures. Rather, ''wastes not covered in Appendices 3 and 4 of the OECD Decision'' will be subject to the domestic rules and regulations of the countries of concern.

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

The 1992 Decision and EPA's OECD rule did not include a provision that would exempt waste samples destined for laboratory analyses. The Amended 2001 OECD Decision, however, would allow Member countries to decide through their domestic laws and regulations that waste samples normally subject to the Amber control procedures will only be subject to the Green control procedures if such samples are destined for laboratory analyses to assess its physical or chemical characteristics, or to determine its suitability for recovery operations. Therefore, we are proposing that if the waste sample is destined for laboratory analyses and meets certain specified conditions, then the waste is subject to the Green control procedures (e.g., the existing controls normally applied in commercial transactions).

The Amended 2001 OECD Decision provides that the amount of waste qualifying for this exemption shall not be more than the minimum quantity reasonably needed to perform the analyses adequately in each particular case, but can never exceed twenty-five kilograms (25 kg /55 lbs). Analytical samples also must be appropriately packaged and labeled and must be carried out under the terms of all applicable international transport agreements. Furthermore, any transboundary movement of such samples through non-OECD Member countries shall be subject to international law and to all applicable national laws and regulations. Thus, the proposed rule allows for waste samples that are sent for laboratory analyses to be exempt from the Amber control procedures provided they meet the same conditions as set forth in the Amended 2001 OECD Decision.

Information on exemptions and any other national requirements concerning movements of waste for laboratory analyses is available to the public via a Web site with information compiled by the OECD Environment Directorate, which can be accessed at *http://www.oecd.org/env/waste/*.

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

5. Recovery Facilities Must Submit a Certificate of Recovery

This proposed rule would implement the Amended 2001 OECD Decision's requirement that a duly authorized representative of the recovery facility submit a certificate of recovery to all interested parties (e.g., exporter, country of export, country of import), ensuring recovery of the waste has been completed. A valid certificate of recovery is defined as a written and dated statement that affirms that the waste materials were recovered and that any residuals generated from the recovery operation have been disposed of in the manner agreed to by the parties to the contract.[13] This proposed rule also requires, as does the Amended 2001 OECD Decision, that the recovery facility send the certificate of recovery as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following the receipt of waste by the recovery facility. Finally, this proposed rule requires that the recovery facility must send copies of the certificate of recovery to the exporter and competent authorities of the countries of export and import by mail, e-mail followed by mail, or fax followed by mail. This proposed rule incorporates the certificate of recovery provisions of the Amended 2001 OECD Decision in § 262.83(e).

The Amended 2001 OECD Decision states that the completion of block 18 of the OECD movement document, and the submission of signed copies to the exporter and relevant competent authorities, fulfils the certificate of recovery requirement. Although the OECD movement document is recommended, the Amended 2001 OECD Decision does not require recovery facilities to use it.

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

[12] Section 262.81(j) in the proposed revisions to the regulatory text in 40 CFR part 262, subpart H defines ''OECD Decision'' as ''Decision of the Council C(2001)107/FINAL, Concerning the Control of Transboundary Movements of Wastes Destined for Recovery Operations, as Amended by C(2004)20'' for the purposes of the subpart.

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

6. Amendments to Notification Requirements

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

(a) Exporter and importing recovery facility e-mail address;

(b) E-mail address for importer (if different from the importing recovery facility);

(c) Address, telephone, fax, and e-mail of intended transporter(s);

(d) Means of transport envisioned; and

(e) Specification of the type of recovery operation(s) that will be used.

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

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

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

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

The Amended 2001 OECD Decision imposed new requirements for R12 and R13 recovery facilities, which we are proposing to incorporate in this proposal. R12 and R13 recovery facilities are transfer and storage facilities, respectively, that do not recover the wastes themselves. Because hazardous wastes destined for recovery may have to undergo treatment before a R1–R11 [14] recovery facility actually recovers them, the OECD considers R12 and R13 facilities as ''intermediate or temporary operations.'' The primary reason for the new requirements is to ensure that the subsequent R1–R11 recovery operation receives the waste and completes its recovery in an environmentally sound manner.

When the notification document lists an R12/R13 recovery facility, we are proposing that the exporter must indicate in the same notification document the recovery facility or facilities where the subsequent R1–R11 recovery operation takes place or may take place.

