

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 261 and 266**

[FRL-6848-8]

**Project XL Site-Specific Rulemaking for US Filter Recovery Services, Roseville, Minnesota, and Generators and Transporters of USFRS XL Waste****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule and draft final project agreement.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing this rule to implement a project under its Project XL (which stands for eXcellence and Leadership) program that would provide regulatory flexibility under the Resource Conservation and Recovery Act (RCRA), as amended, for the US Filter Recovery Services (USFRS) facility located at 2430 Rose Place, Roseville, Minnesota, 55113 and approved Minnesota generators and transporters of wastes to encourage the use of waste water treatment ion exchange resins. The principal objective of the USFRS XL Project is to pilot a flexible, performance-based system for managing waste waters from electroplaters, metal finishers and similar industries who by virtue of their using USFRS water treatment ion exchange resins generate electroplating sludges which are regulated hazardous wastes. To achieve this objective, this proposed rule would replace existing requirements for approved generators and transporters with a comprehensive program designed and implemented by USFRS to properly store and transport the USFRS water treatment ion exchange resin wastes. The overall terms of this XL Project are contained in the draft Final Project Agreement (FPA) of which EPA is also requesting comments. The draft FPA is available for public review and comment at the RCRA Docket in Arlington, Virginia, in the EPA Region V library, at USFRS, and on the world wide web at <http://www.epa.gov/projectxl/>. Following a review of the public comments and appropriate changes, the FPA would be signed by delegates from the EPA, the Minnesota Pollution Control Agency (MPCA), the Counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington in Minnesota, USFRS and each participating generator and transporter.

**DATES:** Public Comments: Comments on the proposed rule and/or FPA must be received on or before September 7,

2000. All comments should be submitted in writing to the address listed below.

**Public Hearing:** Commenters may request a public hearing by August 24, 2000 during the public comment period. Commenters requesting a public hearing should specify the basis for their request. If EPA determines that there is sufficient reason to hold a public hearing, it will do so by August 31, 2000, during the last week of the public comment period. Requests for a public hearing should be submitted to the address below. If a public hearing is scheduled, the date, time, and location will be noticed through a **Federal Register** notice or by contacting Mr. Robert Egan at the Region V office.

**ADDRESSES:** Request to Speak at Hearing: Requests for a hearing should be mailed to the RCRA Information Center Docket Clerk (5305G), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460. Please send an original and two copies of all comments, and refer to Docket Number F-2000-FRSP-FFFFF. A copy should also be sent to Mr. Robert Egan, EPA, Region V. Mr. Egan may be contacted at the following address: U.S. Environmental Protection Agency, Region V, Waste, Pesticides and Toxics Division, (DRP-8J), 77 West Jackson, Chicago, Illinois, 60604, (312) 886-6212.

**Comments:** Written comments should be mailed to the RCRA Information Center Docket Clerk (5305W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460. Please send an original and two copies of all comments, and refer to Docket Number F-2000-FRSP-FFFFF. A copy of the comments should also be sent to Mr. Egan at U.S. EPA, Region V, Waste, Pesticides and Toxics Division (DRP-8J), 77 West Jackson, Chicago, Illinois 60604.

**Viewing Project Materials:** A docket containing the proposed rule, draft FPA, supporting materials, and public comments is available for public inspection and copying at the RCRA Information Center (RIC), located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The RIC is open from 9:00 am to 4:00 pm Monday through Friday, excluding federal holidays. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (703) 603-9230. Refer to RCRA docket number F-2000-FRSP-FFFFF. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost 15 cents

per page. Project materials are also available for review for today's action on the world wide web at <http://www.epa.gov/projectxl/>.

A duplicate copy of the docket is available for inspection and copying at U.S. EPA, Region V, Waste, Pesticides and Toxics Division, 77 West Jackson, Chicago, Illinois 60604 during normal business hours. Persons wishing to view the duplicate docket at the Chicago location are encouraged to contact Mr. Robert Egan in advance, by telephoning (312) 886-6212.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Egan, U.S. EPA, Region V, Waste, Pesticides and Toxics Division, 77 West Jackson, Chicago, Illinois 60604. Mr. Egan may be contacted at (312) 886-6212. Further information on today's action may also be obtained on the world wide web at <http://www.epa.gov/projectxl/>.

**SUPPLEMENTARY INFORMATION:** Electroplaters, metal finishers and other industries use large volumes of water to wash and rinse materials during the manufacturing process. In many manufacturing processes this wash and rinse water is used once then directed to an on-site waste water treatment plant where it is treated to levels required by the Clean Water Act prior to discharge to a surface water body or a local publicly owned treatment works (POTW).

To minimize the use of potable water in the manufacturing process USFRS has developed a water treatment system that uses an ion exchange resin ("resin"). USFRS estimates that one gallon of its resin can treat anywhere from 500 to 2,000 gallons of process waste waters. The resins are contained in a canister. USFRS pays between \$300 and \$4,000 per canister (for the larger ones) and they expect to use each canister for approximately 20 years. The process waste waters are directed to the canisters. The resins within the canisters collect the metals and other chemical contaminants that are otherwise contained in the process waste waters. Exiting the canister is cleaned water.

USFRS anticipates that the cleaned water could be returned to the process thus avoiding or reducing the use and treatment of potable water in the manufacturing process. However, the collection of the chemical contaminants on the resins results in the resins being characterized as a listed hazardous waste—i.e., F006, waste water treatment sludges from electroplating operations. The resins may also exhibit a characteristic of hazardous waste as a result of the operations of a particular

manufacturer. The characterization of the resin wastes as a listed hazardous waste operates as a disincentive to a potential customer to use the USFRS waste water treatment system since that customer must handle, store and transport the resins according to the hazardous wastes requirements contained in 40 CFR parts 260–265, 268, 270, 273 and 279.

The purpose of the USFRS XL Project would be to determine whether substitute requirements imposed on USFRS and approved generators and transporters would remove this disincentive, as well as encourage increased use of the USFRS waste water treatment system, a decrease in the energy associated with use of potable water in the manufacturing process, and a decrease in the amount of hazardous chemicals discharged to POTWs. The development and implementation of the USFRS XL Project would be piloted at USFRS and at approved generators and transporters of USFRS resin wastes. The approved generators and transporters would handle, store and transport the resin wastes in accordance with specific standards contained in proposed new part 266, subpart N of Title 40 of the Code of Federal Regulations (“subpart N”). These requirements would operate in lieu of the requirements imposed under parts 261–265, 268, 270, 273 and 279 of Title 40 of the Code of Federal Regulations. As a result, it is anticipated that the generators will reduce their discharge of process waste waters to local POTWs. USFRS will handle the resin wastes as hazardous waste and in accordance with subpart N and its hazardous waste permit. The proposed rule would impose on USFRS additional reporting and handling requirements in exchange for the regulatory flexibility provided to the generators and transporters. All other hazardous wastes generated by these generators and USFRS would continue to be subject to current RCRA regulations.

The USFRS XL Project is intended to test the effectiveness of an integrated, flexible, performance-based approach for managing hazardous waste to determine whether this approach promotes a reduction in the amount of hazardous chemicals which are discharged to the local POTWs and the amount of water used in the manufacturing process.

EPA is proposing to implement the USFRS XL Project by providing the generators and transporters with a “temporary deferral” from the requirements of 40 CFR parts 261–265, 268, 270, 273 and 279 for USFRS XL waste. The deferral is temporary in that it is only applicable for the period of

time that the waste is at the generator or during its transport to USFRS. Additionally, the deferral is temporary in that the deferral is applicable only during the time that this XL Project is effective—5 years from the effective date of subpart N.

The deferral consists of designating the resin wastes by a waste code different from those identified in 40 CFR part 261 while the waste is at the approved generator and during its transport. To accomplish this the proposed rule contains a new definition of “USFRS XL waste” and provides it with a unique EPA waste code (XL001). USFRS XL wastes will be limited to used water treatment resin canisters and their contents from USFRS XL waste generators located in the state of Minnesota. The USFRS XL waste will include the resins, the wastes contained on or within the resins and any other wastes contained within the water treatment resin canisters. These wastes include only those wastes generated from processes subject to the RCRA F006 hazardous waste listing.<sup>1</sup> USFRS and its generators or transporters will use the waste code XL001 when the wastes are at the generator or in transport.

The deferral would also require the approved generators and transporters and USFRS to comply with new part 266, subpart N in lieu of 40 CFR parts 261–265, 268, 270, 273 and 279. If the approved generator, transporter or USFRS fails to comply with the new requirements then it will have violated RCRA and may be subject to enforcement action for such violations. Proposed new subpart N includes specific requirements for the management of the USFRS XL wastes in a manner which ensures protection of human health and the environment while providing some flexibility to encourage chemical reuse and waste minimization. They are enforceable in the same way as current RCRA standards are enforceable to ensure that handling of the USFRS XL wastes

<sup>1</sup> A solid waste may be a hazardous waste if it is listed or demonstrates a characteristic as defined by 40 CFR part 261, subparts C and D. Certain solid wastes are considered listed hazardous wastes because they are generated as a result of specific manufacturing processes. Such solid wastes may also be considered characteristic hazardous waste depending on the chemical composition of the wastes. This XL Project is focused on the resin wastes generated from process waste waters associated with the F006 hazardous waste listing. It is possible that for some manufacturers the resin wastes may also be characterized as a characteristic hazardous waste. This is acceptable for participation in the USFRS XL project provided the waste waters were from processes associated with the F006 hazardous waste listing.

would be protective of human health and the environment.

