STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendments of Rules Governing the Management, Storage, Treatment, and Disposal of Hazardous Waste, Minn. Rules Pts. 7045.0020, 7045.0125, 7045.0135, 7045.0139, 7045.0219, 7045.0296, 7045.0302, 7045.0375, and 7045.0381

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The subject of this proceeding is the amendment of the rules of the Minnesota Pollution Control Agency (hereinafter "Agency") governing the management, treatment, storage, and disposal of hazardous waste. The amendments will incorporate provisions promulgated by the U.S. Environmental Protection Agency (hereinafter "EPA") under the Resource Conservation and Recovery Act (hereinafter "RCRA") and provisions of the Hazardous and Solid Waste Amendments of 1984 (hereinafter "HSWA"). The amendments also incorporate changes necessary to maintain consistent rule language.

The EPA promulgated regulations under HSWA governing exports of hazardous waste and published these regulations in the August 8, 1986, Federal Register (51 FR 28664-28686)(Exhibit 1). The August 8, 1986, regulations are hereinafter referred to as the exports regulations. The proposed amendments to Minnesota's hazardous waste rules incorporate most of the federal regulations resulting from the August 8, 1986, publication.

The EPA published additional amendments to its hazardous waste regulations

regarding the identification and listing of hazardous waste. The amendments added to the listings four wastes which are generated during the production or formulation of ethylenebisdithiocarbamic acid and its salts. These amendments were promulgated under RCRA and were published in the Federal Register on October 24, 1986 (51 FR 37725-37729) (Exhibit 2). The proposed amendments to Minnesota's hazardous waste rules incorporate these federal listings.

These rule amendments are proposed pursuant to the Agency's authority under Minn. Stat. § 116.07, Subd. 4 (1986).

This Statement of Need and Reasonableness is divided into seven parts. Following this introduction, Part II contains the Agency's explanation of the need for the proposed amendments. Part III discusses the reasonableness of the proposed amendments. Part IV documents how the Agency has considered the methods of reducing the impact of the proposed amendments on small businesses as required by Minn. Stat. § 14.115 (1986). Part V documents the economic factors the Agency considered in drafting the amendments as required by Minn. Stat. § 116.07, Subd. 6 (1986). Part VI sets forth the Agency's conclusion regarding the amendments. Part VII contains a list of the exhibits relied on by the Agency to support the proposed amendments. The exhibits are available for review at the Agency's offices at 520 Lafayette Road, St. Paul, Minnesota 55155.

II. NEED FOR THE PROPOSED AMENDMENTS TO THE HAZARDOUS WASTE RULES

Minn. Stat. Ch. 14 (1986) requires an agency to make an affirmative presentation of facts establishing the need for and reasonableness of the rules or amendments proposed. In general terms, this means that an agency must set forth the reasons for its proposal, and the reasons must not be arbitrary or

capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention and reasonableness means that the solution proposed by an agency is appropriate.

Need is a broad test that does not easily lend itself to evaluation of each proposed revision. In the broad sense, the need for amendments to the Agency's rules governing the management, treatment, storage, and disposal of hazardous waste has two bases: (1) the need for consistency with the federal hazardous waste regulations, and (2) the need for rules which provide protection of human health and the environment without unduly restricting normal commerce.

A. Need for Consistency with Federal Regulations

In 1976, Congress adopted RCRA to regulate the management of hazardous waste. 42 U.S.C. § 6901 et seq. In adopting RCRA, Congress provided for eventual State control of the hazardous waste program and set up the mechanism for the EPA to grant authority to states to operate the program. In states that receive authorization, the State environmental agency administers the State program in lieu of the federal program. To receive and maintain authorization, the State program must be "equivalent" to the federal program and consistent with federal or State programs applicable in other states. EPA has defined equivalent to mean that the state requirements are at least as stringent as federal requirements. In terms of consistency, EPA's goal is to achieve an integrated national program which requires that final State programs do not conflict with each other or with the federal program.

Minnesota received final authorization for its hazardous waste program pursuant to RCRA as amended in 1980 from EPA effective February 11, 1985. See

50 FR 3756 (January 28, 1985). A state with final authorization administers its hazardous waste program in lieu of the EPA program for those regulations which were promulgated pursuant to RCRA as adopted in 1976 and as amended in 1980.

However, the authorization did not extend to those requirements promulgated pursuant to HSWA. A state must obtain authorization specifically under HSWA. Before the Agency can apply for authorization under HSWA, any rule amendments intended to maintain equivalency to the federal program must be in effect in Minnesota. The existing federal regulations establish specific time frames for the adoption of State rules intended to maintain equivalency to the federal rules.

Although a state program may be more stringent than the federal requirements and states are not required to adopt less stringent federal standards, the Agency believes it is important to maintain as much consistency as possible between Minnesota's rules and the federal program. Much of the hazardous waste generated in Minnesota must be sent to other states for treatment or disposal because Minnesota has no commercial disposal facilities and only very limited commercial treatment facilities. This means that many generators must be knowledgeable about requirements of both the State and federal hazardous waste programs. The need to comply with multiple sets of rules makes compliance difficult. Therefore, to the extent it can be accomplished without posing a threat to human health and the environment, amendment of Minnesota's hazardous waste rules to incorporate EPA's amendments is desirable.

B. Need for Managing Hazardous Waste Consistent with the Protection of Human Health and the Environment.

The proposed amendments to the Minnesota hazardous waste rules include provisions protective of human health and the environment. The proposed amendments include provisions which prohibit the export of hazardous waste unless certain requirements are met, which include advance written notification of the plan to export hazardous waste, prior written consent to such plan by the receiving country, and conformance of the shipment to such consent. In addition, manifest, reporting, recordkeeping, and transporter requirements for exporting hazardous waste are proposed. Also, additional protection is provided in the proposed amendments by expanding the lists of hazardous wastes to include four wastes generated during the production and formulation of ethylenebisdithiocarbamic acid and its salts. The hazardous constituent in these wastes is ethylene thiourea which is carcinogenic, teratogenic, and shows evidence of mutagenicity.

III. REASONABLENESS OF THE PROPOSED AMENDMENTS TO THE HAZARDOUS WASTE RULES

The Agency is required by Minn. Stat. Ch. 14 (1986) to make an affirmative presentation of facts establishing the reasonableness of the proposed rules or amendments. Reasonableness is the opposite of arbitrariness and capriciousness. It means that there is a rational basis for the Agency's action. The reasonableness of each of the proposed amendments is discussed below.

A. Minn. Rules pt. 7045.0020 (Definitions).

The Agency is proposing to amend Minn. Rules pt. 7045.0020 to add five definitions which are important to the proposed amendments. These definitions

add terms which are used in the federal exports regulations (Exhibit 1). It is reasonable to define these terms in the rules in order to maintain consistency with the federal program. Because all five terms are used elsewhere in the amendments, it is reasonable to define them so that the regulated community and other entities applying the rules can understand the requirements of the amendments. The terms are "consignee" (subp. 16a), "EPA Acknowledgment of Consent" (subp. 21a), "primary exporter" (subp. 72a), "receiving country" (subp. 73A), and "transit country" (subp. 93a).

"Consignee" is equivalent to the federal definition in 40 C.F.R. § 262.51. The consignee is the facility in a foreign country to which the hazardous waste will ultimately be sent for treatment, storage, or disposal. It is reasonable to define the term to make it clear what the term means with respect to exports of hazardous waste.

"EPA Acknowledgment of Consent" is equivalent to the federal definition in 40 C.F.R. § 262.51. The EPA Acknowledgment of Consent is the cable sent to EPA from the U.S. Embassy in a foreign country which acknowledges that the foreign country has given consent to accept the hazardous waste and sets out the terms and conditions of the consent. It is reasonable to define the term so that the regulated community and other entities applying the rules can understand the requirements of the exports amendments.

"Primary exporter" is equivalent to the federal definition in 40 C.F.R. § 262.51 as well. A primary exporter is the person who originates the manifest for a hazardous waste shipment and who specifies the ultimate treatment, storage, or disposal facility in a foreign country as the facility to which the shipment will be sent and any intermediary arrangements for the export. It is

reasonable to define the term so that the rules clearly identify the person responsible for originating the manifest and selecting the facility to which the shipment is destined.

"Receiving country" is equivalent to the federal definition in 40 C.F.R. § 262.51. A receiving country is the foreign country to which a hazardous waste shipment is ultimately sent for treatment, storage, or disposal. Defining the term will enable the regulated community to understand the export requirements.

"Transit country" is also equivalent to the federal definition in 40 C.F.R. § 262.51. A transit country is any and all countries through which the exported hazardous waste will travel before entering the foreign country in which the waste will be treated, stored, or disposed of. It is reasonable to define the term in the rules to provide exporters of hazardous waste with a clear understanding of the exports amendments.

B. Minn. Rules Pt. 7045.0125 (Management of Waste by Use, Reuse, Recycling, and Reclamation).

With some noted exceptions, existing Minn. Rules pt. 7045.0125 establishes the requirements for hazardous waste that is to be recycled. The existing rule expressly exempts industrial ethyl alcohol from certain regulatory requirements of the hazardous waste rules (see existing Minn. Rules pt. 7045.0125, subp. 4). When it was enacted, existing Minn. Rules pt. 7045.0125 was equivalent to the parallel federal rule then in effect [40 C.F.R. Part 261.6(a)(3)(i)]. However, that federal rule was recently amended (Exhibit 1). The Agency now proposes to amend Minn. Rules pt. 7045.0125 to make it equivalent to the current version of 40 C.F.R. Part 261.6(a)(3)(i). Each of the revisions proposed by the Agency to accomplish the equivalency are discussed below.

First the Agency proposes to revise Minn. Rules pt. 7045.0125, subp. 4. Currently, that subpart exempts industrial ethyl alcohol from certain regulatory requirements of the hazardous waste rules. The federal revisions to its parallel rule limited this exemption by specifying particular requirements for industrial ethyl alcohol which is exported. The Agency proposes to amend Minn. Rules pt. 7045.0125, subp. 4 to similarly limit the exemption. The proposed amendments would accomplish this limitation by stating that industrial ethyl alcohol that is reclaimed is exempt from specified requirements of the hazardous waste rules except as provided in Minn. Rules pt. 7045.0125, subp. 12.

Minn. Rules pt. 7045.0125, subp. 12 is a proposed new subpart. This new subpart would establish the exporting requirements for industrial ethyl alcohol that is to be reclaimed in a foreign country. Proposed subpart 12 would require a person initiating the export of industrial ethyl alcohol and any intermediary arranging for the export to provide notification to EPA, export only with the consent of the receiving country and in conformance with the consent, provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the material for export, submit an annual report, and retain certain records. In addition, subpart 12 would require transporters to: refuse to accept industrial ethyl alcohol for export if the shipment does not conform to the EPA Acknowledgment of Consent; ensure that the EPA Acknowledgment of Consent accompanies the waste; and ensure that the waste is delivered to the facility designated by the person initiating the shipment.

The export requirements for industrial ethyl alcohol that is reclaimed are reasonable because they will allow the Agency to track the exportation of the waste from Minnesota to ensure that it is being accomplished in a manner that is

acceptable to the Agency and the transit and receiving countries. These requirements are equivalent to the provisions of 40 C.F.R. § 261.6(a)(3)(i).

C. Minn. Rules Pt. 7045.0135 (Lists of Hazardous Wastes).

Minn. Rules pt. 7045.0135 is entitled "Lists of Hazardous Wastes." The Agency is proposing to amend subpart 3 of this rule.

Subpart 3 lists hazardous wastes from specific sources. The proposed amendment to subpart 3 would add four groups of hazardous wastes to the previously listed wastes. These added wastes are taken verbatim from federal amendments to the federal hazardous waste regulations.

These four wastes (hazardous waste numbers K123, K124, K125, and K126) are generated during the production or formulation of ethylenebisdithiocarbamic acid (EBDC) and its salts. The hazardous constituent in these four wastes is ethylene thiourea (ETU). ETU is a carcinogen in animals, a potential carcinogen in humans, a teratogen, a mutagen, and also causes thyroid effects. A discussion of the reasonableness of amending the hazardous waste rules to include these four additions is provided in the December 20, 1984, Federal Register (49 FR 49562-49565) (Exhibit 3).

D. Minn. Rules Pt. 7045.0139 (Basis for Listing Hazardous Wastes).

Existing Minn. Rules pt. 7045.0139 lists the constituents which caused the Agency to list wastes as hazardous under Minn. Rules pt. 7045.0135, subps. 2 and 3. Since the Agency is proposing to amend its hazardous waste lists to include four additional wastes (see discussion above regarding K123, K124, K125, and K126 wastes), the Agency also is proposing to amend its constituents list to identify the constituents causing the listing under Minn. Rules pt. 7045.0135. The proposed amendments are taken verbatim from the recently amended federal

regulations (Exhibit 2). It is reasonable to amend Minn. Rules pt. 7045.0139 in order to maintain consistency within the rules and with federal regulations.

E. Minn. Rules Pt. 7045.0219 (Special Requirements for Small Quantity Generators of Hazardous Waste).

Minn. Rules pt. 7045.0219, subp. 5 describes the requirements that small quantity generators of hazardous waste must meet in managing their hazardous wastes. Existing Minn. Rules pt. 7045.0219, subp. 5, item B, subitem 8, requires a small quantity generator to ensure delivery of his waste to an on-site facility or off-site facility either of which meet one of the following four criteria: (1) be permitted by the Agency; (2) be in interim status by the Agency; (3) be approved by the EPA or by another state with EPA authorization; or (4) be a facility which beneficially uses, reuses, recycles, or reclaims the waste or treats it prior to use, reuse, recycling, or reclamation.

As item B, subitem 8 currently reads, a small quantity generator who exports hazardous waste to a foreign country would be unable to comply with any of the above criteria and would be in violation of the hazardous waste rules since facilities in foreign countries are not permitted or approved by the EPA or the Agency because of jurisdictional constraints. This was not the intent of the rule. The intent of the rule is to require that one of the four criteria is met only if a small quantity generator delivers the waste to an on-site or off-site facility located in the United States.

The proposed amendment would clarify subitem 8 by making it applicable to domestic shipments only. This proposed amendment would not otherwise change export requirements and small quantity generators of hazardous wastes would continue to be required to comply with Minn. Rules pt. 7045.0302, which

establishes special conditions for international shipments of wastes.

The Agency's proposed amendment of item B, subitem 8 is reasonable because it clarifies a prior ambiguity in the rules. Finally, the amendment is equivalent to 40 C.F.R. § 261.5(g)(3) and is reasonable for the same reasons stated by EPA in adopting that rule (Exhibit 1).

F. Minn. Rules Pt. 7045.0296 (Annual Reporting).

Minn. Rules pt. 7045.0296 sets forth the reporting requirements for generators of hazardous waste regarding their management practices. As the rule currently states, generators who deliver hazardous waste to an off-site facility must submit annual reports containing information required in the rule. The rule currently makes no distinction between reporting requirements for off-site facilities located in the United States and reporting requirements for off-site facilities located in a foreign country. However, reporting requirements for exports of hazardous waste are set forth in Minn. Rules pt. 7045.0302 entitled "International Shipments; Special Requirements." Therefore, the Agency is amending Minn. Rules pt. 7045.0296 to clarify that the reporting requirements specified in this part apply to the use of an off-site facility which is located in the United States. The Agency is also clarifying the rule to require that each report specify the calendar year covered by the report. Finally, the Agency is also adding a subpart (subpart 4) to explain that the reporting requirements for generators who export hazardous waste are specified in Minn. Rules pt. 7045.0302, subp. 6. The amendments are reasonable because they clarify for generators who ship hazardous waste off-site the specific reporting requirements with which they are required to comply. The amendments also make the rule equivalent to 40 C.F.R. § 261.41.

G. Minn. Rules Pt. 7045.0302 (International Shipments; Special Conditions).

The Agency is proposing to amend Minn. Rules pt. 7045.0302 to incorporate EPA requirements regarding the export of hazardous waste (Exhibit 1). Subpart 1 is proposed to be amended to provide the general requirements for exporting hazardous waste. The amendment provides that exports of hazardous waste are prohibited except in compliance with the requirements specified in the rule. The amendment is equivalent to 40 C.F.R. § 262.52. It is reasonable to include these provisions so that the regulated community understands the circumstances under which exports of hazardous waste are prohibited. Omission of these provisions would be less stringent than the federal regulations.

Subpart 2 of Minn. Rules pt. 7045.0302 is proposed to be amended to specifically set forth the notification requirements a generator must comply with for exports of hazardous waste. The amendments require an exporter to notify EPA and the Agency of an intended export before the waste is exported. The notification must be submitted at least 60 days prior to the intended date of the initial shipment. The 60 day requirement allows a reasonable amount of time for transmission of the notification to the receiving country, receipt of the receiving country's consent or objection to the export, and transmission of an EPA Acknowledgment of Consent to the exporter. The amendments also require the notification to be in writing and signed by the exporter. This requirement will ensure accurate transmission of the information to the Agency and EPA and the usefulness of the document in enforcement actions. Subpart 2 is also being amended to specifically list the information to be included in the exporting notification. The information requirements will provide a detailed "cradle-to-grave" description of the itinerary that an exporter of hazardous

waste intends to follow for particular shipments. The requirements are reasonable because the EPA, the Agency, and the receiving country need to know this information in order to approve or deny a shipment. The requirements of this amendment are equivalent to 40 C.F.R. § 262.53.

Subpart 3 is amended to add an item (item C) requiring that a generator file an exception report with the Agency and EPA if the exported waste is returned to the United States. The Agency is concerned that shipments which are returned to the United States may not be properly managed. This provision will allow the Agency to properly track returned shipments to ensure responsible management. This requirement is reasonable because the Agency believes that it is of interest for tracking and enforcement purposes to know that a hazardous waste shipment was rejected when consent by the foreign country was provided. This provision is equivalent to 40 C.F.R. § 262.55. Also, this provision is consistent with the exception reporting requirements for domestic shipments of hazardous wastes which are currently in effect.

Subpart 3 is also proposed to be amended to clarify existing language and to replace an exisiting word with a word defined in the amendment to Minn. Rules pt. 7045.0020 entitled "Definitions" (see Section A) and which is now properly applied in the rules. Specifically, the existing word "generator" is being replaced by "primary exporter." The amendment is reasonable because it provides clarity in the rules.

The Agency is proposing to amend subpart 4 entitled "Manifest" which sets forth the manifest requirements for hazardous waste imports. The amendment renames the subpart "Importer Manifest Requirements." Since the Agency is amending Minn. Rules pt. 7045.0302 to add a subpart setting forth exporter

manifest requirements (a discussion of which directly follows), renaming subpart 4 is reasonable in order to provide clarity in the rules.

As was discussed above, the Agency is proposing to amending Minn. Rules pt. 7045.0302 by deleting existing subpart 5, renaming it "Exporters Manifest Requirements" and by revising it with new language. These amendments set forth special manifest requirements pertaining to exports of hazardous waste. The manifesting requirements of the amendment will allow the Agency to track the movement of an international shipment in order to determine compliance with the rules. The manifest requirements for exports are consistent with existing manifest requirements with the major difference being in the terminology used. Terminology provided in the manifest for domestic shipments is not applicable to exports. Therefore, the amendments specify the terminology to be used in an export manifest. The effect of the manifest requirements for both domestic and export shipments is equivalent. The requirements of this amendment are equivalent to 40 C.F.R. § 262.54. It is reasonable to include these provisions so that the regulated community understands the requirements for exports manifesting. Omissions of these requirements would be less stringent than the federal regulations.

Further, the Agency proposes to delete existing Minn. Rules pt. 7045.0302, subp. 5 entitled "Annual Reports" in order to replace it with a new rule, set forth in subpart 6 incorporating EPA requirements regarding exports reporting requirements. Proposed subpart 6 specifies the information that a primary exporter is required to submit in the annual report. The amendment is reasonable because it is consistent with current annual reporting requirements for domestic shipments and will enable the Agency to determine whether exporters

have complied with the rules. The amendment is equivalent to 40 C.F.R. § 262.56.

The Agency is also proposing to add a subpart (subpart 7) to specify the recordkeeping requirements with which exporters of hazardous waste must comply. The recordkeeping requirements are consistent with current recordkeeping requirements for hazardous waste generators. For enforcement purposes, the amendment requires an exporter to retain special documents relative to exports for a period of three years. These documents include the notification of intent to export, the EPA Acknowledgment of Consent, the confirmation of delivery, and the annual report. Since the burden of proof is with the generator/exporter to show compliance with the export requirements should the Agency staff visit or inspect an exporter's site, it is reasonable to require the exporter to retain these records. The amendment is equivalent to 40 C.F.R. § 265.57.

H. Minn. Rules Pt. 7045.0375 (The Manifest System; General Requirements).

Existing Minn. Rules pt. 7045.0375 specifies the general manifesting requirements for transporters of hazardous waste. The Agency is proposing to amend subpart 1 of Minn. Rules pt. 7045.0375 by adding two circumstances in which transporters of hazardous waste may not accept waste for export. Transporters cannot accept waste for export if the shipment does not conform to the EPA Acknowledgment of Consent or if the waste is not accompanied by the EPA Acknowledgment of Consent. These provisions are reasonable because they will ensure that the wastes are managed properly in accordance with the EPA Acknowledgment of Consent. They will also provide a ready reference for transportation inspectors who will be seeking to determine compliance of the shipment. The two circumstances added are equivalent to 40 C.F.R. § 263.20.

Omission of these requirements would be less stringent than the federal regulations.

The Agency is also proposing to amend subpart 3 to require export transporters to ensure that a copy of the EPA Acknowledgment of Consent accompanies the hazardous waste when shipped. This amendment enables transportation inspectors, transit countries, and receiving countries to determine whether the shipment is in compliance with the terms of the EPA Acknowledgment of Consent. The amendment is equivalent to 40 C.F.R. § 263.20.

I. Minn. Rules Pt. 7045.0381 (Use of Manifest).

The Agency is proposing to amend Minn. Rules pt. 7045.0381 (subps. 2 and 3) to require transporters shipping hazardous waste for export by water or by rail to ensure that a copy of the EPA Acknowledgment of Consent accompanies the waste. The amendment provides consistency in the rules based on the amendment to Minn. Rules pt. 7045.0375 (see Section H) which requires all export transporters to ensure that a copy of the EPA Acknowledgment of Consent accompanies the waste at all times. This amendment is reasonable because it enables transportation inspectors, transit countries, and receiving countries to determine whether the shipment is in compliance with the terms of the EPA Acknowledgment of Consent. The amendment is equivalent to 40 C.F.R. § 263.20.

The Agency is also proposing to amend subpart 4 to require export transporters to give a copy of the manifest to a United States customs official at the point of departure from the United States. This provision is reasonable because it allows the EPA and the Agency to properly track the shipment to ensure that it is in compliance with the terms of the EPA Acknowledgment of Consent. The amendment is equivalent to 40 C.F.R § 263.20.

IV. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.115, Subd. 2 (1986) requires the Agency, when proposing amendments to existing rules which may affect small businesses, to consider the impact of the rule amendment on small business. The objective of Minn. Stat. Ch. 116 (1986) is to protect the public health and welfare and the environment from the adverse effects which will result when hazardous waste is mismanaged. Application of less stringent standards to the hazardous wastes generated or managed by small businesses would be contrary to the Agency's mandate since small businesses' hazardous wastes can cause the same environmental harms as that of larger businesses. Some additional expenses will be incurred as a result of the amendments due to changes in management requirements though these costs are difficult for the Agency to quantify in the abstract. However, these requirements are justified under the circumstances.

Those aspects of the amendments that are based on federal regulations promulgated under HSWA are already in effect in Minnesota. Incorporation of these provisions into the State rules will not impose any additional requirements on small businesses that are not currently being imposed by the federal regulations in effect in Minnesota and elsewhere in the nation.

Also, the Agency has not received any information to establish that there are any small businesses that generate EBDC wastes in Minnesota. Therefore, the addition of the EBDC wastes to the listings of hazardous wastes will have no impact on small businesses due to the lack of generators and facilities handling EBDC wastes in Minnesota. However, the Agency is proposing to adopt the EBDC amendments to properly manage EBDC wastes should a generator or facility managing EBDC waste be established in Minnesota in the future.

V. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency is required by Minn. Stat. § 116.07, Subd. 6 (1986) to give due consideration to economic factors. The statute provides:

> In exercising all its powers the Pollution Control Agency shall give due consideration to the establishment, maintenance, operation, and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances.

In proposing the requirements of these amendments governing hazardous waste listings and exports of hazardous waste, the Agency has given due consideration to available information as to any economic impacts the proposed amendments would have. The exports amendments will have some economic impacts for exporters of hazardous waste. The amendments will impact exporters of hazardous waste administratively by requiring more extensive notification, reporting requirements, and manifesting. The Agency does not believe the economic impacts will be substantial. Also, the exports amendments are based on federal regulations promulgated under HSWA which are already in effect in Minnesota. Incorporation of these provisions into the State rules will not impose any additional requirements on exporters of hazardous waste that are not currently being imposed by the federal regulations in effect in Minnesota.

Listing the EBDC wastes as hazardous will have economic impacts for generators of these wastes. However, the Agency has not received any information to establish that Minnesota has any generators of EBDC wastes.

Therefore, there will be no economic impacts to any existing businesses or municipalities due to this amendment.

VI. CONCLUSION

The Agency has, in this document and its exhibits, made its presentation of facts establishing the need for and reasonableness of the proposed amendments to Minnesota's hazardous waste rules. This document constitutes the Agency's Statement of Need and Reasonableness for the proposed amendments to the hazardous waste rules.

VII. LIST OF EXHIBITS

The Agency is relying on the following documents to support these amendments.

Agency Ex. No.	Title
1	Federal Register, Vol. 51, No. 153, Pages 28664-28686, August 8, 1986.
2	Federal Register, Vol. 51, No. 206, Pages 37725-37729, October 24, 1986.
3	Federal Register, Vol. 49, No. 246, Pages 49562-49565, December 20, 1984.
4	Federal Register, Vol. 51, No. 49, Pages 8744-8760, March 13, 1986.

Date: September 14, 1987

Thomas J. Kalitowski

Commissioner

ENVIRONMENTAL PROTECTION AGENCY

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

[SW-3038-3]

Hazardous Waste Management System; Exports of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On March 13, 1986, the U.S. Environmental Protection Agency (EPA) proposed regulations under the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), that would apply to exports of hazardous waste (51 FR 10146). EPA is today promulgating the final regulations on this subject. Consistent with HSWA, the regulations prohibit the export of hazardous waste unless certain requirements are met. These requirements include advance written notification to EPA of the plan to export hazardous waste, prior written consent to such plan by the receiving country, attachment of a copy of the receiving country's written consent to the manifest accompanying each waste shipment, and conformance of the shipment to such consent. In addition to provisions concerning the preceding requirements, today's rule includes provisions governing special manifest requirements, exception reporting, annual reporting, recordkeeping, transporter responsibilities, confidentiality, and State authorization.

DATES: Effective Date: November 8, 1986. Exports are prohibited on or after the effective date except in compliance with these regulations. Accordingly, unless consent by the receiving country has been obtained by that date, an export cannot take place. EPA will begin accepting notifications in accordance with these regulations immediately in order to allow time to obtain consent from a receiving country by the effective date of these regulations. Exporters are, therefore, encouraged to submit notifications expeditiously in order to allow time to obtain consent by November 8, 1986, for exports to occur on or soon after that date.

ADDRESSES: The OSW docket is located at: EPA RCRA Docket (Sub-basement), 401 M Street, SW., Washington, DC 20460.

The docket is open from 9:30 to 3:30 Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. Call Mia Zmud at 475–9327 or Kate Blow at 382–4675 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: Carolyn K. Barley, (202) 382–2217, Office of Solid Waste, Room S–257 (WH–563), 401 M Street, SW., Washington, DC 20460 or the toll-free RCRA Hotline: (800) 424–9346 (in Washington, DC, call (202) 382–3000).

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority

These regulations are being promulgated under the authority of sections 2002(a), 3002, 3003, 3006, 3007, 3008 and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6922, 6923, 6926, 6927, and 6937.

II. Background and Summary of Final Rule

A. Existing Export Regulations

On February 26, 1980, EPA promulgated regulations under the Resource Conservation and Recovery Act of 1976 (RCRA) governing exports of hazardous waste. 45 FR 12732, 12743–12744 (codified at 40 CFR Parts 262 and 263). These regulations place certain requirements on generators and transporters regarding exports of hazardous waste in light of the special circumstances involved in international shipments. Since RCRA did not expressly address exports of hazardous waste, these provisions were promulgated primarily under RCRA sections 3002 (Standards Applicable to Generators of Hazardous Waste) and 3003 (Standards Applicable to Transporters of Hazardous Waste) and are limited in scope. A detailed description of EPA's existing export regulations can be found in the Supplemental Information accompanying the proposed rule for Exports of Hazardous Waste, 51 FR 8744 (March 13, 1986).

B. The Hazardous and Solid Waste Amendments of 1984

On November 8, 1984, the President signed into law a set of comprehensive amendments to RCRA, entitled the Hazardous and Solid Waste Amendments of 1984 (HSWA). These comprehensive amendments have far-reaching ramifications for EPA's hazardous waste regulatory program. Among other things, they add a new Section 3017 to RCRA specifically addressing hazardous waste exports.

Generally, subsection (a) of section 3017 provides that, beginning 24 months after enactment of HSWA, the export of hazardous waste is prohibited unless the person exporting such waste: (1) Has provided notification to the Administrator; (2) the government of the receiving country has consented to accept the waste; (3) a copy of the receiving country's written consent is attached to the manifest which accompanies the waste shipment and; (4) the shipment conforms to the terms

of such consent. In lieu of meeting the above requirements, a person may export hazardous waste if the United States and the government of the receiving country have entered into an international agreement establishing notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous waste and the shipment conforms to the terms of such agreement.

Subsection (c) of section 3017 sets forth the requirement to notify the administrator before the shipment leaves the United States and specifies the information to be included in such notification. Subsections (d) and (e) establish procedures for obtaining the receiving country's consent to accept the waste. Subsection (f) addresses the effect of an international agreement on the requirements of Section 3017. Subsection (b) requires the Administrator to promulgate regulations necessary to implement section 3017. Subsection (h) provides that section 3017 does not preclude the Administrator from establishing other standards for the export of hazardous waste under sections 3002 and 3003 of RCRA. Congress also amended section 3008 of RCRA to provide criminal penalties for knowingly exporting hazardous waste without the consent of the receiving country or in violation of an existing international agreement between the United States and the receiving country.

Section 3017 of HSWA contains one additional requirement with which exporters were required to comply immediately upon enactment of HSWA: Subsection (g) requires any person exporting hazardous waste to file with the Administrator, no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous year. EPA codified this particular statutory requirement in its export regulations on July 15, 1985. 50 FR 28702, 28746.

C. March 13, 1986 Proposed Rule

On March 13, 1986, EPA proposed to amend its hazardous waste export regulations to implement section 3017 and thereby improve its current program governing exports. 51 FR 8744. These specific amendments were plced in a revised Subpart E of 40 CFR Part 262. Because Subpart E currently includes special requirements governing imports of hazardous waste and the disposition of waste pesticides by farmers, these provisions were proposed to be moved to new Subparts F and G respectively with no substantive changes. Amendments were also proposed to 40 CFR Parts 260 regarding confidentiality, Part 263 pertaining to transporters of hazardous waste, and Part 271 with respect to State authorization.

Readers should refer to the proposed rule for a discussion of the content, alternatives considered, and rationale for the positions taken in the proposal.