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

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

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

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

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

export, and transit. For example, if a hazardous waste is exported from the United States to a R12/R13 facility in France, and then will be sent to a subsequent R1–R11 recovery facility in Germany, the R12/R13 facility in France must submit a notification to and obtain consent from France (the new country of export), the United States (the original country of export) and Germany (the new country of import for final recovery).

This proposed rule incorporates all of these requirements in § 262.82(f).

9. New Provisions Regarding Mixtures of Hazardous Wastes

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

The Amended 2001 OECD Decision also provides that:

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

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

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

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

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

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

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

(a) Return of Hazardous Waste to Country of Export

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

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

Under the Amended 2001 OECD Decision, the re-export from the country of import to a third country is considered a new transboundary movement of hazardous waste. As a result, the Amber control procedures are applicable. The initial importer becomes the new exporter and, consequently, assumes all responsibilities as an exporter. In addition, the notification must also include the competent authority of the initial country of export who, in accordance with the Amber control procedures, may object to the re-export if the movement does not comply with the requirements set out by its domestic law.

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

If the incident takes place in the country of transit, the exporter should make arrangements so that the hazardous waste still can be recovered in an environmentally sound manner in the recovery facility of the importing country to where it was originally

destined. The competent authority of the country of transit is to immediately inform the competent authorities of the countries of export and import and any other countries of transit. If the exporter is unable to arrange for the recovery of the hazardous waste in an environmentally sound manner at the recovery facility to where it was originally destined, the hazardous waste should be returned, adhering to subsection (a) above, to the country of export within ninety (90) days from the time when the country of export was informed of the incident or such other period of time as the concerned countries agree. The competent authorities of the country of export and the countries of transit are to be informed of the return, but they are prohibited from opposing or preventing the return of the hazardous wastes to the country of export, so long as the movement complies with the requirements set out by the country of export's domestic law. This proposal sets forth these re-export and return provisions of the Amended 2001 OECD Decision in §§ 262.82(c), 262.82(d), and 262.82(e).

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

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

12. Technical Corrections to EPA's OECD Rule

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

13. Change to the Submittal Address for Exception Reports

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

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

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

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

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

F. Changes to 40 CFR 266.80(a)

The existing regulations at 40 CFR part 266, subpart G, ''Spent Lead-Acid Batteries Being Reclaimed,'' exempt exporters of SLABs destined for reclamation from the export requirements of 40 CFR part 262. EPA proposes to amend the table located at 40 CFR 266.80 by including two additional rows to the current table. These additional rows will effectively require that exporters and transporters of SLABs being sent to a foreign country for reclamation will need to meet the universal waste requirements concerning the export of SLABs for reclamation.

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

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

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

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

EPA proposes to amend the table located at 40 CFR 266.80 in order to ensure greater protection of human health and the environment through notification, tracking, and management of SLABs. In addition to harmonizing the RCRA hazardous waste regulations for SLABs with the notification and consent requirements in the RCRA universal waste rules, today's proposed rule would harmonize the export requirements for SLABs with the Amended 2001 OECD Decision and the Basel Convention. (Note that the exemption from the manifest requirements for exporters and transporters of SLABs for reclamation will continue to remain in effect.)

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

1. Export Shipments of SLABs to OECD Member Countries

We are proposing that exporters and transporters of SLABs destined for reclamation in one of the OECD Member countries listed in § 262.58(a)(1) would have to comply with all applicable sections of 40 CFR part 262, subpart H for wastes subject to the Amber control procedures. For a complete listing of the proposed requirements, exporters and transporters should consult the regulatory text for 40 CFR part 262, subpart H in this proposal. In addition

to the proposed changes to subpart H discussed in earlier sections, the applicable Amber control procedures include, but are not limited to, the following:

(a) Notification of Intent To Export

Exporters of SLABs destined for reclamation would be required to comply with the Amber control procedures in § 262.83. Under the Amber control procedures, an exporter must submit a complete notification of its intent to export to EPA at least 45 days before the export is scheduled to leave the United States (or at least ten days if the shipment is going to a pre-approved facility in the country of import). The notification can cover export activities spanning a period of up to and including 12 months (or up to three years if the shipment is going to a pre-approved facility in the country of import).