EPA has agreed to provide USFRS and approved generators and transporters with this regulatory flexibility to determine if the proposed regulatory approach would result in superior environmental performance and significant cost savings to USFRS or its customers.

Today’s proposed rulemaking, and the state actions described in sections V.A & F of this preamble, will not in any way affect the provisions or applicability of any other existing or future regulations.

EPA is soliciting comments on this rulemaking. EPA will publish responses to comments in a subsequent final rule. The USFRS XL Project will enter the implementation phase after EPA promulgates the final federal rule, the state of Minnesota adopts the required state legal mechanisms and the participants sign the FPA. EPA, MPCA, the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington in Minnesota, USFRS and the approved generators and transporters will sign the FPA. At the present time USFRS has only identified itself and Pioneer Transport (a potential participating transporter) for this XL Project. USFRS has not identified any generators as participants in this XL Project.

The FPA may be modified at any time during this XL Project to add generators or transporters to this XL Project. A generator or transporter who wants to participate in this XL Project in the future will be subject to specific requirements and an approval process described below prior to being accepted into this XL Project. Only generators and transporters who have met the approval process conditions may participate in this XL Project. Consequently, implementation of this XL Project and the proposed rules will occur for a specific generator or transporter only after the appropriate state and federal legal mechanisms are in place and the generator or transporter has signed the FPA.

#### Outline of Today’s Document

The information presented in this preamble is organized as follows:

#### IV. Comparison of USFRS XL Project with Current RCRA Regulations

- A. XL Waste Defined
- B. Substitute Requirements
  - 1. Waste Identification and Characterization
  - 2. EPA Identification Numbers
  - 3. Uniform Hazardous Waste Manifest
  - 4. Pre-transport and Transportation Requirements

5. Accumulation and Storage Prior to Shipment
  6. Reporting and Recordkeeping Requirements
  7. Additional Requirements Imposed on USFRS
- V. How the USFRS XL Project will result in Superior Environmental Performance?
- A. What Regulatory Changes will be Necessary to Implement this Project?
    1. Federal Regulatory Changes
    2. State Regulatory Changes
  - B. Why is EPA Supporting this New Approach to USFRS XL Waste Management?
  - C. How Have Various Stakeholders Been Involved in this Project?
  - D. How Will this Project Result in Cost Savings and Paperwork Reduction?
  - E. How Will EPA Ensure the Integrity of the USFRS XL Project?
  - F. How Will the Terms of the USFRS XL Project and Proposed Rule be Enforced?
  - G. How Long Will this Project Last and When Will it be Completed?
- VI. Additional Information
- A. How to Request a Public Hearing
  - B. How Does this Rule Comply With Executive Order 12866?
  - C. Is a Regulatory Flexibility Analysis Required?
  - D. Is an Information Collection Request Required for this Project Under the Paperwork Reduction Act?
  - E. Does This Project Trigger the Requirements of the Unfunded Mandates Reform Act?
  - F. Applicability of Proposed Subpart N under the Minnesota RCRA Authorized Hazardous Waste Program.
    1. Applicability of Rules in Authorized States
    2. Effect on Minnesota Authorization
  - G. How Does this Rule Comply with Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks?
  - H. How Does this Rule Comply with Executive Order 13132: Federalism?
  - I. How Does this Rule Comply with Executive Order 13084: Consultation and Coordination with Indian Tribal Governments?
  - J. Does this Rule Comply with the National Technology Transfer and Advancement Act?

## I. Authority

EPA is publishing this proposed regulation under the authority of sections 2002, 3001, 3002, 3003, 3006, 3010, and 7004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6912, 6921, 6922, 6923, 6926, 6930, and 6974).

## II. Overview of Project XL

The draft FPA sets forth the intentions of EPA, MPCA, Pioneer Transport, the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and

Washington,<sup>2</sup> Minnesota and USFRS with regard to a project developed under Project XL. Project XL is an EPA initiative to allow regulated entities an opportunity to achieve better environmental results at less cost.

EPA announced Project XL—"eXcellence and Leadership"—on March 16, 1995. It is a central part of the National Performance Review and the EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Under Project XL EPA provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current and reasonably anticipated future regulations. These efforts are crucial to EPA's ability to test new strategies that reduce regulatory burden and promote economic growth while achieving better environmental and public health protection. EPA intends to evaluate the results of this and other Project XL projects to determine which specific elements of the project(s), if any, should be more broadly applied to other regulated entities for the benefit of both the environment and the economy.

Under Project XL, participants in four categories—facilities, industry sectors, governmental agencies and communities—are offered the flexibility to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements, on the condition that they produce and demonstrate superior environmental performance.

The XL program is intended to allow EPA to experiment with potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis.

Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first

<sup>2</sup> These counties are identified signatories to the FPA since the State has given them certain responsibilities over hazardous waste generators, transporters and facilities within their jurisdiction.

determining whether or not they are viable in practice and successful in the particular projects that embody them. Furthermore, as EPA indicated in announcing the XL program, EPA expects to adopt only a limited number of carefully selected projects. These pilot projects are not intended to be a means for piecemeal revision of entire programs. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative interpretation again, either generally or for other specific facilities.

EPA believes that adopting alternative policy approaches and interpretations, on a limited, site-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (provided that the Agency acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing re-evaluation of environmental programs, is reflected in a variety of statutory provisions, such as section 8001 of RCRA.

### *XL Criteria*

To participate in Project XL, applicants must develop alternative pollution reduction strategies pursuant to eight criteria: superior environmental performance; cost savings and paperwork reduction; local stakeholder involvement and support; test of an innovative strategy; transferability; feasibility; identification of monitoring, reporting and evaluation methods; and avoidance of shifting risk burden. They must have full support of affected federal, state and tribal agencies to be selected.

For more information about the XL criteria, readers should refer to the two descriptive documents published in the **Federal Register** (60 FR 27282, May 23, 1995 and 62 FR 19872, April 23, 1997), and the December 1, 1995 "Principles for Development of Project XL Final Project Agreements" document. For further discussion as to how the USFRS XL Project addresses the XL criteria, readers should refer to the USFRS draft FPA available from the EPA RCRA docket or Region 5 library for this action (see **ADDRESSES** section of today's preamble).

### *XL Program Phases*

Development of a Project has four basic phases: the initial pre-proposal phase where the project sponsor comes up with an innovative concept that it would like EPA to consider as an XL pilot; the second phase where the

project sponsor works with EPA and interested stakeholders in developing its XL proposal; the third phase where EPA, local regulatory agencies, and other interested stakeholders review the XL proposal; and the fourth phase where the project sponsor works with EPA, local regulatory agencies, and interested stakeholders in developing the FPA and legal mechanisms. The XL pilot proceeds into the implementation phase and evaluation phase after promulgation of the required federal, state and local legal mechanisms and after the designated participants sign the FPA.

#### *Final Project Agreement*

The FPA is a written agreement between the project sponsor, participants and regulatory agencies. The FPA contains a detailed description of the proposed pilot project. It addresses the eight Project XL criteria, and the expectation of EPA that this XL Project will meet those criteria. The FPA identifies performance goals and indicators (monitoring schedules) which will enable USFRS to clearly illustrate the baseline quantities and compare them to quantities derived after implementation of the pilot. The FPA specifically addresses the manner in which the project is expected to produce superior environmental benefits. The FPA also discusses the administration of the agreement, including dispute resolution and termination. The draft FPA for the USFRS XL Project is available for review in the docket for today's action, and also is available on the world wide web at <http://www.epa.gov/projectxl/>.

### **III. Overview of the USFRS XL Project**

EPA is today requesting comments on the draft FPA and proposed rule. These items are key provisions to implement the USFRS XL Project. Today's proposed rule would facilitate implementation of the draft FPA and the USFRS XL Project. After receiving and reviewing comments on the draft FPA and proposed rule EPA will decide whether to proceed with final approval of the USFRS XL Project. If EPA decides to proceed with such final approval then EPA, MPCA, the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington in Minnesota, Pioneer Transport and USFRS will sign the final FPA. Additionally, EPA will finally promulgate the rules proposed today. The regulatory relief provided in the final EPA rules, however, will not be federally effective in Minnesota until the state has made changes similar changes to its hazardous waste

management program and, as necessary, EPA has approved of those changes as part of the authorized hazardous waste program. See section V.A & F below for a more detailed discussion of the manner in which the state may make such changes and the consequences of such actions.

#### *A. Scope of the USFRS XL Project*

The USFRS XL Project is limited in scope to USFRS and approved generators and transporters and to only USFRS XL wastes from the approved generators.

EPA and MPCA will have to approve of any generator or transporter who is added to this XL Project. If the generator's principal place of business is located within the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington, Minnesota then the approval of the environmental agencies located within these counties is also required ("county environmental agencies" or "county agencies.") EPA's approval will focus primarily on the compliance and enforcement history of the generator or transporter. In addition to this enforcement screen, USFRS will conduct a preliminary evaluation of the generator or transporter.

USFRS' preliminary evaluation of a proposed generator will ensure that the proposed generator is within the electroplating, metal working and circuit board manufacturing industrial sectors, has a complete USFRS application form and has a storage area which meets the standards specified in subpart N. USFRS will conduct a waste analysis to determine the chemical constituents anticipated in a potential generator's waste stream and to determine such wastes' compatibility with USFRS' resin process and canisters. If a company passes USFRS' preliminary evaluation, USFRS may propose to EPA, MPCA and, as appropriate, the county agencies to add it to the USFRS XL Project. EPA, MPCA, and as appropriate, the county agencies must approve of the company before it can be added to the USFRS XL Project. After such approvals are received, USFRS may notify the company of its acceptance. At that time, the company must sign the FPA and a certification that they understand the training which USFRS provided on the proper handling of the USFRS XL waste. USFRS will assign a unique USFRS Client Number to the company and will also assign a unique USFRS Waste Profile Number to the waste stream(s) that contribute to the company's generation of the resin wastes.