D. Summary of the Final Rule

Today's final rule on the export of hazardous waste adopts most of the provisions of the proposed rule with certain modifications. In summary, today's rule prohibits exports of hazardous waste unless: (1) Notification of the intent to export is provided to the Administrator; (2) prior written consent is obtained from the receiving country; (3) a copy of the prior written consent is attached to the manifest; and (4) the shipment conforms to the terms of the written consent.

Changes arising out of comments on the proposed rule concern primarily: (1) The definition of exporter; (2) the definitions of receiving and transit countries; (3) collection of a copy of the manifest by U.S. Customs at the U.S. point of departure; (4) hazardous wastes for which notification and consent is required; (5) the period of time covered by a notification; (6) the effective date of the regulations; and (7) special requirements for exports by rail.

In addition to today's final rule on the export of hazardous waste, readers should be aware that pursuant to section 6(e) of the Toxic Substances Control Act, EPA has banned the export of polychlorinated biphenyls (PCBs) of 50 PPM or greater in the absence of an exemption. See 40 CFR 761.10. Today's rule on the export of hazardous waste does not affect this prohibition.

III. Responses to Comments and Analysis of Issues

This section of the preamble addresses the major comments received by EPA on the proposed rule and describes the Agency's position on the major issues raised in the proposal and during the comment period. A separate background document responds to each comment received on the proposal which is not responded to in this preamble as part of the record for this rulemaking. Provisions retained as proposed and not discussed in this preamble are retained for the reasons set forth in the preamble to the proposed rule.

A. Applicability and General Requirements [§§ 262.50, 262.52]

Section 262.50 describes the applicability of Subpart E. Since EPA is changing the definition of exporter [discussed in Section III.B.2. below], this section provides that Subpart E requirements are applicable not only to persons required to initiate the manifest which specifies a treatment, storage, or disposal facility (TSDF) in the receiving country as the designated facility but also to any intermediaries arranging for the export (i.e., export brokers). A reference to the requirements applicable to transporters transporting waste for export has also been added to this provision to direct transporters' attention to the applicable requirements of Part 263. As explained in the proposal, the special export requirements apply in addition to any applicable domestic requirements which apply independently (e.g., Part 262 requirements applicable to generators) except to the extent Subpart E specifically provides otherwise.

As in the proposal, this section also provides that the export requirements apply to all exports of hazardous waste unless an international agreement is entered into between the United States and the importing country which sets forth different requirements. As the United States has yet to enter into any such agreements, § 262.58 is reserved to address any agreements the United States may enter into in the future.

Section 262.53 summarizes the requirements applicable to exports. Some minor language changes have been made to this section to again reference transporter requirements of Part 263 and to reflect the delineation of responsibilities between transporters and other "exporters" of hazardous waste as discussed in Section III.B.2 below.

B. Definitions [§ 262.51]

1. Definition of "Receiving Country"

In the March 13, 1986 proposed rule, EPA defined "receiving country" as the foreign country of "ultimate destination" of a hazardous waste. It was EPA's intent to distinguish "receiving country" from "transit country" which was defined as any foreign country through which a hazardous waste passes en route to a receiving country. Prior consent was proposed to be required only from "receiving countries" not "transit countries." The Agency proposed, however, to exercise its discretion under Section 3017(h) to provide notification to transit countries.

EPA specifically requested comments concerning its proposed definition of receiving country, recognizing the importance of the term as used in section 3017. Various alternatives available for defining this term were noted in the proposal such as defining "receiving country" as: (1) All countries through which the waste passes; (2) the first country the waste enters; or, (3) the final destination of the waste. A number of comments were received on this issue, many of which were in agreement with the Agency's definition. However, some commenters recommended expanding the definition of "receiving country" to include any foreign country the waste passes through en route to its ultimate destination, i.e., "transit country."

The primary concern of these commenters was that, under the language of EPA's definition of receiving country, long-term storage or treatment could occur in a "transit country" without its consent so long as the waste would subsequently be sent elsewhere. Moreover, EPA would have no authority to prohibit long-term storage or treatment in a transit country where the transit country objected to the shipment. The scenario was presented where an exporter intended to ship a waste first to country "A" for treatment, then to country "B" for multi-year storage while the "ultimate" disposal facility in country "C" was prepared to receive and dispose of the waste. Under this scenario, even if countries "A" and "B" objected to the shipment, EPA would have no authority to prohibit the shipment to those countries. Concern was expressed that this would encourage unscrupulous exporters to evade consent requirements with sham long-term treatment and storage. In addition, the dangers involved in storing and/or treating the waste were suggested to be of equal concern as those involved in the ultimate disposal of the waste.

EPA is also concerned about long-term storage and/or treatment of U.S. waste in a foreign country. In fact, EPA's proposal explained that its intent was to require consent from the "ultimate destination" of the waste in contrast to countries where mere *transportation through* or *temporary* storage *incidental to transportation* was to occur.

The proposal, however, envisioned that although there may be several transit countries involved, there would be only one "ultimate destination" of the waste. The scenarios presented by commenters have brought to EPA's attention that not only was EPA's proposed regulatory language ambiguous but that there may be, in rare circumstances, more than one country in which something more than mere transportation and/or temporary storage incidental thereto could occur. In order to ensure that prior consent is obtained from countries, in which treatment and/or long-term storage is to occur, the final rule defines "receiving country" as the foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except for temporary storage incidental to transportation). The final rule also redefines "transit country" as any foreign country, other than a receiving country, through which a hazardous waste is transported. These definitions reflect the intent of the proposal to exempt from the prior consent requirement mere transportation through or temporary storatge incidental to transportation with the added recognition that, in rare circumstances, there may be more than one "receiving country."

In redefining the term "receiving country," EPA recognizes that there may be limits to an exporter's knowledge of further shipment of U.S. generated hazardous wastes from a treatment, storage or disposal facility (TSDF) in one foreign country to another. Thus, EPA interprets the term "receiving country" to include only those countries to which an exporters knows or can reasonably ascertain that the waste will be sent for treatment, storage or disposal. EPA cannot hold exporters responsible for independent decisions by foreign TSDFs to further export a hazardous waste.

The primary exporter is responsible for properly designating a country as a transit country. If any uncertainty arises regarding whether certain "storage" occurring in a foreign country is "storage incidental to transportation," primary exporters should refer, for guidance, to the preamble to the rule clarifying when a transporter handling shipments of hazardous waste domestically is required to obtain a storage permit. See 45 FR 86966 (December 31, 1980). Thus, in determining whether a country is a receiving country or a transit country, the factors to be considered are the nature of the handling of the waste in such country and the length of time the waste remains in such country. EPA is not at this time, however, placing a time limit on the length of time considered "temporary storage incidental to transportation." One of the commenters suggesting a broader definition of receiving country also recognized the need for an exception for temporary storage incidental to transportation. That commenter recommended a 10-day limit consistent with domestic requirements. *See* 45 FR 86966 (December 31, 1980). EPA, however, does not feel it appropriate to impose a specific time limitation on storage incidental to transportation where exports are concerned. The time limitation in the rule referenced above was reached based upon the general nature of the transportation domestically. International transportation, on the other hand, may vary among foreign countries. EPA does not have, at this time, information which would allow it to devise a generally applicable time limitation for storage incidental to transportation internationally. To ensure the proper implementation of today's regulation, EPA will selectively review notifications to ensure that countries designated by exporters as transit countries are not, in fact, receiving countries. If EPA determines that a country is improperly designated as a transit country, it will require that country's prior consent to the waste shipment.

In EPA's view, the final definitions of receiving and transit countries and the decision to require notification of transit countries and both notification of and prior consent from receiving countries is consistent with the statute and best implements Congressional intent in enacting section 3017. Congress did not define the term "receiving country" in section 3017. The statutory language uses the term "receiving country" in the singular form which arguably indicates that Congress contemplated only one receiving country. On the other hand, however, use of the singular version may simply reflect the assumption that exports commonly would involve only one receiving country. The statutory language also provides for notification of the *treatment, storage or disposal* facility abroad to which the waste will be sent. This language arguably indicates that Congress contemplated notification of any country in which "treatment," storage" or "disposal" occurs. However, this notification requirement is qualified by the term "ultimate" treatment, storage or disposal facility. This arguably indicates that "receiving country" encompasses only the final destination of the waste with the phrase "treatment, storage or disposal facility" being used simply as the common phrase for identifying the hazardous waste facility which is the "ultimate" destination. To complicate matters further, however, "ultimate" storage is a contradiction in terms since EPA has defined "storage" as the holding of hazardous waste for a

temporary period *at the end of which the hazardous waste is treated, disposed of or stored elsewhere.* Thus, technically, storage could never be "ultimate," yet Congress used the term "storage" and must have intended it to have some content. An argument could be made that "ultimate" means the TSDF in a *single* foreign country when the waste is temporarily stored in such country and then moved to another facility in that same country for disposal. In this vein, the phrase "treatment, storage or disposal facility" would arguably evidence intent that notification and prior consent be obtained from any country in which treatment, storage or disposal occurs. Unfortunately, the legislative history of section 3017 does not shed any light on Congress' intent regarding the content of "receiving country."

In view of the ambiguity of this term, EPA believes that it is best defined as the country in which treatment, storage or disposal occurs but not a country in which mere transportation (including temporary storage incidental to transportation occurs. Neither the statutory language nor legislative history evidences a clear intent to require both notification and prior consent for mere transportation through a foreign country which would include, consistent with domestic transportation, temporary storage incidental to transportation.

In EPA's view, Congress was concerned with informing a foreign country *and obtaining the prior consent* from a country which is actually ending up with the waste whether through disposal, treatment or long-term storage. In other words, Congressional concern was with countries truly accepting the waste and taking significant action to deal with the waste. Generally, the considerations and ramifications for these countries will be different from and greater than those of countries in which only transportation occurs. Moreover, treatment and long-term storage in a foreign country can be a means to avoid domestic regulation of hazardous waste disposition and can pose problems similar to the actual disposal of hazardous wastes. For example, a surface impoundment engaged in "long term storage" of a waste is likely to present risks similar to an impoundment engaged in "disposal" of a waste, assuming the unit is designed, operated and located in a similar manner. Consent from foreign countries in which treatment or storage (other than incidental to transportation) occurs also is necessary to protect against attempts to avoid consent requirements by labeling particular activities as long-term storage or treatment.

EPA believes that concerns associated solely with transportation through a country are addressed through notification alone which will provide a country with information to enable it to respond to accidents which may occur during transportation. Response is also assisted, and protection afforded for such activities, through the container, labeling and placarding requirements imposed on the transportation of hazardous waste both domestically and by other countries. The notification of transit countries also allows such country to take action to prohibit the entry of such waste into its borders. The treatment of transit countries in the final rule also furthers Congressional intent to impose a minimum of additional regulatory burdens on U.S. generators and administrative burdens on EPA while establishing a more comprehensive and responsible export policy. See 130 Cong. Rec. S9152 (daily ed. July 25, 1984); 129 Cong. Rec. H8163 (daily ed. October 6, 1983). Finally, EPA's definitions of receiving and transit countries and its decision to require prior consent of receiving countries and notification for transit countries is consistent with a new draft decision recently issued by the Organization for Economic Cooperation and Development (OECD) concerning the transboundary movement of hazardous wastes. (Draft Council Decision and Recommendation on Exports of Hazardous Waste from the OECD Area, March, 1986.)

2. Definition of Exporter

a. *Appropriate Liabilities and Responsibilities.* In the proposed rule, EPA defined "exporter" to be the person who is required to prepare the manifest in accordance with 40 CFR Part 262, Subpart B for a shipment of hazardous waste that specifies a TSDF in the receiving country as the facility to which the waste will be sent. Thus, for example, the exporter could be the generator in one case (*see* 40 CFR 260.10, 262.20), the owner or operator of a treatment, storage or disposal facility who initiates a shipment of hazardous waste in another (*see* 40 CFR 264.71(c), 265.71(c)), or a transporter who mixes hazardous waste of different DOT shipping descriptions in yet another (*see* 40 CFR 263.10(c)(2)). The proposal also discussed an alternative definition of exporter—any person who intends to export a hazardous waste. Under this definition, all parties involved in the export (i.e., the generator or person required to assume generator responsibilities, transporter, and any export broker) would be required to comply with all of the export requirements and could be held liable for any failure to do so. Under such a definition, however, only one party would be expected to assume and perform particular duties (such as providing notification) on behalf of all the parties. The proposal noted that this alternative was similar to the treatment afforded generators where several persons meet the definition of generator (*see* 45 FR 72024 (Oct. 30, 1980)).

EPA rejected this alternative primarily because: (1) It is difficult to define the point at which intent to export occurs and the manifest constitutes clear evidence of such intent (e.g., a question arises as to whether an initial generator who sends its waste to a domestic recycling facility and that facility subsequently exports the waste for further recycling "intends" to export); (2) where several parties meet the definition of "exporter," confusion might occur regarding which party should provide notification on behalf of all the parties potentially causing delay and/or duplicative notification; (3) parties such as transporters should not be subject to liability for responsibilities more appropriately placed on generators or persons required to assume generator responsibilities; and, (4) the party preparing the manifest generally appeared to be in the best position to supply EPA with the information required in the notification, receive the EPA Acknowledgment of Consent for attachment to the manifest, and ensure that the shipment conformed with the terms of the receiving country's consent.

While some commenters supported EPA's proposed definition of exporter, others suggested that full potential liability for export notification and other violations should be placed on all parties engaged in the export. One commenter suggested that EPA could avoid duplicative notification by requiring transporters and brokers to submit a copy of the relevant notification and other documents with an appropriate certification, thereby creating an incentive for such persons to verify the information obtained from the person preparing the manifest. One commenter was especially concerned that, under the proposed rule, waste transporters and brokers who often actually arrange for the domestic transport, international transit, and ultimate treatment, storage, and disposal of the waste would be largely exempt from enforcement.

The Agency agrees, at least in part, with the concerns expressed by these

commenters. Although the Agency suggested in the preamble that the preparer of the manifest designating a foreign TSDF would remain liable for any violations of the duties imposed upon him when performed by a broker on his behalf, the Agency agrees with the commenter that brokers arranging for the export should also be held directly responsible for accurate notification and compliance with the consent of the receiving country. These persons are acting on behalf of the party required to initiate the manifest and often may be similarly situated. For example, a broker would be knowledgeable of most information required in a notification since he would be arranging for the export. Therefore, the Agency has added to the definition of exporter "any intermediary arranging for the export."

The term "intermediary" means "broker." An intermediary/broker is a party who arranges for an export by acting as a middleman between the party originating the manifest and another party involved in the export such as the transporter or foreign waste management facility. An intermediary/broker can be licensed or unlicensed, an agent or an indepentent contractor. The term "intermediary" excludes transporters, provided the transporter's role is limited to transporting the waste. The term would, however, include transporters if the transporter were also acting on intermediary responsibilities such as arranging for the management of the waste with the foreign TSDF.

With regard to the responsibilities and liabilities of transporters transporting waste for export, EPA is not, for the most part, making the changes suggested by these commenters. The proposed rule included two significant amendments to § 263.20. One prohibited a transporter from accepting a waste from an exporter unless an EPA Acknowledgment of Consent was attached to the manifest. The other required transporters to ensure that the EPA Acknowledgement of Consent accompanied the hazardous waste en route. In addition, existing regulations require transporters to send a copy of the manifest back to the generator (§ 263.20(g)) and to deliver the entire quantity of hazardous waste to the place outside the United States designated by the generator (§ 263.21(a)(4)). These duties parallel the duties placed on transporters of domestic waste shipments. EPA does not believe that transporters of hazardous waste for export should be held responsible for other elements of the notification and consent, such as ensuring that the waste meets the description contained in the notification or that the quantity of waste consented to by the receiving country has not been exceeded. EPA does not believe it necessary or practical to require transporters to verify that the waste matches the description contained in the notification. This could be construed to necessitate periodic sampling and waste analysis by transporters who are generally not qualified to undertake these actions. In addition, it is possible that the originator of the manifest may employ a number of transporters to transport waste covered by a single notification. It does not seem equitable or practical to require each transporter to ensure that the total quantity consented to by the receiving country has not been exceeded.

Of course, if the transporter knows or is willfully blind to the fact that the waste does not conform with the terms of the consent, he may nonetheless be subject to criminal enforcement action under section 3008(d). In view of the availability of criminal sanctions for such actions, EPA is adding to the requirements applicable to transporters, the requirement that a transporter may not accept a waste for export where he knows the shipment does not conform to the Acknowledgement of Consent. Thus, whereas a transporter has no affirmative duty to ensure conformance of the shipment with the consent, if he is aware that the shipment is not in conformity, he has the duty to refuse to transport the waste.

To clarify its criminal enforcement authority under section 3008(d)(6) against a transporter who knowingly exports hazardous waste without the consent of the receiving country, the Agency is making another change to the definition of exporter. In so doing, EPA wishes to preclude any misunderstanding about the reach of seciton 3008(d) which might otherwise have been caused by the definiton of "exporter" for Subpart E purposes. Therefore, in order to make clear its criminal enforcement authority under section 3008(d) while clearly delineating the limited administrative responsibilities of transporters, the final rule uses the term "primary exporter" to refer to the person defined as an "exporter" in the proposed rule, and, as discussed previously, any intermediary arranging for the export. This change makes clear that these persons are not the only parties which are "exporters" subject to certain responsibilities under section 3017 and criminal enforcement action under Section 308. Transporters transporting hazardous waste for export are also a type of "exporter."

The responsibilities of the primary exporter are contained in Part 262, Subpart E. Although under this revised definition, there may be more than one party acting as the primary exporter, e.g., "the person required to initiate the manifest . . . and any intermediary arranging for the export," the Agency expects one party to submit the notification, keep the required records, and submit the required annual report, etc. on behalf of all the parties. These parties should decide amongst themselves which party should perform these functions on behalf of the other parties meeting the definition of "primary exporter." This is similar to the situation where several parties meet the definition of generator. See 45 FR 72024, 72026 (October 30, 1980). Enforcement actions can, however, be taken against all primary exporters where equitable and in the public interest.

The responsibilities of transporters are identified in 40 CFR Part 263. These responsibilities include the two amendments to § 263.20 included in the proposed rule (with a minor adjustment for rail transportation discussed at Section G below), the existing requirements of §§ 263.20(g), 263.21 and 263.22(d), and the new requirements that a transporter may not accept hazardous waste for export if he knows the shipment does not conform with the Acknowledgment of Consent and he must deliver a copy of the manifest to the U.S. Customs official at the point the waste leaves the United States (discussed at Section E below). In EPA's view, Section 3017 accords it the discretion to determine who constitutes the "person who exports" or "person who intends to export" and to delineate the responsibilities of each person involved consistent with the intent of section 3017.

At the suggestion of commenters, EPA is also making one other change to the definition of exporter. Rather than define "primary exporter" as the person required to "prepare" a manifest, the final rule defines "primary exporter" as the person required to "originate" a manifest designating a foreign TSDF. The purpose of this revision is to make clear that it was and remains EPA's intent that liability is not solely on the individual who physically completes the manifest but rather on the person responsible for originating the manifest. It should be noted that "person" is broadly defined in § 260.10 to include, among others, individuals, corporations, and partnerships. An entity such as a corporation may comprise many individuals. Thus, many individuals can, in appropriate circumstances, be held

liable for non-compliance with the requirements applicable to a primary exporter. For example, the corporate president, vice-president, facility manager, and environmental officer may all be subject to criminal enforcement action under section 3008(d)(6) where such persons decide to export hazardous waste without the consent of the receiving country. EPA emphasizes that the definition of primary exporter does not limit EPA's authority to enforce criminally under section 3008(d)(6) against such parties. *Cf. United States v. Johnson & Towers, Inc.*, 741 F. 2d 662, 667 (3rd Cir. 1984) *cert. denied*, 105 S. Ct. 1171 (1985) (holding that definition of "person" for purposes of knowing unpermitted disposal of hazardous waste under section 3008(d)(2) is not limited to the "owners or operators" regulated under RCRA administrative requirements but rather extends as well to individual employees of the entity disposing of the waste).

b. Applicability of the Export Requirements to Certain Hazardous Wastes. Under EPA's proposed definition of "exporter," the regulations governing exports would be applicable to exports of hazardous waste initiated by persons required to prepare a manifest under 40 CFR Part 262, Subpart B or an equivalent provision in an authorized State program. Thus, exports of any hazardous wastes that are exempt from the manifest requirements of Part 262, Subpart B would not be subject to any of the export requirements. Accordingly, such hazardous wastes as samples, residues in empty containers, wastes generated in product transportation vehicles, certain wastes when recycled, and wastes generated by small quantity generators of less than 100 kg/mo would be excluded from the export requirements. *See*, e.g., 40 CFR 261.4(c) and (d), 261.5, 261.6, and 261.7. In the preamble to the proposed rule, EPA questioned whether Congress intended to regulate for export wastes not regulated domestically and requested comment on whether EPA should expand the wastes subject to section 3017.

(1) *Comments Suggesting that EPA Narrow the Applicability of Section 3017.* Several commenters focused on recycled waste and suggested that all hazardous waste exported for use, reuse, reclamation or other recycling be exempt from the export requirements even when subject to the manifest requirement. Various reasons for this position were put forth including: (1) Additional administrative costs created by the regulations of hazardous waste exported for recycling could damage or destroy the economic viability of such recycling and result in environmentally less preferable management; (2) due to the volatility of prices paid for recycled metals in international trade, the delay caused by waiting for the receiving country's consent could have a significant adverse economic impact; (3) recyclers have an economic incentive to be certain that their wastes are in fact recycled; therefore, more secure handling of wastes intended for recycling is assured; and (4) the stigma involved in treating hazardous wastes intended for recycling as "hazardous waste" might cause the receiving country to refuse consent. These commenters further argued that there is no indication of Congressional intent to include hazardous wastes for recycling under section 3017; in their view, the phrase "treatment, storage or disposal" as used in section 3017 does not include recycling. Lastly, these commenters cite other sections of RCRA and its legislative history as an indication of Congressional intent to foster all types of recycling of hazardous waste.

EPA does not agree that all hazardous wastes exported for use, reuse, reclamation or other recycling should be exempt from the export requirements. EPA's authority to regulate materials for recycling under Subtitle C has been fully discussed in other rule-makings and need not be repeated in detail here. *See* 48 FR 14472 (April 4, 1983); 50 FR 614 (January 4, 1985). Hazardous waste recycling and ancillary activities are within the statutory meanings of the terms "treatment, storage and disposal." In view of the absence of statutory language limiting the reach of these terms for purposes of section 3017, EPA does not believe Congress intended to exempt hazardous wastes for recycling which EPA fully regulates domestically. Similarly, the argument that hazardous wastes that are recycled do not require regulations because they are inherently valuable and do not generally pose significant risks also has been refuted elsewhere. *See*, e.g., 48 FR at 14473 *et seq;* 50 FR at 617–18. Moreover, although EPA is sympathetic to any impacts the requirement of consent may have with respect to some wastes when exported for recycling, where EPA has made the determination that a hazardous waste recycling activity poses sufficient risk domestically to be subjected to full regulation, there is no justification sufficient to override the need of a foreign country receiving such wastes to be accorded notification and the opportunity to accept or reject such waste. Full regulation domestically is clear evidence that this is the type of waste for which foreign countries would also wish to receive notice and have the means by which to reject such waste and police activities involving such wastes. Narrowing the applicability of section 3017 as these commenters suggested might also encourage sham recycling activities. The potential for this is increased in the context of exports since the foreign facility is outside EPA's jurisdiction, thus making enforcement by EPA more difficult. Accordingly, the final rule continues to apply to all wastes for recycling, which are required to be manifested.

To accommodate commenters' concerns regarding stigmatization of exported recycled hazardous wastes by labeling these materials "hazardous wastes," EPA recommends that exporters include information in their notifications indicating that the waste involved is a "recyclable material" (see 40 CFR 261.6(a)(1)). EPA can then pass this information on to the foreign countries involved. EPA also is doubtful that the possibility of stigmatization or the economic impacts some commenters fear will prove significant. As a result of international discussion and agreement, many countries have become knowledgeable regarding the issue of transboundary movements of hazardous waste. For example, joint decisions and recommendations have been generated under the auspices of the Organization for Economic Cooperation and Development and by the Commission of European Communities. Accordingly, in many cases where recycling of a valuable material is involved, it is likely that the countries involved will demonstrate a sufficient degree of sophistication to respond appropriately and expeditiously to notifications concerning such activities. Moreover, in view of the means EPA intends to use to transmit information, delay on the United States' part and any consequent economic impacts which might result therefrom are unlikely.

The Agency wishes to point out that a relatively narrow set of hazardous secondary materials are not defined as solid wastes and, therefore, are not hazardous wastes when recycled in a particular manner (e.g., listed commercial chemical products that are to be reclaimed (50 FR 614, 619, *codified at* 40 CFR 261.2)). Thus, these materials would not be subject to the export requirements.[1] Exporters of such

[1] These same listed commercial chemical products would, however, be a hazardous waste when, for example "used in a manner constituting disposal." *Id.*

materials, nevertheless, should keep in mind that they have the burden of proof to show that such materials are to be recycled in a manner bringing them outside the scope of "solid waste." *See* 50 FR at 642 and 40 CFR 261.2(f). Exporters "must keep whatever records or other means of substantiating their claims that they are not managing a solid waste because of the way the material is to be recycled." 50 FR at 642–643. This might include, for example, a description of the foreign recycling facility, evidence that the recycling facility is licensed or otherwise qualified by the foreign jurisdiction, and/or a copy of the contract indicating the terms of the transaction. *See* also *United States v. Hayes International Corp.*, 786 F.2d 1499, (11th Cir. 1986) (in a prosecution under Section 3008(d)(1) of RCRA for the knowing transportation of waste to an unpermitted facility, the court rejected defendant's claim that it believed the hazardous waste at issue was being recycled, where evidence indicated the lack of a good faith belief).

EPA is aware of evidence that certain materials that have been exported ostensibly for recycling were actually examples of sham recycling. Improper disposal was intended and in fact occurred. For example, a 41-count indictment charging conspiracy, mail fraud, and utilization of false statements was returned on April 17, 1986, by a federal grand jury sitting in the Southern District of California against four officers and owners of two corporations that were allegedly, among other things, claiming to be recycling waste when in fact they knew it was being illegally disposed of in Mexico.

Any notification, consent or annual report based on false representations is invalid. Thus, persons exporting hazardous waste are subject to civil and criminal enforcement actions. These actions are based upon the fact that the exporter did not comply with applicable notification, consent and/or annual report requirements.

Another extremely small group of hazardous secondary materials, although considered hazardous wastes, are either fully exempt or partially exempt from regulation by EPA domestically. *See* 40 CFR 261.6(a)(2) and (3) (50 FR 614, 665 (January 4, 1985)). Exporters of such secondary materials should keep in mind that the burden of proof is also on the exporter to demonstrate that such waste falls within one of these exemptions. The applicability of the export requirements to these wastes when exported is discussed in detail below in conjunction with other wastes for which manifests are not required domestically.

EPA also wishes to note that if, as a result of promulgating a new hazardous waste characteristic, adding additional wastes to the list of hazardous wastes, or other regulatory changes, additional wastes become subject to manifesting, exporters of such waste must also comply with the requirements promulgated in today's rule.

(2) *Comments Suggesting that EPA Broaden the Applicability of section 3017.* Some commenters supported the Agency's proposal to exempt from the export requirements those wastes that are presently exempted from manifest requirements. One commenter, however, objected to this scheme suggesting that the language of section 3017 (which states that ". . . no person shall export any hazardous waste identified or listed under this subtitle" unless the requirements of section 3017 are met) clearly indicates Congressional intent to subject all hazardous wastes to the export requirements of section 3017. EPA does not agree that Congress intended to require notification and consent for all hazardous wastes in view of the statutory language itself and the established domestic RCRA program.

EPA's regulatory definition of "hazardous waste" is a broad one. It includes all solid wastes which are listed hazardous wastes or which exhibit the characteristic of ignitability, corrosivity, reactivity, or EP toxicity. Generally, hazardous wastes (whether listed or characteristic) are subject to the generally applicable regulations governing their generation, transportation, treatment, storage and disposal. *See* 40 CFR Parts 262, 263, 264 and 265. However, there are a very small number of "hazardous wastes" which EPA, for one reason or another, has totally exempted from domestic regulation. These include, for example, residues under certain specified amounts in empty containers and scrap metal (if it demonstrates a characteristic of hazardous waste) when sent for recycling. 40 CFR 261.7, 261.6(a)(3)(iv). In EPA's view, Congress could not have intended to regulate for export those "hazardous wastes" which EPA does not regulate domestically. It is highly unlikely that Congress would have been more concerned about wastes exported than wastes in its own backyard. For example, as Representative Mikulski, the sponsor of section 3017, stated:

> Our own country will have safeguards from the ill effects of hazardous waste upon passage of [HSWA]. We should take an equally firm stand on the transportation of hazardous waste bound for export to other countries. 129 Cong. Rec. H8163 (daily ed. October 6, 1983) [emphasis added].

An "equally firm" stand on exports would not require regulation of a waste for export not regulated domestically.

Nor does EPA agree that section 3017 is clear on its face regarding its scope of coverage. Although section 3017(a) does include language prohibiting the export of "any hazardous waste" unless certain conditions are met, one of those conditions is the requirement to attach a copy of the receiving country's consent "to the *manifest* accompanying the hazardous waste shipment" [emphasis added]. And, in transmitting notification to a receiving country, section 3017 includes a requirement that EPA, in conjunction with the Department of State, include "a description of the Federal regulations which would apply to the treatment, storage and disposal of the hazardous waste in the United States." These requirements evidence an intent on Congress' part to encompass something less than "all hazardous wastes" since where a waste is not regulated domestically, consent could *not* be attached to the manifest nor would there be any regulations for EPA to describe which govern the domestic treatment, storage or disposal of such wastes. Thus, EPA does not believe that Congress mandated notifying a foreign country of a "hazard" the United States itself does not believe of sufficient concern to regulate domestically.

The question of the reach of section 3017 also arises with respect to certain hazardous wastes which are regulated minimally domestically, although excluded from the generally applicable requirements placed on the generation, transportation, treatment, storage and disposal of hazardous wastes. These include, for example, samples for testing and wastes generated by small quantity generators generating less than 100 kg/mo of hazardous waste. *See* 40 CFR 261.4(d); 261.5 FR at 10174 (March 24, 1986).[2]

EPA does not believe that application of the export requirements was intended for those wastes excluded from the generally applicable manifesting requirement even though some de minimus requirements are imposed domestically. In EPA's view, the function served by the manifest domestically is similar to the function served by the notification and consent internationally. The manifest notifies persons receiving the waste or handling the waste of the nature of the materials

[2] The final rule as it applies to small quantity generators is also discussed at Section H of this preamble

being dealt with and as such affords such persons the opportunity to reject the waste or, if accepted, provides sufficient information to ensure proper handling of the waste. The manifest also serves as a tracking mechanism which allows policing of hazardous waste management and allows action to be taken against persons improperly handling the waste. Similarly, the notification requirement for exports notifies the foreign country receiving the waste of the nature of the materials and as such affords the receiving country the opportunity to reject the waste or if accepted, allows it to have information sufficient to enable it to deal with the waste. The consent requirement allows the foreign country to take action to prohibit unsafe or inadequate handling of a waste by withholding consent.