A complete notification includes, but is not limited to:

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

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

(b) Shipment Tracking

Under § 262.84, export shipments of SLABs must be accompanied by a movement document from the initiation of the shipment until it reaches the final recovery facility. Exporters must provide the initial transporter with the movement document. Transporters are prohibited from accepting a shipment of SLABs without such a movement document, and are required to ensure that the movement document accompanies the shipment from the initiation of the shipment until it reaches the final recovery facility. The movement document must include all the information from the notification and the following:

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

(c) Annual Reporting

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

(d) Exception Reporting

Under § 262.87(b), any person exporting SLABs who meets the definition of primary exporter in § 262.51 or who initiates the movement documentation under § 262.84 must file an exception report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, if any of the following occurs:

- He has not received a copy of the RCRA hazardous waste manifest signed by the transporter and noting the date and point of departure of the waste from the United States, within forty-five (45) days from the date it was accepted by the initial transporter;
- Within ninety (90) days from the date the waste was accepted by the initial transporter, the exporter has not received written confirmation from the recovery facility that the hazardous waste was received;
- The waste is returned to the United States.

(e) Recordkeeping

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

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

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

(a) Notification of Intent To Export

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

- Contact information and EPA ID number (if applicable) for the primary exporter;
- A description and quantity of the SLABs to be exported;
- The RCRA waste code(s) (if applicable), U.S. DOT proper shipping name, hazard class, and United Nations number as identified in 49 CFR parts 171 through 177;
- Planned mode(s) of transportation and type(s) of containers;
- A description of the manner in which the SLABs will be treated, stored, or disposed of (including recovery) in the receiving country;
- The planned frequency and time period of exportation;
- A list of all transit countries through which the SLABs will be sent, and a description of the approximate length of time the hazardous waste will remain in each country and the nature of its handling while there;
- All points of entry to and departure from each foreign country through which the SLABs will pass; and
- The name and site address of the consignee [15] and any alternate consignee.

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

[15] As noted previously, this is equivalent to ''importer'' in the proposed revisions to 40 CFR part 262, subpart H.

(b) Shipment Documentation and Tracking

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

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

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

(c) Annual Reporting

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

(d) Recordkeeping

Under § 262.57, we are proposing that exporters of SLABs must keep the following records:

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

G. Changes to 40 CFR 271.1

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

IV. Costs and Benefits of the Proposed Rule

A. Introduction

The value of any regulatory action is traditionally measured by the net change in social welfare that it generates. The Agency's economic assessment conducted in support of this 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 analysis assesses the proposed integration of various OECD Council Decisions into existing U.S. regulations governing shipments (export/import/transit) of hazardous wastes destined for recovery between the U.S. and other OECD Member countries. In addition, we assess the newly proposed export regulations for SLABs to OECD and non-OECD countries. Also incorporated into the analysis is the proposed requirements that importers of hazardous waste subject to 40 CFR part 262, subpart F, provide to the initial transporter documentation necessary to confirm EPA's consent to the import to accompany such manifested import shipments, and that the receiving facility submit to EPA a copy of that documentation when it submits to EPA the RCRA hazardous waste manifest for the import shipment. Finally, this action proposes a revision to the current language in §§ 262.55 and 262.87(b) that will require exception reports to be submitted directly to the Director, International Compliance and Assurance Division (ICAD), of the Office of Enforcement and Compliance Assurance (OECA), EPA Headquarters, rather than to the EPA Administrator. There is no discernable cost impact associated with this proposed requirement for exception reports to be submitted directly to the Director.

First, we assess all potential cost impacts (positive and negative) of the

proposed revisions to the OECD rule, including:

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

Next, we assess all potential cost impacts (positive and negative) of the proposed revisions to the SLAB regulations, including:

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

Finally, we analyze the proposed requirements that importers of hazardous waste subject to 40 CFR part 262, subpart F, provide to the initial transporter documentation necessary to confirm EPA's consent to the import to accompany such manifested import shipments, and that the receiving facility submit to EPA a copy of that documentation when it submits to EPA the RCRA hazardous waste manifest for the import shipment.

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

C. Cost Impacts

The total incremental cost for the OECD portion of the proposed rule during the first year of implementation (i.e., including reading the rule) is estimated to be $14,472. This is a net impact estimate that includes a total net incremental cost increase to the regulated community of $13,634, and a total net cost increase to EPA of $838. The total incremental annual net cost for the OECD portion after the first year of implementation (i.e., excluding reading the rules) is estimated to be $9,678.

The total incremental cost for the SLAB portion of the proposed rule during the first year of implementation (i.e., including reading the rule) is estimated at $851,000. The first year total incremental cost is expected to be about $780,000 for the affected U.S. industry and about $71,000 for EPA. The total incremental annual cost after the first year of implementation (i.e., excluding reading the rules) is estimated to be $404,000.