USFRS' preliminary evaluation of a proposed transporter will consist of

determining whether the transporter has a current satisfactory safety rating from the United States Department of Transportation (USDOT), an EPA hazardous waste identification number, and a Minnesota Uniform Hazardous Materials Registration (Minnesota registration). USFRS will report on the results of this preliminary evaluation to EPA, MPCA and, as appropriate, the County Agencies. USFRS may propose a transporter who is not a licensed hazardous waste carrier or does not have an EPA identification number. USFRS may propose to EPA, MPCA and, as appropriate, the county agencies to add to the USFRS XL Project any transporter, even a common carrier, who has a current satisfactory rating from USDOT. EPA, MPCA, and as appropriate, the county agencies must approve of the transporter before it can be added to the USFRS XL Project. After such approvals are received, USFRS may notify the transporter of its acceptance. At that time, the transporter must sign the FPA and certify that it has been trained by USFRS on the proper handling of USFRS XL wastes and understands its responsibilities under new part 266, subpart N.

The procedures for obtaining state and local approval of a transporter or generator may be different than the federal procedures outlined above. USFRS must obtain the approval of EPA and MPCA in all instances before it may add a company as a generator or transporter to the USFRS XL Project. For potential generators and transporters whose principal place of business is located in Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington Counties, Minnesota. USFRS will have to obtain the approval of the appropriate county agencies. In all instances USFRS will have to complete the preliminary evaluations identified above prior to proposing to EPA, MPCA or the county agencies the addition of a company to the USFRS XL Project.

The federal procedures for approving a company as a participant in the USFRS XL Project as a generator or transporter are detailed in the proposed rule. In summary, if a company passes USFRS' preliminary evaluation, USFRS will notify EPA in writing of its desire to add this company to the USFRS XL Project. EPA will have twenty one days to veto such company's participation in the USFRS XL Project. EPA anticipates that it will exercise this veto authority based in part on the environmental compliance and enforcement history of the company. If USFRS does not receive a written disapproval from EPA within the twenty one days, the company is deemed to have EPA approval.

USFRS must also obtain the approval of the MPCA and county agency, as appropriate. EPA anticipates that USFRS will seek the approval of MPCA and the appropriate county agency at the same time that it seeks EPA approval. MPCA and the appropriate county agency will perform a compliance and enforcement screen. If the potential generator or transporter passes this screen, MPCA will provide written notice to the company and notify it of its duties and responsibilities.

After USFRS has received the approval of EPA, MPCA and the appropriate county agency it may proceed with the next step in the federal process for adding a generator or transporter to the USFRS XL Project. That step will consist of USFRS notifying the potential generator or transporter that it has received the required agency approvals. At that time, USFRS will obtain the company's signature to FPA and the appropriate certification. Upon request, USFRS will forward a copy of the signed documents to EPA, MPCA and the appropriate county agency.

On the date USFRS receives the signed FPA and certification, the potential generator or transporter is considered part of this USFRS XL Project. This date may be referred to as the generator or transporter "effective date." The generator or transporter must handle its USFRS XL waste generated on or after the effective date in accordance with the requirements of part 266, subpart N. The generator or transporter must handle USFRS XL waste generated prior to the effective date according to the RCRA regulations applicable at that time. Proposed new subpart N does not apply retroactively to these wastes.

The transportation of USFRS XL waste is strictly controlled and monitored by USFRS. The generator must contact USFRS whenever it has a shipment for pick-up. USFRS in turn will contact an approved transporter to arrange for pick-up of the waste. The approved transporters will be the sole transporters of these wastes. USFRS will provide the generator with the Transportation Tracking Document prior to the date the transporter arrives to pick-up the wastes. The generator will ensure that the information on the Transportation Tracking Document is correct. The generator will provide the Transportation Tracking Document to the transporter. The transporter will then carry the wastes to USFRS' Roseville, Minnesota facility for treatment.

The USFRS Roseville facility will handle the USFRS XL wastes as a hazardous waste and consistent with its hazardous waste permit.<sup>3</sup> USFRS' treatment of the wastes will consist of treatment to regenerate the resins and make them amenable for reuse in another canister. USFRS will handle any residual wastes from the resin regeneration process according to the RCRA hazardous waste code designation it would have had if it were not subject to the XL001 designation (*i.e.*, F006 and any other appropriate waste codes). USFRS will ensure that this hazardous waste is legitimately recycled through metal recovery.

This XL Project is limited to USFRS water treatment resin canisters and their contents after use by a generator. The wastes include the resins, the wastes contained on or within the resins and any other wastes contained within the canisters. The wastes include only those wastes which are generated from processes subject to the RCRA F006 hazardous waste listing.

#### *B. What Problems Has USFRS Identified?*

The present RCRA regulatory structure may act as a disincentive for certain manufacturers to reduce their consumption of potable water. In particular, electroplaters, metal finishers and other similar industries use large volumes of water to wash and rinse materials during the manufacturing process. In most manufacturing processes today, wash and rinse water is used once, then discarded. This "single-use" waste water is usually directed to an on-site waste water treatment plant where it is treated to levels required by the Clean Water Act prior to discharge to a POTW or surface waters. This single-use of water is very wasteful. A great amount of effort and cost is expended to produce potable water for this single use. Additional costs are incurred in treating these waste waters prior to discharge.

To minimize single water use and to encourage recycling of rinse waters, USFRS has developed a water treatment system that uses a resin. The resin is contained within a cylindrical canister which can be integrated into a company's existing processes. One gallon of resin can treat between 500 to 2,000 gallons of waste waters. The regenerated water can then be directed back to the manufacturing process and

reused. This reduces the amount of potable water that is needed in the manufacturing process. The resins contained within the canisters can be regenerated and reused at USFRS' Roseville, Minnesota facility. This regeneration process produces a regenerated resin and residual wastes containing metals, such as copper, nickel and zinc ("sludges"). The regenerated resin may be reused again in water treatment systems. The residual wastes from USFRS's regeneration process may be recycled to recover the metals contained within them.

As part of this XL Project USFRS has proposed that it will arrange for the recycling of the sludges through metal reclamation. USFRS anticipates that this recycling will be done by another company. USFRS projects that the recycling of sludges will provide another environmental benefit since it will result in less wastes being landfilled. Furthermore, USFRS suggests that the metals that are recovered may reduce the energy and environmental impacts from mining and manufacturing of virgin ores.

The proposed new subpart N requires USFRS to recycle the sludges through metal reclamation. It also requires USFRS to have its recycling in place prior to initiation of this XL Project. Since USFRS does not recycle these sludges itself its ability to implement this XL Project is restricted to the availability of legitimate off-site recyclers who are willing to accept the sludges. USFRS has indicated that there presently are not many companies who are willing or able to do such recycling. It has also indicated that it is committed to finding such a company and will continue to explore such options.

This XL Project may provide sufficient environmental benefit without the sludge reclamation requirement. The benefits may derive from the anticipated increase in the use of the USFRS resins and the resultant anticipated reduction in the use of potable water for industrial processes, reduction in discharges to the POTWs and reduction in the use of chemicals for water treatment. Consequently, EPA may modify or delete the sludge reclamation requirements in new subpart N based on the public comments and information submitted during that period.

The use of water reuse systems such as USFRS's ion exchange system by electroplaters, metal finishers and similar industries often results in the resins and canisters being considered a listed hazardous waste (F006) once the resins have been spent at the manufacturing plant. However, these resins and the canisters can be

<sup>3</sup> The conditions in proposed new subpart N must be incorporated into USFRS' hazardous waste permit by the State of Minnesota. This must be accomplished in time to allow USFRS to have the revised permit before it installs the resin canisters at its first generator approved by the agencies.

regenerated at USFRS' Roseville, Minnesota facility. Since the resins and the canisters may be a RCRA hazardous waste, the manufacturer incurs additional obligations under RCRA that it would not necessarily incur if it had not implemented the water reuse system. The additional regulatory obligations may act as a disincentive to a company's use of a water reuse system and thus increases the use of potable water.

### C. What Solutions Are Proposed by the USFRS XL Project?

To encourage water and waste reduction and recycling, USFRS proposes that the canisters and resins be temporarily deferred from the RCRA regulatory requirements contained in 40 CFR parts 261–265, 268, 270, 273 and 279. This temporary deferral would be implemented through a proposed regulation which designates these wastes by a waste code different from those identified in 40 CFR part 261 while the waste is at the approved generator and during its transport to USFRS. This deferral is premised on the fulfillment of five general requirements. First, the generator would handle the waste in accordance with specific standards required by the proposed rule. Second, the waste is transported only to USFRS' Roseville, Minnesota facility and only by approved transporters. Third, the generators and transporters are limited to companies located in Minnesota who pass a preliminary evaluation by USFRS and are approved by EPA, MPCA and the appropriate county agencies. Fourth, USFRS handles the waste according to the waste code designation it would have had but for this proposed rule (*i.e.*, F006 and any other appropriate waste code). Finally, USFRS will recycle, through metals recovery, any metals contained in these wastes. Presented below is a more detailed discussion of these elements of the proposed rule and draft FPA.