In EPA's view, therefore, the lack of imposition of the manifest requirement domestically indicates that such wastes do not reach a level of concern to necessitate notice or a mechanism by which action can be taken to police or enforce against improper handling of these wastes. Accordingly, it is unnecessary to impose an equivalent mechanism on exports of these wastes. It also is doubtful that Congress intended to regulate a waste for export more stringently than domestically. Since no tracking mechanism is available domestically for EPA to know whether such a waste ultimately was exported or actually remained in this country, no similar mechanism is necessary for foreign countries. Moreover, in many cases it is unlikely that, in view of the reasons for excluding such wastes from the manifest requirement, these are the types of wastes for which Congress intended notification and consent. For example, in view of the de minimus amounts and practical safeguards involved in dealing with samples, it is unlikely that a significant environmental problem could result or that a foreign country would be significantly concerned about such wastes. *See* 46 FR at 47426 (September 25, 1981).

Accordingly, EPA is not expanding the scope of section 3017 beyond those wastes for which manifesting is required domestically, with one exception. That exception is spent industrial ethyl alcohol when exported for reclamation. This particular hazardous waste presents a special situation. This waste was exempted from regulation by EPA domestically in view of the fact that the Bureau of Alcohol, Tobacco and Firearms already imposes notice and tracking requirements similar to those imposed generally by EPA on hazardous wastes domestically. EPA regulation, therefore, was considered redundant. *See* 50 FR at 649 (January 4, 1985). Since notice and tracking requirements are placed on these wastes domestically in lieu of EPA's requirements, EPA believes that this is the type of waste for which notification and consent should apply for exports. Thus, the final regulation includes an amendment to 40 CFR 261.6 regarding spent industrial ethyl alcohol when exported for recycling. That provision requires that, in the absence of an applicable international agreement specifying different requirements, the person initiating the export of such material and any intermediary arranging for the shipment must: (1) Provide notification to EPA; (2) export only with the consent of the receiving country and in conformance with such consent; (3) provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the material for export; (4) submit an annual report; and, (5) retain certain records. The "person initiating the shipment" is intended to mean the person who would have been required to prepare the manifest but for the exemption in existing 40 CFR 261.6(a)(3)(i). In addition, the final rule requires transporters carrying such materials to refuse to accept such shipment if he knows that it is inconsistent with the Acknowledgment of Consent, ensure that the EPA Acknowledgment of Consent accompanies the waste and that the waste is delivered to the facility designated by the person initiating the shipment. These requirements meet the statutory minimum of section 3017 plus a recordkeeping requirement for enforcement purposes. All other requirements applicable to other exports will not apply to exports of industrial ethyl alcohol exported for recycling since they are essentially tied to the EPA manifesting system or are inapplicable domestically.

(3) *Other Issues Related to the Applicability of section 3017.* One foreign government commented that the definition of exporter should apply to persons required to prepare a manifest both for waste subject to EPA's regulations as well as waste considered hazardous by the transit and receiving countries. Although EPA supports such an approach in principal, it believes that if a foreign receiving country wishes to expand the universe of waste for which it receives notification, this can best be accomplished through an international agreement between the country and the United States. Moreover, it is questionable whether section 3017 provides authority for EPA to regulate any materials for export that are not "hazardous wastes" identified or listed under RCRA.

Several commenters requested clarification of the applicability of the definition of exporter to certain specific situations. One commenter presented the situation where multiple generators send their waste to a domestic facility for recycling and the recycler later exports still bottoms and other byproducts of the recycling process for use as fuel. In this scenario, the recycler would be the party who originates the manifest designating a foreign TSDF, and thus would be the primary exporter. The initial generators would have designated the domestic facility on their manifests and therefore would not meet the definition of primary exporter. Of course, if the initial generator knew that its waste was being exported by the recycler without the consent of the receiving country, and yet continued to ship waste to that recycler or agreed to participate in the scheme, the initial generator might well be subject to criminal charges for aiding and abetting the recycler and/or conspiring with the recycler to violate section 3008.

Another commenter requested clarification on the aplicability of the export requirements when hazardous waste is generated in Alaska and transported through Canada to a facility in the continental United States. This commenter noted that, apparently, EPA did not intend to require notification of Canada under such circumstances since the term "transit country" was proposed to be defined as the country through which a hazardous waste passes "en route to a receiving country." The phrase "en route to a receiving country" was used in the proposal simply to denote short-term storage that may occur "en route." EPA did not intend this language to exempt such shipments from the notification requirement applicable to transit countries. To make this clear, the phrase "en route to a receiving country" has been deleted in the final rule. This action is consistent with an OECD decision to which the United States is a signatory. Decision and Recommendation of the Council on Transboundary Movement of Hazardous Waste, February 1, 1984.

Two commenters urged the Agency to broaden the exemption for certain samples from the export requirements. These commenters requested that EPA broaden the sample exemption to cover hazardous waste samples exported for the purpose of determining: (1) Whether the foreign facility will accept the waste

stream; (2) the treatment, storage, or disposal measures the foreign facility would use; and (3) the price the foreign facility would charge for the treatment, storage, or disposal of the waste.

Existing §261.4(d) conditionally exempts from Subtitle C requirements, any sample of solid waste that is collected "for the sole purpose of testing to determine its characteristic or composition." Because such samples are not subject to the manifest requirements of Part 262, Subpart B, they are exempt from the export requirements. The Agency believes that this comment has merit, not only in the context of exports but also for the management of samples domestically. However, the Agency believes that creating such an exemption would require further analysis for both exports and domestic shipments, and if deemed appropriate, proposal for public comment. The Agency questions what the appropriate conditions for such an exemption would be. For example, the Agency would want to consider whether a quantity limitation or some type of limit on the types of waste covered by the exemption would be desirable. Accordingly, the Agency will consider these suggestions for possible further regulatory action and is not expanding the scope of the § 261.4(d) sample exemption at this time. Unless and until future regulatory action is taken, exports of hazardous waste samples outside the scope of § 261.4(d) must comply with the export requirements. Alternatively, foreign waste management facilities could contract with laboratories in the United States to do any necessary analysis.

3. *Other Definitions.* In its proposed rule, EPA proposed definitions for two additional terms—"EPA Acknowledgment of Consent" and "Consignee." The definition of "EPA Acknowledgment of Consent" has not been changed from the proposed rule. A full discussion of comments and EPA's plans regarding the EPA Acknowledgment of Consent is set forth in Section III. D. of this preamble.

Two comments were received on the proposed definition of "Consignee.' in the proposal, "Consignee" was defined as the ultimate treatment, storage, or disposal facility to which the hazardous waste will be sent in the receiving country. One commenter suggested adding "recycling" to the list of facility types, since the proposal intended to cover wastes exported for recycling. EPA does not believe that this change is necessary because, as discussed above, the term "treatment" clearly covers recycling (see, e.g., 40 CFR 260.10).

The second commenter objected to the use of the word "ultimate" in the definition of "Consignee," suggesting that in the case of hazardous wastes that are exported for recycling, storage or treatment, the initial TSDF that receives the waste may transfer certain portions of the waste to a second TSDF. According to this commenter, exporters frequently have no knowledge of or control over such secondary transfers and may be unable to identify, especially prospectively, such secondary TSDF's. EPA acknowledges that further management of an exported waste may occur after it is sent to a foreign TSDF which is beyond the control or knowledge of the exporter. A foreign TSDF may on its own initiative decide to send waste to another TSDF. EPA did not intend to require an exporter to specify actions which occur in a foreign country unknown to him or beyond the scope of his control. EPA used the adjective "ultimate," consistent with the statutory language of Section 3017, to distinguish between the facility to which the waste is being sent for treatment, storage or disposal in a receiving country and a facility *in that same country* at which a shipment may be stored incidental to transportation (e.g., at transfer facilities, loading docks). For example, if a waste is being exported to London, England via Portsmouth, England and the waste is held temporarily in Portsmouth awaiting transportation to London, the consignee would be the facility in London.[3]

The type of storage incidental to transportation which EPA intended to distinguish from the "ultimate" destination of the waste is similar to that type of storage discussed in the preamble to the rule clarifying when a transporter handling shipments of hazardous waste is required to obtain a storage facility permit.

See 45 FR 86966 [Dec. 31, 1980]. However, for purposes of determining who is the consignee, as between a temporary storage facility at which the waste may be stored incidental to transportation and the ultimate destination of the waste, no time limit on the length of such storage is being proposed as is the case in the rule referenced above. EPA believes it would be extremely difficult, if not impossible due to unforeseen events occurring in transit abroad, for an exporter to know prospectively whether a shipment might be stored, for example, for more than ten days at a storage facility in the course of transportation and would thus become the consignee. Accordingly, the consignee is the facility of ultimate destination of the waste in a receiving country and not a temporary storage facility where a waste may be stored for a short period of time incidental to transportation.

Thus, EPA interprets the term "ultimate TSDF" to mean the final destination of the waste in a receiving country known to the exporter. In view of its interpretation of this term, EPA finds it unnecessary to change the language of the proposed rule.

C. Notifications of Intent to Export [§ 262.53]

EPA received a number of comments on the subject of notification. These comments focused on four issues related to the notification: (1) The 60-day advance time suggested for submission of the notification; (2) separate notification for each shipment; (3) the period covered by the notification; and (4) renotification.

Subsection (c) of section 3017 requires that any person who intends to export a hazardous waste shall, before such waste is scheduled to leave the United States, provide notification to the Administrator. The purpose of this notification is to provide sufficient information so that a receiving country can make an informed decision on whether to accept the waste and, if so, to manage it in an environmentally sound manner. The notification is also intended to ensure that environmental, public health, and U.S. foreign policy interests are safeguarded and to assist EPA in determining the amounts and ultimate destination of exports of U.S. generated hazardous waste so as to enable EPA and Congress to gauge whether the right to export is being abused.

The regulatory notification requirements are intended to implement the broad statutory requirements for notification set forth in section 3017(c) and ensure that sufficient information is obtained to satisfy Congressional intent.

1. Sixty-Day Advance Time

Section 262.53(a) of the proposed rule suggested that the exporter submit notification to the Agency 60 days before the waste was scheduled to leave the United States. This 60-day advance time represented EPA's best estimate of the amount of time it would take to notify a receiving country, obtain consent, and transmit such consent to the exporter. EPA noted in the proposal that the statute itself sets forth the time

[3] In view of the changes in the definition of receiving country, it should be noted that there may be more than one consignee in those rare circumstances where there is more than one receiving country.

frame (30 days) within which a complete notification must be transmitted to the receiving country after receipt by EPA and the time frame (30 days) within which the consent or objection must be transmitted to the exporter after receipt by the Secretary of State. Since EPA believed the information could be transmitted in less time than statutorily required (see discussion in Section III.D), this 60-day advance time allowed approximately thirty days for the receiving country to provide its consent or objection to the Department of State.

EPA received several comments on the 60-day advance time. Most of the commenters focused their responses primarily on the 30-day period for a receiving country to transmit its consent or objection to the Department of State. One commenter stated that 30 days was an adequate period for dissenting governments to protest shipments. The commenter added that a longer period would cause unnecessary and costly delays in disposing of wastes. Another commenter proposed that a receiving country should be deemed to have given its consent if it fails to respond to EPA's notice within 30 days.

Other commenters expressed a concern that a 60-day advance notice was inadequate and that a 90-day advance notice would be necessary. One commenter in favor of a 90-day advance time stated that the 60-day notice would cause delays in exporting waste. Another commenter expressed the view that a 60-day advance time was too long. This commenter maintained that 30 days would be sufficient and proposed a "fast track" system to expedite EPA transmission.

After reviewing the comments, EPA has decided to retain the 60-day advance time as the recommended submittal time. This period should provide time for EPA, the Department of State, and the receiving country to process the notification and transmit the receiving country's consent or objection to the exporter. In fact, the amount of time estimated for EPA and the Department of State to transmit information already reflects a "fast track" system to expedite transmission. Therefore, EPA does not believe, at this time, that it would be appropriate to shorten the suggested time frame. Of course, exporters may submit notifications at a later date since the 60-day advance time is solely a recommended minimum advance time. Exporters should keep in mind, however, that this could increase the risks of a delay in receipt of consent and consequent delay in shipment.

EPA disagrees with the commenter's recommendation that failure by a receiving country to respond to a notification should be considered consent. EPA cannot require a foreign country to respond within a specific number of days. Moreover, EPA does not have the authority to assume consent if there is no response within a specific time period because the statute prohibits exports in the absence of written consent. With respect to those exporters who believe the 60-day advance time is too short, EPA notes that exporters may always submit notifications further in advance if they so desire.

EPA reminds exporters that the 60-day advance time is only EPA's best estimate of the time transmission of information will take. A receiving country may take longer to respond than estimated. Accordingly, regardless of the time when a notice is submitted (even if submitted 60 days or more in advance), the shipment cannot take place until consent has been obtained. Exporters therefore, are encouraged to submit notifications at the earliest possible date.

2. Separate Notification for Each Shipment

The proposed rule provided that a single notification could cover more than one shipment; a separate piece of paper providing notification for each shipment would not be necessary. This was considered consistent with legislative intent since the statute itself specifies that a notification include information on the "frequency of shipment." Since the statute was not clear on this point, however, the Agency specifically requested comments regarding whether separate notification should be required for each shipment.

The vast majority of commenters stated that separate notification was unnecessary. Several commenters noted that such notification would be burdensome to the Agency as well as to industry. Another commenter found separate notifications for each shipment to be contrary to Congressional intent since the statute requires that the "frequency of shipment" be specified in the notification. Only one commenter supported separate notification for each shipment. This commenter, however, stressed that such notification would be the ideal. EPA agrees with the majority of commenters that Congress did not intend notification for each shipment, and that such notification would create unnecessary burdens on industry, the Agency, and foreign countries. As a result, separate notification for each shipment is not required in the final rule.

3. Notification Period (24 Months vs. 12 Months) [§ 262.53]

In its proposal, EPA indicated that a notification could cover a period of up to 24 months. The Agency also requested comment on the alternative of allowing notifications to cover only a 12-month period. Comments received on this issue were divided.

Except for one comment, those in favor of a 24-month period did not provide EPA with a reason why they favored this time period over the 12-month period. The commenter who did provide an explanation suggested that a two-year period would provide the receiving country with time to become familiar with the characteristics of the hazardous waste and to determine whether the facilities were able to properly dispose of the hazardous waste.

Other comments supported the change to a 12-month notification period. Several commenters suggested that because of the difficulties in forecasting export activities over a 24-month period, numerous renotifications would be required, resulting in no net reduction of the burden on exporters. A commenter in support of the 12-month period said that it would improve the accuracy of the estimated number and quantity of shipments identified in a notification. One commenter was concerned that foreign countries would be reluctant to consent to exports for a period as long as 24 months, resulting in the need for protracted negotiations with the receiving country. Another commenter explained that the 12-month time period would allow the receiving country to have greater control over the shipments across the border.

EPA finds the comments in favor of a 12-month notification persuasive and agrees that the better view is to allow notifications to cover a maximum of 12 months rather than 24. In addition, EPA notes that since governments within some countries tend to change rapidly and records may be lost or misplaced or policy changes may occur, the more frequent annual notice would provide more current information to foreign governments than would a 24 month notice. Finally, the amount and detail of information on the effects of hazardous waste on human health and the environment is always increasing, and annual reviews of consent would allow reassessment of any new data.

One commenter asserted that, in view of its regular standard exportation practices, annual or biennial "renotification" for unchanged practices should not be required where a single

notification provides a complete and accurate picture of the waste exportation practices that will occur. Recognizing that practices which deviate from the notification could be enforceable violations of RCRA, this commenter felt that a notification should be allowed to cover any period of time so long as the initial notification fully and accurately reflects the notifier's practices. EPA does not believe that submittal of the notification on an annual basis presents a burden to exporters since such a requirement would only entail duplication of the original notification. Moreover, prudent planning by the exporter should prevent any interruption in exports which might result as a consequence of awaiting new consent. Further, annual notification provides receiving countries with a formal mechanism to review information relative to incoming shipments in light of any new developments which may occur within that country within the previous 12-month period.

4. Renotification [§ 262.53]

Paragraph (c) of proposed § 262.53 required renotification and new consent from the receiving country for changes in the conditions specified in the original notification. Two commenters suggested that renotification should not be required for small variations in shipping procedures and routes.

EPA believes there is some merit to these comments. In fact, the proposal represented an attempt to build into the notification requirements the flexibility to allow for minor changes without renotification and consent. For example, it was proposed that notification include the "estimated" number of shipments of the hazardous waste. Upon re-examination of the issue of notification, however, EPA has decided that some minor regulatory changes would be appropriate. Whereas EPA believes that renotification is necessary where material conditions in the original notification change (since this may affect the original consent granted by the receiving country), it does not believe that certain minor deviations from the original notification warrant renotification and additional consent. In EPA's view, certain notification information is more for informational purposes than integral to a decision to accept or reject a waste. Accordingly, EPA believes that it is doubtful that such deviations would be of sufficient concern to a foreign country for it to wish to reconsider its consent. Moreover, renotification for minor deviations in certain information would put unnecessary burdens on foreign countries, EPA and exporters. And, in view of the need for at least a two-month advance notification, exporters may not at that date have highly detailed information on an export.

In determining what types of changes should trigger the need for renotification and consent, EPA considered which items are most likely to be highly variable and more importantly, which items would be likely to affect the receiving country's consent. For example, EPA believes that any increase over the estimated quantity of waste to be exported should require renotification and consent. However, EPA has concluded that decreases in the quantity exported would not be likely to affect the receiving country's consent and, therefore, is not requiring renotification for such changes. EPA also is requiring renotification and consent for any changes in the waste description, consignee, ports of entry to and departure from a foreign country, the manner in which the waste will be treated, stored or disposed of in the receiving country, the name of any transit countries, the handling of the waste in transit countries, important factors for a receiving country in determining whether to accept or reject a hazardous waste or for a transit country to take appropriate action. Although renotification will be required for changes in the ports of entry to and departure from transit countries, the names of any transit countries, the appropriate length of time the waste will remain in transit countries, and the nature of the handling of the waste in such countries, consent of the receiving country will not be required for these changes since they are unlikely to affect the receiving country's original consent. However, when the Agency receives notification for these types of changes, it will provide notice of them to any affected transit country.

Renotification will not be required when there is a change in the mode of transportation to be utilized. An exporter may not know sufficiently in advance the highly specific details on how the waste is to be transported. Moreover, the mode of transportation may change en route. For example, transportation which was originally planned to take place by truck may be changed at the last minute to railroad due to unexpected events. EPA also will not require renotifications when there is a change in the type of container in which the waste will be transported. The exporter must already meet the specific container requirements of the Department of Transportation, as well as any such requirements of all transit and receiving countries. Moreover, exporters must be allowed to repackage containers damaged en route. Renotification will also not be required for changes in the exporter's telephone number since such a change should not affect the receiving country's consent.

The changes noted above are consistent with Section 3017 since the statutory language itself in several respects builds in flexibility in the notification requirements in an effort to achieve the same result as these more specific regulatory provisions. In addition, in the absence of these changes, exporters are likely, for example, to simply list all possible ways a waste may be transported to avoid renotification. Under such circumstances, a foreign country would be receiving no more specific information on these elements. Accordingly, § 262.53(c) has been changed to require renotification for all changes in the original notification except for changes in the exporter's telephone number, mode of transportation, type of container, and decreases in quantity. In addition, the regulatory language has been modified to make clear that consent of the receiving country is not required for changes to the information noted above which is pertinent to transit countries.

EPA is also concerned about the language of proposed § 262.53(a)(2)(ii) which required that the notification contain "the estimated number of shipments of the hazardous waste and the approximate date of each shipment." Commenters stated that the requirement to estimate the number and total quantity is meaningless and explained that waste generation is never preplanned and exact, therefore, information on the amount of waste generated cannot be exact. Other commenters disagreed with the requirement to include the date of shipment, also explaining that waste generation is never preplanned and exact, consequently, information on the shipment dates cannot be exact. Other commenters also disagreed with the requirement to include the date of shipment, explaining that it is not always feasible to know even 60 days in advance of a shipment the exact date when waste will be transported. The commenters suggested that EPA require the expected frequency of shipment rather than the exact date.

Although the notification requirement as proposed only required the *approximate* dates and estimated number of shipments, EPA notes that no guidance was provided on how much deviation from the approximate date and estimated number of shipments was

allowable without the need for renotification. To avoid the uncertainty inherent in the proposed language, and in view of the comments received expressing concern with this requirement, EPA has chosen to adopt, in the final rule, the statutory language requiring notification of "the estimated frequency or rate at which such waste is to be exported and the period of time over which such waste is to be exported." EPA believes this change clearly meets Congressional intent for notification while providing important flexibility to exporters.

Except for the changes regarding notification discussed above, EPA is retaining § 262.53 as proposed for the reasons set forth in the preamble to the proposal.

D. Procedures for the Transmission of Notification, Consent or Objection

Subsections (d) and (e) of section 3017 require the Department of State to transmit notification of the intended export to the government of the receiving country within thirty days of receipt by EPA of a complete notification from the primary exporter. EPA must then notify the primary exporter of the receiving country's consent or objection to the intended export within thirty days of receipt of a response by the Department of State. Because the exchange of information among EPA, the Department of State, receiving countries and transit countries is administrative in nature and imposes no requirements on the public, EPA did not propose specific procedures to implement these statutory requirements.

As discussed in the proposal, EPA and the Department of State plan to telegraphically transmit the notification as well as the receiving country's response. Notifications would be sent from EPA to the Department of State for transmission to the U.S. Embassy in the receiving country. The U.S. Embassy would forward the information to appropriate authorities in the receiving country in translation, if necessary, with a request for an expeditious written response. Upon receipt of this written response, it would be translated by the U.S. Embassy in the receiving country, if necessary, and cabled to the Department of State for transmission to EPA. Where the terms of the receiving country's consent are understandable only by reference to the export notification (e.g., the receiving country simply references a notification and gives consent without reiterating terms described in the notification), the cable will also include relevant portions of such notification. Where the receiving country fully consented to the export or consented with specified modifications, this cable would constitute the EPA Acknowledgment of Consent and would be sent to the primary exporter for attachment to the manifest. Where the foreign country reject the shipment, EPA would so notify the primary exporter in writing. Meanwhile, the original written communication from the receiving country would be sent to the Department of State in Washington in the diplomatic pouch mail. This document would then be forwarded to EPA for retention. A copy would also be forwarded to the exporter.

As required by section 3017, in notifying receiving countries of intended shipments, the government of the receiving country would also be advised that United States' law prohibits the export of hazardous waste unless the receiving country consents to accept the waste. The notification would include a request to provide the Department of State with a response to the notification which either consents to the full terms of the notification, consents to the notification with specified modifications, or rejects receipt of the hazardous waste. Also in accordance with statutory requirements, a description of the Federal regulations which would apply to the treatment, storage, and disposal of hazardous waste in the United States would be provided to the receiving country.

While most commenters favored EPA's suggested procedure of using the cable as the EPA Acknowledgment of Consent, several commenters maintained that an exact duplicate or mechanical reproduction of the actual written consent must be used in lieu of a cable. These commenters suggested that EPA's proposal was contrary to the plain language of the statute and voiced concern over the possibility of human error in transcribing information into a cable or in translating such information.

In EPA's view, transcription of a receiving country's consent into a cable and attachment of such cable to the manifest meets the statutory requirement that a "copy" of the receiving country's written consent be attached to the manifest accompanying the waste shipment. The term "copy" is not limited to a "photo" copy or other mechanical reproduction but can include typed or handwritten "copies." Moreover, EPA believes that "copy" is broad enough to encompass a translation of a receiving country's consent. EPA also believes that the statute accords EPA the discretion to implement the export requirements in a workable and practical fashion. In EPA's view, this necessitates use of telegraphic communications.

U.S. Embassy personnel will be well qualified to translate the receiving country's response and, as indicated in the proposal, EPA will work closely with the Department of State to ensure that cables prepared by the U.S. Embassy include an exact reiteration or translation of the receiving country's consent. EPA remains concerned that mailing actual reproductions of documents will cause unnecessary delays that can be avoided by the use of cables. Without the use of cables, it would be necessary to increase, and possibly significantly increase, the advance time for submission of notifications. This would require exporters to project their export plans even further into the future when submitting their notifications, risking an increase in the number of renotifications necessary and consequent burdens on EPA, exporters, foreign countries and the Department of State. In addition, were EPA to require that the actual consent document be mailed, transmission would be dependent on a postal system over which neither EPA nor the Department of State would have control. It would be unfair to leave exporters dependent upon postal systems which, in some countries, are of questionable reliabilty. Nor does EPA believe it would be appropriate to use the Department of State's diplomatic pouch mail. The Department of State has indicated that while diplomatic pouch mail is generally received within two weeks, in some instances it can take from three to six weeks and, therefore, transmission could exceed the 30-day time frame provided by the statute for transmission of consent to the exporter upon receipt by the Secretary of State.[4]

One commenter suggested that, although a facsimile of the written consent should be provided the exporter, a Department of State translation might also be helpful. However, this commenter believed that exporters should, nonetheless, be held to compliance with the foreign language

[4] One commenter suggested that the statutory time frame problem could be resolved by defining receipt by the Secretary of State as receipt by the Department of State in Washington. Generally, the U.S. Embassy in a foreign country is the representative of the Secretary of State and, therefore, the better view is that receipt by the Embassy is receipt by the Secretary of State. Even were this suggestion adopted, however, the problem would remain that notifications would need to be submitted further in advance thereby risking a consequent increase in burdens on all parties involved due to the increased likelihood that renotification would be necessary for changes in the shipment.

version. EPA notes in response to this comment that it would not take enforcement action against an exporter who relied in good faith on an Embassy translation. Moreover, it would be unfair to require reliance on the foreign language version under such circumstances. Any difficulties arising out of an erroneous translation by the United States is a matter best dealt with by the governments of the countries involved and is a matter of foreign relations appropriately left to the Department of State. Furthermore, were exporters held to the foreign language version, exporters might feel the need to obtain their own translations which could result in various versions of the consent. This could cause needless complications. With use of the Department of State translation, exporters and EPA will be relying on the same translation. Accordingly, EPA is retaining its definition of Acknowledgment of Consent and the procedures for transmission of the notification and consent as proposed except in one respect. To assist in expediting transmission, the final rule adds a requirement that exporters mark the envelope containing the notification "Attention: Notification to Export."

With regard to transit countries, transmission of notification will proceed similar to that for receiving countries. EPA will notify primary exporters of any response of a transit country. As noted earlier, EPA strongly urges exporters to reroute wastes objected to by transit countries since transit countries may take action to prohibit entry.

E. Special Manifest Requirements [§ 262.54]

This section sets forth special manifest requirements pertaining to exports of hazardous waste in light of the special circumstances relative to such shipments. The final rule adopts the provisions as proposed for the reasons set forth in the preamble to the proposed rule except in one significant respect.

During the development of the proposed rule, EPA considered requiring the transporter to deliver a copy of the manifest to a U.S. Customs official at the point the waste leaves the United States. Customs officials would periodically forward the copies it collected to EPA. Such a requirement would serve as a means to assist EPA in enforcing section 3017. The Agency decided not to propose this requirement because it had no evidence that exporters were violating current notification requirements. In addition, the Agency was of the opinion that copies of manifests retained by generators could be obtained (e.g., for comparison with notification and consent documents) if concerns arose about violations of section 3017.

The Agency received comments both opposing this requirement as well as strongly urging the Agency to reconsider its decision on this subject. After evaluating the comments received on this issue, obtaining further information on violations of existing notification requirements, and reconsidering the advantages and disadvantages of the collection of manifest copies, EPA has determined that submission of the manifest at the border should be required. Thus, § 262.54(i) of today's rule requires the primary exporter to provide the transporter with an additional copy of the manifest and § 263.20(g)(4) requires the transporter to deliver a copy of the manifest to the Customs official at the point the waste leaves the United States. This is a new tracking device intended to assist EPA in working with the U.S. Customs Service to establish an effective program to monitor and spot-check exports of hazardous waste. This requirement will allow the Agency to monitor closely the generator's compliance with the EPA Acknowledgment of Consent, coordinate enforcement actions with foreign countries, establish trends and patterns for enforcement and program development, and respond to Congressional inquiries. It also provides clear evidence of an important element of proof in enforcement actions (i.e., that an export did or did not occur) and serves as a deterrent to illegal activities. Moreover, this requirement will allow EPA to respond promptly to hazardous waste incidents in foreign countries. Routine submission of these documents to EPA is important in light of foreign policy concerns involved in exporting hazardous wastes. The diplomatic ramifications of improper shipments of United States' wastes could have a significant impact on the United States as a responsible member of the international community.

The Agency believes that the need for an additional copy of the manifest will result in an insignificant increase in the paperwork burden on the regulated community since this requirement does not include preparation of any additional information but only requires an additional copy of existing information.

F. Annual Reports, Recordkeeping, and Exception Reports [§§ 262.55, 262.56, 262.57]

Section 3017(g) of RCRA imposes a new annual reporting requirement for exports of hazardous waste. The annual reports should be sent to the Office of International Activities (A-106), United States Environmental Protection Agency, Washington, D.C. 20460. Comments received regarding the proposed rule's annual reporting requirement were largely favorable.

One commenter noted that meeting the annual report requirement for exported wastes would be very easy for exporters who reside in States, such as New York, which already require such reports. Another commenter proposed the creation of an annual report form. Since the number of exporters filing annual reports is expected to be very small, the Agency does not believe that an annual report form is necessary in order to enable it to process annual reports. Nor does the Agency believe that expenditure of the resources necessary to develop and print annual report forms is justified in view of the relatively small number of exports.

One commenter explained that submittal of the annual report would be unrealistic since its members presently do not submit reports and, therefore, do not maintain records on export shipments. This commenter also stated that EPA could easily obtain the material found in the annual report from the biennial report, and that requiring both is unnecessary. EPA notes, in response to this commenter, that section 3017 of RCRA requires annual submissions of information on exports. Therefore, annual reporting is a statutory requirement and information submitted biennially would not meet this requirement. Since commenters did not refute EPA's assertion that most generators retain separate records on domestic shipments and exports, EPA does not believe that the administrative burden on exporters to file annual reports on exports and biennial reports on domestic waste management is excessive. Also, as discussed in the proposal, EPA believes that this approach is administratively less burdensome on the Agency.

A second commenter questioned whether information found in the annual reports could be more readily obtained from computerized notice records. Because the annual report is a statutory requirement, regarding what actually occurred, the notice records cannot be used as a substitute. The annual reporting information will tend to be more specific than the notification information. For example, it will provide information of the actual quantity exported if under the amount estimated in the prior notification.

Accordingly, EPA has retained the annual reporting requirement as

proposed except in one respect. One commenter stated that, by exempting generators who file annual reports from reporting exports on the biennial report form, EPA cannot exempt exporters from the new HSWA waste minimization requirements of section 3002(a)(6) (C) and (D). EPA does not believe that exporters will be exempt from such requirements in most cases based upon the assumption that, generally, an exporter will not only export waste but also will ship some wastes off-site for treatment, storage or disposal domestically. Accordingly, the requirements of section 3002(a)(6) (C) and (D) will be met for all wastes by filing the biennial report as required by 40 CFR 262.41. Nevertheless, to cover the annual circumstance where a person exports all his hazardous wastes, the final rule includes a requirement that unless provided pursuant to 40 CFR 261.41, an exporter must include in the annual report submitted in even numbered years: (1) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and (2) a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984. Small quantity generators generating less than 1,000 kg/mo are exempt from this requirement consistent with 40 CFR 262.44 (*See* 51 FR 10146, 10176 (March 24, 1986)). Exporters of spent industrial ethyl alcohol for reclamation are also exempt since this requirement does not otherwise apply to such wastes.

With regard to the proposed recordkeeping and exception reporting requirements, EPA received no significant comments on these provisions. Accordingly, EPA is retaining §§ 262.55 and 262.57 as proposed for the reasons set forth in the preamble to the proposed rule.