The combined total cost of the proposed rule (OECD portion, plus SLAB portion, plus import consent documentation portion) is estimated at $919,000 for the first year. Approximately 92.5% of this total is attributable to the SLAB portion of the proposal, followed by the EPA import consent documentation requirements representing about 5.9% of the total. The OECD portion accounts for about 1.6% of the total first year cost of the proposal. After the first year, the total incremental cost of the proposed rulemaking, omitting the cost of reading the rules, is estimated at $468,000.

Cost estimates presented in this section are based on our estimates for the number of potentially affected importers, exporters, and transporters. Numerous data sources were used in the derivation of these estimates, including: RCRAInfo, the Waste International Tracking System (WITS), industry consultations, the Biennial Report, the International Trade Commission (ITC), Environment Canada, and SEMARNAT [16] data. A full explanation of the data sources, analytical methodology, assumptions, and limitations associated with the findings presented above is presented in our Cost Assessment [17] document prepared in support of this proposed action. This document is available in the docket. Interested stakeholders are encouraged to read and comment on the analysis and findings presented in this document.

D. Benefits

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

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

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

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

[17] *Cost Assessment for the Proposed Rule on Exports and Imports of Hazardous Waste Destined for Recovery Among OECD Countries and Exports of Spent Lead-Acid Batteries from the U.S.*

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 cannot authorize States to administer Federal import/export functions in any section of the RCRA hazardous waste regulations. This promotes national coordination, uniformity and the expeditious transmission of information between the United States and foreign countries. Although States do not receive authorization to administer the Federal government's functions in subparts E or F, in accordance with 271.10, the State program must include requirements respecting international shipments equivalent to those at subparts E and F. States are also not authorized to administer the Federal government's functions in subpart H, but in this case, States are not required to adopt those provisions. However, EPA would encourage States to incorporate all the import and export related requirements into their regulations for the convenience of the regulated community and for completeness, particularly where a State has already incorporated 40 CFR part 262, subparts E, F and H, the import manifest submittal requirements in 264.71(a)(3) and 265.71(a)(3), or the domestic management provisions for SLABs in 40 CFR part 266, subpart G. If or when a State chooses to adopt these import/export provisions, when final, care should be taken not to replace Federal or international references with State terms. Moreover, if finalized, the provisions of today's notice would take effect in all States upon the effective date of the final rule.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

This rule, as proposed, is projected to result in a net increase in costs to certain importers, exporters, and transporters of affected hazardous wastes. Increased costs are also projected for the federal government. The total net cost of this proposal is estimated to be $919,000 during the first year following rule implementation. Exporters are projected to account for approximately 68 percent of this total. Benefits of this action include the U.S. meeting its legal obligations to implement the Amended 2001 OECD Decision, increased regulatory efficiency, reduced risks associated with the treatment and disposal of hazardous wastes, and improved data collection.

The total net cost estimate for this proposal is significantly below the $100 million threshold [18] established under part 3(f)(1) of the Order. Thus, this proposal is not considered to be an economically significant action. However, in an effort to comply with the spirit of the Order, we have prepared an economic assessment [19] in support of this proposed rule. The RCRA docket established for today's rulemaking maintains a copy of this document for public review. Interested persons are encouraged to read and comment on this document.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2308.01.

The proposal requires that the affected sources submit the following:

- Under the proposed OECD revisions: U.S. recovery facilities will have to submit a certificate of recovery to the foreign exporter, and to the competent authority of the country of export and EPA, as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following receipt of waste; U.S. facilities that exchange or accumulate the waste shipments (e.g., R12/R13 facilities) before final recovery at another facility (e.g., R1–R11 facilities) will have to prepare and provide a certificate of recovery for R12/R13 recovery operations, and provide and maintain a copy of the certificate of recovery for the subsequent R1–R11 recovery operations; U.S. recovery facilities that cannot complete the intended recovery and must re-export or otherwise return the hazardous waste shipment will have to submit new notification documents and comply with the associated Amber control procedures; and U.S. exporters will have to keep records of the additional certifications of recovery and any R12/R13 certifications they receive from recovery facilities in other OECD countries.
- Under the proposed SLAB revisions: SLAB exporters will have to: Comply with the full subpart H requirements if going to countries listed in § 262.58(a)(1) (e.g., submitting notices, originating a movement document for each shipment, keeping records of all confirmations of receipt and recovery they receive, submitting exception reports and annual reports, and recordkeeping); and comply with portions of the subpart E requirements if going elsewhere (e.g., submitting notices, providing a copy of EPA's Acknowledgement of Consent for each shipment, submitting annual reports and recordkeeping).
- Under the proposed import documentation revisions: U.S. receiving facilities will have to submit to EPA copies of documentation confirming EPA's consent to the import each time they submit to EPA a copy of the RCRA hazardous waste manifest for each hazardous waste import shipment within thirty (30) days of shipment delivery.