## IV. Comparison of USFRS XL Project With Current RCRA Regulations

### A. XL Waste Defined

A definition of "USFRS XL waste" is proposed for 40 CFR 266.301. "USFRS XL waste" consists of the USFRS used water treatment resin canisters and their contents from approved USFRS generators within the State of Minnesota. The USFRS XL wastes include the ion exchange resins, the wastes contained on or within the ion exchange resins and any other wastes contained within the water treatment resin canisters. Spills of USFRS XL

wastes by the generator or transporter are considered USFRS XL waste provided the generator or transporter handles the spill in accordance with the spill requirements of proposed 40 CFR 266.308(e) and 266.311. The USFRS XL wastes are limited to wastes which result from processes which would be subject to the RCRA F006 hazardous waste designation at the point of generation (*i.e.* waste water treatment sludges from specified electroplating operations). This definition of USFRS XL wastes includes only those ion exchange resin canisters which result in reuse of substantially all of the treated waste waters in the industrial process. These wastes may also exhibit a characteristic of hazardous waste as a result of the operations of a particular company. This definition does not include those ion exchange resins canisters which result in the disposal of the treated waste waters, without any reuse of the treated waste waters in the industrial process. This definition does not include wastes that were generated prior to the date a generator is added to this USFRS XL Project. USFRS XL waste while at an approved generator and during transport shall be identified by the waste code XL001. The XL001 waste designation applies only to USFRS XL wastes generated by approved USFRS XL waste generators.

An approved USFRS XL waste generator is a company located in Minnesota who: has properly identified its wastes and processes; has passed a preliminary evaluation by USFRS; has not been excluded by EPA, MPCA and appropriate county agencies; has received notice of approval from USFRS; and has signed the FPA, and a certification that it has taken and understood the specific training required by subpart N.

USFRS will assign to approved generators a USFRS Client Number and USFRS Waste Profile Number for USFRS XL wastes.

### B. Substitute Requirements

The RCRA regulations identify specific requirements for persons who generate, transport, treat, store or dispose of hazardous waste (40 CFR parts 261–266, 268, 270, 273 and 279). Generators of hazardous waste are subject to different requirements depending upon the quantity and type of hazardous waste that they generate or accumulate in a calendar month (40 CFR 261.5, 262.10(b) and 262.34). The RCRA regulations also have specific provisions for the management of certain recyclable materials (40 CFR 261.6). USFRS and approved generators and transporters of USFRS XL waste

must comply with new part 266, subpart N instead of the regulations contained in 40 CFR 261.5, 261.6(a)(1), parts 262–265, 268, 270, 273 and 279. Additionally, the USFRS XL waste generator may exclude the amount of USFRS XL waste it generates when it is determining whether it is subject to 40 CFR 261.5 or part 262. Presented below is a summary of the substitute requirements for USFRS and the approved generators and transporters.<sup>4</sup>

### 1. Waste Identification and Characterization

**RCRA Requirements.** Generators of hazardous waste are required to properly characterize their wastes as hazardous waste, (40 CFR 262.11). For listed hazardous waste the generator must determine if it is listed in subpart D of 40 CFR part 261. For characteristic hazardous waste the generator may accomplish this characterization either by testing the waste or applying specific knowledge of the hazardous characteristics of the waste considering the materials or the processes used.

**XL Project Requirements.** USFRS XL waste would normally be considered a listed hazardous waste (F006) and, depending on the processes, may be considered a characteristic hazardous waste. In order to determine all of the wastes codes appropriate for a particular waste stream it would be necessary for a generator to test the waste or have specific knowledge. In lieu of having this responsibility fall solely on the generator, this XL Project proposes that USFRS and the customer will share certain responsibilities.

Pursuant to § 266.306, prior to being accepted into this XL Project, the customer/potential generator company would properly identify its processes and chemicals contributing to the water proposed for treatment in the USFRS resin canisters. It may only identify those waste streams which meet the F006 listing. The customer will accomplish this by completing and submitting to USFRS a USFRS XL waste application form. After being accepted into this XL Project, the customer shall provide USFRS with prior notification of any changes in its processes. USFRS will perform a chemical profile analysis, of the customer's waste stream(s) and processes contributing to the water treated within the ion exchange resin canisters. USFRS will conduct this analysis in accordance with the test

<sup>4</sup> Unless otherwise specified, the discussion that follows on the RCRA requirements focuses on the requirements for large quantity generators. The USFRS XL Project and proposed new subpart N, however, applies to all generators, regardless of the quantity of waste that they generate.

methods identified in its waste analysis plan contained in its RCRA hazardous waste permit. This waste stream analysis will substitute for an analysis of the resins after use in the canisters. The analysis will also ensure that the waste waters are compatible with the ion exchange resin process and that the wastes are compatible with maintaining the integrity of the canisters. USFRS will conduct the waste stream analysis once for each customer prior to accepting a customer into this XL Project. Once a customer is accepted into the XL Project, USFRS will repeat the analysis whenever a customer provides it with notice that it has changed its processes contributing to the USFRS XL waste.

The USFRS XL waste designation will only apply to those water treatment resin canisters and their contents for processes identified by the customer, evaluated by USFRS and approved by EPA, MPCA and appropriate county agencies.

## 2. EPA Identification Numbers

*RCRA Requirements.* Persons who generate, transport, treat, store or dispose of hazardous waste must obtain an EPA identification number, (40 CFR 262.12 and 263.11).<sup>5</sup> Generators and transporters receive an identification number by completing and submitting to EPA a Notification of Hazardous Waste Activity Form (EPA form 8700-12). The notification form generally requires the generator or transporter to identify its name, address, contact person, regulatory status (e.g., large quantity generator, small quantity generator, transporter, treatment, storage or disposal facility, etc.). For a generator, the type and estimated quantity of hazardous wastes it generates also must be identified. Generally, it identifies the wastes by specific EPA wastes codes ("D", "F", "K", "P" or "U"). It also requires the generator to sign the form and certify that the information it is providing is true, accurate and complete.

*XL Project Requirements.* Some of the USFRS XL waste generators and transporters may have an EPA identification number or submitted an EPA notification form. These are not required for participation in this XL project. Instead, USFRS XL transporters and generators will be given a unique USFRS XL client identification number. Additionally, each generator's USFRS

XL waste will be given a unique waste profile number.

This XL Project has the biggest potential impact on the number of generators added to the RCRA universe. Some of the potential generators may have an EPA identification number due to other hazardous waste activities that they conduct. USFRS anticipates, however, that a large number of new generators may be added. These generators would not have an EPA identification number except for their participation in this XL Project.

USFRS proposes that instead of requiring these generators to submit a notification form and obtain an EPA identification number, EPA would accept the USFRS XL waste application form and its unique customer and process waste stream number. The procedures for adding generators and transporters to this XL Project are contained in new proposed §§ 266.302 and 266.303. USFRS will require all potential generators to complete a USFRS XL waste application form. The USFRS XL waste application form will contain information similar to that required on the Notification Form, except that it will identify the wastes by the "XL001" designation in addition to the EPA waste codes. Additionally, USFRS will assign to each approved generator a unique client number instead of an EPA identification number. The customer will use this number whenever it generates and transports off-site USFRS XL waste. USFRS will also assign to each approved waste stream from the customer a unique number known as a waste profile number.

After receiving the approval of EPA, MPCA and appropriate county agencies, USFRS will provide its customer with an approval letter.

Pursuant to new proposed § 266.319(c), USFRS will maintain a list of the approved customers and generators<sup>6</sup>. USFRS will include on that list the customer name, the USFRS client and waste profile numbers, a summary of the results of the USFRS profile analysis and the process waste streams approved for participation in the XL Project. USFRS will have that list available at its Roseville, Minnesota facility and will provide that list to EPA and MPCA on a quarterly basis<sup>7</sup>. If any

of the customer information is claimed as confidential business information or trade secrets USFRS will indicate that fact and notify EPA and MPCA. EPA will treat such material in accordance with 40 CFR part 2.

EPA believes that USFRS' proposed system for notifying and tracking USFRS XL waste transporters, customers and generators is an acceptable replacement for the EPA notification and identification number requirements otherwise imposed upon hazardous waste generators under 40 CFR part 262. Additionally, EPA believes that this method may allow for better tracking of the progress and benefits associated with this XL Project since generators and their waste streams will be identified by unique codes instead of the generic site-wide EPA identification number. From an administrative perspective it may be better for all USFRS XL waste not to have a unique EPA identification number since a large percentage of these generators may have the need for such number only because of their participation in this XL Project. Once their participation ends so too would the need for the EPA identification number. This in and of itself is not a justification to replace the notification and EPA identification requirements. However, since USFRS will track the shipments of USFRS XL waste according to the unique USFRS customer and waste stream number and will provide EPA with a list of those customers EPA is receiving the same information without adding companies to the RCRA data base. Additionally, the USFRS tracking may be an improvement on the present hazardous waste tracking system since that system does not track the source of the waste streams. Finally, since this XL Project is limited in time and a participant may revert to a non-regulatory status once it quits this XL Project EPA believes that allowing a substitute to the notification and EPA identification number would be acceptable and may save the Agency resources.

## 3. Uniform Hazardous Waste Manifest

*RCRA Requirements.* The Uniform Hazardous Waste Manifest ("manifest") is used to track hazardous waste from its point of generation to its destination, often referred to as the "designated facility."

Generally, hazardous waste generators must use the manifest when hazardous waste is transported offsite, (40 CFR 262.20(a)).<sup>8</sup> Instructions for the manifest

<sup>5</sup> Persons who qualify as conditionally exempt small quantity generators are not required to submit a notification to EPA to obtain an EPA identification number.