G. Transporter Responsibilities

The March 13, 1986 proposal amended § 263.20 to prohibit a transporter from accepting waste from an exporter unless, in addition to a manifest, an EPA Acknowledgment of Consent was attached to the manifest. EPA also proposed to amend this section to require transporters to ensure that an EPA Acknowledgment of Consent accompanied the waste en route. No changes were proposed regarding other requirements of Part 263 applicable to transporters transporting waste for export. *See* 40 CFR 263.20(g), 263.21, 263.22(d). As discussed in Section III.B. of this preamble, EPA is retaining these requirements as proposed and is adding the additional requirements that the transporter deliver a copy of the manifest to a U.S. Customs official at the point the waste leaves the United States and that the transporter refuse to accept hazardous waste for export if he knows it does not conform to the Acknowledgment of Consent.

One further change is also being made in the transporter requirements. This pertains to exports by rail. In drafting the proposed rule, EPA recognized that existing domestic regulations for shipments by rail do not require that the manifest travel with the waste shipment nor do they require that intermediate rail transporters sign the manifest. *See* 40 CFR 263.21(d). Instead, a shipping paper is required to accompany the waste and the manifest must be sent to the next non-rail transporter, the TSDF, or, for exports, the last rail transporter designated to handle the waste in the United States. These special requirements were imposed on rail transporters due to the special nature of the railroad industry in recognition that railroads have sophisticated computerized tracking information systems. If the manifest system were applied to the rail system without adjustment, normal operating practices would be so disrupted as to effectively prevent the use of this method of transportation. *See* 45 FR 86970, 86971 (December 31, 1980). In the rail system, shipping papers are left with railcars at interchange points to be picked up by the transferee railroad. Thus, no face-to-face contact occurs and the normal manifest system is unworkable.

In keeping with the existing system for railroads, EPA's proposed export provisions required the Acknowledgment of Consent to be attached to the shipping paper in lieu of the manifest. In commenting on the proposal, the Association of American Railroads, brought to EPA's attention that the rail industry is now moving toward a system where there will be no exchange of papers between rail carriers. Each rail carrier will have its own shipping paper issued through a computerized system and therefore not even an exchange of a shipping paper will occur by leaving the shipping paper with the rail car. Instead, each rail carrier operator would carry its own shipping paper for the shipment. In the rail industry's view, the proposed export requirements represented a step backward since the requirement that the Acknowledgment of Consent be attached to the shipping paper would require that papers be passed from rail carrier to rail carrier and the new "paperless" exchange would be unworkable. This commenter, therefore, suggested that the Acknowledgment of Consent be attached to the manifest which is forwarded ahead to the last rail transporter to carry waste in the U.S.

EPA did not intend to prevent or discourage the use of rail transportation through the export requirements. Nor does EPA believe that this was Congress' intent. In fact, EPA's intent in the proposal was to accommodate the special circumstances of the rail industry while ensuring that the purpose and intent of section 3017 was met. However, while EPA understands that attachment to a shipping paper under the new rail system may not be workable, it is difficult to understand why a copy of the Acknowledgment of Consent cannot be left in the rail car with the shipment. This would not require any face-to-face contact since the document would simply travel with the rail car as it is passed from one railroad to another. Accordingly, the final rule provides that the Acknowledgment of Consent simply accompany the waste shipment for shipments by rail and need not be attached to the shipping paper. Consistent with section 3017, this will allow the consent to accompany the waste shipment.[5] EPA invites further comment on this issue and will consider further modification to this requirement once the new "paperless" rail system is implemented if it can be shown that this requirement essentially prohibits exports by rail.

H. Small Quantity Generators

As previously discussed in Section III.B.4 of this preamble, EPA proposed to define an exporter as the person required to prepare the manifest pursuant to 40 CFR Part 262, Subpart B for a shipment of hazardous waste that specifies a treatment, storage, or disposal facility in the receiving country to which the waste will be sent. Under the rules existing at the time of the March 13, 1986 proposal, generators of less than 1000 kg/mo of hazardous waste in a calendar month (i.e., small quantity generators) were not subject to Subpart B of Part 262 (or any other Part 262–266 or 270 regulations),[6] provided

[5] The proposed rule also allowed the Acknowledgment of Consent to be attached to the shipping paper for exports by water (bulk shipment) in view of the domestic scheme for this type of transportation. The final rule does not change the proposal with regard to these exports since there were no comments suggesting that this would be a significant problem.

[6] Generators of between 100–1000 kg/mo were required by Section 3001(d)(3) of HSWA to manifest any waste shipped off-site with a single copy of the Uniform Hazardous Waste Manifest beginning July 1985.

the small quantity generator complied with § 262.11 (hazardous waste determination) and ensured delivery of his waste to an on-site facility or off-site facility either of which met one of five criteria:

1. Permitted under Part 270;
2. In interim status under Parts 270 and 265;
3. Authorized to manage hazardous waste by a State with a hazardous waste management program approved under Part 271;
4. Permitted, licensed, or registered by a State to manage municipal or industrial solid waste; or
5. A facility which beneficially uses, reuses, or legitimately recycles or reclaims its waste or treats its waste prior to beneficial use, reuse, or legitimate recycling or reclamation.

As the preamble to the proposal noted, it appeared that, technically, a small quantity generator who exported his waste would be subject to then-existing export requirements since he would be unable to comply with any of the above requirements. The proposed rule did not propose to change this result. Therefore, under the proposed rule, small quantity generators who exported their wastes would have been subject to full Part 262 requirements, including the proposed export requirements, while small quantity generators who shipped to any of the five kinds of domestic facilities identified above would continue to be exempt from the Part 262 requirements. The proposal indicated that EPA would be considering whether this was the appropriate treatment of small quantity generators in the final rule. In so doing, EPA would specifically consider any changes which ultimately might be made in the small quantity generator provisions being considered in a separate rulemaking (50 FR 31278 (August 1, 1985)). In addition, EPA would consider whether there should be more concern for a waste exported than dealt with domestically.

Since the March 13, 1986 proposal on exports, EPA has published its final rules for generators of less than 1000 kg/mo at 51 FR 10146 (March 24, 1986). In general, that rulemaking subjects generators of 100–1000 kg/mo to most of the hazardous waste management regulations, including the Part 262 multiple copy manifest requirements and retains the current exemption for generators of less than 100 kg/mo from the Part 262 manifesting and other regulatory requirements.

In determining the final export requirements appropriate for generators of less than 100 kg/mo of hazardous waste, EPA has decided to exempt these generators from the export requirements to be consistent with the Agency's domestic policy with respect to these generators. As discussed at Section III.B.2. above, in EPA's view, only those wastes for which manifests are required domestically are the types of wastes that are properly the subject of section 3017. Moreover, as EPA stated in the March 24, 1986 final rule, it had no data to indicate that additional regulation of generators of less than 100 kg/mo of hazardous waste would provide any significant additional level of environmental protection. Generators of less than 100 kg/mo of hazardous waste account for only 0.07 percent of the total quantity of hazardous waste generated nationally. A review of damage cases also indicated that very few incidents involved quantities below 100 kg. Finally, it does not appear that the effect of the then-existing regulatory language which subjected exports by these generators to Part 262 requirements was intentional.

Accordingly, the final rule modifies § 261.5 to make clear that these generators are exempt from Part 262 requirements for exports as well as for domestic shipments. Any concerns that a foreign country may have about receiving such wastes can be resolved through a bilateral agreement by including the requirement that generators of less than 100 kg/mo provide notification for exports of hazardous wastes.

Generators of 100–1000 kg/mo will be subject to the export rules since under the March 24, 1986 final rule, they are now subject to manifesting requirements.

I. State Authority

1. Effect on State Authorization

Consistent with existing procedures, the proposal provided that States could not assume the authority to receive notifications of intent to export. In addition, States would not be authorized to transmit such information to foreign countries through the Department of State or to transmit Acknowledgments of Consent to the exporter. In EPA's view, foreign policy interests and exporters' interests in expeditious processing were better served by EPA's retaining these functions. This would provide the Department of State with a single point of contact in administering the export program and will better allow for uniformity and expeditious transmission of information between the United States and foreign countries. With the exception of these functions, EPA proposed that States include requirements equivalent to those promulgated today.

EPA specifically requested comments on this approach. As no comments were received objecting to the notification process set forth in the proposed rule, EPA has retained the language of the proposed rule in this respect. However, the final rule includes changes to proposal § 271.11 to require State programs to include a requirement that, for exports, a transporter may not accept a waste for export if he knows it does not conform to the Acknowledgment of Consent and must deliver a copy of the manifest to the U.S. Customs official at the point the waste leaves the United States. These changes simply reflect the addition of these requirements to the Federal requirements discussed above.

2. Universe of "Hazardous Waste" in Authorized States

In the preamble to the proposed rule, EPA explained that where a State has obtained authorization, "hazardous waste" for purposes of the export requirements would be the authorized State's universe of hazardous wastes plus wastes EPA identifies or lists pursuant to HSWA. EPA requested comments on the alternative of basing implementation on the Federal universe of hazardous wastes.

Comments received on this issue were divided. One commenter stated that the approach proposed could result in inconsistencies among States which would be confusing to foreign countries. In addition, such an approach could create unfair burdens on persons exporting from certain States. This commenter also stated that EPA's concern that exporters would have to become familiar with both Federal and State universes of hazardous waste if only the Federal universe was regulated was unfounded.

This commenter further stated that since any authorized State's universe of hazardous wastes must include at least the entire Federal universe, exporters would have little difficulty familiarizing themselves with the Federal universe. In addition, this commenter noted that the use of the Federal universe would be simpler for persons who export from more than one State, obviating the need for detailed knowledge of the universe of hazardous wastes in every State where such persons engage in the export business.

Commenters supporting EPA's approach argued that all wastes considered hazardous at the point of origination should be subject to the

export requirements to assure proper management and disposition.

After reviewing the comments received on the proposed approach and the implications of such an approach, EPA has determined that basing implementation on the authorized State universe plus those wastes identified or listed by EPA pursuant to HSWA remains the better approach. The "authorized State universe" of hazardous wastes consists of: (1) Those wastes in the Federal universe for which the State was authorized at the time it first received final authorization and (2) any wastes subsequently identified or listed by EPA for which the State has received authorization (by filing a request for approval of a program revision). The authorized State universe does not include wastes which are identified or listed by the State as hazardous wastes under State law but are not identified or listed as such by EPA. *See* 40 CFR 271.1(i)(2).

This approach is consistent with EPA's usual interpretation of the phrase "hazardous wastes identified or listed under this subtitle." The only period of time when any inconsistency among States might occur is during the period allowed States to update their programs to add a non-HSWA waste newly listed or identified by EPA. See 40 CFR 271.21 (Amendments to this section were proposed on January 1986 at 51 FR 496–504.) Only during this period might a particular waste from State A be subject to the export requirements (because State A's program revision is approved early) while the same waste from State B would not be subject to the export requirements (because State B's program revision is approved later than State A's). EPA does not believe that the potential for this inconsistency merits deviating from its usual interpretation of the phrase "identified or listed under this subtitle." Moreover, were export requirements applicable to the Federal universe, more wastes would be subject to the export requirements than are regulated on a national level domestically. This would be inconsistent with the intent to treat wastes for export similar to wastes dealt with domestically. Similarly, a material newly listed by EPA and stored in a State during the time period allowed a State to revise its program to add such waste, would not be subject to regulation while stored but would be subject to regulation once the export of such waste was initiated. Thus, materials exported would become subject to regulation ahead of the time States are required to regulate the waste domestically. This would make little sense.

To what extent commenters may be suggesting that EPA also regulate wastes listed by a State beyond those regulated Federally, EPA also rejects this approach as inconsistent with its usual interpretation of "identified or listed" under this Subtitle. In addition, EPA would not have the authority to enforce violations with respect to such wastes which would make little sense with respect to a program primarily Federally implemented. Thus, under this final rule, hazardous wastes identified or listed by the State as part of its authorized program which are broader in scope (not in the Federal universe) will not be subject to the export regulations.

J. Confidentiality

EPA proposed to amend § 260.2 to provide that information for which a claim of confidentiality is made will be disclosed by EPA only to the extent and by means of the procedures set forth in 40 CFR Part 2, Subpart B, except that information contained in a notification of intent to export a hazardous waste will be provided to appropriate authorities in receiving countries and the Department of State, regardless of such a claim. Information would otherwise be disclosed to the public and transit countries in accordance with 40 CFR Part 2. The final rule adopts this provision as proposed.

As the preamble to the proposal explained, this approach to the confidentiality of section 3017 notices was based upon EPA's interpretation of RCRA. There is an apparent conflict on the face of the statute between section 3007(b) and section 3017. Section 3007(b) could be read as prohibiting all disclosure of any confidential business information contained in a notice of intent to export. However, this reading would contradict section 3017.

Because the statute must be interpreted to give the fullest possible effect on both section 3007(b) and section 3017, EPA interprets section 3017 to require provision of the notification information to a receiving country through the Department of State even if the information in the notice is confidential, but to prohibit disclosure by EPA of such confidential business information to other persons. The purpose of the notification is to allow receiving countries to make an informed decision as to whether to accept the waste and, if accepted, how to deal with that waste. Moreover, section 3017 prohibits the export of hazardous waste in the absence of consent by the receiving country. Thus, unless such information can be divulged to the Department of State and receiving countries, informed consent could not be obtained and the export would be prohibited.

If a claim of confidentiality is asserted as to any notification information, EPA will exercise its discretion to determine whether it is the type of information that is important for a transit country to know. For example, it would be important for a transit country to know the type and amounts of waste but probably not important for it to know the port of entry to a receiving country. If the information claimed confidential is deemed to be information of which a transit country should know, the time frame set forth in section 3017(d) for submission of a "complete" notification to a receiving country will not begin to run until a determination by EPA of the validity of any such claim has been made. Only upon EPA's completion of the processing of the confidentiality claim will the notification information be provided to receiving countries and any nonconfidential information provided to transit countries. Since an export cannot take place in the absence of the consent of the receiving country, exporters should be aware that claims of confidentiality could, therefore, significantly delay shipment.

EPA received comments on this subject which stated that the availability of export information should not be abridged. EPA does not believe that the final rule in any way abridges the availability of export information contrary to Congressional intent. In fact, as EPA noted in the proposal, it does not believe that notification information generally is entitled to treatment as confidential business information. It has been EPA's experience that existing notifications, which consist of identification of the exporter, waste and consignee, have not been claimed by exporters to be confidential.

Another commenter questioned why EPA could not provide confidential information to a transit country. As discussed above, EPA believes that the only correct reading of sections 3007(b) and 3017 precludes disclosure of confidential information to parties other than receiving countries and the Department of State. However, EPA notes that a transit country that is not satisfied with the information it receives from the notification may take action to prohibit the waste from entering the country.

IV. Enforcement

A. EPA

Noncompliance with RCRA section 3017 or regulations promulgated thereunder is subject to civil and criminal enforcement action under section 3008. As the legislative history of section 3017 states:

> The requirements of this section should be vigorously enforced using all the tools of Section 3008. To accomplish this, the Agency should work with the U.S. Customs Service to establish an effective program to monitor and spotcheck international shipments of hazardous waste to assure compliance with the requirements of the section. Violations should then be vigorously pursued. S. Rep. No. 98-284, 98th Cong., 1st sess. 48.

Most important, HSWA includes an amendment to section 3008(d) of RCRA authorizing criminal penalties against any person who exports a hazardous waste without the consent of the receiving country or in nonconformance with an international agreement between the U.S. and a receiving country. Section 3008(d)(6) establishes incarceration of up to two years and/or a fine of $50,000 per day for knowingly exporting a hazardous waste without consent or in violation of a bilateral agreement. Penalties and prison terms may be doubled for second offenses. EPA intends to prosecute violators to the fullest extent.

Subsection (d)(6) of section 3008 subjects to criminal sanctions "any person who knowingly exports" hazardous waste to a foreign country without that sovereign's consent. The receiving country's consent is premised on the correctness of the data on the export notification. "Consent" based upon the false representation of the exporter is invalid.

The following examples of knowing exportation are meant to illustrate (but do not limit) cases in which the Agency would find that the receiving country's consent has not been given and criminal enforcement might be pursued:

1. Exportation of hazardous waste without notification (or without renotification as required under 40 CFR 262.53(c));
2. Exportation of hazardous waste after notification but without consent (or after renotification but without consent based on the renotification); or
3. Exportation of hazardous waste with "consent" based on false representation(s) in the notification.

In the enforcement of these regulations, EPA may also use section 3008(d)(3) of RCRA (which prohibits the knowing omission of material information or the making of a false statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained, or used for compliance with Subtitle C (e.g., the notification of intent of export)). These two violations are each punishable by up to two years imprisonment and/or a fine of $50,000. (Potential fines and prison terms are doubled for second offenses.)

B. U.S. Customs Service

The new HSWA provision on the export of hazardous waste raises issues concerning cooperation between EPA and the U.S. Customs Service on enforcement matters. As noted above, Congress intended that EPA "should work with the U.S. Customs Service to establish an effective program to monitor and spotcheck international shipments of hazardous waste to assure compliance with the requirements of [section 3017]." To further this legislative intent, EPA has consulted with and is continuing to consult with the U.S. Customs Service in order to develop an effective program to monitor and spotcheck hazardous waste exports.

The United States Customs Service has independent authority to stop, inspect, search, seize, and detain suspected illegal exports of hazardous waste under the Export Administration Act, 50 U.S.C. App. 2411, as amended by the Export Administration Amendments Act of 1985, Pub. L. No. 99-64, 99 Stat. 120 (1985), case law, and U.S. Customs Service regulations (e.g., 19 CFR Part 162). Exporters who violate the Export Administration Act or U.S. Customs Service regulations may also be subject to enforcement actions under those authorities.

C. Other Agencies

Exporters of hazardous waste also may be required to comply with pertinent export control laws and regulations issued by other agencies. For example, regulations promulgated by the Bureau of the Census of the Department of Commerce require exporters to file Shipper's Export Declarations for shipments valued over $1,000. 15 CFR Part 30. It may very well be possible that hazardous waste exported for purposes of recycling would have a value of $1,000. On January 1, 1986, the Bureau of Census created a new statistical reporting number for hazardous waste within the "Schedule B—Statistical Classification of Domestic and Foreign Commodities Exported from the United States." This number (818.8000) must be used in preparing shipper Export Declarations as required by 13 U.S.C. 301, and 15 CFR 30.7.

Failure to file a Shipper's Export Delcaration is subject to civil penalties as authorized by 13 U.S.C. 305. It is also unlawful to knowingly make false or misleading representations in such documents. This constitutes a violation of the Export Administration Act. To knowingly and willfully make false or misleading statements relating to information on the Shipper's Export Declaration is a criminal offense subject to penalties as provided for in 18 U.S.C. 1001.

V. Effective Date of the Final Regulations

EPA proposed that any final regulatory provisions issued pursuant to section 3017(c) setting forth export notification requirements shall become effective 30 days after promulgation. It was EPA's position that, although the statute specifies a 180-day effective date, the statute also accorded EPA the discretion to shorten that time period under appropriate circumstances.

Several commenters expressed serious concern with the 30-day effective date, reading EPA's statement on this issue to mean that exports taking place starting 30 days after the date of publication of the final rule would be subject not only to the notification requirement but also the consent requirement. It was not EPA's intent, however, to require both notification and consent for shipments occurring 30 days after promulgation. Rather, EPA intended the date occurring 30 days after promulgation to be the point at which it would begin processing notifications. Consent would not be necessary until the November 8, 1986 statutory deadline.

Accordingly, to effectuate EPA's intent and to provide time for consent to be obtained for shipments occurring on or soon after November 8, 1986, the final rule provides that the regulations are effective November 8, 1986, but that EPA will begin accepting notifications immediately for shipments to occur on or after that date. This should allow time to process notifications in order to obtain consent by the statutory deadline and thereby avoid any hiatus in exports of hazardous waste.

Another commenter asserted that EPA has no authority to shorten the 180-day effective date. However, as explained in the preamble to the proposal, EPA interprets the statute to afford it the discretion to shorten this time period. Section 3010(b) provides that regulations promulgated under Subtitle C shall have an effective date six months after the date of promulgation. That section also allows the Administrator to provide for a shorter period prior to the effective date under specified conditions. Section

3017(b) also sets forth the requirement that regulations be effective six months (180 days) after promulgation. However, it does not mention specifically the Administrator's discretion to allow a shorter time. Thus, the question arises as to whether section 3010(b) or section 3017(b) is controlling. It is EPA's view that section 3010(b) is controlling. Where Congress intended that the Administrator have no discretion to shorten the period prior to the effective date, Congress used specific language to that effect. For example, section 3001(d)(9) (Small Quantity Generator Waste) provides that "the last sentence of § 3010(b) shall not apply to regulations promulgated under this Section." Accordingly, since Congress did not specifically provide otherwise under section 3017, the Administrator retains the authority to shorten this period.

EPA believes a shorter effective date is appropriate with respect to the export rule because the regulated community does not need six months to come into compliance with these rules. These rules are not complex and simply involve the exchange of general information. Moreover, because of the date of promulgation of this final rule, these regulations cannot be effectuated by November 8, 1986,[7] and still allow for a 180 day period prior to the effective date. Yet, EPA believes it is important to have rules in effect to properly implement section 3017 by that date.

Assuming, however, that section 3010(b) is not controlling, EPA believes that its scheme for effectuation of these rules is also authorized by section 3017 itself. Section 3017 specifies several dates by which certain acts should occur: 24 months for full statutory implementation; 12 months for implementation of the notification requirements of subsection (c); 12 months for enactment of regulations to implement the section; and, 180 days before the effective date of the regulations. Exactly how these time frames were intended to work together is unclear. For example, regulations need not be promulgated for 12 months but notification requirements were required to go into effect in 12 months. At the same time, 180 days was specified as the time between promulgation and effectuation of regulations. The various time frames established in section 3017 do not, on their face, logically interrelate, nor is it apparent which time frame would control if any slippage were to occur. In view of the lack of clarity of the statutory language in this respect, it is EPA's position that the time for full implementation of section 3017 must take precedence over the number of days between the promulgation date and effective date of the implementing notes. This scheme comports with Congressional intent that this section go into effect by November 8, 1986, and that regulations be in place by that time. Where EPA is unable to satisfy both of these statutory time frames, the November 8, 1986, deadline for implementing section 3017 is more important than the number of days between promulgation of the rule and its effective date.

[7] Section 3017(a) requires compliance with export requirements 24 months after enactment of HSWA (November 8, 1986).

VI. Economic, Environmental and Regulatory Impacts

A. Impact on Small Quantity Generators

Because of the limited number of generators of between 100–1000 kg/mo EPA expects will export hazardous waste, the impact on small quantity generators should be minimal.

B. Executive Order 12291—Regulatory Impact

Executive Order 12291 (46 FR 13193, February 9, 1981) requires that a regulatory agency determine whether a new regulation will be "major" and if so, that a Regulatory Impact Analysis be conducted.

The Administrator has determined that today's final rule is not a major rule, because it has total estimated costs of less than $100 million per year, and has no significant adverse economic effects.

While EPA recognizes that some companies may experience economic dislocation if there are significant delays in processing notifications and consents, the Agency believes that judicious planning on the part of these companies could eliminate or lessen the impact of such delays, if any. As stated in the preamble to the proposed rule (51 FR 10146, March 13, 1986), EPA will process all notifications and written consents as expeditiously as possible.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2050–0035.

D. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, a Regulatory Flexibility Analysis must be performed if the regulatory requirements have a significant impact on a substantial number of small entities. No Regulatory Flexibility Analysis is required where the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Since 1980, generators exporting hazardous waste have been required by EPA to notify the Administrator four weeks before the initial shipment of hazardous waste to each country in each calendar year. Based upon an analysis of those notifications received, the Agency has determined that no small entitles have filed notifications of intent to export. EPA does not anticipate that the universe of generators exporting hazardous waste will significantly change in the future. Therefore, this rule is not expected to have a significant economic impact on a substantial number of small entities and does not require a Regulatory Flexibility Analysis. Therefore, pursuant to 5 USC §601(b), I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous waste, Liquids in landsfills.

40 CFR Part 261

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

40 CFR Part 262

Hazardous material transportation, Hazardous waste, Imports, Exports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Waste minimization.

40 CFR Part 263

Hazardous material transportation, Waste treatment and disposal.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping

requirements, Water pollution control, Water supply.

Lee M. Thomas,
Administrator.
August 5, 1986.

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001 through 3007, 3010, 3014, 3015, 3017, 3018, 3019 and 7004, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974).

2. Section 260.2 is amended by revising paragraph (b) to read as follows:

§ 260.2 Availability of information; confidentiality of information.

* * * * *

(b) Any person who submits information to EPA in accordance with Parts 260 through 266 of this chapter may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in § 2.203(b) of this chapter. Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in Part 2, Subpart B, of this chapter except that information required by § 262.53(a) which is submitted in notification of intent to export a hazardous waste will be provided to the Department of State and the appropriate authorities in a receiving country regardless of any claims of confidentiality. However, if no such claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to the person submitting it.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for Part 261 is revised to read as follows:

Authority: Secs. 1006, 2002[a], 3001, 3002, and 3017 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, 6922, and 6937).

4. Section 261.6 is amended by revising paragraphs (a)(3)(i) to read as follows:

§ 261.6 Requirements for recyclable materials.

(a) * * *
(3) * * *

(i) Industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in § 262.58:

(A) A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements applicable to a primary exporter in §§ 262.53, 262.56 (a)(1)–(4), (6), and (b), and 262.57, export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in Subpart E of Part 262, and provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export;

(B) Transporters transporting a shipment for export may not accept a shipment if he knows the shipment does not conform to the EPA Acknowledgment of Consent, must ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment and must ensure that it is delivered to the facility designated by the person initiating the shipment.

* * * * *

5. Section 261.5 is amended by revising paragraphs (f)(3) and (g)(3) to read as follows:

§ 261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

* * * * *

(f) * * *

(3) A conditionally exempt small quantity generator may either treat or dispose of his acute hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage or disposal facility, either of which, if located in the U.S., is:

* * * * *

(g) * * *

(3) A conditionally exempt small quantity generator may either treat or dispose of his hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage or disposal facility, either of which, if located in the U.S., is:

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

6. The authority citation for Part 262 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3002, 3003, 3004, 3005, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6906, 6912(a), 6922, 6923, 6924, 6925, and 6937).

7. Section 262.41 is amended by revising the introductory text to paragraph (a), (a)(3), (a)(4) and (a)(5), and adding a sentence at the end of paragraph (b) to read as follows:

§ 262.41 Biennial Report.

(a) A generator who ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States must prepare and submit a single copy of a Biennial Report to the Regional Administrator by March 1 of each even numbered year. The Biennial Report must be submitted on EPA Form 8700–13A, must cover generator activities during the previous year, and must include the following information:

* * * * *

(3) The EPA identification number, name, and address for each off-site treatment, storage, or disposal facility in the United States to which waste was shipped during the year;

(4) The name and EPA identification number of each transporter used during the reporting year for shipments to a treatment, storage or disposal facility within the United States;

(5) A description, EPA hazardous waste number (from 40 CFR Part 261, Subpart C or D), DOT hazard class, and quantity of each hazardous waste shipped off-site for shipments to a treatment, storage or disposal facility within the United States. This information must be listed by EPA identification number of each such off-site facility to which waste was shipped.

* * * * *

(b) * * *

Reporting for exports of hazardous waste is not required on the Biennial Report form. A separate annual report requirement is set forth at 40 CFR 262.56.

8. 40 CFR Part 262 is amended by revising Subpart E to read as follows:

Subpart E—Exports of Hazardous Waste

Sec.
262.50 Applicability.
262.51 Definitions.
262.52 General requirements.
262.53 Notification of intent to export.
262.54 Special manifest requirements.
262.55 Exception reports.
262.56 Annual reports.
262.57 Recordkeeping.
262.58 International agreements. [Reserved]

Subpart E—Exports of Hazardous Waste

§ 262.50 Applicability.

This subpart establishes requirements applicable to exports of hazardous waste. Except to the extent § 262.58 provides otherwise, a primary exporter

of hazardous waste must comply with the special requirements of this subpart and a transporter transporting hazardous waste for export must comply with applicable requirements of Part 263. Section 262.58 sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, treatment, storage and disposal of hazardous waste for shipments between the United States and those countries.

§ 262.51 Definitions.

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

"Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste will be sent.

"EPA Acknowledgment of Consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

"Primary Exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with 40 CFR Part 262, Subpart B, or equivalent State provision, which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

"Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

"Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

§ 262.52 General requirements.

Exports of hazardous waste are prohibited except in compliance with the applicable requirements of this Subpart and Part 263. Exports of hazardous waste are prohibited unless:

(a) Notification in accordance with § 262.53 has been provided;

(b) The receiving country has consented to accept the hazardous waste;

(c) A copy of the EPA Acknowledgment of Consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)).

(d) The hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA Acknowledgment of Consent.

(Approved by the Office of Management and Budget under control number 2050–0035)

§ 262.53 Notification of intent to export.

(a) A primary exporter of hazardous waste must notify EPA of an intended export before such waste is scheduled to leave the United States. A complete notification should be submitted sixty (60) days before the initial shipment is intended to be shipped off site. This notification may cover export activities extending over a twelve (12) month or lesser period. The notification must be in writing, signed by the primary exporter, and include the following information:

(1) Name, mailing address, telephone number and EPA ID number of the primary exporter;

(2) By consignee, for each hazardous waste type:

(i) A description of the hazardous waste and the EPA hazardous waste number (from 40 CFR Part 261, Subparts C and D), U.S. DOT proper shipping name, hazard class and ID number (UN/NA) for each hazardous waste as identified in 49 CFR Part 171–177;

(ii) The estimated frequency or rate at which such waste is to be exported and the period of time over which such waste is to be exported.

(iii) The estimated total quantity of the hazardous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form (8700–22);

(iv) All points of entry to and departure from each foreign country through which the hazardous waste will pass;

(v) A description of the means by which each shipment of the hazardous waste will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.));

(vi) A description of the manner in which the hazardous waste will be treated, stored or disposed of in the receiving country (e.g., land or ocean incineration, other land disposal, ocean dumping, recycling);

(vii) The name and site address of the consignee and any alternate consignee; and

(viii) The name of any transit countries through which the hazardous waste will be sent and a description of the approximate length of time the hazardous waste will remain in such country and the nature of its handling while there;

(b) Notification shall be sent to the Office of International Activities (A–106), EPA, 401 M Street, SW., Washington, DC 20460 with "Attention: Notification to Export" prominently displayed on the front of the envelope.

(c) Except for changes to the telephone number in paragraph (a)(1) of this section, changes to paragraph (a)(2)(v) of this section and decreases in the quantity indicated pursuant to paragraph (a)(2)(iii) of this section when the conditions specified on the original notification change (including any exceedance of the estimate of the quantity of hazardous waste specified in the original notification), the primary exporter must provide EPA with a written renotification of the change. The shipment cannot take place until consent of the receiving country to the changes (except for changes to paragraph (a)(2)(viii) of this section and in the ports of entry to and departure from transit countries pursuant to paragraph (a)(2)(iv) of this section) has been obtained and the primary exporter receives an EPA Acknowledgment of Consent reflecting the receiving country's consent to the changes.

(d) Upon request by EPA, a primary exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(e) In conjunction with the Department of State, EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraph (a) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by paragraph (a) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(f) Where the receiving country consents to the receipt of the hazardous waste, EPA will forward an EPA Acknowledgment of Consent to the primary exporter for purposes of § 262.54(h). Where the receiving country objects to receipt of the hazardous waste or withdraws a prior consent, EPA will notify the primary exporter in writing. EPA will also notify the primary exporter of any responses from transit countries.