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

The estimated annual public reporting burden for the new paperwork requirements in the proposed rule is approximately 4.62 hours/year per respondent under the proposed OECD revisions; 20.73 hours/year per respondent under the proposed SLAB revisions; and 9.15 hours/year per

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

[19] *Cost Assessment for the Proposed Rule on Exports and Imports of Hazardous Waste Destined for Recovery Among OECD Countries and Exports of Spent Lead-Acid Batteries from the U.S. (Cost Assessment).*

respondent under the proposed import consent documentation. The annual public recordkeeping burden is estimated to average 10.20 hours/year per respondent under the proposed OECD revisions, and 0.25 hours/year per respondent under the proposed SLAB revisions. The total annual public burden is estimated to be 15,077 hours and $840,500 during the first year of implementation, and 9,024 hours and $389,600 after the first year. The capital and start-up plus total operation and maintenance costs are expected to be negligible. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–RCRA–2005–0018. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after October 6, 2008, a comment to OMB is best assured of having its full effect if OMB receives it by November 5, 2008. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

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

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

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities. The primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities,'' (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

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

While a significant number of exporters may be small businesses, the results of our analysis indicate that the cost to individual small entities in each potentially affected sector (as identified by NAICS codes) is likely to be insignificant. Our analysis specifically examined the potentially impacted small companies with fewer than 20 employees. The average annual gross sales of these companies were found to range from $0.4 million to $4.1 million, depending upon NAICS sector. The annual compliance costs for these companies, as a percentage of average annual gross sales, was found to range from 0.01 percent to 0.08 percent.

The reader is encouraged to review our regulatory flexibility screening analysis prepared in support of this determination. This analysis is incorporated into the *Cost Assessment*, which is available in the docket established for this proposal. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposal contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments, or the private sector, in large part because the UMRA does not apply to rules that are necessary for the national security or the ratification or implementation of international treaty obligations (e.g., the

Amended 2001 OECD Decision). In any event, EPA has determined that this rule, as proposed, does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The total cost impacts of this proposed action are estimated to be $919,000 during the first year, and approximately $468,000 per year thereafter.

Finally, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments are not affected by this action, as proposed.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

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

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. No Tribal governments are known to own or operate businesses that may be affected by this proposal. Thus, Executive Order 13175 does not apply to this proposed rule. EPA specifically solicits additional comment on our determination under this Order and on this proposed rule from tribal officials.

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

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

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children residing in the United States.

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

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

This rule, as proposed, will not seriously disrupt energy supply, distribution patterns, prices, imports or exports. In fact, this proposed rule is designed to improve regulatory efficiency and improve information collection, in part by implementing technical corrections and clarifications to the existing regulations.

I. National Technology Transfer Advancement Act

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

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

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

EPA has determined that this proposed rule will not have disproportionately high and/or adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment. This proposal is designed to improve regulatory efficiency and improve information collection, in part by implementing technical corrections and clarifications to the existing regulations.

List of Subjects

40 CFR Part 262

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

40 CFR Part 264

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

40 CFR Part 265

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

40 CFR Part 266

Environmental protection, Exports, Spent Lead-Acid Batteries, Recycling, Waste treatment and disposal.

40 CFR Part 271

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

Dated: September 19, 2008.

Stephen L. Johnson,

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 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

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

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

2. 262.55 is amended by revising the introductory text to read as follows:

§ 262.55 Exception reports.

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

* * * * *

3. Section 262.58 is revised to read as follows:

§ 262.58 International agreements.