<sup>6</sup> A distinction is made in the rules between an approved customer and an approved generator. They are essentially the same with the only difference being that a customer is not automatically a generator. A customer becomes a generator when it first generates or causes to be regulated USFRS XL waste.

<sup>7</sup> USFRS will also have a list of the approved transporters, see proposed § 266.319(c).

<sup>8</sup> A substitute for the manifest is allowed for certain generators of small quantities of hazardous

require that the generator provide information about the wastes' handlers including the name of the transporter and the designated facility, and a description of the hazardous waste being transported. The generator must sign the manifest certifying that a waste minimization program is in place, and that the waste is properly packaged, marked, labeled and placarded.

Each time a waste is transferred (e.g., from one transporter to another, or from a transporter to the designated facility), the manifest must be signed to acknowledge receipt of the waste. A copy of the manifest is retained by each individual in the transportation chain. Once the waste is delivered to the designated facility, the owner or operator of that facility must sign and return a copy of the manifest to the generator. The generator must submit an exception report to the EPA Regional Administrator if he or she still has not received the manifest after specified time periods (45 days for large quantity generators, and 60 days for small quantity generators). The generator, transporter, and the designated facility must each keep copies of the manifest for three years.

Generators are also prohibited from offering hazardous waste to transporters or treatment, storage or disposal facilities that do not have an EPA ID number.

**XL Project Requirements.** USFRS will ensure that USFRS XL waste reaches its destination by applying strict transportation routing and tracking requirements to the transportation of USFRS XL waste from generators, its use select approved transporters and the use of a USFRS Transportation Tracking Document. Proposed subpart N accomplishes this by directly imposing these requirements on USFRS and its generators and transporters (proposed § 266.310). The requirements are summarized below.

USFRS will control the transportation and routing of the USFRS XL wastes from a generator and its transporters. All USFRS XL waste generators must use a USFRS XL waste approved transporter to transport the USFRS XL waste. The USFRS XL waste must be sent to USFRS' Roseville, Minnesota facility. The generator must contact USFRS when it wants to transport its USFRS XL waste. USFRS's Roseville facility has a dedicated shipping department. That department will arrange with a USFRS XL waste approved transporter to pick-up the generator's USFRS XL waste

waste, see 40 CFR 262.20(e) and a manifest is not required for conditionally exempt small quantity generators, see 40 CFR 261.5.

within 30 days of receipt of the generator's request. USFRS' shipping department will complete the USFRS Transportation Tracking Document and provide it to the generator with a copy to USFRS's lab. USFRS will include on the Transportation Tracking Document information required by these new rules. USFRS will provide the generator with the Transportation Tracking Document prior to the transporter arriving at the generator's site to pick up the waste.<sup>9</sup>

USFRS's transporters must transport the USFRS XL waste to USFRS's Roseville, Minnesota facility within 30 days of USFRS's contacting the transporter to collect the USFRS XL waste from the generator. USFRS's lab will track the receipt of the USFRS XL waste identified on the Transportation Tracking Document. The proposed rules require the USFRS XL waste to be transported to the USFRS Roseville, Minnesota facility within 30 days of its pick-up. USFRS has indicated that this 30 days may be necessary to facilitate scheduling shipments of XL waste in an efficient manner. A USFRS transporter may store or arrange to store a shipment of USFRS XL waste during that 30 day period, provided however, it may only do so for a 10 day or less period without triggering the facility requirements in sections 264, 265, 268 and 270 of RCRA. This 10 day limitation on the storage of USFRS XL waste by the transporter mirrors the limitations on storage by transfer facilities contained in section 263.12.

If the shipment is not received by USFRS within 30 days of the USFRS transporter picking it up at the USFRS generator, USFRS will contact the transporter to determine the disposition of the load. If USFRS does not receive the shipment within 5 days of its scheduled arrival date, it will notify EPA, MPCA and appropriate county agencies. USFRS will send copy of the Transportation Tracking Document to the USFRS generator within 5 days of USFRS' receipt of the XL001 waste from the transporter.

USFRS will use its own trucks or those of approved transporters to transport USFRS XL waste to USFRS's

<sup>9</sup> Proposed § 266.310(a) requires USFRS to provide the Transportation Tracking Document to the generator prior to the arrival of the transporter at the generator. Although a specific number of days in advance is not specified in the rule it is expected that USFRS will provide the Transportation Tracking Document with enough time for the generator to review the document to ensure it is accurate and can make any necessary revisions. USFRS anticipates that it will usually provide the Transportation Tracking Document within 3 days of receiving a request from the generator to pick-up its USFRS XL waste.

Roseville facility. USFRS has a strict program in place for selection of qualified transporters. USFRS contracts only with transporters who have met USFRS quality control requirements. USFRS requires its transporters to have an EPA identification number and a current satisfactory rating from the USDOT. This rating is the highest rating available and includes an assessment of the safety record of the transporter and its drivers and the condition of the trucks. Additionally, USFRS requires its USFRS XL waste transporters to have a Minnesota registration to transport hazardous waste. Proposed § 266.303(c) and (d) incorporates these USFRS requirements as part of the preliminary evaluation that USFRS must conduct prior to proposing a transporter to USEPA. The proposed rules allow USFRS to propose any transporter, including common carriers, as a participant. However, the transporter must be approved by USEPA prior to being accepted, must have a satisfactory USDOT safety rating and must complete training on the proper handling of the USFRS XL waste and compliance with subpart N. USFRS will assign to each transporter a unique USFRS client identification number. This number will be used on the Transportation Tracking Document.

In lieu of the manifest, USFRS, its transporters and generators will use a USFRS Transportation Tracking Document when transporting the USFRS XL waste from the generator to USFRS's Roseville facility. USFRS has provided EPA with a draft Transportation Tracking Document for use with this XL Project. The draft Transportation Tracking Document contains information similar to the information contained on the manifest. Instead of an EPA identification number the generator will use its USFRS client and waste profile numbers and the XL001 code to identify the USFRS XL wastes it is shipping. The transporter will also use its unique client identification number. The Transportation Tracking Document does not contain the waste minimization statement normally found on the manifest. The Agency believes that such a statement is not needed since the participants to this XL project have already committed to waste minimization, and therefore will be minimizing the water used and potentially other chemicals. Furthermore, as signatories to the FPA participants are certifying their intent to reduce the amount of waste that would be disposed. Proposed § 266.310 and the definition of the USFRS XL Waste

Transportation Tracking Document contained in proposed § 266.301 requires that USFRS obtain EPA approval of the Transportation Tracking Document prior to using the Transportation Tracking Document and whenever it proposes to revise it. EPA proposes to approve the draft Transportation Tracking Document provided by USFRS. Pursuant to proposed §§ 266.319(d), 320 and 321 USFRS, the transporter and the generator(s) will retain a copy of the Transportation Tracking Document for three years for each shipment of XL wastes that it receives at its Roseville, Minnesota facility.

This project shifts the burden of tracking the shipments from the generator to USFRS. Consequently, pursuant to proposed § 266.310(a), USFRS, not the generator, will assume responsibility for any exception reports. With this XL Project the generator must use USFRS or one of its approved transporters to transport the XL wastes. USFRS will track the receipt of the shipments at its Roseville, Minnesota facility. Since USFRS will only use approved transporters and it completes and tracks each generator Transportation Tracking Document, USFRS will know of any shipment that is not received at its Roseville facility. USFRS will use a shorter time period—five days—to gauge whether it is necessary to take further steps to locate a shipment. If USFRS is unable to locate the shipment within five days it will then notify EPA, MPCA and appropriate county agencies of that fact. This XL Project is more stringent than RCRA since it requires a preliminary evaluation of the transporters, directs the shipments to only one facility; and requires notice of lost shipments at an earlier time.

#### 4. Pre-Transport and Transportation Requirements

**RCRA Requirements.** RCRA establishes pre-transportation and transportation requirements for generators and transporters of hazardous waste. The generator must properly package (40 CFR 262.30), label (40 CFR 262.31), mark (40 CFR 262.32) and placard (40 CFR 262.33) hazardous waste. These rules incorporate by reference the requirements for packing, labeling, marking and placarding contained in the US DOT regulations for transportation of hazardous materials found at 49 CFR parts 172, 173, 178, and 179. Generators must also mark containers of 110 gallons<sup>10</sup> or less of

hazardous waste as follows (40 CFR 262.32(b)):

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

Generator's Name and Address \_\_\_\_\_  
Manifest Document Number” \_\_\_\_\_

The transporter of hazardous waste must have an EPA identification number, (40 CFR 263.11); accept hazardous waste only with an accompanying manifest, sign and retain a copy of the manifest, and ensure the manifest accompanies the shipment of hazardous waste, (40 CFR 263.20); and ship the hazardous waste to the designated facility or next designated transporter, (40 CFR 263.21). Additionally, if a spill occurs during the shipment of the hazardous waste, then the transporter must take appropriate immediate action to protect human health and the environment, clean up the release and notify the National Response Center and the Department of Transportation when required, (40 CFR 263.30 and 31).