(Approved by the Office of Management and Budget under control number 2050–0035)

§ 262.54 Special manifest requirements.

A primary exporter must comply with the manifest requirements of 40 CFR 262.20–262.23 except that:

(a) In lieu of the name, site address and EPA ID number of the designated permitted facility, the primary exporter must enter the name and site address of the consignee;

(b) In lieu of the name, site address and EPA ID number of a permitted alternate facility, the primary exporter may enter the name and site address of any alternate consignee.

(c) In Special Handling Instructions and Additional Information, the primary exporter must identify the point of departure from the United States;

(d) The following statement must be added to the end of the first sentence of the certification set forth in Item 16 of the Uniform Hazardous Waste Manifest Form: "and conforms to the terms of the attached EPA Acknowledgment of Consent";

(e) In lieu of the requirements of § 262.21, the primary exporter must obtain the manifest form from the primary exporter's State if that State supplies the manifest form and requires its use. If the primary exporter's State does not supply the manifest form, the primary exporter may obtain a manifest form from any source.

(f) The primary exporter must require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies (as defined in 40 CFR 264.72(a)) between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste.

(g) In lieu of the requirements of § 262.20(d), where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter must:

(1) Renotify EPA of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with § 262.53(c) and obtain an EPA Acknowledgment of Consent prior to delivery; or

(2) Instruct the transporter to return the waste to the primary exporter in the United States or designate another facility within the United States; and

(3) Instruct the transporter to revise the manifest in accordance with the primary exporter's instructions.

(h) The primary exporter must attach a copy of the EPA Acknowledgment of Consent to the shipment to the manifest which must accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter must provide the transporter with an EPA Acknowledgment of Consent which must accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter must attach the copy of the EPA Acknowledgment of Consent to the shipping paper.

(i) The primary exporter shall provide the transporter with an additional copy of the manifest for delivery to the U.S. Customs official at the point the hazardous waste leaves the United States in accordance with § 263.20(g)(4).

(Approved by the Office of Management and Budget under control number 2050–0035)

§ 262.55 Exception reports.

In lieu of the requirements of § 262.42, a primary exporter must file an exception report with the Administrator if:

(a) He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within forty-five (45) days from the date it was accepted by the initial transporter;

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

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

(Approved by the Office of Management and Budget and assigned under control number 2050–0035)

§ 262.56 Annual reports.

(a) Primary exporters of hazardous waste shall file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous calendar year. Such reports shall include the following:

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

(2) The calendar year covered by the report;

(3) The name and site address of each consignee;

(4) By consignee, 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), DOT hazard class, the name and US EPA ID number (where applicable) for each transporter used, the total amount of waste shipped and number of shipments pursuant to each notification;

(5) Except for hazardous waste produced by exporters of greater than 100 kg but less than 1000 kg in a calendar month, unless provided pursuant to § 262.41, in even numbered years:

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

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

(6) A certification signed by the primary exporter which 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 rsponsible 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) Reports shall be sent to the following address: Office of International Activities (A-106), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

(Approved by the Office of Management and Budget under control number 2050–0035)

§ 262.57 Recordkeeping.

(a) For all exports a primary exporter must:

(1) Keep a copy of each notification of intent to export for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(2) Keep a copy of each EPA Acknowledgment of Consent for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(3) Keep a copy of each confirmation of delivery of the hazardous waste from the consignee for at least three years from the date the hazardous waste was accepted by the initial transporter; and

(4) Keep a copy of each annual report for a period of at least three years from the due date of the report.

(b) 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.

(Approved by the Office of Management and Budget under control number 2050–0035)

§ 262.58 International agreements. [(Reserved)]

9. Title 40 CFR Part 262 is amended by adding new Subpart F to read as follows:

Subpart F—Imports of Hazardous Waste

Sec.
262.60 Imports of hazardous waste.

Subpart F—Imports of Hazardous Waste

§ 262.60 Imports of hazardous waste.

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

(b) When importing hazardous waste, a person must meet all the requirements of § 262.20(a) for the manifest except that:

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

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

(c) A person who imports hazardous waste must obtain the manifest form from the consignment State if the State supplies the manifest and requires its use. If the consignment State does not supply the manifest form, then the manifest form may be obtained from any source.

10. Title 40 CFR Part 262 is amended by adding a new Subpart G to read as follows:

Subpart G—Farmers

§ 262.70 Farmers.

A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in this part or other standards in 40 CFR Part 270, 264 or 265 for those wastes provided he triple rinses each emptied pesticide container in accordance with § 261.7(b)(3) and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

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

11. The instructions to the Uniform Hazardous Waste Manifest form in the Appendix to Part 262 is amended to add under Item 16 a new paragraph after the first paragraph as follows:

* * * * *

Primary exporters shipping hazardous wastes to a facility located outside of the United States must add to the end of the first sentence of the certification the following words "and conforms to the terms of the EPA Acknowledgment of Consent to the shipment."

* * * * *

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

12. The authority citation for Part 263 is revised to read as follows:

Authority: Secs. 2002(a), 3002, 3003, 3004, 3005 and 3017 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 and as amended by the Quiet Communities Act of 1978 (42 U.S.C. 6912, 6922, 6923, 6924, 6925 and 6937).

13. Section 263.20 is amended by revising paragraphs (a), (c), (e)(2), (f)(2) and (g)(3) and by adding paragraph (g)(4) to read as follows:

§ 263.20 The manifest system.

(a) A transporter may not accept hazardous waste from a generator unless it is accompanied by a manifest signed in accordance with the provisions of 40 CFR 262.20. In the case of exports, a transporter may not accept such waste from a primary exporter or other person (1) if he knows the shipment does not conform to the EPA Acknowledgment of Consent; and (2) unless, in addition to a manifest signed in accordance with the provisions of 40 CFR 262.20, such waste is also accompanied by an EPA Acknowledgment of Consent which, except for shipment by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)).

* * * * *

(c) The transporter must ensure that the manifest accompanies the hazardous waste. In the case of exports, the transporter must ensure that a copy of the EPA Acknowledgment of Consent also accompanies the hazardous waste.

* * * * *

(e) * * *

(2) A shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports, an EPA Acknowledgment of Consent accompanies the hazardous waste; and

* * * * *

(f) * * *

(2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports an EPA Acknowledgment of Consent accompanies the hazardous waste at all times.

* * * * *

(g) * * *

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

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

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

14. The authority citation for Part 271 continues toread as follows:

Authority: Secs. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

§ 271.1 [Amended]

15. Section 271.1 paragraph (j) is amended by adding the following entry to Table 1 in chronological order:

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

Date	Title of regulation
* * * * *	
[Insert date of publication].....	Exports of hazardous waste

16. Section 271.10 is amended by revising paragraph (e) to read as follows except for the note which remains unchanged.

§ 271.10 Requirements for generators of hazardous wastes.

* * * * *

(e) The State program shall provide requirements respecting international shipments which are equivalent to those at 40 CFR Part 262 Subparts E and F, except that:

(1) Advance notification, annual reports and exception reports in accordance with 40 CFR 262.53, 262.55 and 262.56 shall be filed with the Administrator; States may require that copies of the documents referenced also be filed with the State Director; and

(2) The Administrator will notify foreign countries of intended exports in conjunction with the Department of State and primary exporters of foreign countries' responses in accordance with 40 CFR 262.53.

* * * * *

17. Section 271.11 is amended by revising paragraph (c) to read as follows:

§ 271.11 Requirements for transporters of hazardous wastes.

* * * * *

[e State must require the transporter to carry the manifest during transport, except in the case of shipments by rail or water specified in 40 CFR 263.20 (e) and (f) and to deliver waste only to the facility designated on the manifest. The State program shall provide requirements for shipments by rail or water equivalent to those under 40 CFR 263.20 (e) and (f). For exports of hazardous waste, the State must require the transporter to refuse to accept hazardous waste for export if he knows the shipment does not conform to the EPA Acknowledgment of Consent, to carry an EPA Acknowledgment of Consent to the shipment, and to provide a copy of the manifest to the U.S. Customs official at the point the waste leaves the United States.

* * * * *

[FR Doc. 86-17999 Filed 8-7-86; 8:45 am]

BILLING CODE 6560-50-M

addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of harzardous waste.)

II. Effective Date

This rule is effective immediately. Although Subtitle C regulations normally take effect six months after promulgation (RCRA section 3010(b)), the Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioners by an effective date six months after promulgation, and in fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

III. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This grant of an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its wastes as non-hazardous.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effects will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this final regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous wastes, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Dated: October 17, 1986.

Jeffery D. Denit,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Appendix IX, add the following wastestreams in alphabetical order to Table 1 as indicated:

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
General Cable Co.	Muncie, IN.	Dewatered wastewater treatment sludges (EPA Hazardous Waste Nos. F006 and K062) generated from electroplating operations and steel finishing operations after [insert date of final rule's publication]. This exclusion does not apply to sludges in any on-site impoundments as of this date.

[FR Doc. 86–24057 Filed 10–23–86; 8:45am]

BILLING CODE 6560–50–M

40 CFR Parts 261 and 271

[SW-FRL-3096-3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is amending the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous four wastes generated during the production and formulation of ethylenebisdithiocarbamic acid (EBDC) and its salts. The effect of this regulation is that all of these wastes will be subject to regulation under 40 CFR Parts 262 through 266, and Parts 270, 271, and 124.

DATE: Effective date: This regulation becomes effective on April 24, 1987.

ADDRESS: The OSW docket is located in the sub-basement at the following address, and is open from 9:30 to 3:30, Monday through Friday, excluding Federal holidays: EPA RCRA Docket (S–212) (WH–562), 401 M Street, SW., Washington, DC 20460.

The public must make an appointment (by calling Mia Zmud at (202) 475–9327, or Kate Blow at (202) 382–4675) to review docket materials. Refer to "Docket number F–86–EBDC–FFFFF" when making appointments to review any background documentation for this rulemaking. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost; additional copies cost $0.20 per page. Copies of the non-CBI version of the listing background document, the Health and Environmental Effects Profile for Ethylene Thiourea, and not readily available references are available for *viewing and copying only* in the OSW docket.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424–9346 or at (202) 382–3000. For technical information contact Wanda LeBleu-Biswas, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–7392.

SUPPLEMENTARY INFORMATION:

I. Background

On December 20, 1984, EPA proposed to amend the regulations for hazardous waste management under RCRA by listing as hazardous four wastes generated during the production and formulation of ethylene-bisdithiocarbamic acid (EBDC) and its salts.[1] See 49 FR 49562–49565. The hazardous constituent in these wastes is ethylene thiourea (ETU), which is carcinogenic, teratogenic, and shows evidence of mutagenicity. ETU is typically present in each waste at significant levels; its concentration ranges from 0.005 percent in waste K123 to one percent in waste K125. ETU is also moderately persistent in ground water, as indicated by hydrolysis experiments, and is mobile in the environment, due to its high solubility in water and polar organic solvents. Thus, ETU can reach environmental receptors

[1] The Hazardous and Solid Waste Amendments of 1984 require the Agency to make a determination as to whether wastes from carbamate manufacturing should be listed as hazardous.

in harmful concentrations if these wastes are mismanaged. Furthermore, waste K124 is corrosive. (See the preamble to the proposed rule at 49 FR 49562–49565 (December 20, 1984) for a more detailed explanation of our basis for listing these wastes.) After evaluating these wastes against the criteria for listing hazardous wastes (40 CFR 261.11(a)(3)), EPA had determined that these wastes are hazardous because they are capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

The Agency received several comments on these proposed waste listings.[2] We have evaluated these comments carefully, and have responded to them accordingly. This notice makes final the regulation proposed on December 20, 1984, and outlines EPA's response to the comments received on that proposal.

II. Response to Comments

This section presents the comments received on the proposed rule, as well as the Agency's response.

A. Overlap with Other Statutes

The commenter felt that, in light of the Office of Pesticides Program, RPAR Data Call-In, the issuance of the rule should be delayed until the Data Call-In is completed. Specifically, since new data are being developed for the Call-In, in the view of the commenter, these data may shed new light on the tendency of EBDC to degrade to ETU, and on whether there is any potential for absorption of ETU into mammals.

The additional information may shed light on issues related to FIFRA regulation of EBDCs as pesticides. Sufficient evidence currently exists, however, indicating that ETU has toxicological properties of concern (carcinogenicity, teratogenicity, thyroid effects, and mutagenicity), and on its fate and transport in the environment (from means other than use as a pesticide) to determine, for purposes of RCRA, that these wastes are hazardous. We, therefore, have decided not to delay this ruling. If, however, at any time new data are submitted that may change our basis for listing, we will evaluate the impact on these listed wastes.

B. Concentrations of ETU

The commenter felt that the concentrations of ETU outlined in the preamble to the proposed rule (see 49 FR 49563) are vague and must be clearly documented, as these concentrations form the basis for the proposed rule. In addition, the commenter believes that the ETU concentrations are open-ended with no limit having been established.

The concentrations of ETU outlined in the table are not vague, but actually are specified for each waste. The concentrations are presented as ranges to depict the boundaries reported by all generators of the waste. The Agency believes that aggregating this information provides a clear and concise description of the range of possible concentrations of ETU in each waste, while protecting the confidentiality of the specific data submitted by the generators.

In response to the comment that no limit has been established for ETU concentrations in the waste, the commenter is correct that no lower bound has been established. The Agency notes, however, that typically and frequently the listed wastes will contain ETU at levels of concern. Any person, however, may petition the Agency, pursuant to 40 CFR §§ 260.20 and 260.22, to exclude from regulation wastes generated at a particular facility. See 50 FR 28727, 28742–43, July 15, 1985. If particular wastes did not contain hazardous levels of ETU (and were not hazardous for any other reason), the Agency could exclude them from regulation.

C. The Risk of EBDC Wastes to Human Health and the Environment

The commenter stated that, to date, large amounts of EBDCs have been beneficially used in agriculture with no evidence that any harm to humans or the environment has occurred.

Although pesticide uses of EBDC have not been cancelled, the Agency still has concerns (as evidenced by the RPAR Data Call-In and its scheduled 1986 reassessment of its 1982 decision on EBDCs) about possible health effects that would not be readily observable by, or evident to, the user. Chronic health effects, such as cancer, may not manifest themselves for years after exposure. Some effects (*e.g.*, mutagenic or teratogenic effects) will only manifest themselves in a future generation. Similarly, environmental contamination, such as pesticide residues in ground water, may not be immediately evident to users. We do not agree with the commenter that EBDC use has been shown not to pose health or environmental problems. Nor would evidence of safe use necessarily prove that uncontrolled disposal would not result in environmental harm.

Further, it should be noted that, under FIFRA, a pesticide is registered for use if it will not cause any "unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs, and benefits of use." (See FIFRA Section 2(bb).) Thus, a pesticide that poses some risk may be approved if the benefits outweigh the risks. (In such cases, the Agency typically imposes regulatory restrictions to reduce exposure, thereby reducing the risks.) Under RCRA, however, a waste is considered hazardous if it poses a risk to human health or the environment. This statutory standard does not call for balancing the economic benefits of an activity against its risks. Some controlled uses of a pesticide may be allowed even though some risk may be incurred, due to the economic and substantial social benefits of the pesticide's use. In contrast, under RCRA, a substantial potential hazard to human health or the environment is sufficient to support a decision to list a waste.

III. Test Methods for New Appendix VII Compounds

The Agency is suggesting Method Numbers 8250 and 8330 to test for ETU. Persons wishing to submit delisting petitions are to use the methods listed in Appendix III to demonstrate the concentration of ETU in the waste.[3] As part of their petitions, petitioners should submit quality control data demonstrating that the methods they have used yield acceptable recovery (*i.e.*, >50% recovery at concentrations above 1 μg/g) on spiked aliquots of their waste.

The above methods are in "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods," SW–846, 2nd ed., July 1982, as amended; available from: Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783–3238. Document Number: 055–002–81001–2.

IV. CERCLA Impacts

All hazardous wastes designated by today's rule will, upon the effective date, automatically become hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

[2] One person requested a 30-day extension of the public comment period on this proposal. Although no official extension was given, the Agency usually accepts late comments if they are submitted within a reasonable time after the close of the comment period; however, the Agency is not required to do so. This person never submitted any comments.

[3] Petitioners may use other test methods to analyze for ETU if, among other things, they demonstrate the equivalency of these methods by submitting their quality control and assurance information along with their analysis data. See 40 CFR 260.21

(CERCLA). (See CERCLA section 101(14).) CERCLA requires that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities (RQs) immediately notify the National Response Center at (800) 424–8802 or (202) 426–2675) of the release. (See CERCLA section 103 and 50 FR 13456–13522, April 4, 1985.)

Pursuant to section 102, all hazardous wastes newly designated under RCRA will have a statutorily-imposed RQ of one pound unless and until adjusted by regulation. If, however, a newly listed hazardous waste contains hazardous substances for which final RQs have already been assigned in Table 302.4, 40 CFR Part 302, the lowest RQ assigned to any of the constituents present in the waste represents the RQ for the waste stream. Thus, if the waste contains only one constituent of concern, the waste will have the same RQ as that of the constituent.

In the case of all four waste streams listed pursuant to this rule, ETU is identified as the only hazardous constituent. ETU has a final RQ of one pound (see 50 FR 13487, April 4, 1985). The Agency proposed in the December 20, 1984 proposal for this rule that RQs of one pound would be designated as the final RQs for the listed wastes (K123, K124, K125, and K126). Since the Agency received no public comments on these proposed RQs, the Agency also is making final in this rule the one-pound RQ proposed for EPA Hazardous Waste Nos. K123, K124, K125, and K126. Since ETU is currently undergoing carcinogenicity assessment for CERCLA RQ adjustment (ranking) purposes, however, both its RQ and the RQ of these four wastes are subject to change when the assessment is completed, as will be noted in their listing in Table 302.4

The RQs promulgated in this rule are effective upon the effective date of today's action. These listed wastes and their RQs will be added to Table 302.4 of § 302.4 at the time of its next Federal Register publication.

V. State Authority

A. Applicability of Rules in Authorized States

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

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final 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 the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

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

Today's rule is promulgated pursuant to section 3001(e)(2) of RCRA, a provision added by the HSWA. It is, therefore, being added to Table 1 in § 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to the HSWA, and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1, as discussed in the following section of this preamble.

B. Effect on State Authorizations

As noted above, EPA will implement today's rule in authorized States until they modify their programs to adopt these rules, and the modification is approved by EPA. Since the rule is promulgated pursuant to the HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of regulations that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications under section 3006(b) are described in 40 CFR 271.21. The same procedures should be followed for section 3006(g)(2).

Applying § 271.21(e)(2), States that have final authorization must modify their programs by July 1, 1989 if only regulatory changes are necessary, or July 1, 1990 if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)).

States with authorized RCRA programs already may have regulations similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these regulations in lieu of EPA until the State program modification is approved. Of course, States with existing regulations may continue to administer and enforce their regulations as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of EPA's regulations may be approved without including regulations equivalent to those promulgated. Once authorized, however, a State must modify its program to include regulations substantially equivalent or equivalent to EPA's within the time periods discussed above.

VI. Compliance Dates

A. Notification

The Agency has decided not to require persons who generate, transport, treat, store, or dispose of these hazardous wastes to notify the Agency within 90 days of promulgation that they are managing these wastes. The Agency views the notification requirement to be unnecessary in this case since we believe that most, if not all, persons who manage these wastes have already notified EPA and received an EPA identification number. In the event that any person who generates, transports, treats, stores, or disposes of these wastes has not previously notified and received an identification number, that person must get an identification number pursuant to 40 CFR 262.12 before he can generate, transport, treat, store, or dispose of these wastes.

B. Interim Status

All existing hazardous waste management facilities (as defined in 40

CFR 270.2) that treat, store, or dispose of hazardous wastes covered by today's rule, and that are currently operating pursuant to interim status under section 3005(e) of RCRA, must file with EPA an amended Part A permit application by April 24, 1987. In addition, facilities which currently treat, store, or dispose of the wastes subject to this rule, but which have not received a permit pursuant to section 3005 and are not operating pursuant to interim status may also be eligible for interim status under the Hazardous and Solid Waste Amendments of 1984. See section 3005(e)(1)(A)(ii) of RCRA, as amended. In order to operate pursuant to interim status, such facilities must get an identification number pursuant to 40 CFR 262.12 and submit a Part A permit application by April 24, 1987. Land disposal facilities which qualify for interim status under section 3005(e)(1)(A)(ii) must also apply for a final determination regarding the issuance of a permit and certify that the facility is in compliance with all applicable ground water monitoring and financial responsibility requirements within twelve months of becoming subject to such permit requirements. See RCRA section 3005(e)(3). If not, interim status will terminate on that date.

A hazardous waste management facility which has received a permit pursuant to section 3005, however, may not treat, store, or dispose of the wastes covered by today's rule until it submits an amended permit application pursuant to 40 CFR 124.5, and the permit has been modified pursuant to 40 CFR 270.41 to allow it to treat, store, or dispose of these wastes.

VII. Regulation of EBDC Compounds under FIFRA

The Agency issued a notice on August 10, 1977 (42 FR 40618), informing the public that evidence of hazards from the use of EBDCs (and ETU) warranted an in-depth evaluation of risks and benefits. On October 14, 1982, the Office of Pesticides and Toxic Substances concluded that, while there was valid and significant evidence of hazard, additional data were necessary to decide whether or not to cancel EBDCs, and that registrations could continue with mandatory restrictions on use practices. Additional data on EBDCs and ETU have been requested from registrants. On December 31, 1986, the Agency is scheduled to complete a reassessment of its regulatory position under FIFRA on EBDCs. In conducting the reassessment, the Agency will review the available health and safety data, assess the applicable health and environmental risks, and reach a decision on the registration of pesticide products containing EBDCs.

VIII. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. In the proposed listing, EPA addressed this issue by citing the results of an economic analysis that was conducted based on a worst case scenario; the total additional incurred cost for the industry to dispose of the wastes as hazardous was approximately $33,100. The Agency received no comments on this figure.

Since EPA does not expect that the amendments promulgated here will have an annual effect on the economy of $100 million or more, will result in a measurable increase in costs or prices, or have an adverse impact on the ability of U.S.-based enterprises to compete in either domestic or foreign markets, these amendments are not considered to constitute a major action. As such, a Regulatory Impact Analysis is not required.

IX. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities.

The hazardous wastes listed here are not generated by small entities (as defined by the Regulatory Flexibility Act), and the Agency has no information indicating that small entities will dispose of them in significant quantities. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

X. Paperwork Reduction Act

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects

40 CFR Part 261

Hazardous waste, Recycling.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: October 7, 1986.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In § 261.32, add the following waste streams to the subgroup "Pesticides":

§ 261.32 Hazardous wastes from specific sources.

. . . . .

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
	• • • • • •	
Pesticides		
	• • • • • •	
K123	Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salt.	(T)
K124	Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts	(C, T)
K125	Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts.	(T)
K126	Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts.	(T)
	• • • • • •	

3. Add the following compound and analysis methods in alphabetical order to Table 1 of Appendix III of Part 261:

Appendix III—Chemical Analysis Test Methods

• • • • •

Compound	Method No.
• • • • •	
Ethylene thiourea	8250, 8330.
• • • • •	

4. Add the following entries in numerical order to Appendix VII of Part 261:

Appendix VII—Basis for Listing Hazardous Waste

• • • • •

EPA hazardous waste No.	Hazardous constituents for which listed
• • • • •	
K123	Ethylene thiourea.
K124	Ethylene thiourea.
K125	Ethylene thiourea.
K126	Ethylene thiourea.
• • • • •	

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

5. The authority citation for Part 271 continues to read as follows:

Authority: Sec. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), and 6926].

§ 271.1 [Amended]

6. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

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

Promulgation date	Title of regulation	Federal Register reference	Effective date
• • • • •			
October 24, 1986	Listing Wastes from the Production and Formulation of Ethylenebisdithiocarbamic Acid (EBDC) and its Salts.	51 FR 37725	April 24, 1987
• • • • •			

[FR Doc 86-23996 Filed 10-23-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[SW-8-FRL-3099-8]

Colorado; Final Authorization of Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule on application of Colorado for a program revision to regulate hazardous components of radioactive mixed wastes.

SUMMARY: Colorado has applied for final authorization of a revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Colorado's application and has reached a decision that Colorado's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to Colorado to operate its expanded program, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984.

EFFECTIVE DATE: Final authorization for Colorado shall be effective at 1:00 p.m. on November 7, 1986.

FOR FURTHER INFORMATION CONTACT: Charles L. Brinkman, One Denver Place, Suite 1300, 999 18th Street, Denver, Colorado 80202-2413. Phone: 303/293-1794.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur.

On July 3, 1986, the Agency published a Federal Register notice requiring States to have authority to regulate radioactive mixed wastes (51 FR 24504). That notice required States to demonstrate to the appropriate EPA Regional Administrator that their hazardous waste management program applies to all hazardous waste even if mixed with radioactive waste. This demonstration must be made pursuant to the schedule set forth in 40 CFR 271.21(e)(2) for State program revisions.

B. Colorado

Colorado received final authorization for its hazardous waste program on November 2, 1984. On July 17, 1986, Colorado submitted a program revision application for additional program approval to regulate the hazardous components of radioactive mixed waste. EPA made a tentative determination on August 8, 1986, that Colorado's program revision would satisfy all requirements if Colorado would include additional information in its Program Description on State staffing and funding for regulation of the hazardous components of radioactive mixed wastes and a numerical estimate of radioactive mixed waste handlers within the State. Colorado submitted additional information on August 11, 1986, which demonstrated Colorado's capability to address the hazardous components of radioactive mixed waste and listed all known handlers of radioactive mixed waste in Colorado. Thus, adequate documentation of Colorado's ability to

ENVIRONMENTAL PROTECTION AGENCY

[WH-FRL-2693-4]

40 CFR Part 261

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to amend its regulations under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous four wastes generated during the production and formulation of ethylenebisdithiocarbamic acid (EBDC) and its salts. The effect of this proposed regulation would be to subject these wastes to the hazardous waste management standards contained in 40 CFR Parts 262–266, Part 124, and the requirements of Parts 270 and 271.

DATES: EPA will accept public comments on this proposed rule until February 4, 1985. Any person may request a hearing on this amendment by filling a request with Eileen B. Claussen, whose address appears below, by January 4, 1985.

ADDRESSES: Comments should be sent to the RCRA Docket Clerk, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C., 20460. Comments should identify the regulatory docket "Listing EBDC." Requests for a hearing should be addressed to Eileen B. Claussen, Director, Characterization and Assessment Division, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

The public docket for this amendment is located in Room S–212A, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline at (800) 424–9346 or at (202) 382–3000. For technical information contact Dr. Howard Fribush, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C., 20460, (202) 475–6678.

SUPPLEMENTARY INFORMATION:

I. Background

On May 19, 1980, as part of its final and interim final regulations implementing Section 3001 of RCRA, EPA published a list of hazardous wastes generated from specific sources. This list has been amended several times, and is published in 40 CFR 261.32. EPA proposes to add to the list four wastes from the production of ethylenebisdithiocarbamic acid (EBDC) and its salts.[1] These wastes are (1) aqueous wastes from product purification (K123), (2) reactor vent scrubber water (K124), (3) purification solds from filtration, evaporation, and centrifugation operations (K125), and (4) baghouse dust and floor sweepings in milling and packaging operations (K126) from the production or formulation of EBDC and its salts.

The hazardous constituent in these wastes, ethylene thiourea (ETU), is a carcinogen in animals, a potential carcinogen in humans, a teratogen, a mutagen, and also causes thyroid effects. ETU is a contaminant, a degradation product, and a metabolite of EBDC and its salts. The Agency has previously listed as hazardous discarded commercial chemical products, off-specification species, container residues, and spill residues containing ETU, under 40 CFR 261.33(f) (EPA Hazardous Waste No. U116, Ethylene thiourea). In addition, ETU appears in Appendix VIII.

ETU typically is present in high concentrations in each waste stream. This constituent also is mobile and persistent, and can reach environmental receptors in harmful concentrations if these wastes are mismanaged. The reactor vent scrubber water also is corrosive because it has a pH greater than 12.5. Evaluated against the criteria for listing hazardous wastes (40 CFR 261.11(a)(3)), EPA has determined that these wastes are hazardous because they are capable of posing a substantial present or potential threat to human health and the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

II. Summary of the Regulation

A. List of Wastes

This proposed regulation would list as hazardous four wastes generated during the production and formulation of EBDC and its salts.[2]

These residual wastes are:

- K123—Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salts.
- K124—Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.
- K125—Purification solids (including filtration, evaporation, and centrifugation solids) from the production of ethylenebisdithiocarbamic acid and its salts.
- K126—Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its sales.

In 1982, four domestic companies were producing EBDC at four locations, with a total annual production capacity of 26,090 kkg (57.4 million pounds). For fungicide use, EBDC compounds are principally sold either as the sodium salt (nabam), the manganese salt (maneb), the zinc salt (zineb), as a mixture of the manganese and zinc salts (mancozeb), as the diammonium salt (amobam), or as the mixed ammonium-zinc salt (metiram, polyram). Production of EBDCs totalled 12,000 kkg (27 million pounds) in 1977, and 9,000 kkg (20 million pounds) in 1982. The total volume of the organic residual wastes from production of EBDC and its salts by the process described here at nameplate capacity is approximately 92,400 kkg (203 million pounds) of process wastewater (EPA Hazardous Waste No. K123), 4,120 kkg (9.06 million pounds) of reactor vent scrubber water (EPA Hazardous Waste No. K124) 1,300 kkg (2.86 million pounds) of purification solids (EPA Hazardous Waste No. K125), and 39 kkg (86,000 pounds) of baghouse dust and floor sweepings (EPA Hazardous Waste No. K126).

EBDC and its sales typically are produced by reacting ethlenediamine with carbon disulfide in the presence of a base (usually sodium hydroxide or ammonium hydroxide), and then adding the desired metal to precipitate the EBDC product. The wastes that are being listed from this operation are formed as residuals at several points in the production of EBDC and its salts. Waste K123 includes any of a collection of aqueous wastes and is formed from either of the following operations: (1) Separation of the aqueous supernate generated after the precipitation of the insoluble EBDC product (formed as either a transition metal salt and/or its thiuramsulfide), (2) concentration of this aqueous supernate in the evaporator, resulting in the formation of an aqueous

[1] The Agency currently is evaluating other wastes from the production of carbamates and may propose to list additional wastes in the near future.

[2] We considered listing as hazardous wastes the following streams: (1) Spent carbon from the pretreatment or treatment of the wastewater, (2) still bottoms from the stream stripping of the wastewater, (3) sludges from the metals precipitation or separation of the wastewater, and (4) sludges from the biological treatment systems. However, because these waste streams are derived from the waste streams being listed, they are automatically considered hazardous wastes.

waste, and (3) the washing of the product, also producing process wastewater. Waste K124 is formed from the passage of reactor vent gases through a scrubber, typically generating a caustic aqueous waste. Due to the high (greater then 50%) concentration of sodium hydroxide in waste K124, this waste has a pH greater than 12.5. This waste, therefore, meets the corrosivity characteristic specified in 40 CFR 261.22. Waste K125 is the purification solids, formed from the evaporation of water from the mother liquor and from the filtration and centrifugation of the EBDC salt during wastewater treatment. Waste K126 is dust and floor sweepings from milling and packaging operations.

Our proposal to list these wastes is based on the similarity of the production processes employed by the facilities manufacturing EBDC and its salts. The Listing Background Document and the sources cited there describe these production processes in detail.