(a) Any person who exports or imports hazardous waste subject to the Federal manifest requirements of part 262, or subject to the universal waste management standards of 40 CFR part 273, or subject to State requirements analogous to 40 CFR part 273, or exports spent lead-acid batteries subject to the spent lead-acid battery management standards of 40 CFR part 266, subpart G or subject to State requirements analogous to 40 CFR part 266, subpart G, to or from designated Member countries of the Organization for Economic Cooperation and Development (OECD) as defined in paragraph (a)(1) of this section for purposes of recovery is subject to subpart H of this part. The requirements of subparts E and F of this part do not apply to such exports and imports.

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

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

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

4. Section 262.60(e) is revised to read as follows:

* * * * *

(e) The importer must provide the transporter with an additional copy of the manifest and documentation confirming EPA's consent to the import of hazardous waste 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. Subpart H is revised to read as follows:

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

Sec.

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

§ 262.80 Applicability.

(a) The requirements of this subpart apply to imports and exports of wastes that are considered hazardous under U.S. national procedures and are destined for recovery operations in the countries listed in § 262.58(a)(1). A waste is considered hazardous under U.S. national procedures if it meets the Federal definition of hazardous waste in 40 CFR 261.3 and it is subject to either the Federal manifesting requirements at 40 CFR part 262, subpart B, to the universal waste management standards of 40 CFR part 273 or to State requirements analogous to 40 CFR part 273, or for exports only, if the waste is subject to 40 CFR part 266, subpart G or to State requirements analogous to 40 CFR part 266, subpart G.

(b) Any person (exporter, importer, or recovery facility operator) who mixes two or more wastes (including hazardous and non-hazardous wastes) or otherwise subjects two or more wastes (including hazardous and non-hazardous wastes) to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under RCRA and any exporter duties, if applicable, under this subpart.

§ 262.81 Definitions.

The following definitions apply to this subpart.

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

(b) *Countries concerned* means the OECD Member countries of export or import and any OECD Member countries of transit.

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

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

(e) *Country of transit* means any designated OECD Member country listed in § 262.58(a)(1) and (a)(2) other than the country of export or country of import across which a transboundary

movement of hazardous wastes is planned or takes place.

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

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

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

(i) *OECD* means the Organization for Economic Cooperation and Development.

(j) *OECD Decision* means the OECD ''Decision of the Council C(2001)107/FINAL, Concerning the Control of Transboundary Movements of Wastes Destined for Recovery Operations, as Amended by C(2004)20.''

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

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

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

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

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

§ 262.82 General conditions.

(a) *Scope.* The level of control for exports and imports of waste is indicated by assignment of the waste to either a list of wastes subject to the Green control procedures or a list of wastes subject to the Amber control procedures and by the national procedures of the United States, as defined in § 262.80(a). The two lists correspond to Appendices 3 and 4, respectively, of the OECD Decision and have been incorporated by reference in § 262.89(d).

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

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

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

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

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

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

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

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

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

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

(3) Procedures for mixtures of wastes.

(i) A Green waste that is mixed with one or more other Green wastes such that the resulting mixture is not considered hazardous under U.S. national procedures as defined in § 262.80(a) shall be subject to the Green control procedures, provided the composition of this mixture does not impair its environmentally sound recovery.

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

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

Note to paragraph (a)(3)(ii): The regulated community should note that some OECD

Member countries may require, by domestic law, that a mixture of a Green waste and more than a *de minimis* amount of an Amber waste or a mixture of two or more Amber wastes be subject to the Amber control procedures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

retain the original of the movement document for three (3) years.

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

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

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

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

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

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

§ 262.83 Notification and consent.

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

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

(1) Transactions requiring specific consent:

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

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

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

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

(i) *Notification.* The exporter must provide EPA a notification that contains all the information identified in paragraph (d) of this section in English, at least ten (10) days in advance of commencing shipment to a pre-approved facility. The notification must indicate that the recovery facility is pre-approved, and may apply to a single specific shipment or to multiple shipments as described in paragraph (b)(1)(i) of this section. This information must be sent to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, with the words ''OECD Export Notification—Pre-approved Facility'' prominently displayed on the envelope. General notifications that cover multiple shipments as described in paragraph (b)(1)(i) of this section may cover a period of up to three (3) years. Even when a general notification is used for multiple shipments, each shipment still must be accompanied by its own movement document pursuant to § 262.84.