**XL Project Requirements.** Under this XL Project, USFRS or an approved USFRS transporter will transport the USFRS XL wastes from the generator to the USFRS Roseville, Minnesota facility. USFRS has an EPA identification number and a hazardous waste permit. USFRS approved transporters will have a current satisfactory safety rating from USDOT and a unique USFRS customer identification. All transporters will use the USFRS Transportation Tracking Document. Pursuant to proposed §§ 266.308(c) and 309 the transporters and generators will ensure the USFRS XL wastes have affixed to the ion exchange resin canisters the following warning statement which will be provided by USFRS:

XL001 wastes—USFRS ion exchange resin canister wastes—Federal Law Prohibits Improper Disposal. This is USFRS XL waste from (insert XL waste generator's name). Handle as a hazardous waste and ship only to USFRS located at 2430 Rose Place, Roseville, MN. This waste was placed in this container on (date) and placed in storage at (insert USFRS XL waste generator's name) on (insert date). *If found, contact USFRS and the nearest police, public safety authority, EPA or MPCA. The USFRS telephone number is (insert phone number). USFRS Transportation Tracking Document Number \_\_\_\_\_*  
*“If spilled immediately contain the spill and prevent it from going into any water body; collect the spilled material and place in a 55 gallon steel drum; contact USFRS and the nearest police, public safety authority, EPA or MPCA.*

USFRS will supply these labels to the generator at the same time as it provides the generator with the USFRS Transportation Tracking Document. The transporters will ensure that these labels are affixed to the containers during transport and that the XL wastes are within an approved container.

#### 5. Accumulation and Storage Prior to Shipment

**RCRA Requirements.** Generators of hazardous waste are allowed to accumulate hazardous waste on their property from between 90 to 270 days, depending on the quantity of wastes, (40 CFR 262.34). The generators may accumulate the hazardous waste in containers, tanks, drip pads or containment buildings, provided each of these units meets specific requirements for the safe storage of hazardous wastes, (40 CFR 262.34). Generally, these “safe storage” standards are grouped into four broad categories of requirements: Use and Management of Containers, Preparedness and Prevention, Contingency Plan and Emergency Procedures and Personnel Training.

The container management standards require the generator to store the hazardous waste in containers which are in good condition, compatible with their contents and closed during storage (40 CFR 262.34(a)(1)(i) and 265.171, 172 and 173). The generator must meet special requirements for ignitable, reactive or incompatible wastes (40 CFR 262.34(a)(1)(i) and 265.176 and 177). The generator is required to inspect the condition of the containers on a weekly basis (40 CFR 262.34(a)(1)(i) and 265.174). The generator must also control volatile emissions from the containers (40 CFR 262.34(a)(1)(i) and 265.178). If the generator uses process vents or there is the possibility of air emissions from the containers, then the generator must comply with applicable special requirements contained in part 265, subparts AA, BB and CC<sup>11</sup>.

The preparedness and prevention standards require the generator to maintain and operate the storage area so as to minimize the possibility of fire, explosion or any unplanned sudden or non-sudden release of the hazardous waste (40 CFR 262.34(a)(4) and 265.31); to have, where necessary, certain equipment such as communication devices to notify facility personnel and local emergency responders of emergencies, fire extinguishers and an adequate supply of water or foam (40

<sup>11</sup> Similar requirements apply to hazardous waste stored in tanks (40 CFR 262.34(a)(1)(ii)), stored on drip pads (40 CFR 262.34(a)(1)(iii)), and/or placed in containment buildings (40 CFR 262.34(a)(1)(iv)).

<sup>10</sup> The USDOT regulations have increased the size of the containers from 110 gallons to 119 gallons.

EPA's regulations presently retain the 110 gallon size.

CFR 262.34(a)(4) and 265.32); to routinely test and maintain such equipment (40 CFR 262.34(a)(4) and 265.33); to have such equipment accessible to facility personnel (40 CFR 262.34(a)(4) and 265.34); to have adequate aisle space to allow for access in the case of fire or spills (40 CFR 262.34(a)(4) and 265.35); to make arrangements with local emergency response authorities (e.g., police, fire and hospitals), as necessary, to familiarize them with the hazards posed by the hazardous wastes (40 CFR 262.34(a)(4) and 265.37); and to have a contingency plan designed to minimize the hazards from the fire, explosion or unplanned sudden or non-sudden release of hazardous waste (40 CFR 262.34(a)(4) and 265.51)<sup>12</sup>.

The Contingency Plan and Emergency Procedures standards require the contingency plan to include: the actions facility personnel would take; the arrangements made with local emergency responders; the name, address and telephone number of the generator's emergency coordinator; a list of the emergency equipment and an evacuation plan, (40 CFR 262.34(a)(4) and 265.52). The generator must have an emergency coordinator available or on call at all times, (40 CFR 262.34(a)(4) and 265.55). In the case of an imminent or actual emergency, the emergency coordinator must undertake certain emergency procedures. Those procedures require the emergency coordinator to activate internal alarms; notify appropriate state or local emergency responders; assess the nature, rate and extent of any release; take actions to ensure the releases do not occur, recur or spread; monitor for leaks; provide for proper treatment or disposal of the released hazardous wastes; segregate incompatible wastes; and notify EPA and the state of the emergency, (40 CFR 262.34(a)(4) and 265.56)<sup>13</sup>.

The Personnel Training standards require the generator to have adequately trained personnel to handle the hazardous wastes, to comply with the requirements of RCRA, and to appropriately respond to emergencies (§§ 262.34(a)(4) and 265.16 (a) and (b)). The generator must retain records of who has been trained, their job title and job description, and a description of the training they have taken (§§ 262.34(a)(4) and 265.16(d)). The generator's hazardous waste personnel must

annually review their training (§§ 262.34(a)(4) and 265.16(c))<sup>14</sup>.

*XL Project Requirements.* The USFRS XL wastes are contained within the resin canisters. These canisters are sealed units. The canisters have an inlet and outlet port. These ports may be sealed once the canisters are disconnected from the generator's processes. The canisters are leak proof, and able to withstand certain temperatures and certain height drops.

The wastes contained in the canisters will consist of the spent resins and wastes accumulated on them. The hazardous wastes found on the resins will be metals. USFRS does not anticipate the canisters will have any volatile chemicals in them. The resins and wastes will be neither combustible, reactive nor explosive. They are compatible with the cylindrical canisters. The resins are tiny pellets with the metals adhering to them via chemical attraction. The metals may not be physically capable of separation unless they come into contact with acids or caustic chemicals.

Given the nature of the USFRS XL waste, this XL Project's accumulation and storage standards focus on proper training, use and management of the containers and prevention of exposure. It imposes more stringent use and management standards. In exchange for this increased stringency it tailors and reduces the training, preparedness and prevention and contingency plan requirements normally found in RCRA to just the specific needs presented by handling of the USFRS XL waste.

The accumulation and storage requirements are contained in proposed § 266.308. The proposed rule requires the generator to store its USFRS XL waste on an impervious surface. Pursuant to § 266.302(c), prior to accepting a customer into this XL Project, USFRS will obtain from its customers the waste application form. This form will provide information on the location and condition of the proposed storage area. This information will be supplied on a site engineering form which USFRS developed and submitted as part of the waste application form. The generator will indicate on the site engineering form the location and construction of the storage area for the canisters. Prior to accepting a generator into this XL Project, USFRS will review the site engineering form and inspect the potential generator's storage area to determine if it is impervious. USFRS will only propose to EPA for this XL Project persons who,

among other things, have an impervious storage area. Upon request, USFRS will provide a copy of the customer's site engineering form and the results of USFRS' evaluation of the customer to EPA, MPCA and appropriate county agencies.

The proposed rule limits the generator to less than 90 days for the on-site storage of its USFRS XL waste. The generator must store the USFRS XL wastes in the water treatment resin canisters and separately from its other wastes or materials, including explosive or ignitable wastes or materials. The generator will ensure that the canisters are closed and disconnected from the process(es). It will place on the canisters a label which indicates its name and location, contents of the canister and the date the canister was placed in storage. The generator will ensure that there is adequate aisle space to determine the condition of the canisters and to respond to any leaks from the canisters during their storage. The generator will inspect the condition of the canisters weekly while they are stored on-site. The generator will maintain a log of these inspections. The log will indicate the date the canister was placed in storage, the condition of the canister, the date of the inspection, the person conducting the inspection and the condition of the canisters and the storage area at the time of the inspection.

Pursuant to proposed § 266.313, the generator will retain the ability to legally treat or dispose of its wastes contributing to its USFRS XL waste stream in the event that it is no longer a participant in this XL Project. In most cases this will mean that the generator would have to make arrangements with its local POTW whereby the POTW would agree to take the generators' wastewater on 60 days notice. The POTW serving the Counties of Anoka, Hennepin, Ramsey, Washington, Dakota, Carver and Scott, known as the Metropolitan Council of Environmental Services (MCES) has advised EPA that it will be able to accept the wastewater of those generators who participate in this XL Project in its district on 60 days notice.

Generators will comply with tailored closure requirements of proposed § 266.312. If and when a generator's participation is terminated in this XL Project, USFRS will pick up all of the generator's canisters. Generally, proposed § 266.315 provides USFRS and the generator sixty days to complete the closure activities required by proposed § 266.312. USFRS will collect the generator's USFRS XL waste within thirty days of notice of the customer's

<sup>12</sup> Small quantity generators are required to implement a modified contingency plan, 40 CFR 262.34(d)(5)(i).

<sup>13</sup> Small quantity generators accumulating waste must comply with the emergency procedures found at 40 CFR 262.34(d)(5)(iv)

<sup>14</sup> Small quantity generators must conduct personnel training, 40 CFR 262.34(d)(5)(iii).

discontinuance in the program. The generator will remove from the storage area any USFRS XL wastes and clean any related contamination. The generator will retain records of all activities it has undertaken to decontaminate its storage area and equipment.