As derived from both questionnaires and sampling analyses, these wastes typically contain significant concentrations of ETU, a side reactant contaminant and major degradation product of EBDC.[3,4]

EPA hazardous waste Nos.	Estimated concentration of ETU	
	ppm	Percent
K123	50 to 2,500	0.005 to 0.25.
K124	1,000 to 2,000	0.1 to 0.2.
K125	1,000 to 10,000	0.1 to 1.0.
K126	200 to 2,500	0.02 to 025.

In addition, these wastes typically contain other potentially toxic constituents, such as ethylenebisisothiocyanate and carbon disulfide. Ethylenebisisothiocyanate also is a degradation product of EBDC. However, the Agency does not have sufficient toxicity data to propose including these additional compounds as hazardous constituents at the present time. When more information is available, we will determine whether they should be added.

[3] These wastes also contain EBDC at significant concentrations. EBDC, although toxic, is not very persistent (e.g., one of the salts of EBDC, mancozeb, has a half-life of less than one day in sterile water). Therefore, we are not listing it as a constituent of concern. The Agency, however, solicits comment on our decision not to list EBDC as a toxicant of concern.

[4] These levels are considered significant based on the carcinogenicity of ETU and the doses that were required to elicit the carcinogenic response in the study by Graham *et al.* (see the HEEP for ETU). From that study, the Agency's CAG, using doses that ranged from 5–500 ppm, calculated an oncogenic risk to humans from ETU of 10^{-4} from ingestion of 2.8×10^{-4} mg/kg/day. The levels used to calculate the risk are much (one to three orders of magnitude) less than the concentration of ETU in the wastes.

The Agency's Carcinogen Assessment Group (CAG) has identified ETU as potentially carcinogenic. The International Agency for Research on Cancer (IARC) also has indicated that there is evidence that ETU is "probably carcinogenic in humans."

BRL and Innes (as stated in the Health and Environmental Profile (HHEP) for ETU) reported significantly increased incidences of hepatomas in both sexes of two strains of mice and significantly increased incidences of lymphoma in females of one strain when compared with controls. In comparison with pooled controls, dietary administration of ETU at the Maximum Tolerated Dose (MTD) (350 ppm) significantly increased the incidence of thyroid follicular carcinom in both male and female rats (Weisburger, as reported in the HEEP for ETU). Ulland (as stated in the HEEP for ETU) also reported increased thyroid carcinoma incidence in rats fed ETU at the MTD for 18 months. In addition, rats developed thyroid gland carcinomas and adenocarcinomas at dietary levels of 250 and 500 ppm when treated for 1 or 2 years (Graham, as reported in the HEEP for ETU).

Rats and hamsters administered ETU exhibited teratogenic effects. ETU was a potent teratogen in rats at daily oral doses as low as 20–40 mg/kg during gestation with no toxicity to dams (Khera, Chernoff, Teramoto, as reported in the HEEP for ETU). The fetal responses included central nervous system (CNS) abnormalities such as exencephaly, hydrocephaly, hydranencephaly, menigoencephaly, and meningorrhea (Khera, Ruddick, Tryphonas, Chernoff, Mungkornkarn, as reported in the HEEP for ETU). Skeletal anomalies were also observed by these investigators. CNS and skeletal defects were also produced in offspring of hamsters treated with ETU at relatively high single oral dose levels of >1200 mg/kg (Khera), although Lu and Su found fetal abnormalities in hamsters at repeated doses of >120 mg/kg and CNS defects with multiple does of 300 or 360 mg/kg (as reported in the HEEP for ETU). In addition, dermal application of ETU to pregnant rats at a relatively low dose of 50 mg/kg/day for 2 gestational days also resulted in CNS and skeletal abnormalities in fetuses (Stula and Krauss, as reported in the HEEP for ETU).

ETU is mutagenic in some bacteria and yeast systems. ETU was positive in some strains of *Salmonella typhimurium* in the reverse mutation assay to histidine independence (Seiler, Schupbach, Teramoto), in *B. subtilis* spores in the rec assay (Kada), in a cell transformation assay with hamster kidney cells (Daniel and Dehnel), and in the unscheduled DNA synthesis of cultured HeLa cells (Martin and McDermid) (as reported in the HEEP for ETU). ETU also was positive in the mitochondrial DNA petite mutation assay in *Saccharomyces cerevisiae* (Diala, Egilsson) (as reported in the HEEP for ETU).

The Agency's Office of Pesticides Programs has called for additional testing for mutagenicity on both ETU and EBDC and its salts. The National Institute of Occupational Safety and Health (NIOSH) has recommended that ETU handled as a carcinogen and teratogen in the workplace. ETU, therefore, exhibits toxicological properties of regulatory concern. The Listing Background Document and HEEP contain additional details on the health effects of ETU.

The Agency also has data which indicate that EBDC and its salts degrade rapidly to ETU in the waste and the environment. As a result of this rapid breakdown, ETU normally is present with EBDC and its salts in wastes. In addition, mancozeb has a half-life of less than one day in sterile water before degrading to ETU.

Based on the solubility of ETU in water (20 grams per liter at 30 °C), the Agency further believes that ETU is mobile in the environment. ETU will migrate from the matrix of the waste and is expected to be capable of entering the aquatic environment either through runoff or leaching through soil. Based on the volume of waste that could be generated from EBDC production, approximately 231 kkg (0.51 million pounds) of ETU could escape into the environment from waste K123, 8.24 kkg (18,128 pounds) of ETU could escape into the environment from waste K124, 13.0 kkg (28,600 pounds) of ETU could escape into the environment from waste K125, and 0.1 kkg (220 pounds) of ETU could escape into the environment from waste K126.[5] Furthermore, due to the rapid breakdown of EBDC salts to ETU, EBDC wastes containing EBDC salts could produce even more ETU after the wastes are released into the environment.

The Agency also has determined that ETU is persistent in ground water. This is based on data that shows that ETU is

[5] The amount of ETU that could escape into the environment from EBDC wastes is a worst case estimate and is equal to the amount of ETU in the waste. These figures are calculated as follows: Percent of ETU in the waste multiplied by the total volume of wastes produced. Thus, the amount of ETU in waste K123 is 92,400 kkg × 0.25% = 231 kkg.

stable to hydrolysis in distilled water for at least 40 days (see the HEEP for ETU). If waste disposal sites are improperly designed or managed—for example, sited in areas with highly permeable soils or constructed without effective natural or artificial liners—it is likely that ETU could escape from EBDC wastes to surface water or ground water. As indicated by the high solubility of ETU in water and moderate solubility in other polar solvents such as methanol, ethanol, ethylene glycol, and pyridine, ETU, if improperly disposed, may be dissolved by the solvents found in mixed wastes and leach out of these wastes into ground water. The Agency, therefore, believes that ETU from EBDC wastes which are improperly managed, is likely to enter and remain in the environment, posing substantial risk.

Moreover, the Agency believes that current industry waste management practices do not adequately protect human health and the environment from significant exposure to ETU. For example, centrifuge solids, which contain high levels of ETU, typically are disposed of in a sanitary landfill. These practices do not prevent ETU from leaching from these wastes and contaminating surface water and ground water at significant levels.

EBDC wastewaters typically are processed in wastewater treatment systems. The Agency has data, however, which indicates that significant amounts of ETU can survive wastewater treatment (see the HEEP for ETU). In addition, ETU can inhibit activated sludge treatment of wastewaters. The ETU present significantly inhibits nitrification from occurring within the activated sludge, a process which is critical to the efficacy of the sludge, and thus, to wastewater treatment. It follows from this that ETU can inhibit nitrification in the receiving stream, thus interfering with the natural ecological development of the stream. Wastewater treatment of EBDC wastes containing significant amounts of ETU therefore, is not likely to remove the ETU, contaminating the environment with a highly mobile, persistent carcinogen and environmental toxicant. The Listing Background Document and the HEEP contain additional details on the management, fate, and transport of ETU.

Consequently, by virtue of the high concentrations of ETU in these wastes, which are generated in large volumes, the mobility of ETU via leaching and runoff, and its persistence in ground water, EPA has determined that these wastes pose a substantial present or potential hazard to human health and the environment, when improperly stored, transported, disposed of, or otherwise managed. The Agency, therefore, is proposing to add these wastes to the hazardous waste list in 40 CFR § 261.32.

III. Regulatory Status of Hazardous Wastewaters

Under the existing hazardous waste regulations, tanks that are treating or storing hazardous wastewaters are exempt from the Parts 264 and 265 management standards when the treatment unit is part of a wastewater treatment facility that is subject to regulation under either section 402 or section 307(b) of the Clean Water Act. Treatment units, such as concrete basins, which may or may not be in-ground, routinely provide for certain steps in a wastewater treatment process such as equalization, neutralization, aeration (in biological treatment facilities), settling (in both biological and physical/chemical treatment facilities), flocculation or treated wastewater storage prior to recycling. Where such units are constructed primarily of non-earthen materials designed to provide structural support, they are defined as tanks for purposes of the hazardous waste regulations. See 40 CFR 260.10 (definition of "tank"). In applying this definition, the Agency has provided guidance that a unit is to be evaluated as if it were free-standing and filled to its design capacity with the material it is intended to hold. If the walls or shell of the unit alone provide sufficient structural support to maintain the structural integrity of the unit under these conditions, the unit is considered to be a tank. Alternatively, if the unit is not capable of retaining its structural integrity without supporting earthen materials, it is considered to be a surface impoundment.

Therefore, when wastewaters, including those covered by the listing proposed today, are stored or treated in containment devices which qualify as tanks, these devices are presently exempt from the Parts 264 and 265 management standards.

IV. Test Methods for Compounds Added to Appendix VII

In 49 FR 38786–38809, Monday, October 1, 1984, the Agency proposed test methods (both those newly designed, as well as those previously available in SW–846—see below) for use in detecting specified substances by applicants who wish to conduct waste evaluations in support of delisting petitions, and by owners or operators of hazardous waste management facilities who must conduct ground-water monitoring (see 40 CFR 264.99) or incinerator monitoring (see 40 CFR 264.341). These test methods will, upon promulgation, be included in 40 CFR Part 261, Appendix III. In this proposal, Method Numbers 8250 and 8330 were designated for testing for the presence and concentration of ETU.

These methods are in "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods", SW–846, 2nd ed., July 1982, as amended; available from: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 783–3238, Document number: 055–002–81001–2.

V. CERCLA Impacts

The hazardous wastes designated by today's proposed rule will, if made final, automatically become hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). (See CERCLA section 101(14).) CERCLA requires that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities (RQs) immediately notify the National Response Center of the release. (See CERCLA section 103 and 48 FR 23552, May 25, 1983.)

For those hazardous wastes containing constituents which have already been assigned RQs, the RQ assigned to the waste will represent the lowest RQ associated with the constituents. Since ETU, the only hazardous constituent of all four wastes has a statutory RQ of one pound,* all four of these wastes also have statutory RQs of one pound. (See 48 FR 23552–23605.)

VI. State Authority

Once a State receives interim or final authorization, it operates the RCRA program instead of EPA. If promulgated, this listing and the related management standards will not apply in interim-authorized States unless the State listed these EBDC wastes at the time it received interim authorization. Unless a State received final authorization on the basis of a universe of hazardous wastes which included these EBDC wastes, this listing and the related standards would not apply in States with final authorization until the State revises its program to add these EBDC wastes to the universe of hazardous wastes and the revision is approved by EPA. The process and schedule for State adoption of these regulations is described in 40 CFR 271.21, as amended by 49 FR 21678–21682, May 22, 1984.

* Criteria are currently being developed for potential carcinogens such as ETU to adjust the one pound RQ to a level adequately protective of human health and the environment.

If this proposed listing is made final, States which now have final authorization would have to revise their programs within one year from the date of promulgation if only regulatory changes are necessary, and within two years from the date of promulgation if statutory changes are required. This deadline may be extended in exceptional cases (see 40 CFR 271.21(e)(3)). States now in the process of applying for final authorization would be able to receive final authorization without including these EBDC wastes in their universe of hazardous wastes if the official state application is submitted less than one year after this listing, if made final, is promulgated. The date by which States must modify their programs is governed by 40 CFR 271.21(e)(iii).

VII. Regulation of EBDC Compounds Under FIFRA

EBDC compounds are used as fungicides and, therefore, are subject to regulation under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The statutory test under FIFRA is a risk-benefit balance: Products are "registered" (authorized) if they generally will not cause any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of use. Accordingly, pesticides which present substantial risks can be approved if benefits outweigh risks. (See FIFRA sections 3(c)(5) and 2(bb).) The amount of information on which this decision is based has increased as the techniques to assess risks have improved. Moreover, many pesticide products, including some containing EBDCs, were approved under statutory criteria which preceded the current test.

The burden of proof is on the proponents of registration to demonstrate that a pesticide meets the statutory test. If the Agency decides to cancel a pesticide's registration, proponents of the pesticide are afforded opportunities to contest the Agency's determination.

The Agency issued a notice on August 10, 1977 (42 FR 40618) informing the public that evidence of hazards from the use of EBDCs (and ETU) warranted an in-depth evaluation of risks and benefits. On October 14, 1982, the Office of Pesticides and Toxic Substances concluded that, while there was valid and significant evidence of hazards, additional data was necessary to decide whether or not to cancel EBDCs, and registrations could continue with mandatory restrictions on use practices. Additional hazard data has been requested from registrants. The Agency believes that the decision to list EBDC waste streams for which a different statutory standard applies, is fully consistent with the treatment of EBDC pesticides under FIFRA.

VIII. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The total additional incurred cost for disposal of the wastes as hazardous is approximately $33,100, well under the $100 million constituting a major regulation. This cost is insignificant and results from minimal additional compliance requirements, as these wastes are already being managed as if they were RCRA hazardous wastes.

In addition, we do not expect that there will be an adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Since this proposal is not a major regulation, no Regulatory Impact Analysis is being conducted.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA responses to those comments are available for public inspection in Room S-212A at EPA.

IX. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on small entities.

The hazardous wastes proposed to be listed here are not generated by small entities (as defined by the Regulatory Flexibility Act), and the Agency does not believe that small entities will dispose of them in significant quantities. Accordingly, I hereby certify that this proposed regulation would not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis. (See 5 U.S.C. 603).

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: December 14, 1984.

William D. Ruckelshaus,

Administrator.

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 reads as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In § 261.32, add in numerical order the following waste streams to the subgroup "Organic Chemicals":

§ 261.32 Hazardous wastes from specific sources.

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
•	• • • • •	
K123	Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salts.	(T)
K124	Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.	(C, T)
K125	Purification solids (including filtration, evaporation, and centrifugation solids) from the production of ethylenebisdithiocarbamic acid and its salts.	(T)
K126	Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocrabamic acid and its salts.	(T)
•	• • • • •	

3. Add the following entries in numerical order to Appendix VII of Part 261:

Appendix VII—Basis for Listing Hazardous Waste

EPA hazardous waste No.	Hazardous constituents for which listed
•	• • • • •
K123	Ethylene thioures.
K124	Ethylene thioures.
K125	Ethylene thioures.
K126	Ethylene thioures.
•	• • • • •

[FR Doc. 84-33123 Filed 12-19-84; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 262, 263, 271

[FR 2939-7]

Hazardous Waste Management System; Exports of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: On November 8, 1984, the President signed into law the Hazardous and Solid Waste Amendments of 1984 (HSWA). These amendments to the Resource Conservation and Recovery Act of 1976 (RCRA) require EPA to promulgate rules to implement new section 3017 regarding exports of hazardous waste. Accordingly, to implement section 3017 and improve upon its existing program, EPA is today proposing and requesting public comment on revisions to its current regulations governing exports of hazardous waste. Consistent with HSWA, the regulations proposed today would prohibit the export of hazardous waste unless certain requirements are met. These requirements include advance written notification to EPA of the plan to export hazardous waste, prior written consent to such plan by the receiving country, attachment of a copy of the receiving country's written consent to the manifest accompanying each waste shipment, and confirmance of the shipment to such consent. These requirements would apply except to the extent EPA promulgates any different requirements set forth in any international agreement the United States may enter into with a receiving country which establishes different notice, export and enforcement procedures for the transportation, storage and disposal of such waste. In addition to provisions concerning the preceding requirements, today's proposal includes provisions governing special manifest requirements, exception reporting, annual reporting, recordkeeping, transporter responsibilities, confidentiality, and State authorization.

DATE: Comment on this proposal will be accepted until April 28, 1986. The proposed Parts 260, 262, 263 and 271 standards applicable to exports of hazardous waste will be effective 30 days after the date of publication in the Federal Register of the final rules.

ADDRESSES: Comments on this proposal should be submitted to Carolyn K. Barley at the address cited below. The official record for this rulemaking is located in Room S-212A, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, and is available for review from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Carolyn K. Barley, (202) 382-2217, Office of Solid Waste, Room S-257 (WH-563), 401 M Street SW., Washington, D.C. 20460 or the toll-free RCRA Hotline: 800/424-9346 (in Washington, D.C., call 202/382-3000).

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

I. Authority

These regulations are being proposed under the authority of sections 2002(a), 3002, 3003, 3006, 3007, 3008 and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6922, 6923, 6926, 6927, and 6937.

II. Background

A. Existing Export Regulations

On February 26, 1980 EPA promulgated regulations under the Resource Conservation and Recovery Act of 1976 (RCRA) governing exports of hazardous waste. 45 FR 12732, 12743-12744 (codified at 40 CFR Parts 262 and 263). These regulations place certain requirements on generators and transporters regarding exports of hazardous waste in light of the special circumstances involved in international shipments. Since RCRA did not expressly address exports of hazardous waste, these provisions were promulgated primarily under sections 3002 (Standards Applicable to Generators of Hazardous Waste) and 3003 (Standards Applicable to Transporters of Hazardous Waste) of RCRA and are limited in scope.

Essentially, current Subpart E of Part 262 requires any person exporting hazardous waste to comply with the requirements generally applicable to generators such as initiating the manifest, using proper labels and containers, offering placards, and complying with the recordkeeping and reporting requirements of RCRA. A generator must also notify EPA before the initial shipment of hazardous waste to each foreign country in a calendar year. This notification requirement was established to allow EPA to inform a foreign country or an intended export and to assist EPA in tracking exports of hazardous waste. The content of this notification, however, is minimal: A generator must only identify the waste and consignee. Notification of the quantities of waste, frequency of shipment, or the manner in which such waste will be transported to, treated, stored or disposed in the receiving country is not required. Current regulations also do not require prior written consent of the receiving country prior to shipment. Accordingly, under current regulations, EPA has no authority to prohibit the export of hazardous waste if the foreign country objects to its receipt; any action to stop the shipment must be taken by the receiving country. As a further means of tracking the waste, Subpart E regulations also require that the generator require the consignee to confirm delivery of the waste. Special manifest and exception reporting requirements are also included in Subpart E.

In addition to the export provisions set forth in Subpart E and elsewhere in Part 262 (Standards Applicable to Generators), certain requirements regarding exports of hazardous waste are also included in Part 263 (Standards Applicable to Transporters of Hazardous Waste). These include a requirement that the transporter note on the manifest the date the waste left the United States, sign and retain one copy

of the manifest, and return a signed copy to the generator. Transporters must also deliver the entire quantity of waste to the place outside the United States designated by the generator unless the generator directs otherwise and the manifest is revised. These requirements were established to further enable EPA to track exports of hazardous waste.

B. The Hazardous and Solid Waste Amendments of 1984

On November 8, 1984, the President signed into law a set of comprehensive amendments to RCRA, entitled the Hazardous and Solid Waste Amendments of 1984 (HSWA). These comprehensive amendments will have far-reaching ramifications for EPA's hazardous waste regulatory program. Among other things, they add a new section 3017 to RCRA specifically addressing hazardous waste exports. In enacting this provision, Congress was concerned that EPA's existing notification system was inadequate to address the present and potential environmental, health, and foreign policy problems which occur when wastes are exported to nations which do not wish to receive them or lack sufficient information to manage them properly. *See, e.g.*, S. Rep. No. 98-284, 98th Cong., 1st Sess. 47 (1983). Congress also expressed concern that the failure to effectively regulate exports may be creating a major loophole for circumvention of U.S. hazardous waste laws. 129 Cong. Rec. H8163-H8164 (daily ed. Oct. 6, 1983) (Statements of Rep. Mikulski and Rep. Florio). Thus, Section 3017 expands current notification requirements and requires prior written consent by the receiving country before the shipment can take place.

Generally, subsection (a) of section 3017 provides that, beginning 24 months after enactment of HSWA, the export of hazardous waste is prohibited unless the person exporting such waste: (1) Provides notification to the Administrator; (2) the government of the receiving country has consented to accept the waste; (3) a copy of the receiving country's written consent is attached to the manifest which accompanies each waste shipment; and, (4) the shipment conforms to the terms of such consent. In lieu of meeting the above requirements, a person may export hazardous waste if the United States and the government of the receiving country have entered into an international agreement establishing notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous waste and the shipment conforms to the terms of the agreement.

Subsection (c) of section 3017 sets forth the requirement to notify the Administrator before the shipment leaves the United States and specifies the information to be included in such notification. Subsections (d) and (e) establish procedures for obtaining the receiving country's consent to accept the waste. Subsection (f) addresses the effect of an international agreement on the requirements of section 3017. Subsection (b) requires the Administrator to promulgate regulations necessary to implement section 3017. Subsection (h) authorizes the Administrator to establish other standards for the export of hazardous waste under sections 3002 and 3003 of RCRA. Finally, Congress also amended section 3008 of RCRA to provide criminal penalties for knowingly exporting hazardous waste without the consent of the receiving country or in violation of an existing international agreement between the United States and the receiving country.

Section 3017 of HSWA contains one additional requirement with which exporters must comply immediately: Subsection (g) requires any person exporting hazardous waste to file with the Administrator, no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous year. EPA recently codified this statutory requirement in its export regulations. 50 FR 28702, 28746 (July 15, 1985).

C. Proposed Regulations

Today EPA is proposing amendments to its hazardous waste export regulations to implement section 3017 and improve upon its current program governing exports. New Subpart E of 40 CFR Part 262 would address only exports of hazardous waste and replace existing regulations governing such exports now contained in that Subpart. Since Subpart E currently also includes special requirements governing imports of hazardous waste and the disposition of waste pesticides by farmers, these provisions would be moved to new Subparts F and G respectively with no substantive changes. Amendments are also proposed to 40 CFR Parts 260 regarding confidentiality, 263 pertaining to transporters of hazardous waste, and 271 with respect to State authorization.

III. Detailed Discussion of Proposed Regulation

The following is a detailed section-by-section discussion of the proposed changes to the export regulations.

A. Applicability [§ 262.50]

This section describes the applicability of Subpart E. Subpart E requirements would be applicable to exports of hazardous waste. As discussed more fully below, the term "exporter" is proposed to be defined as the person required to prepare the manifest for a shipment of hazardous waste, in accordance with 40 CFR Part 262, Subpart B, or equivalent State provision, which specifies a treatment, storage or disposal facility in a foreign country as the facility to which the waste will be sent. As such, exporters would be required to comply not only with the special requirements of Subpart E but also with Part 262 requirements applicable to generators (except to the extent Subpart E specifically provides otherwise).

This section also provides that the requirements of Subpart E apply to all exports of hazardous waste unless an international agreement is entered into between the United States and a receiving country which provides for different requirements. As the U.S. government has yet to enter into any such agreements, § 262.58 is proposed to be reserved to set forth any requirements placed on private parties by international agreements which are different from those required by the proposed regulations.

B. Definitions [§ 262.51]

Current regulations do not include a definitional section. This section has been added to provide definitions of new terms used in implementing section 3017 and for purposes of clarity.

1. "Receiving Country"

Congress did not define the term "receiving" country in enacting section 3017. Accordingly, EPA has the discretion to define that term to best effectuate Congressional intent. EPA's interpretation of this term is important because section 3017 requires prior consent of the "receiving country" to accept a hazardous waste; otherwise the export cannot take place. This prior consent requirement is the key element of new section 3017.

EPA believes that under most circumstances there will be only one foreign country involved in an export transaction: The country actually accepting the waste for purposes of its ultimate disposition in that country. However, circumstances may arise where a hazardous waste is transported through or temporarily stored for a short period (for example, at a loading dock or transfer facility) in another country en route to its final destination. Under the

latter circumstances, the question arises as to what constitutes the "receiving country" for purposes of obtaining consent to accept the shipment.

The term "receiving country" could be limited to the first country through which the waste travels or in which a waste may be temporarily held in the course of transportation even if ultimately destined for another country. Under this theory, once the waste enters the initial foreign country, it would then be the responsibility of that country to regulate any further export of such waste. Thus, consent would only be required from the initial country the waste enters. On the other hand, the term "receiving country" could include both transit countries and the country ultimately receiving the waste thus requiring consent from all countries involved. Finally, the term "receiving country" could be limited to the country of ultimate destination of the waste.

After considering the preceding alternatives, EPA proposes to define the term "receiving country" to mean only the foreign country of ultimate destination of the waste. Thus, consent must be obtained from the country in which the hazardous waste ultimately will be treated, stored or disposed. Consent would not be required from countries through which a shipment is transported or in which a shipment is temporarily held in the course of transportation to its ultimate destination. EPA realizes, however, that there may be limits to an exporter's knowledge of the ultimate destination of the waste. Accordingly, if the exporter does not know and cannot reasonably ascertain the country of ultimate destination, the receiving country would be the last country to which the waste will be sent that is known to the exporter.

EPA believes this proposed definition best reflects Congressional intent. It does not appear as though Congress contemplated that consent be obtained from both transit countries and the country ultimately handling the waste. The statutory language itself refers to "receiving country" not "receiving countries." Furthermore, section 3017 specifically requires exporters to notify EPA of the name and address of the "ultimate" treatment, storage or disposal facility. This requirement is indicative of Congressional concern with the "ultimate" destination of the waste. Moreover, Congressional discussions leading up to the enactment of section 3017 focus on the "dumping" or "disposal" of hazardous waste in unsuspecting foreign countries as the activity of primary concern, not the transportation through or temporary storage in a foreign country en route to its final destination.[1] *See, e. g.*, 129 Cong. Rec. H8163-8164 (daily ed. October 6, 1983) (Remarks of Rep. Mikulski and Rep. Florio). EPA believes that requiring consent only from the country actually accepting the waste for purposes of its ultimate disposition also best serves Congressional intent to impose a minimum of additional regulatory burdens on U.S. generators and administrative burdens on EPA while establishing a more comprehensive and responsible export policy. *See* 130 Cong. Rec. S9152 (daily ed. July 25, 1984) (Statement of Sen. Mitchell).

EPA also rejected the alternative of limiting the meaning of the term "receiving country" to the first foreign country the waste may enter or in which it may be temporarily held in the course of transportation to its final destination. Again, Congress specifically requires notification of the "ultimate" treatment, storage or disposal facility thereby indicating an intent to ensure consent by the country handling the "ultimate" disposition of the waste. And, as noted above, Congressional discussions leading up to HSWA also focused on the actual "disposal" of the waste. Moreover, EPA does not believe it appropriate to relinquish authority over the export of such waste at the point it simply enters another country in the course of transportation where it is known that such waste will ultimately be disposed of elsewhere. Were "receiving country" defined in such a limited manner, exporters could avoid consent requirements of countries to which the waste is ultimately being sent simply by rerouting the waste through another country. EPA especially requests comments on its definition of the term "receiving country."

2. "Consignee"

EPA has chosen to use the term "consignee" to refer to the "ultimate" treatment, storage or disposal facility to which the hazardous waste will be sent in the receiving country. The place of ultimate destination of the waste is to be distinguished from a facility at which any short term storage of the waste might occur incidental to transportation (e.g., at transfer facilities, loading docks). Thus, for example, if a waste is being exported to London via Portsmouth and the waste may be held temporarily in Portsmouth awaiting transportation to London, the consignee would be the facility to which the waste is being sent in London. The type of storage incidental to transportation which EPA tends to distinguish from the "ultimate" destination of the waste is similar to that type of storage discussed in the preamble to the rule clarifying when a transporter handling shipments of hazardous waste is required to obtain a storage facility permit. *See* 45 FR 86966 (Dec. 31, 1980). However, for purposes of determining who is the consignee, as between a temporary storage facility at which the waste may be stored incidential to transportation and the ultimate destination of the waste, no time limit on the length of such storage is being proposed as is the case in the rule referenced above. EPA believes it would be extremely difficult, if not impossible, due to unforeseen events occurring in transit abroad, for an exporter to know prospectively whether a shipment might be stored, for example, for more than ten days at a storage facility in the course of transportation and would thus become the "consignee." Accordingly, the consignee is the facility of ultimate destination of the waste and is not a temporary storage facility where a waste may be stored for a short period of time incidental to transportation.

3. "Transit country"

A definition of transit country is included in light of EPA's proposal, discussed in detail below, to provide notification to transit countries. A transit country is any foreign country through which a hazardous waste passes en route to a receiving country.

4. "EPA Acknowledgment of Consent"

The "EPA Acknowledgment of Consent" is defined as the cable prepared by the U.S. Embassy in the receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent. This cable will be transmitted to EPA via the Department of State in Washington and hence to the exporter for attachment to the manifest (or shipping paper for exports by rail or water (bulk shipment)) accompanying each waste shipment. As explained more fully below, EPA proposes to use this document to constitute the "consent" of the receiving country for purposes of section 3017, as opposed to a reproduction of the actual communication from the receiving country, for purposes of uniformity, to

[1] As discussed in detail below, however, EPA is proposing that the United States notify transit countries pursuant to the authority of section 3017(h), although consent will not be required. EPA believes that such notification is important from a foreign policy perspective and that, in light of the nature of the activity occurring in transit countries, notification alone is appropriate and sufficient

provide an English translation to the exporter of the terms and conditions of consent, and to allow expeditious transmission of consent telegraphically to expedite communication and meet the statutory time frames for transmitting consent to the exporter.

5. "Exporter"

Section 3017 requires "any person" who exports hazardous waste to comply with the notification, consent, and reporting requirements of that section. EPA believes that several persons could be involved in a single export transaction (e.g., a generator, transporter, and a broker). The statutory language, however, does not specify which of such parties should, for example, provide the notification information to EPA, receive the EPA Acknowledgment of Consent, and attach a copy of such document to the manifest (or shipping paper for exports by rail or water (bulk shipment)) accompanying each waste shipment. In order to avoid confusion as to which party is responsible for specific export requirements and avoid duplicative notification, EPA proposes to place the primary statutory responsibilities for exports on a single party in each transaction.

EPA thus proposes to define the term "exporter" to be the person who is required to prepare the manifest in accordance with 40 CFR Part 262, Subpart B for a shipment of hazardous waste which specifies a treatment, storage, or disposal facility in the receiving country as the facility to which the waste will be sent. EPA believes that the person preparing the manifest for such shipments is in the best position to provide EPA with the notification information, receive the EPA Acknowledgment of Consent, attach such document to the manifest (or shipping paper for exports by rail or water (bulk shipment)), and ensure that the shipment initially conforms with the terms and conditions of the receiving country's consent. Such party is often in the best position to know the types and quantities of the waste to be exported. Generally, such party will have contracted with the consignee for receipt of the waste and will know the name of the consignee and be most able to obtain information on the manner in which the waste will be handled. Because such party will be preparing the manifest (or shipping paper for exports by rail or water (bulk shipment)), he should also know the details of transportation to the receiving country. And, because he will be initiating the shipment, he should also be in the best position to receive and attach the EPA Acknowledgment of Consent to the manifest accompanying the waste shipment, and ensure initial compliance with the terms of the EPA Acknowledgment of Consent.