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

(c) *Wastes not covered in Appendices 3 and 4 of the OECD Decision.* Wastes destined for recovery operations, that have not been assigned to Appendices 3 or 4 of the OECD Decision, but which are considered hazardous under U.S. national procedures as defined in § 262.80(a), are subject to the

notification and consent requirements established for the Amber control procedures in accordance with paragraph (b) of this section. Wastes destined for recovery operations, that have not been assigned to Appendices 3 or 4 of the OECD Decision, and are not considered hazardous under U.S. national procedures as defined by § 262.80(a) are subject to the Green control procedures.

(d) *Notifications submitted under this section must include the information specified in paragraphs (d)(1) through (d)(14) of this section:*

(1) Serial number or other accepted identifier of the notification document;

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

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

(4) Importer name (if not the owner or operator of the recovery facility), address, telephone and fax numbers, and e-mail address; whether the importer will engage in waste exchange or storage, meeting the definition of R12 or R13 recovery operations in § 262.81(m), prior to delivering the waste to the final recovery facility and identification of recovery operations to be employed at the final recovery facility;

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

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

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

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

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

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

(11) Means of transport envisaged;

(12) Designation of waste type(s) from the appropriate list (Part I or II of Appendix 3 or 4) of the OECD Decision, description(s) of each waste type, estimated total quantity of each, RCRA waste code, and the United Nations number for each waste type;

(13) Specification of the recovery operation(s) according to § 262.81(m).

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

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

Name: _____

Signature: _____

Date: _____

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

(e) *Certificate of Recovery.* As soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following receipt of the waste, the U.S. recovery facility shall send a certificate of recovery to the exporter and to the competent authorities of the countries of export and import by mail, e-mail without a digital signature followed by mail, or fax followed by mail.

§ 262.84 Movement document.

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

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

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

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

(1) Date movement commenced;

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

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

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

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

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

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

1. All necessary consents have been received; OR

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

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

(Delete sentences that are not applicable)

Name: _____

Signature: _____

Date: _____

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

(c) Exporters also must comply with the special manifest requirements of 40 CFR 262.54(a), (b), (c), (e), and (i) and importers must comply with the import requirements of 40 CFR part 262, subpart F.

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

(e) Within three (3) working days of the receipt of imports subject to this subpart, the owner or operator of the U.S. recovery facility must send signed copies of the movement document to the exporter, to the Office of

Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and to the competent authorities of the countries of export and transit. If the concerned U.S. recovery facility is a R12/R13 recovery facility under § 262.81(m), the facility shall retain the original of the movement document for three (3) years.

§ 262.85 Contracts.

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

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

(1) The generator of each type of waste;

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

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

(4) The recovery facility.

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

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

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

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

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

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

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

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

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

§ 262.86 Provisions relating to recognized traders.

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

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

§ 262.87 Reporting and recordkeeping.

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

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

(2) The calendar year covered by the report;

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

(4) By final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from 40 CFR part 261, subpart C or D), designation of waste type(s) and applicable waste code(s) from the appropriate OECD waste list (Appendices 3 or 4 of the OECD Decision), DOT hazard class, the name and U.S. EPA identification number (where applicable) for each transporter used, the total amount of hazardous waste shipped pursuant to this subpart, and number of shipments pursuant to each notification;

(5) In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters

of greater than 100kg but less than 1000kg in a calendar month, and except for hazardous waste for which information was already provided pursuant to § 262.41:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 262.89 OECD waste lists.

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

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

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

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

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

(d) The OECD waste lists, entitled ''List of Wastes Subject to the Green Control Procedure'' and ''List of Wastes Subject to the Amber Control Procedure,'' are set forth in Appendix 3 and Appendix 4, respectively, of the OECD Decision. These lists are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 on [date of approval for incorporation by reference]. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**. The materials are available for inspection at: the U.S. Environmental Protection Agency, Docket Center Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004 (Docket # EPA–HQ–RCRA–2005–0018) or at the National Archives and Records Administration (NARA), and may be obtained from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue André Pascal, F–75775 Paris Cedex 16, France. For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

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

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

7. Section 264.12(a)(2) is revised to read as follows:

§ 264.12 Required notices.

(a)(1) * * *

(2) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H must provide a copy of the movement document bearing all required signatures to the foreign exporter; to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue. NW., Washington, DC 20460; and to the competent authorities of all other countries concerned within three (3) working days of receipt of the shipment. The original of the signed movement document must be maintained at the facility for at least three (3) years. In addition, such owner or operator shall, as soon as possible, but no later than thirty (30) days after the completion of recovery and no later

than one (1) calendar year following the receipt of the hazardous waste, send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to EPA's Office of Enforcement and Compliance Assurance at the above address by mail, e-mail without a digital signature followed by mail, or fax followed by mail.