Within the same sixty days, the generator will provide USFRS with access to visit the generator. The purpose of this access is to allow USFRS to determine if all of the USFRS XL waste has been removed. USFRS has developed a systems discontinuation form that it will use to document its visual observations during this visit. Pursuant to proposed § 266.312(b) USFRS will provide a summary of its observations at the generator of the condition of the storage area and the removal of all USFRS XL Waste. USFRS may use its systems discontinuation form. USFRS will provide the summary to the customer to EPA, MPCA and appropriate county agencies. Pursuant to §§ 266.319(d) and 266.320 USFRS and the USFRS XL waste generator will maintain records of their compliance with the requirements of § 266.312, including a copy of the systems discontinuation form or its EPA approved equivalent summary.

Abbreviated closure requirements are specified in proposed § 266.314 for those companies who have not generated USFRS XL wastes at the time their participation is terminated. All that is required of these companies is that notice of their termination is provided and that they implement the alternative treatment or disposal required by § 266.313. This truncated closure is appropriate for these companies (i.e., USFRS XL waste approved customers) because at the time of their termination they will not have generated any USFRS XL waste. Consequently, the requirements related to decontamination and off-site shipment contained in proposed § 266.312 are not appropriate.

Proposed § 266.308(e) specifies the generators responsibilities for spilled or leaked USFRS XL waste on-site. If there is a leak or spill of USFRS XL waste in the generator's storage area, then the generator will immediately contain and collect the wastes. It is anticipated that the spilled or leaked materials may consist of water and/or resins. The generator will place spilled or leaked resins in a 55 gallon steel drum which is compatible with the spilled or leaked resins. When allowed by the local POTW, the generator will direct water spilled from the canisters to its drainage system for permitted discharge to the local POTW, and notify the POTW.

Otherwise, the generator will place the spilled or leaked water and resin from the canister(s) in a steel 55 gallon drum which is compatible with the spilled or leaked water and resin. The generator will store and label the spilled or leaked USFRS XL wastes in accordance with the requirements for USFRS XL wastes. The generator will notify USFRS and MPCA of the spill or leak and arrange with USFRS for the transport of any such spilled or leaked USFRS XL wastes with the next scheduled shipment of USFRS XL wastes.

This XL Project and the proposed rule do not impose on the generator a requirement for an internal communication device. It eliminates the need for fire extinguishers, water or foam. It also eliminates the written contingency plan and an emergency coordinator at the generator. Instead, proposed § 266.308(i) requires the generator to have an external communication device, such as a telephone. It also requires in proposed § 266.308(a) and (b) that the generator store the wastes in a manner which should all but eliminate the potential for a release to the environment or an emergency. In particular, it requires the generator to segregate the USFRS XL wastes from other wastes and to store it on an impervious pad. Proposed § 266.308(d) and (e) require the generator to inspect the storage area on a weekly basis and to immediately respond to spills or leaks of the USFRS XL waste.

Prior to generating any USFRS XL waste, pursuant to proposed § 266.308(h) the generator must designate a contact person responsible for handling the USFRS XL wastes and responding to any releases of the wastes. It also requires USFRS to provide that person with adequate training on how to handle the USFRS XL waste and any releases. USFRS is required to provide each company (generators and transporters) with adequate training through the use of a training module ("USFRS training module"). USFRS may use any recorded communication media that it believes is appropriate for the training module (e.g., printed brochures, videos, etc.) Pursuant to proposed § 266.304 USFRS will submit this module to EPA, MPCA and the appropriate county agency early enough such that it may obtain the necessary approvals prior to accepting the first shipment of USFRS XL waste. Further, pursuant to the proposed rule, the USFRS training module will, at a minimum, identify the hazards presented by the USFRS XL waste, the steps needed to install and replace the ion exchange resin canisters, the

requirements imposed by these rules, the procedures to follow in the event of a release of the USFRS XL wastes and the proper procedures to decontaminate equipment, structures and material in the event that the generator no longer participates in the XL Project. Prior to approving a person as a participant into the USFRS XL Project, USFRS will obtain a signed certification from that person. The certification will state that the person has reviewed, viewed or read the training materials and agrees to follow it. As part of this certification the potential generator will identify the individual responsible for its compliance with the conditions of these rules, the individual's job title and a description of his or her duties.

Pursuant to proposed § 266.305, USFRS will provide every potential generator with a material safety data sheet ("USFRS MSDS") for the resin contained in the canister. USFRS will provide this at the time the company applies to USFRS for participation in this XL Project. The USFRS MSDS will comply with the requirements for MSDS imposed by the Occupational Safety and Health Administration (OSHA). Pursuant to proposed § 266.308(h) the generator will maintain and exhibit in a prominent location a copy of the USFRS MSDS on its property and will provide a copy of it to local police and fire departments and to the local hospital. USFRS will ensure that the MSDS prominently instructs individuals in the proper handling and emergency response procedures for handling spills or leaks of the USFRS XL wastes at the generator or while in transit to USFRS. The USFRS MSDS will also accompany each shipment of USFRS XL wastes.

If an imminent or actual emergency occurs which threatens the release of USFRS XL waste at the generator site, then the generator will notify the EPA, MPCA, USFRS and the appropriate local emergency responders and county agencies. The generator will take actions to ensure the releases do not occur, recur or spread; contact USFRS to arrange for the transport and disposal of the USFRS XL wastes; and make a written recording of the event and its actions in response to such event.

## 6. Reporting and Recordkeeping Requirements

*RCRA Requirements.* Generators of hazardous waste must complete and submit certain reports and documents. Generally, the RCRA regulations require the generator to retain these reports or documents for three years. The generator must retain copies of all manifests for three years, (40 CFR 262.40). Under federal requirements,

only large quantity generators must complete and retain copies of a biennial report of hazardous waste activity, (40 CFR 262.40(b) and 41). In the State of Minnesota, the requirement is for an annual report.

The annual report generally requires the generator to identify for that calendar year the amount and type of hazardous waste that it generated and transported off-site. It requires the generator to identify the transporters and facilities that it used for its hazardous waste transport, treatment and disposal. It also requires the generator to identify the efforts it has taken during the year to reduce the volume and toxicity of wastes produced. The generator must also keep records of all waste analyses or similar determinations of the characteristics of its hazardous wastes, (40 CFR 262.40(c)). Generators who store hazardous waste on-site in containers, tanks, drip pads, or containment buildings must also have a contingency plan on-site and provide copies to State and local responders (40 CFR 262.34(a)(4) and 265.53). They must report to EPA any emergency and retain a copy of such reports (40 CFR 262.34(a)(4) and 265.56(j)).

*XL Project Requirements.* Proposed §§ 266.319, 320 and 321 present the recordkeeping and reporting requirements for USFRS, the generators and transporters. Under the proposed rules, the generator will not be required to retain copies of the waste analysis or annual reports. Instead the burden will shift to USFRS to retain equivalent information to that contained within these reports. In particular, USFRS will retain for three years a copy of all approval letters to its approved customers and generators of USFRS XL wastes; any correspondence with its approved customers or generators relevant to their participation in this XL Project; a copy of the approved customer's and generator's XL Waste application form, site engineering form, summary of its generator closure review pursuant to § 266.312; waste analysis, and its review analyses of the approved customer's or generator's storage area; and the Transportation Tracking Document for each shipment of USFRS XL waste.

Each generator will be required to retain for three years records of any spill or emergency notifications and other duties imposed pursuant to proposed § 266.308(g); the signed FPA, certification; its weekly inspection log required by § 266.308(d); its compliance with the training requirements of § 266.308(h); and its records of

compliance with the decontamination requirements of § 266.312.

Each transporter will retain for three years a copy of the USFRS XL Waste FPA, its certification; a copy of the signed Transportation Tracking Document for USFRS XL waste it transported; and its record of any notification of spills or leaks of USFRS XL wastes required by § 266.311.

In addition to the records listed above, USFRS will develop and submit certain additional reports, lists and documents. Many of these reports and documents are in lieu of requiring the same or similar information from its customer (e.g., annual reports or contingency plan). The reporting requirements are presented in proposed § 266.319 according to their frequency: annual reports (proposed § 266.319(a)), semi-annual reports (proposed § 266.319(b)) and quarterly reports (proposed § 266.319(c)). A summary of each report is presented below.

Quarterly reports are presented in proposed § 266.319(c) and consist of status reports on generator and transporter participation in the XL Project. Separate lists, with similar information, will be reported for each. The generator list is summarized in this paragraph. USFRS will identify on the XL participant list information on its preliminary evaluation of the transporters and generators, the dates of EPA, MPCA and appropriate county approvals, the effective date of a company being added to the USFRS XL Project and any termination date. For the generators, USFRS will also include a summary of USFRS's profile analysis, the generator's process waste streams approved for participation in the XL Project and the condition of the customer's storage area at the time of its application to USFRS. For generators who discontinue participation in this XL Project, USFRS will include on the XL generator list the date of the notice of termination of its participation, the date USFRS removed the last ion exchange canister, and the date of the USFRS review of the generator's decontamination efforts. USFRS will update the XL participant list as persons are added to or eliminated from this XL Project. USFRS will have the XL generator list available for review by EPA or MPCA at its Roseville, Minnesota facility. USFRS will send a copy of the XL generator list to EPA, MPCA and appropriate county agencies on a quarterly basis.