Under the proposed definition, an "exporter" could be a generator as defined in 40 CFR 260.10 or other person required to assume generator responsibilities, i.e., a transporter who mixes hazardous wastes of different DOT shipping descriptions by placing them into a single container pursuant to 40 CFR 263.10(c) or the owner or operator of a treatment, storage or disposal facility who initiates a shipment of hazardous waste pursuant to 40 CFR 264.71(c) or 265.71(c). Current regulations for exports place notification requirements on generators. The proposed regulations simply clarifies that an exporter is a generator or other person required to assume generator responsibilities such as provided in 40 CFR 263.10(c), 264.71(c), and 265.71(c).

EPA considered the alternative of defining "exporter" to be "any person" who intends to export a hazardous waste. Under such a definition, all parties involved in the export, the generator (or person assuming generator responsibilities), transporter, and any export broker would be required to comply with the exporter requirements and could be held liable for failure to comply with such requirements. Similar treatment has been afforded generators where several parties meet the definition of generator. *See* 45 FR 72024, 72026 (Oct. 30, 1980). Under such a definition, EPA would expect one party, however, to assume and perform particular duties on behalf of all the parties. Guidance on who the agency would prefer to assume such responsibilities would be provided in the preamble. Enforcement actions, could, however, be taken against all parties for any violation where equitable and in the public interest.

This option was rejected because EPA believes that it would be difficult to define the point at which the "intent to export" would occur. The most tangible evidence of such "intent" is the point at which a manifest is prepared specifying a treatment, storage or disposal facility in a foreign country as the facility to which the waste will be sent. Only at that point does it become clear that an export will occur. Moreover, EPA believes that unlike in the situation governed by the rule noted above, a particular party, the generator (or person required to assume generator responsibilities) stands out as the predominant party in all cases. In addition, in the case of exports, EPA believes its proposed definition would cause less confusion and delay and that certain parties, such as transporters, shoud not be ostensibly subject to liability for responsibilities more appropriately placed on generators or persons required to assume generator responsibilities. Transporter responsibilities should include such matters as refusing to accept waste for export unless an EPA Acknowledgment of Consent is attached to the manifest, ensuring that the EPA Acknowledgment of Consent accompanies each waste shipment in transit, and that the shipment is not altered in transit contrary to the terms of the receiving country's consent. Generators (or persons required to assume generator responsibilities) are, on the other hand, in a better position to supply the notification and ensure initial compliance of the shipment with the receiving country's consent. Thus, the liability of such parties should relate to those duties for which such parties are in the best position to assume. As far as export brokers are concerned, such parties woud be acting on behalf of a generator (or person assuming generator responsibilities) as an agent. Under the definition of exporter as proposed, the generator (or person required to assume generator responsibilities) would remain liable for any violations of the duties imposed upon him when performed by a broker on his behalf. Of course, if a broker engages in activities which make him a generator or other person required to assume generator responsibilities under EPA regulations, the exporter requirements would apply to such party under the definition as proposed.

EPA particularly requests information on the nature of the export industry and comments on the appropriate liabilities and responsibilities which should be placed on brokers, transporters, and generators.

Under EPA's proposed definition of "exporter," Subpart E requirements would not be applicable to exports of hazardous waste initiated by persons not required to prepare a manifest under 40 CFR Part 262 Subpart B or an equivalent provision in an authorized State program. Thus, exports of hazardous wastes that are exempt from the manifest requirements of 262 Subpart B would not be subject to Subpart E requirements (see discussion later in this Preamble). EPA recognizes that section 3017 requires notification and consent for exports of "any hazardous waste identified or listed under this subtitle." However, it is not clear whether in using this language Congress intended to regulate wastes

exported more stringently than domestic wastes or to expand existing export requirements to cover exports not currently covered (e.g., some recycled wastes). EPA requests comments on the proposed continuation of an exemption of such exports from regulations especially whether there are any strong policy reasons to extend coverage of Subpart E to such exports.

C. General Requirements [§ 262.52]

This section sets forth the general requirements applicable to exports of hazardous waste. It provides that exports of hazardous waste are prohibited except in compliance with the applicable requirements of Subpart E and summarizes the general statutory prohibitions on exports set forth in section 3017(a) as implemented by proposed Subpart E.

D. Notification of Intent to Export [§ 262.53]

Subsection (c) of Section 3017 requires that any person who intends to export a hazardous waste shall, before such waste is scheduled to leave the United States, provide notification to the Administrator. This subsection also sets forth the minimum information which must be included in such notification. The primary purpose of this notification requirement is to provide sufficient information to a receiving country to allow it to make an informed decision on whether to accept the waste and, if so, to manage it in an environmentally sound manner. S. Rept. No. 98-284, 98th Cong., 1st Sess. 47 (1983). Coupled with the prohibition on exports in the absence of the consent of the receiving country, this provision is also intended to ensure that environmental, public health, and U.S. foreign policy interests are safeguarded. *Id.; see also* 130 Cong. Rec. S9152 (daily ed. July 25, 1984) (Statement of Senator Mitchell). This notification requirement is further intended to assist EPA in determining the amounts and ultimate destination of exports of U.S. generated hazardous waste so as to enable EPA and Congress to gauge whether the right to export is being abused. 130 Cong. Rec. S9152, *supra.*

The notification requirements proposed today are intended to implement the broad statutory requirements for notification set forth in section 3017(c) and ensure that sufficient information is obtained to satisfy Congressional intent. Accordingly, proposed § 262.53(a) requires an exporter to notify EPA of an intended export before the waste leaves the United States. Such notifications should be submitted sixty days prior to the intended date of the initial shipment. This sixty-day advance time is included in order to allow a reasonable amount of time for transmission of the notification to the receiving country, receipt of the receiving country's consent or objection to the export, and transmission of an EPA Acknowledgment of Consent to the exporter. In this respect, it should be noted that the statute itself sets forth the time frame (30 days) within which a complete notification must be transmitted to the receiving country after receipt by EPA and the time frame (30 days) within which the consent or objection must be transmitted to the exporter after receipt by the Secretary of State. Since EPA believes the information can be transmitted in less time than statutorily required (see discussion in Part III E), this 60-day advance time allows approximately thirty days for the receiving country to provide its consent or objection to the Department of State. Of course, EPA cannot require a receiving country to respond within a specific number of days. And, since an export is prohibited in the absence of consent, the shipment cannot take place until such consent has been obtained even though the notification may have been submitted sixty days prior to shipment. Thus, exporters are encouraged to submit notifications at the earliest possible date.

The regulation would also require such notification to be in writing and signed by the exporter. This requirement is intended to ensure the accurate transmission of the required information to EPA and the usefulness of the document in enforcement actions. A single notification may cover more than one shipment; a separate piece of paper providing notification for each shipment is not necessary. This appears consistent with legislative intent since the statute itself specifies that a notification include information on the "frequency of shipment." Comments are specifically requested, however, on whether a separate notification should be required for each shipment. The proposal limits a notification to shipments occurring over a maximum period of twenty-four months. The agency considered allowing a notification to cover a twelve month period but rejected this option in favor of the 24-month period as a better balance between concerns for currency and accuracy of information and imposition of administrative burdens on exporters. However, EPA specifically requests comments on whether it would be appropriate to restrict this period of time to twelve months.

Regarding the content of a notification, the statute itself requires that a notification include the following information:

(1) The name and address of the exporter;

(2) The types and estimated quantities of hazardous waste to be exported;

(3) The estimated frequency or rate at which such waste is to be exported, and the period of time over which such waste is to be exported;

(4) The ports of entry;

(5) A description of the manner in which such hazardous waste will be transported to and treated, stored, or disposed in the receiving country; and

(6) The name and address of the ultimate treatment, storage or disposal facility.

To implement these broad informational requirements, the proposed regulation identifies certain specific information which would be required. Accordingly, notification would be required to contain the following:

(1) Name, mailing address, telephone number and EPA ID number of the exporter;

(2) By consignee, for each hazardous waste type:

(i) A description of the hazardous waste and the EPA hazardous waste number (from 40 CFR Part 261, Subpart C and D), U.S. DOT proper shipping name, hazard class and ID number (UN/NA) for each hazardous waste as identified in 49 CFR Part 171-177;

(ii) The estimated number of shipments of the hazardous waste and approximate date of each shipment;

(iii) The estimated total quantity of the hazardous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form (8700-22);

(iv) All points of entry to and departure from each foreign country through which the hazardous waste will pass;

(v) A description of the means by which each shipment of the hazardous waste will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.));

(v) A description of the manner in which the waste will be treated, stored or disposed of in the receiving country (e.g., land or ocean incineration, other land disposal, ocean dumping, or recycling); and

(vii) The name and site address of consignee and any alternate consignee.

As discussed in detail below, the United States intends to provide notification to transit countries as well as receiving

countries. Conset from transit countries, however, would not be required. Accordingly, the proposal also requires, pursuant to the authority of section 3017(h), designation of any transit countries through which the waste will pass and information on its handling while there.

Paragraph (b) of proposed § 262.53 specifies the place to which notification must be sent. Paragraph (c) requires renotification, consent from the receiving country, and EPA Acknowledgement of Consent for changes in the conditions specified in the original notification. This would include changes in the amount of waste to be exported in excess of the estimate originally provided since EPA believes a foreign country would not consent to receiving more waste than contemplated when consent was given. EPA believes this section is necessary since "consent" arguably has not been received for any shipment differing from the shipment of which the receiving country was notified. Since this provision is likely to be used when unforeseen circumstances arise necessitating a change in the export close to the date of the intended initial shipment, EPA will act expeditiously to obtain consent to such changes. However, exporters should keep in mind that an export deviating from the description in the original notification has not been consented to and, therefore, cannot take place until consent to the changes has been obtained and a new EPA Acknowledgement of Consent has been received.

Paragraph (d) would allow EPA to obtain any additional information from an exporter in the event the receiving country requests further information in order to respond to a notification of intent to export.

Paragraph (e) provides that EPA will forward a complete notification to the receiving country and any transit countries. A notification would be complete when EPA receives all information EPA determines is necessary to satisfy the requirements of § 262.53(a). This paragraph also provides that, if a claim of confidentiality is asserted with respect to any of the required notification information, EPA may find a notification not "complete" until any such claims are resolved in accordance with § 260.2. For a discussion of the basis for and purpose of this provision, see the section below on confidentiality.

Paragraph (f) provides that exporters will be notified of any responses by receiving and transit countries. Where the receiving country consents to the shipment, an EPA Acknowledgement of Consent will be provided the exporter for attachment to the manifest (or shipping paper for exports by rail or water (bulk shipments)) accompanying each waste shipment.

EPA specifically requests comments on the proposed notification requirements especially regarding whether any additional information would be appropriate to satisfy Congressional intent.

E. Procedures for the Transmission of Notification, Consent and Objection

Subsections (d) and (e) of section 3017 set forth the procedures involving EPA and the Department of State for notifying the receiving country on an intended export, obtaining the receiving country's response to the notification, and notifying the exporter of such response. These statutory provisions require the Department of State to transmit notification of the intended export to the government of the receiving country within thirty days of receipt by EPA of a complete notification from the exporter. EPA must then notify the exporter of the receiving country's consent or objection to the intended export within thirty days of receipt by the Department of State of the receiving country's response.

EPA is not proposing any specific regulations regarding procedures for the exchange of information among EPA, the Department of State, receiving countries and transit countries because these actions are administrative in nature and impose no requirements on the public. For informational purposes, however, a discussion of such procedures follows.

In order both to meet the statutory time frames noted above and expedite transmission of information, EPA anticipates notifying the Department of State within five days of receipt of the exporter notification. The Department of State anticipates notifying the receiving country within ten days of receipt of the information from EPA. The Department of State anticipates notifying EPA of the receiving country's response within ten days of receipt of such response, and EPA anticipates notifying the exporter of such response within five days of receipt of the response from the Department of State. This amounts to a total of thirty days transmission time for notification and consent. Thus, as previously discussed, EPA has proposed that exporters notify EPA at least sixty days prior to the intended first shipment to allow time for the receiving country to respond. Thirty days remain for the receiving country to provide its consent to the export. Exporters are reminded, however, that an export cannot take place without consent of the receiving country and, therefore, the shipment could be delayed if the receiving country does not respond within that time period.

The Department of State will use its telegraphic system to notify the receiving country of an intended export and to transmit the response back from the U.S. Embassy in the receiving country to the Department of State in Washington. Thus, EPA will draft a cable incorporating the details of the exporter notification which the Department of State will transmit to the U.S. Embassy in the receiving country. The U.S. Embassy will then pass the information on to the appropriate authorities in the receiving country with a request to respond expeditiously to the notification by providing the U.S. Embassy with a written consent or objection to the intended export. Upon receipt of the written response of the receiving country, the Embassy will then translate this response into English, if necessary, and cable it to the Department of State in Washington. This cable would then be forwarded to EPA. Where the receiving country fully consents to the shipment or consents with specified modifications, this cable will constitute the EPA Acknowledgment of Consent and would then be forwarded to the exporter for attachment to the manifest (or shipping paper for exports by rail or water (bulk shipments)) accompanying each waste shipment. Where the foreign country rejects the shipment, EPA will so notify the exporter in writing. Meanwhile, the original written communication from the receiving country would be sent to the Department of State in the diplomatic pouch used by the Department of State to transmit documents from foreign posts to the Department of State. This document would then be forwarded to EPA for retention. A copy will also be forwarded to the exporter. EPA will work closely with the State Department to establish procedures to ensure that cables prepared by the U.S. Embassy in the receiving country include all of the relevant information contained in the exporter's original notification, as well as an exact reiteration or translation of the receiving country's written consent to the notification. This will provide U.S. Customs officials with the information necessary to check the shipment against the receiving country's consent to the notification.

Telegraphic transmission of information between the United States and receiving countries is necessary to expeditiously transmit notification and consent information. Mailing actual reproductions of such documents would

take considerably longer, making it difficult to meet the statutory deadlines for transmission of such information and necessitating earlier notification by the exporter than that proposed. In light of the use of cables, a copy of the exporter's actual notification letter will not be transmitted to receiving countries. Similarly, a copy of the receiving country's actual consent document does not need to be attached to the manifest (or shipping paper for exports by rail or water (bulk shipments)). As stated earlier, the cable received from the U.S. Embassy in the receiving country will constitute the EPA Acknowledgment of Consent document and will be used to transmit the receiving country's consent to the exporter for attachment to the manifest (or shipping paper for exports by rail or water (bulk shipment)). Use of such a document not only allows the exporter to be notified expeditiously of the cabled response of the receiving country but also makes possible the inclusion of an English translation of the terms and conditions of the receiving country's response where such response is in a foreign language. Without such a translation, it would be difficult for the exporter to ensure conformance with such consent.

Thus, EPA interprets the statutory language of subsection (d) of section 3017 which requires that "a copy of the notification" be forwarded to the receiving country to mean forwarding the information contained in the notification from the exporter to the receiving country. And, EPA interprets the statutory language of subsection (a) requiring attachment of a "copy of the receiving country's written consent" to the manifest accompanying each waste shipment to mean attachment of the EPA Acknowledgment of Consent incorporating the terms and conditions of such consent. Similarly, EPA interprets the statutory language of subsection (e) which references the written consent, objection, or other communication from the receiving country and provides that "such a consent, objection or other communication" be forwarded to the exporter to mean forwarding the information contained in the foreign country's response to the notification. EPA believes the means it proposes to transmit information is consistent with Congressional intent to ensure notification, consent, attachment of such consent to the manifest, and conformance of the shipment to the consent while ensuring that the statutory time frames for transmission are met.

EPA considered developing a standard form to incorporate all of the relevant information contained in the exporter's notification. This form would provide a concise transmission (in consistent format) of the information relevant to the export. In preparing this form, EPA would include only that information needed by U.S. Customs to determine whether the shipment was in conformance with the receiving country's consent. Copies of the receiving country's consent or an exact translation of that consent would be sent directly to the exporter in order to inform the company of all of the receiving country's conditions of acceptance. However, EPA rejected this option in favor of the proposed one for the following reasons: (1) The amount of time required to prepare the form would add a few days to the process of notification; and (2) by working closely with the U.S. Department of State to ensure that the cable prepared by the U.S. Embassy in the receiving country includes all of the relevant information, the cable will provide Customs officials with the information necessary to monitor shipments at the border. EPA requests comments on whether a form rather than a copy of the cable which includes a reiteration of all of the receiving country's conditions of acceptance should be prepared.

As required by section 3017, in notifying receiving countries of intended shipments, the government of the receiving country will be advised that United States law prohibits the export of hazardous waste unless the receiving country consents to accept the waste. The notification will include a request to provide the Department of State with a response to the notification which either consents to the full terms of the notification, consents to the notification with specified modifications, or rejects receipt of the hazardous waste. Also, in accordance with statutory requirements, a description of the Federal regulations which would apply to the treatment, storage and disposal of hazardous waste in the United States will be provided the receiving country.

F. Notification of Transit Countries

EPA has been a full and regular partner in extensive international consultations concerning the international shipment of hazardous waste under the auspices of the Organization for Economic Cooperation and Development (OECD). U.S. experts along with those of other OECD member countries have worked to develop agreed-upon principles governing international shipments of hazardous waste. In February of 1984, the United States, along with other OECD member countries, voted to adopt a formal decision and recommendations for implementing such decision regarding the control of international shipments of hazardous waste. The OECD decision provides:

> . . . Member countries shall control the transfrontier movements of hazardous waste and, for this purpose, shall ensure that the competent authorities of the countries concerned are provided with adequate and timely information concerning such movements.

The term "countries concerned" is defined to include exporting, importing and transit countries. To implement this decision, the OECD Council recommended that countries apply certain principles concerning transfrontier movements including the following:

> . . . [C]ountries should take the measures necessary to ensure that the entities within their jurisdiction provide, directly or indirectly, the authorities of the exporting, importing and transit countries with adequate and timely information.

Accordingly, EPA has exercised its authority pursuant to section 3017(h) to require exporters to notify EPA of any countries through which a hazardous waste will pass en route to the receiving country. The requirement to provide information regarding the approximate length of time the waste will remain in a transit country and the nature of its handling while there is proposed in order to provide sufficient information to a transit country regarding the nature of the transit of the waste through such country. EPA, in conjunction with the Department of State, plans to provide such countries with the information contained in the exporter's notification and will inform the exporter of any response by such countries.

EPA, however, does not propose to require consent from transit countries. Section 3017 requires consent only of receiving countries and EPA's proposed regulation defines "receiving country" to mean the country in which the waste will be ultimately treated, stored or disposed. Exporters should keep in mind, however, that the transit country may take action to prohibit entry of the waste into that country. Accordingly, EPA recommends that exporters make every effort to reroute the waste should a transit country object to the entry of such waste into that country.

EPA's plan to notify transit countries is intended to implement the OECD Decision and Recommendations and is also intended to respond to the legitimate interests of transit countries

in light of the nature of the activity which would occur in such countries, i.e., transit through or temporary storage in such countries. In EPA's view, it is important for protection of human health and the environment as well as foreign relations to provide notification to transit countries. This will enable transit countries to stop shipments which are unwelcome, to ensure safe handling during transit and be prepared to deal with any incidents (such as spills) which may occur during transit. EPA specifically requests comments on its proposed treatment of transit countries. Related to this issue is the alternative considered by EPA (and discussed above) to define "receiving country" to include both the ultimate country receiving the waste and transit countries. Were this alternative adopted, consent from transit countries would also be required before the shipment could take place.

G. Special Manifest Requirements [§ 262.54]

This section sets forth special manifest requirements pertaining to exports of hazardous waste in light of the special circumstances relative to such shipments. Accordingly, as specified in the proposed rule, some of the proposed requirements are in lieu of the provisions applicable to generators in Part 262 while others are in addition to such Part 262 requirements.

Paragraph (a) of proposed § 262.54 retains the current requirement that an exporter enter on the manifest the name and address of the consignee in place of the designated permitted facility. Paragraph (b) is added to make clear that the exporter may enter the name of any alternate consignee for which consent has been obtained in lieu of a permitted alternate facility in the United States.

Paragraph (c) retains the current requirement of § 262.50(b)(3)(ii) to identify the point of departure of the waste from the United States. This requirement was originally included in the regulations in order to provide additional information on the movement of an international waste shipment. Paragraph (d) requires an exporter to add to the certification on the manifest in Item 16 that the shipment conforms to the EPA Acknowledgment of Consent. This certification is included for purposes of enforcement. Paragraph (e) retains the current § 262.50(b)(4) requirement which specifies where the exporter should obtain the manifest form. This requirement deviates slightly from the requirement set forth in § 262.21 pertaining to domestic shipments since the waste is being sent outside the United States. Paragraph (f) essentially retains current § 262.50(b)(2) that requires the exporter to require the consignee to confirm delivery as a condition of their business agreement. A copy of the manifest signed by the foreign consignee may be used for this purpose. EPA proposes to add the requirement that the exporter require the consignee to describe any significant discrepancies as defined in 40 CFR 264.72(a) between the manifest and the shipment. This requirement is for enforcement purposes and is similar to current manifest discrepancy requirements for domestic shipments.

Paragraph (g) applies in lieu of § 262.20(d). This section is intended to place the responsibility on the exporter for hazardous waste that cannot be delivered to a facility to which the foreign country has consented pursuant to the original notification. Thus, an exporter has three choices in such a situation: (a) He can obtain new consent; (b) he can have the waste returned to himself; or (c) he can designate another facility in the United States. EPA realizes that new consent may be difficult to obtain expeditiously which could result in practical problems regarding what should be done with the waste in the meantime. However, it is provided as an option even though EPA believes that the other options noted above are preferable. The proposed regulation also requires the exporter to instruct the transporter to revise the manifest in accordance with the exporter's instructions regarding where the waste should be taken. This ensures that an accurate record of the hazardous waste will be maintained.

Paragraph (h) is proposed to ensure attachment of the EPA Acknowledgment of Consent to the manifest (or shipping paper for exports by rail or water (bulk shipments)) as required by RCRA section 3017. EPA regulations allow a shipping paper to accompany shipments by rail and water (bulk shipments) in lieu of a manifest (*see* 40 CFR 263.20). Accordingly, the EPA Acknowledgment of Consent would accompany the shipping paper under such circumstances. In EPA's view, Congress provided that consent be attached to the manifest to ensure that consent traveled with the document identifying the waste. Accordingly, attachment of the EPA Acknowledgment of Consent to the shipping paper under these circumstances would satisfy this intent.

EPA considered requiring an additional copy of the manifest which the transporter would give to a U.S. Customs official at the border. Customs officials would periodically forward the copies it collected to EPA. Upon receipt EPA would compare these copies with the agreed-upon terms of export to determine compliance. The Agency decided not to propose this requirement, however, because there is no evidence that exporters are violating current notification requirements under § 262.50. Further, the receiving country could request such a review if there was concern about violations of exporter notifications. EPA specifically requests comment on whether such a monitoring system is necessary.

H. Exception Reports

Proposed pragraphs (a) and (b) retain current requirements for exception reporting which deviate somewhat from exception reporting for domestic shipments in light of the special circumstances involved in international shipments. For domestic shipments, exception reports are required where a copy of the manifest is not returned to the generator by the designated facility. Since EPA has no jurisdiction over a foreign facility to require it to return a copy of the manifest, EPA regulations require the exporter to require the consignee to confirm delivery of the waste. As a back-up to tracking the waste in light of EPA's lack of jurisdiction over foreign facilities, EPA regulations also require the transporter to sign a copy of the manifest, enter the date the waste left the United States and return a copy to the generator (40 CFR 263.20(g)). Thus, the proposed exception reporting requirements hinge upon the lack of receipt of the transporter's copy of the manifest and the failure to receive confirmation from the consignee that the waste was received.

Exception reporting is an important tracking and enforcement tool for exports of hazardous waste. It allows notification to EPA that a waste has not left the United States or has left the United States but has not been received by the consignee. Thus, EPA can determine whether the waste remains in the United States or has reached the foreign country but not reached the consignee. The proposed regulation also requires submission of an Exception Report where the waste is returned to the United States. This requirement is proposed to be added because EPA believes that it is in the interest of U.S. foreign policy to know that a hazardous waste shipment was rejected when consent by the foreign country was provided.

I. Annual Reports [§ 262.56]

As discussed above, section 3017(g) of RCRA imposes a new annual reporting

requirement for exports of hazardous waste.

On July 15, 1985 (50 FR 28702), EPA codified the language of section 3017(g) due to the immediate effectiveness of this requirement. Today's proposal would amend this annual reporting requirement to require specific reporting information to implement the broad statutory reporting requirements to summarize the types, quantities, frequency, and ultimate destination of all exported waste. Thus, EPA proposes to require annual reporting of: (1) The EPA ID number, name, and mailing and site address of the exporter; (2) the calendar year covered by the report; (3) the name and site address of each consignee; (4) a description of each waste exported including the EPA hazardous waste number and DOT hazard class; (5) the name and U.S. EPA ID number (where applicable) for each transporter used; (6) the total amount of waste shipped pursuant to each notification; and (7) the number of shipments pursuant to each notification. Items (4) through (7) would be provided by consignee for each hazardous waste exported. As with the biennial reporting requirements for domestic shipments, a certification requirement is included. The address of the place reports would be sent is also specified. These reporting requirements would assist EPA in using the annual report as an enforcement tool and aid Congress and EPA in determining whether the export right is being abused and additional controls are necessary or desirable.

Because the annual report provides the agency with information on exports of hazardous waste, today's proposal would eliminate the requirement of § 262.41 which requires generators to include in the biennial report information relative to exports.

EPA plans to change the instructions to the form in future printings of the biennial report form to clarify this reporting requirement. Exporters should note, however, that authorized States may continue to require generators to include information on exports in the biennial report and may also require exporters to send a copy of the annual report to the States.

The agency considered retaining the requirement for generators to include in the biennial report information on exports and eliminating the requirement to file an annual report during those years in which a biennial report was required. This option was not selected, however, because the agency believes eliminating export information from the biennial report would not place a greater workload on generators since most generator retain separate records on domestic and exported shipments and, thus, are in a position to file separate reports on those activities. Further, copies of the reports must be submitted to different addressees, i.e., the annual report must be submitted to EPA Headquarters and the biennial report to EPA Regional Administrators. In addition, it is administratively less burdensome for the agency to receive two separate reports, because EPA will not then have to pull out information on exports from the biennial report to keep Congress informed on the issue of exports. Furthermore, it appears that Congress intended that reporting of exports be separated out from information on other shipments by enacting section 3017(g). The agency requests comments on this requirement.

J. Recordkeeping [§ 262.57]

The recordkeeping provisions proposed today are consistent with current recordkeeping requirements of § 262.40 which require generators to retain for a period of three years copies of manifest and biennial and exception reports. For enforcement purposes, the proposed regulation includes requirements to retain for a period of three years those special documents relative to exports: (a) The notification of intent to export; (b) the EPA Acknowledgment of Consent; (c) the confirmation of delivery (if not the manifest); and (d) the annual report. Also consistent with § 262.40, the proposal includes a requirement that the specified periods of retention are extended automatically during the course of any unresolved enforcement action or as requested by the Administrator.

There are several reasons for requiring the exporter to retain copies of notifications, Acknowledgments of Consent, and annual reports. Primary among these is that EPA considers the burden of proof, in general, to be on the generator/exporter. Generators, on the whole, are required to keep copies of biennial reports and manifests (40 CFR 262.40, 262.40(b)). Copies of notifications of intent to export and Acknowledgments of Consent are similarly necessary for the exporter to show compliance with the export standards. In addition, unique to exports, notifications, Acknowledgments of Consent, and annual reports pass between the exporter and EPA Headquarters. The Regions and State Directors are not directly part of the paperwork flow or approval process. They are, however, in the direct line of enforcement. For this reason, Regional and State enforcement personnel should have access to those documents when they visit or inspect an exporter's site which is best accomplished if these records are required to be retained by the exporter.

K. International Agreements [§ 262.58]

This section has been reserved for future regulatory provisions which would set forth different requirements established in any international agreements the United States may enter into with a foreign country regarding exports of hazardous waste. In this respect, section 3017 of HSWA provides that where such an agreement exists, only the requirements of subsections (a)(2) and (g) apply. Subsection (a)(2) provides that no person shall export a hazardous waste from the United States to a receiving country where an international agreement pursuant to subsection (f) has been entered into unless the shipment conforms with the terms of such agreement. Subsection (g) requires annual reporting. Section 3008(d)(6) of HSWA provides for criminal enforcement action for exports not in conformance with such agreements.

L. Transporter Responsibilities [§ 263.20]

To implement section 3017(a)(1)(c) and for purposes of enforcement, EPA proposes to amend § 263.20 to prohibit a transporter from accepting waste from an exporter unless, in addition to a manifest, an EPA Acknowledgment of Consent is attached to the manifest. This section would also be amended to require transporters to ensure that an EPA Acknowledgment of Consent accompanies the hazardous waste en route. Current §263.20(g) also requires the transporter to send a copy back to the generator. This provision would not be changed.

M. Small Quantity Generators

EPA proposes to define an exporter as the person required to prepare a manifest pursuant to 40 CFR Part 262, Subpart B, or equivalent State provision, which specifies a treatment, storage, or disposal facility in a foreign country as the facility to which the waste will be sent.

Under the existing rules, generators of less than 1,000 kg of non-acutely hazardous waste in a calendar month (i.e., small quantity generators) are not subject to Subpart B of Part 262 (or any other Part 262–266 or 270 regulations), provided the small quantity generator complies with § 262.11 (hazardous waste determination) and ensures delivery of his waste to an on-site facility or off-site facility which is:

1. Permitted under Part 270;
2. In interim status under Part 270 and 265;
3. Authorized to manage hazardous waste by a State with a hazardous waste management program approved under Part 271;
4. Permitted, licensed, or registered by a State to manage municipal or industrial solid waste; or
5. A facility which beneficially uses, reuses, or legitimately recycles or reclaims its waste or treats its waste prior to beneficial use, reuse, or legitimate recycling or reclamation.

A small quantity generator who exports his waste would be unable to comply with any of the above requirements since (1) through (4) require approval by a government entity while item 5 would require that the generator somehow "assure" that his waste is "legitimately" recycled by a foreign facility, a difficult requirement with which to comply when a foreign facility is involved. Consequently, the existing § 261.5 rules require that all small quantity generators comply with the manifesting provisions of Part 262. These generators would, therefore, qualify as exporters under today's proposal. The effect of this situation is to subject small quantity generators who export their wastes to full Part 262 requirements including the proposed export requirements while the small quantity generators who ship to any of the five kinds of domestic facilities identified above are currently excluded from the Part 262 requirements.[2]

Based upon the notifications which EPA has been receiving since 1980, the agency is not aware of any exports by small quantity generators. Accordingly, EPA does not propose to change the existing applicability of Part 262 (which would also require compliance with the proposed export requirements if finally promulgated) to all such small quantity generators.

However, EPA requests comments from generators of less than 1,000 kg/month on whether they intend to export hazardous wastes. In addition, EPA requests comments (with supportive explanation) from generators intending to export such wastes on whether they should be subject to full Part 262 requirements in addition to the export requirements, some of Part 262 requirements in addition to the export requirements, only the export requirements or none of Part 262 requirements and none of the export requirements. The agency will consider these alternatives in issuing any final rule.

On the one hand, it is arguable that generators of 100 kg/mo or less exporting hazardous waste should be exempt from Part 262 requirements and the export requirements on the grounds that EPA should not be more concerned about exports from such generators than domestic shipments by such generators. By the same token, however, foreign policy concerns (including human health and the environment concerns) may indicate that such generators at least comply with the export requirements [3] especially since the regulations exempting such generators from Part 262 requirements require shipment to appropriate facilities in order to obtain the benefit of the exemption. This evidences some concern for such waste handled domestically which may indicate that foreign countries would have some concern and therefore should be accorded notification, etc.

Nevertheless, the increased burdens on such generators of compliance with the exporter requirements may outweigh the degree of concern involved.