* * * * *

8. Section 264.71(a)(3) is revised to read as follows:

§ 264.71 Use of manifest system.

(a)(1) * * *

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

* * * * *

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

9. 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.

10. Section 265.12(a)(2) is revised to read as follows:

§ 265.12 Required notices.

(a)(1) * * *

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

* * * * *

11. Section 265.71(a)(3) is revised to read as follows:

§ 265.71 Use of manifest system.

(a)(1) * * *

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

* * * * *

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

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

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

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

§ 266.80 Applicability and requirements.

(a) * * *

If your batteries * * *	And if you * * *	Then you * * *	And you * * *
(1) Will be reclaimed through regeneration (such as by electrolyte replacement).	.....	Are exempt from 40 CFR parts 262 (except for § 262.11), 263, 264, 265, 266, 268, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	Are subject to 40 CFR parts 261 and § 262.11 of this chapter.
(2) Will be reclaimed other than through regeneration.	Generate, collect, and/or transport these batteries.	Are exempt from 40 CFR parts 262 (except for § 262.11), 263, 264, 265, 266, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	Are subject to 40 CFR parts 261 and § 262.11, and applicable provisions under part 268.
(3) Will be reclaimed other than through regeneration.	Store these batteries but you aren't the reclaimer.	Are exempt from 40 CFR parts 262 (except for § 262.11), 263, 264, 265, 266, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	Are subject to 40 CFR parts 261, § 262.11, and applicable provisions under part 268.
(4) Will be reclaimed other than through regeneration.	Store these batteries before you reclaim them.	Must comply with 40 CFR 266.80(b) and as appropriate other regulatory provisions described in 266.80(b).	Are subject to 40 CFR parts 261, § 262.11, and applicable provisions under part 268.
(5) Will be reclaimed other than through regeneration.	Don't store these batteries before you reclaim them.	Are exempt from 40 CFR parts 262 (except for § 262.11), 263, 264, 265, 266, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	Are subject to 40 CFR parts 261, § 262.11, and applicable provisions under part 268.

If your batteries * * *	And if you * * *	Then you * * *	And you * * *
(6) Will be reclaimed through regeneration or any other means.	Export these batteries for reclamation in a foreign country.	Are exempt from 40 CFR parts 263, 264, 265, 266, 268, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA. You are also exempt from part 262, except for 262.11, and except for the applicable requirements in either:. (1) 40 CFR part 262 subpart H; or (2) 262.53 ''Notification of Intent to Export, 262.56(a)(1) through (4), (6), and (b) ''Annual Reports,'' and 262.57 ''Recordkeeping''.	Are subject to 40 CFR part 261 and §262.11, and either must comply with 40 CFR part 262, subpart H (if shipping to one of the OECD countries specified in 40 CFR 262.58(a)(1)), or must: (a) Comply with the requirements applicable to a primary exporter in 40 CFR 262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57; and (b) Export these batteries only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in subpart E of part 262 of this chapter; and (c) Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.
(7) Will be reclaimed through regeneration or any other means.	Transport these batteries in the U.S. to export them for reclamation in a foreign country.	Are exempt from 40 CFR parts 263, 264, 265, 266, 268, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	Must comply with applicable requirements in 40 CFR part 262, subpart H (if shipping to one of the OECD countries specified in 40 CFR 262.58(a)(1)), or must comply with the following: (a) You may not accept a shipment if you know the shipment does not conform to the EPA Acknowledgment of Consent; (b) You must ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment; and (c) You must ensure that the shipment is delivered to the facility designated by the person initiating the shipment.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

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

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

15. Section 271.1(j) is amended by adding the following entries to Table 1 and Table 2 in chronological order by date of publication in the **Federal Register**, to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

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

Promulgation date	Title of regulation	**Federal Register** reference	Effective date
* *	*	* *	* *
[Insert date of publication of final rule in the **Federal Register** (FR)].	Exports of hazardous waste	[Insert FR page numbers]	[Insert date of X months from date of publication of final rule].

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

Effective date	Self-implementing provision	RCRA citation	**Federal Register** reference
* *	* *	*	* *
[Insert date X days after of publication of final rule in the **Federal Register** (FR)].	Exports of hazardous waste	3017(a)	[Insert **Federal Register** reference for publication of final rule].

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