For generators generating between 100–1,000 kg/mo of hazardous waste, current regulations subject such generators to certain manifest requirements which are imposed pursuant to 40 CFR 261.5 but which are similar to some Part 262 requirements. Accordingly, again, these generators arguably also should not be regulated more stringently for exports than for domestic shipments and therefore should not be subject to full Part 262 requirements. It may be better to require these generators to comply with partial Part 262 requirements such as those currently imposed pursuant to 40 CFR 261.5. In other words, apply general Part 262 requirements only to the extent they are required for domestic off-site shipment for such generators. Foreign policy concerns for requiring such generators to at least comply with the export requirements are stronger than for generators of 100 kg/mo or less since generators of between 100 and 1,000 kg/mo are regulated more stringently domestically than generators of 100 kg/mo or less. This evidences more domestic concern with such waste which indicates that a foreign country would have increased concerns and therefore should be notified, etc. Again, on the other hand, the increased burdens on such generators of compliance with the exporter requirements may outweigh the degree of concern involved.

Thus, EPA will consider these options for handling small quantity generators in light of any comments received. In addition, EPA points out that it recently proposed new requirements generally for small quantity generators on August 1, 1985 at 50 FR 31278. Any decision EPA makes in its final rulemaking regarding exports will take into consideration any decisions EPA makes in issuing a final rule regarding that proposal.[4]

N. State Authority

1. Applicability of Rules in Authorized States

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

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final 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. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under newly enacted section 3006(g) of RCRA, new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States

[2] Generators of between 100 and 1,000 kg of hazardous waste in a calendar month are currently subject to certain manifest provisions mandated by section 3001(d) of the HSWA. However these manifest requirements are not imposed pursuant to Part 262, Subpart B and thus do not subject these generators to the exporter definition.

[3] If this option were selected, since such generators are not required to prepare a manifest, the EPA Acknowledgment of Consent would only be required to travel with any other shipping document accompanying the shipment as opposed to the requirement that the EPA Acknowledgment of Consent be attached to the manifest.

[4] It should be noted that the proposed amendments to the small quantity generator rules would remove generators of between 100 kg and 1,000 kg of hazardous waste in a calendar month from the conditional exclusion provisions of § 261.5 and subject them instead to regulation under Part 262. As a result, if the August 1, 1985, amendments are finalized, generators of 100–1,000 kg/mo would fall within the definition of exporter and would be subject to the export requirements and portions of Part 262.

until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

Today's announcement proposes standards that would be effective in all States since the requirements are imposed pursuant to section 3017 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6937. The rule setting forth these standards would be added to Table 1 in § 271.1(j) which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect simultaneously in all States regardless of their authorization status.

2. Effect on State Authorizations

Under current regulations (40 CFR 271.10(e)), States are required to include provisions respecting international shipments which are equivalent to those at 40 CFR 262.50, except that advance notification of international shipments, as required by 40 CFR 262.50(b)(1) must be filed with the Admininstrator of EPA. Upon receipt of the notification, EPA then forwards the information, in conjunction with the Department of State, to the receiving country. Thus, unlike other provisions of Part 262, States were not authorized to carry out § 262.50 in its entirety.

Consistent with existing procedures, EPA does not propose to allow States to assume the authority to receive notifications of intent to export. In addition, States would not be authorized to transmit such information to foreign countries through the Department of State or to transmit Acknowledgments of Consent to the exporter. In EPA's view, foreign policy interests and exporters' interests in expeditious processing are better served by EPA's retaining these functions. This will provide the Department of State with a single point of contact in administering the export program which will better allow for uniformity and expeditious transmission of information between the United States and foreign countries. Accordingly, States would be required to include requirements equivalent to those proposed today with the exceptions noted above. EPA requests comments on the alternative of allowing States to assume the functions covered by the exceptions. The rule proposed today also would require that annual reports and exception reports be provided the Administrator. Of course, States can also require that such documents be submitted to State Directors. This requirement is necessary in light of EPA's participation in the export scheme and in light of foreign policy interests.

EPA also proposes to amend § 271.11 to require State programs to include the requirements that transporters also carry a copy of the EPA Acknowledgment of Consent.

3. Schedule for Receiving Authorization

A State may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to 40 CFR 271.10(e). The procedures and schedule for State program modifications under Section 3006(b) are described in 40 CFR 271.21. The same procedures should be followed for Section 3006(g)(2).

Applying § 271.21(e)(2), States that have final authorization must modify their programs within a year of promulgation of EPA's regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)).

States that submit official applications for final authorization less than 12 months after promulgation of EPA's regulations may be approved without satisfying § 271.10(e) as amended. However, once authorized, a State must modify its program to include standards substantially equivalent or equivalent to those in § 271.10(e) within the time periods discussed above.

4. "Hazardous Waste" in Authorized States

EPA intends that where a State obtains authorization, "hazardous waste" for purposes of export requirements would be those hazardous wastes identified or listed by the State as part of its authorized program plus any hazardous wastes which EPA identifies or lists pursuant to HSWA. This is consistent with EPA's usual interpretation of "identified or listed under this subtitle" as referring to an authorized State's universe of hazardous waste plus HSWA wastes. This approach allows an exporter to function on the basis of the State universe of hazardous waste, with which he is already familiar, expanded by those wastes EPA adds pursuant to the HSWA. One drawback to this approach is that notification would be required for waste "A" exported from a State which considers it to be hazardous but would not be required in another State where waste "A" is not considered hazardous. This might be confusing to foreign countries.

Alternatively, EPA could base implementation on only the Federal universe of hazardous wastes. While this approach would be easier for foreign countries to understand and perhaps better from a foreign policy perspective, it would require that exporters become familiar with the entire Federal universe in addition to the State universe under which the exporters otherwise function. EPA requests comments on which universe of hazardous wastes should apply in authorized States.

O. Confidentiality [§§ 260.2, 262.53(e)]

Title 40 CFR 260.2 provides that information submitted to EPA under Parts 260 through 265[5] of 40 CFR will be made available to the public to the extent authorized by, among other statutory provisions, Section 3007(b) of RCRA as implemented by the regulations of Part 2, Subpart B of 40 CFR. Section 260.2 also provides that a person submitting such information to EPA may submit a claim of confidentiality covering all or part of such information by following the procedures set forth in 40 CFR 2.203(b). Under such circumstances EPA will disclose such information only in accordance with Part 2, Subpart B, of 40 CFR. Part 2, Subpart B, sets forth the standards for determining the validity of a claim of confidentiality and the procedures for processing such claims and disclosing such information determined not to be entitled to confidential treatment.

EPA proposes to amend § 260.2 to provide that information for which a claim of confidentiality is made will be disclosed by EPA only to the extent and by means of the procedures set forth in 40 CFR Part 2, Subpart B, except that information contained in a notification of intent to export a hazardous waste pursuant to proposed § 262.53(a) will be provided to appropriate authorities in receiving countries and the Department of State regardless of such a claim. Information will otherwise be disclosed to the public and transit countries in accordance with 40 CFR Part 2.

This approach to the confidentiality of Section 3017 notices is based upon EPA's interpretation of RCRA. There is an apparent conflict on the face of the statute between section 3007(b) and section 3017. Section 3007(b) could be read as prohibiting *all* disclosure of any

[5] This reference to Part 265 has been changed in the proposed regulation to Part 266 so as to include new Part 266 (50 FR 666, January 4, 1985) consistent with the intent of 40 CFR 260.2 to cover all the hazardous waste regulations.

confidential business information contained in a notice of intent to export. However, this reading would contradict section 3017. Because the statute must be interpreted to give the fullest possible effect to both section 3007(b) and section 3017, EPA interprets section 3017 to require provision of the notification information to a receiving country through the Department of State even if the information in the notice is confidential but to prohibit disclosure by EPA of such confidential business information to other persons. The purpose of the notification is to allow receiving countries to make an informed decision as to whether to accept the waste and, if so, how to deal with that waste. Moreover, section 3017 prohibits the export of hazardous waste in the absence of consent by the receiving country. Thus, unless such information can be divulged to the Department of State and receiving countries, informed consent could not be obtained and the export would be prohibited.

There is no statutory purpose for EPA to receive notices under section 3017 unless EPA can give such notices to the receiving country. Nor could EPA implement the requirement to obtain the consent of such governments unless such notice can be provided. Accordingly, EPA must divulge such information to the Department of State and receiving countries to implement section 3017.

The disclosure of additional information to the Department of State and receiving countries pursuant to a request from a receiving country for further information beyond that required by § 262.53 will be governed by section 3007(b) and implementing regulations at 40 CFR Part 2. In EPA's view, Congress specifically delineated in section 3017(c) the information minimally necessary to allow a foreign country to take appropriate action in response to a notification of intent to export and authorized EPA to impose any additional requirements if deemed necessary. The proposed notification provision accomplishes this and any further information which a receiving country may request should be treated in the same manner as other Subtitle C information. However, exporters should keep in mind that if such information is not disclosed to a receiving country, consent may not be forthcoming and the export could not take place.

As previously discussed, EPA also plans to notify transit countries. Since EPA proposed to define "receiving countries" not to include transit countries, section 3007(b) would govern provision of notification information to transit countries. Accordingly, any claims of confidentiality will be processed in accordance with 40 CFR Part 2 with respect to transit countries. However, as provided in proposed § 262.53(e), a notification may be deemed not to be complete until any claims of confidentiality made with respect to the information required by § 262.53(a) are resolved.

Under this proposal, EPA would have the discretion to determine whether the information claimed confidential in a notification is information which must be provided a transit country unless determined by EPA to be entitled to confidential treatment. Thus, the time frame set forth in section 3017(d) for submission of a "complete" notification to a receiving country will not begin to run until a determination by EPA of the validity of any such claims has been made. Only upon EPA's completion of such processing of confidentiality claims will the notification information be provided to receiving countries and any nonconfidential information provided to transit countries. Since an export cannot take place in the absence of the consent of the receiving country, exporters should be aware that claims of confidentiality could therefore significantly delay shipment.

If an exporter claims only portions of the notification information confidential and EPA determines that the information not claimed confidential is sufficient to provide necessary infromation to a transit country, EPA may find the notification complete and proceed to notify the receiving country of all notification information and transit countries of that information not claimed confidential, thereby avoiding delay. For example, if an exporter claims only the name of the consignee confidential, EPA could reasonably conclude that this information is not significant with respect to transit countries and that the remaining information is sufficient to provide necessary information to the transit country. Thus, EPA may find the notification complete, and proceed with notification.

EPA believes that notification of transit countries is important to protect human health and the environment as well as important from a foreign policy standpoint. Therefore, EPA wishes to inform transit countries of as much information as possible. This policy, however, is constrained by the need to maintain the confidentiality of validity confidential business information. In order to satisfy both these policies, EPA's proposal would allow EPA to delay transmission of notification information until such confidentiality claims are resolved where it determines such action to be necessary. Once resolved, EPA will proceed with providing receiving countries with all notification information and transit countries with all information determined not to be entitled to confidential treatment in accordance with 40 CFR Part 2, Subpart B. This provision is proposed under the authority of section 3017(h).

EPA puts exporters on notice, however, that EPA does not believe that notification information generally is entitled to treatment as confidential business information. This belief is supported by EPA's experience that existing notifications, which consist of identification of the exporter, waste and consignee, have not been claimed by exporters to be confidential. Furthermore, EPA believes that exporters will not be able to demonstrate that the availability of such information is likely to cause substantial harm to the business's competitive position or that this information is not otherwise obtainable without the business's consent. For example, much of this information is required on manifests which may be available from State authorities. Moreover, if a situation arises where confidentiality may be a valid concern, EPA believes that it would generally be sufficient to assert a claim as to only a single piece of information, such as the consignee, to ensure protection. EPA requests comments on its proposed treatment of confidentiality claims.

IV. Enforcement

A. EPA

Noncompliance with RCRA section 3017 or regulations promulgated thereunder is subject to enforcement actions under section 3008. As the legislative history of section 3017 states:

> The requirements of this section should be vigorously enforced using all the tools of section 3008. To accomplish this, the Agency should work with the U.S. Customs Service to establish an effective program to monitor and spotcheck international shipments of hazardous waste to assure compliance with the requirements of the section. Violations should then be vigorously pursued. S. Rep. No. 98-284, 98th Cong., 1st sess. 48.

Most importantly, the HSWA amendments include an amendment to section 3008(d) of RCRA authorizing criminal penalties for knowingly exporting a hazardous waste without the consent of the receiving country or in nonconformance with an international agreement between the U.S. and a receiving country. Section 3008

establishes a penalty of $50,000 per day for knowingly exporting a hazardous waste without a consent or in violation of a bilateral agreement. Prison terms may be up to two years. Penalties and prison terms may be doubled for second offenses. EPA intends to prosecute violators of the export rule to the fullest extent.

B. Customs

The new HSWA provision on the export of hazardous waste raises issues concerning cooperation between EPA and the U.S. Customs Service on enforcement matters. As noted above, Congress intended that EPA "should work with the U.S. Customs Service to establish an effective program to monitor and spotcheck international shipments of hazardous waste to assure compliance with the requirements of [Section 3017]." To further this legislative intent, EPA is presently consulting with the U.S. Customs Service in order to develop an effective program to monitor and spotcheck hazardous waste exports.

The United States Customs Service has independent authority to stop, inspect, search, seize, and detain suspected illegal exports of hazardous wastes under the Export Administration Act, 50 U.S.C. App. 2411, as amended by the Export Administration Amendments Act of 1985, Pub. L. No. 99-64, 99 Stat. 120 (1985), case law, and U.S. Customs Service regulations (e.g., 19 CFR Part 162). Exporters who violate the Export Administration Act or U.S. Customs Service regulations may also be subject to enforcement actions under those authorities.

C. Other Agencies

Exporters of hazardous waste also may be required to comply with pertinent export control laws and regulations issued by other agencies. For example, regulations promgulated by the Bureau of the Census, Department of Commerce, require exporters to file Shipper's Export Declarations for shipments valued over $1,000. 15 CFR Part 30. It may very well be possible that hazardous waste exported for purposes of recycling would have a value over $1,000. The "Schedule B—Statistical Classification of Domestic and Foreign Commodities exported from the United States" contains a statistical reporting number for certain waste and scrap. This number (793.0000) must be used in preparing Shipper's Export Declarations, as required by 13 U.S.C. 301 and 15 CFR Part 301. EPA is consulting with the Bureau of the Census about the advisability of adding a reporting number for hazardous waste to "Schedule B."

Failure to file a Shipper's Export Declaration is subject to civil penalties as authorized by 13 U.S.C. 305. It is also unlawful to knowingly make false or misleading representations in such documents. This constitutes a violation of the Export Administration Act. To knowingly make false or misleading statements relating to information on the Shipper's Export Declaration is a criminal offense subject to penalties as provided for in 18 U.S.C. 1001.

V. Effective Date of Final Regulations

EPA proposes that any final regulatory provisions issued pursuant to section 3017(c) setting forth export notification requirements shall become effective 30 days after promulgation.

Section 3010(b) provides that regulations promulgated under Subtitle C shall have an effective date six months after the date of promulgation. That section also allows the Administrator to provide for a shorter period prior to the effective date under specified conditions. Section 3017(b) also sets forth the requirement that regulations be effective six months (180 days) after promulgation. It does not mention specifically, however, the Administrator's discretion to allow a shorter time. Thus, the question arises as to whether section 3010(b) or section 3017(b) is controlling. It is EPA's view that section 3010(b) is controlling. Where Congress intended that the Administrator have no discretion to shorten the period prior to the effective date, Congress used specific language to that effect. Thus, section 3001(d)(9) provides that "the last sentence of § 3010(b) shall not apply to regulations promulgated under this Section." Accordingly, since Congress did not specifically provide otherwise under section 3017, the Administrator retains the authority to shorten this period.

EPA believes a shorter effective date is appropriate with respect to the export rules since the regulated community does not need six months to come into compliance with these rules. These rules are not complex and simply involve the exchange of general information. In addition, at this point in time, it is unlikely that these regulation can be effectuated by November 8, 1986,[6] and still allow for a 180 day period prior to the effective date. Yet, EPA believes it important to have rules in effect to properly implement section 3017 by that date.

[6] Section 3017(a) provides compliance with that section 24 months after enactment of HSWA (November 8, 1986).

Assuming, however, that section 3010(b) is not controlling, EPA believes that its scheme for effectuation of these rules is also authorized by section 3017 itself. This scheme comports with Congressional intend that this section go into effect by November 8, 1986, and that regulations be in place by that time. Although section 3017 also provides that regulations promulgated under that section take effect 180 days after promulgation, it is unlikely that, at this point in time, final regulations will be promulgated sufficiently in advance of November 8, 1986, to allow for effectuation by that date as well as a 180-day period between promulgation and effectuation. Under such circumstances, and because regulatory provisions interpreting section 3017 are important to the proper implementation of that section, it is EPA's view that the November 8, 1986 date must control for purposes of the effective date of the export regulations. Where EPA is unable to satisfy both of these statutory time frames, surely the November 8, 1986 deadline for implementing section 3017 is more important than the number of days between promulgation and effectuation.

VI. Economic, Environmental and Regulatory Impacts

A. Impact on Small Quantity Generators

Because of the small number of Small Quantity Generators EPA expects will export hazardous waste, the impact on Small Quantity Generators should be minimal.

B. Executive Order 12291—Regulatory Impact

Under Executive Order 12291 (46 FR 12193, February 19, 1981), EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis.

This proposed regulation is not major because it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, under Executive Order 12291, today's action is not "major." This proposed regulation has been submitted to the Office of Management and Budget (OMB) for review.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA and a copy may be obtained from: Nanette Liepman: Information Management Branch; EPA; 401 M. Street, SW. (PM-223); Washington, D.C. 20460 or by calling 202-382-2742. Submit comments on these requirements to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for EPA, 726 Jackson Place NW., Washington, D.C. 20503. The final rule will respond to OMB or public comments on the information collection requirements.

D. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, a regulatory flexibility analysis must be performed if the regulatory requirements have a significant impact on a substantial number of small entities. No regulatory flexibility analysis is required where the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Since 1980, generators exporting hazardous waste have been required by EPA to notify the Administrator four weeks before the initial shipment of hazardous waste to each country in each calendar year. Based upon an analysis of those notifications received, the Agency has determined that no small entities have filed notifications of intent to export. EPA does not anticipate that the universe of generators exporting hazardous waste will significantly change in the future. Therefore, this rule is not expected to have a significant economic impact on a substantial number of small entities and does not require a regulatory flexibility analysis. Therefore, pursuant to 5 U.S.C. 601(b), I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

VII. List of Subjects

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous Waste, Liquids in Landfills.

40 CFR Part 262

Hazardous material transportation, Hazardous waste, Imports, Exports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Waste minimization.

40 CFR Part 263

Hazardous materials transportation, Waste treatment and disposal.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Lee M. Thomas,

Administrator.

March 4, 1986.

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

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, through 3007, 3010, 3014, 3015, 3017, 3018, 3019 and 7004, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974).

2. Section 260.2 is proposed to be amended by revising paragraph (b) to read as follows:

§ 260.2 Availability of information; confidentiality of information.

* * * * *

(b) Any person who submits information to EPA in accordance with Parts 260 through 266 of this chapter may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in § 2.203(b) of this chapter. Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in Part 2, Subpart B, of this chapter except that information required by §262.53(a) which is submitted in a notification of intent to export a hazardous waste will be provided to the Department of State and the appropriate authorities in a receiving country regardless of any claims of confidentiality. However, if no such claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to the person submitting it.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

3. The authority citation for Part 262 continues to read as follows;

Authority: Secs. 1006, 2002(a), 3002, 3003, 3004, 3005, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6906, 6912(a), 6922, 6923, 6924, 6925, and 6937).

4. Section 262.41 is proposed to be amended by revising the introductory text of paragraph (a) and paragraphs (a)(3), (a)(4) and (a)(5) and adding two sentences to the end of paragraph (b) to read as follows:

§ 262.41 Biennial Report.

(a) A generator who ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States must prepare and submit a single copy of a Biennial Report to the Regional Administrator by March 1 of each even numbered year. The Biennial Report must be submitted on EPA Form 8700-13A, must cover generator activities during the previous year, and must include the following information:

* * * * *

(3) The EPA identification number, name, and address for each off-site treatment, storage, or disposal facility in the United States to which waste was shipped during the year;

(4) The name and EPA identification number of each transporter used during the reporting year for shipments to a treatment, storage or disposal facility within the United States;

(5) A description, EPA hazardous waste number (from 40 CFR Part 261, Subpart C or D), DOT hazard class, and quantity of each hazardous waste shipped off-site for shipments to a treatment, storage or disposal facility within the United States. This information must be listed by EPA identification number of each off-site facility to which waste was shipped.

* * * * *

(b) * * *

Reporting for exports of hazardous waste is not required on the Biennial Report form. A separate annual report requirement is set forth at 40 CFR 262.56.

5. Subpart E consisting of §§ 262.50-262.58 of 40 CFR Part 262 is proposed to be by revised to read as follows:

Subpart E—Exports of Hazardous Waste

Sec.

Subpart E—Exports of Hazardous Waste

§ 262.50 Applicability.

This subpart establishes requirements applicable to exports of hazardous waste. An exporter of hazardous waste must comply with the special requirements of this subpart except to the extent § 262.58 provides otherwise. Section 262.58 sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, treatment, storage and disposal of hazardous waste for shipments between the United States and those countries.

§ 262.51 Definitions.

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

"Consignee" means the ultimate treatment, storage or disposal facility in the receiving country to which the hazardous waste will be sent.

"EPA Acknowledgment of Consent" means the cable sent to EPA from the U.S. Embassy in the receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

"Exporter" is the person who is required to prepare the manifest for a shipment of hazardous waste, in accordance with 40 CFR Part 262, Subpart B, or equivalent State provision, which specifies a treatment, storage or disposal facility in the receiving country as the facility to which the hazardous waste will be sent.

"Receiving country" means the foreign country of ultimate destination of the hazardous waste.

"Transit country" means any foreign country through which a hazardous waste passes en route to a receiving country.

§ 262.52 General Requirements.

Exports of hazardous waste are prohibited except in compliance with the applicable requirements of this subpart. No person shall export any hazardous waste unless:

(a) Notification in accordance with § 262.53 has been provided;

(b) The receiving country has consented to accept the hazardous waste;

(c) A copy of the EPA Acknowledgment of Consent to the shipment is attached to the manifest (or shipping paper for exports by rail or water (bulk shipment)) accompanying each hazardous waste shipment; and

(d) The hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA Acknowledgment of Consent.

§ 262.53 Notification of intent to export.

(a) An exporter of hazardous waste must notify EPA of an intended export before such waste is scheduled to leave the United States. A complete notification should be submitted sixty (60) days before the initial shipment is intended to be shipped off site. This notification may cover export activities extending over a twenty-four (24) month or lesser period. The notification must be in writing, signed by the exporter and include the following information:

(1) Name, mailing address, telephone number and EPA ID number of the exporter;

(2) By consignee, for each hazardous waste type:

(i) A description of the hazardous waste and the EPA hazardous waste number (from 40 CFR Part 261, Subparts C and D), U.S. DOT proper shipping name, hazard class and ID number (UN/NA) for each hazardous waste as identified in 49 CFR Parts 171–177;

(ii) The estimated number of shipments of the hazardous waste and approximate date of each shipment;

(iii) The estimated total quantity of the hazardous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form (8700–22);

(iv) All points of entry to and departure from each foreign country through which the hazardous waste will pass;

(v) A description of the means by which each shipment of the hazardous waste will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.));

(vi) A description of the manner in which the hazardous waste will be treated, stored or disposed of in the receiving country (e.g., land or ocean incineration, other land disposal, ocean dumping, recycling);

(vii) The name and site address of the consignee and any alternate consignee; and

(viii) The name of any transit countries through which the hazardous waste will be sent and a description of the approximate length of time the hazardous waste will remain in such country and the nature of its handling while there;

(b) Notification shall be sent to the Office of International Activities (A–106), EPA, 401 M Street SW., Washington, D.C. 20460.

(c) When the conditions specified on the original notification change (including any exceedance of the estimate of the quantity of hazardous waste specified in the original notification), the exporter must provide EPA with a written renotification of the change. The shipment cannot take place until consent of the receiving country to the changes has been obtained and the exporter receives an EPA Acknowledgment of Consent reflecting the receiving country's consent to the changes.

(d) Upon request by EPA, an exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(e) In conjunction with the Department of State, EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraph (a) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by paragraph (a) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(f) Where the receiving country consents to the receipt of the hazardous waste, EPA will forward an EPA Acknowledgment of Consent to the exporter for attachment to the manifest (or shipping paper for exports by rail or water (bulk shipment)) accompanying each waste shipment. Where the receiving country objects to 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.

§ 262.54 Special manifest requirements.

An exporter must comply with the manifest requirements of 40 CFR 262.20–262.23 except that:

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

(b) In lieu of the name, site address and EPA ID number of a permitted

alternate facility, the exporter may enter the name and site address of any alternate consignee.

(c) In Special Handling Instructions and Additional Information, the exporter must identify the point of departure from the United States;

(d) The following statement must be added to the end of the first sentence of the certification set forth in Item 16 of the Uniform Hazardous Waste Manifest Form: "and conforms to the terms of the attached EPA Acknowledgment of Consent";

(e) In lieu of the requirements of § 262.21, the exporter must obtain the manifest form from the exporter's State if that State supplies the manifest form and requires its use. If the exporter's State does not supply the manifest form, the exporter may obtain a manifest form from any source.

(f) The exporter must require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies (as defined in 40 CFR 264.72(a)) between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste.

(g) In lieu of the requirements of § 262.20(d), where a shipment cannot be delivered for any reason to the designated or alternate consignee, the exporter must:

(1) Renotify EPA of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with § 262.53(c) and obtain an EPA Acknowledgment of Consent prior to delivery; or

(2) Instruct the transporter to return the waste to the exporter in the United States or designate another facility within the United States; and

(3) Instruct the transporter to revise the manifest in accordance with the exporter's instructions.

(h) The exporter must attach a copy of the EPA Acknowledgment of Consent to the shipment to the manifest (or shipping paper for exports by rail or water (bulk shipment)) which must accompany the hazardous waste shipment.

§ 262.55 Exception Reports.

In lieu of the requirements of § 262.42, an exporter must file an exception report with the Administrator if:

(a) He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within forty-five (45) days from the date it was accepted by the initial transporter;

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

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

§ 262.56 Annual Reports.

(a) Exporters of hazardous waste shall file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all such harardous waste exported during the previous calendar year. Such reports shall include the following:

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

(2) The calendar year covered by the report;

(3) The name and site address of each consignee;

(4) By consignee 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), DOT hazard class, the name and US EPA ID number (where applicable) for each transporter used, the total amount of waste shipped and number of shipments pursuant to each notification; and

(5) A certification signed by the exporter which 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) Reports shall be sent to the following address: Office of International Activities [A-106], Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

§ 262.57 Recordkeeping.

(a) For all exports an exporter must:

(1) Keep a copy of each notification of intent to export for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(2) Keep a copy of each EPA Acknowledgment of Consent for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(3) Keep a copy of each confirmation of delivery of the hazardous waste from the consignee for at least three years from the date the hazardous waste was accepted by the initial transporter;

(4) Keep a copy of each annual report for a period of at least three years from the due date of the report.

(b) 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.

§ 262.58 International Agreements [Reserved].

6. Title 40 CFR Part 262 is proposed to be amended by adding new Subpart F consisting of § 262.60 to read as follows:

Subpart F—Imports of Hazardous Waste

§ 262.60 Imports of Hazardous Waste.

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

(b) When importing hazardous waste, a person must meet all the requirements of § 262.20(a) for the manifest except that:

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

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

(c) A person who imports hazardous waste must obtain the manifest form from the consignment State if that State supplies the manifest and requires its use. If the consignment State does not supply the manifest form, then the manifest form may be obtained from any source.

7. Title 40 CFR Part 262 is proposed to be amended by adding a new Subpart G consisting of § 262.70 to read as follows:

Subpart G—Farmers

§ 262.70 Farmers.

A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in this part or other standards in 40 CFR Parts 270, 264 or 265 for those wastes provided he triple rinses each emptied pesticide container in accordance with § 261.7(b)(3) and disposes of the pesticide residues on his own farm in a

manner consistent with the disposal instructions on the pesticide label.

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

8. The instructions to the Uniform Hazardous Waste Manifest form in the Appendix to Part 262 is amended to add under Item 16 a new paragraph after the first paragraph as follows:

* * * * *

Exporters shipping hazardous wastes to a facility located outside of the United States must add to the end of the first sentence of the certification the following words "and conforms to the terms of the attached Acknowledgment of Consent."

* * * * *

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

9. The authority citation for Part 263 is proposed to be revised to read as follows:

Authority: Secs. 2002(a), 3002, 3003, 3004, 3005 and 3017 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 and as amended by the Quiet Communities Act of 1978 (42 U.S.C. 6912, 6922, 6923, 6924, 6925, and 6937).

10. Section 263.20 is proposed to be amended by revising paragraphs (a), (c), (e)(2), and (f)(2) to read as follows:

§ 263.20 The Manifest System.

(a) A transporter may not accept hazardous waste from a generator unless it is accompanied by a manifest signed in accordance with the provisions of 40 CFR 262.20. In the case of exports, a transporter may not accept such waste from an exporter or other person unless, in addition to a manifest signed in accordance with the provisions of 40 CFR 262.20, such waste is also accompanied by an EPA Acknowledgment of Consent attached to the manifest.

* * * * *

(c) The transporter must ensure that the manifest accompanies the hazardous waste. In the case of exports, the transporter must ensure that a copy of the EPA Acknowledgment of Consent also accompanies hazardous waste for export.

* * * * *

(e) * * *

(2) A shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports, an EPA Acknowledgment of Consent accompanies the hazardous waste; and

* * * * *

(f) * * *

(2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports an EPA Acknowledgment of Consent accompanies the hazardous waste at all times.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

11. The authority citation for Part 271 continues to read as follows:

Authority: Sec. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

§ 271.1 [Amended]

12. Section 271.1(j) is proposed to be amended by adding the following entry to Table 1 in chronological order:

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

Date	Title of regulation
* *	* *
March 13, 1986	Exports of Hazardous Waste.

13. Section 271.10 is proposed to be amended by revising paragraphs (e) introductory text and (e)(1) and (e)(2) to read as follows. The note remains unchanged.

§ 271.10 Requirements for generators of hazardous wastes.

* * * * *

(e) The State program shall provide requirements respecting international shipments which are equivalent to those at 40 CFR Part 262 Subparts E and F, except that:

(1) Advance notification, annual reports and exception reports in accordance with 40 CFR 262.53, 262.55 and 262.56 shall be filed with the Administrator; States may require that copies of the documents referenced also be filed with the State Director); and

(2) The Administrator will notify foreign countries of intended exports in conjunction with the Department of State and exporters of foreign countries' responses in accordance with 40 CFR 262.53.

14. Section 271.11 is proposed to be amended by revising paragraph (c) to read as follows:

§ 271.11 Requirements for transporters of hazardous wastes.

* * * * *

(c) The State must require the transporter to carry the manifest during transport, except in the case of shipments by rail or water specified in 40 CFR 263.20 (e) and (f) and to deliver waste only to the facility designated on the manifest. The State program shall provide requirements for shipments by rail or water equivalent to those under 40 CFR 263.20 (e) and (f). For exports of hazardous waste, the State must require the transporter to also carry a copy of the EPA Acknowledgment of Consent to the shipment.

* * * * *

[FR Doc. 86–5491 Filed 3–12–86; 8:45 am]

BILLING CODE 6560–50–M