The annual report requirements are presented in proposed § 266.319(a) and are intended to provide a substitute for the hazardous waste biennial report. USFRS will provide an annual report on

all USFRS XL wastes. USFRS will include in the annual report, at a minimum, each USFRS XL waste generator, the quantity of USFRS XL waste that USFRS received from each generator during the calendar year and a certification by USFRS that those wastes were treated at USFRS in accordance with the requirements imposed by new part 266, subpart N. USFRS will include information on the amount of metals it reclaimed and recycled from the resins.

USFRS will develop and track certain information that will be used to determine the environmental benefits derived from the USFRS XL Project. From the generators USFRS will report on an annual basis the following information: the amount of water recycled by the generators, the pretreatment chemicals and energy the generators did not use as a result of participating in this USFRS XL Project, the amount of water discharged to the local POTW before and during this project, the amount of sludge recovered by USFRS before and during this project, the amount of sludge recovered instead of being disposed by a generator (if the generator disposed of the sludge prior to participating in this project), the quantity of material (ion exchange resins, other wastewater treatment sludge, residues) collected from each facility (monthly), the frequency of canister replacement in terms of process volume, the constituents in the material (ion exchange resins, wastewater treatment sludge, residues) collected at each facility (e.g., recoverable metals, contaminants/non-recoverable materials), and constituents in the material (ion exchange resins, wastewater treatment sludge, residues) disposed by each facility (e.g., contaminants/non-recoverable material).

USFRS will report on an annual basis the following information from its facility: quantity of material (ion exchange resins, wastewater treatment sludge, residues) to be processed, quantity of metals recovered, the constituents of the recovered material (ion exchange resins, wastewater treatment sludge, residues), quantity and constituents of the non-recoverable material (ion exchange resins, wastewater treatment sludge, residues) and how it was disposed.

USFRS shall report on an annual basis the following information from the metal reclamation facility it uses to recycle sludges: the quantity of each metal recovered.

Pursuant to proposed § 266.319(b), USFRS will collect and report on a semi-annual basis financial information related to the costs and savings realized

as a result of implementation of this project and sufficient information for EPA to determine the amount of superior environmental benefit resulting from this project. Pursuant to proposed § 266.319(b)(1), the report will contain information which includes, but is not limited to: 1. The volume of waste collected and recycled, 2. The amount of metals recycled, 3. The volume of recycled material sold to others, 4. Data regarding the management of the ion exchange canisters, 5. The constituents of the sludge and 6. Information regarding how the sludge and residues are managed.

Additionally, proposed § 266.319(b)(2) requires USFRS to report certain financial information related to implementation of this XL Project. It specifies that USFRS will collect baseline and XL costs. The baseline costs shall be calculated using two scenarios: 1. typical charges (prior to the XL Project) for pretreating and disposing effluent wastewater under the applicable Clean Water Act requirements and the costs for manifesting, transporting and disposing of F006 sludges; and 2. typical charges that would be incurred if wastes were recycled in compliance with RCRA and requirements for manifesting and transportation of those hazardous wastes (including tax obligations under both scenarios). The XL costs will include the current costs to the generator for completing bills of lading, the current transportation costs for XL wastes, the generator's cost to install the ion exchange canisters, and the cost to USFRS of metals reclamation off-site (including costs associated with transportation and disposal). USFRS will compare the baseline costs to the XL costs and provide an analysis of whether the project is resulting in cost savings for the generators and which aspects of the XL Project produce these savings.

#### 7. Additional Requirements Imposed on USFRS

**RCRA Requirements.** Companies which treat, store or dispose of hazardous waste must comply with a permit issued for such activities. The permit will contain the specific requirements which the company must meet.

**XL Project Requirements.** USFRS has a RCRA permit which allows it to receive the USFRS XL wastes. Pursuant to proposed § 266.307 once USFRS receives the USFRS XL waste at its Roseville, Minnesota facility, the waste will lose its USFRS XL waste designation (XL001) and must be handled as a fully regulated hazardous

waste (i.e., as F006 and any other applicable hazardous waste code designation). USFRS will determine the appropriate designation of the waste based on its waste profile analysis and knowledge of the waste stream. USFRS will comply with all terms and conditions of its RCRA permit for handling these hazardous wastes. USFRS will also be responsible for the conditions and terms identified in items 1–6 above as applicable to USFRS—e.g., waste profiling, use of the Transportation Tracking Document, generator annual report, training module, MSDS, discontinuation review of the customer, and transportation of waste to the Roseville, Minnesota facility. USFRS will arrange for the recycling through metals recovery of the metals which are contained in the generator's USFRS XL wastes. Pursuant to proposed § 266.307(b) USFRS may not accept any customers into this Project unless and until it has arranged for recycling of the metals contained in the XL001 wastes it receives. This rule further requires USFRS recycle the metals contained in the XL001 waste it receives throughout the duration of the XL Project.

To ensure proper coordination of responses to spills, leaks or emergencies of USFRS XL waste at the generator or while in transit, proposed § 266.307(c) requires USFRS to have a spill response coordinator. This person will receive all calls from generators and transporters regarding spills, leaks or emergencies related to the USFRS XL wastes. This person shall also be responsible for coordinating the proper response to such spills, leaks or emergencies.

#### V. How the USFRS XL Project Will Result in Superior Environmental Performance

##### A. What Regulatory Changes Will be Necessary to Implement this Project?

###### 1. Federal Regulatory Changes

The purpose of today's proposed regulatory changes are to provide generators and transporters of USFRS XL waste with alternative requirements for the proper handling and transportation of those wastes. The USFRS XL wastes are F006 hazardous wastes. Additionally, some of this F006 waste may be characterized as characteristically hazardous waste (i.e., "D" wastes) depending on the concentration of the constituents in the waste streams at each individual generator. Consequently, the USFRS XL wastes would be subject to the requirements of 40 CFR parts 261–265, 268, 270, 273 and 279. However, today's proposal would provide the USFRS XL

wastes with a separate waste code while they are at approved generators and transporters. It also proposes to substitute tailored management requirements for the approved generators and transporters and USFRS. Consequently, in order to implement this regulatory flexibility EPA is proposing to provide a "temporary deferral" from the requirements of 40 CFR parts 261–265, 268, 270, 273 and 279 for USFRS XL waste while it is at the generator and during its transport to USFRS. The generators and transporters would have to manage the wastes in accordance with new part 266, subpart N in lieu of 40 CFR parts 261–265, 268, 270, 273 and 279. If a generator or transporter fails to comply with the new requirements, then it will have violated those requirements and may be subject to enforcement action for such violations. The deferral is temporary in that it is only applicable for the period of time that the waste is at the generator or in transport and not when it reaches USFRS. Additionally, this deferral expires when the XL Project is terminated. This XL Project will last no more than five years from the effective date of the new part 266, subpart N.

Today's proposal would also impose on USFRS additional handling, record keeping and reporting requirements for the USFRS XL wastes (XL001) it receives from the generators and transporters. These requirements complement the regulatory flexibility granted to the generators and transporters. These requirements are necessary for the successful completion of this XL Project. The new requirements are contained in new proposed part 266, subpart N.

This site-specific rule would add a new paragraph (v) to 40 CFR 261.6, and new Subpart N to part 266 to clarify that USFRS XL wastes (XL001) generated and transported by approved USFRS XL waste generators and transporters would be exempt from § 261.5, parts 262–266 (except 266, subpart N), 268, 270, 273 and 279. Instead these persons would be regulated by a new part 266, subpart N.

New part 266, subpart N would contain the procedures necessary to implement this regulatory flexibility and would fully describe the requirements imposed on USFRS, and the approved generators and transporters as detailed above in sections IV. A & B.

EPA is proposing to add the following definitions to § 266.301 to implement this XL Project: County Environmental Agencies or County Agencies, USFRS, USFRS XL Waste, USFRS XL Waste Application Form, USFRS XL Waste Approved Customer, USFRS XL Waste

Approved Transporter, USFRS XL Waste Transportation Tracking Document, USFRS XL Waste Final Project Agreement, USFRS XL Waste Generator, USFRS Waste Training Module, USFRS XL Waste Material Safety Data Sheet, USFRS XL Waste Project or USFRS XL Project, and USFRS XL Waste Transporter.

## 2. State Regulatory Changes

The state of Minnesota is authorized under section 3006 of RCRA to implement the federal RCRA program. Thus, Minnesota's regulations operate in lieu of the federal regulations adopted pursuant to RCRA. EPA may directly implement and enforce new federal regulations in an authorized state only if those regulations are adopted pursuant to EPA's statutory authority granted by the Hazardous and Solid Waste Amendments of 1984, (HSWA). Minnesota's and EPA's regulations require companies that treat, store or dispose of hazardous waste to have a permit or interim status. If a company has interim status it must comply with the requirements of 40 CFR part 265 and Minn. R. 7001.0650 and Minn. R. 7045.0552 to 7045.0648. If a company has a permit then it must comply with the permit. A company with a permit does not have to comply with new regulatory requirements (with certain exceptions) until such time that the permit is modified to incorporate those new requirements. 40 CFR 270.4. Minnesota has a similar provision, Minn. R. 7001.0150, subp. 2.P.

Minnesota's hazardous waste management regulations, codified in Minn. R. Chs. 7001 and 7045 contain equivalent or more stringent, requirements as compared to the Federal regulations at 40 CFR parts 260-266, 268, 270, 273 and 279 for hazardous waste. None of the regulations proposed with today's proposal are promulgated pursuant to EPA's HSWA authority. Consequently, the approved generators, transporters and USFRS are subject to the Minnesota state regulations until such time as these new regulations are adopted by the state of Minnesota or an equivalent state legal mechanism is used. Therefore, conforming state regulatory changes or legal mechanisms must be implemented in addition to the proposed federal changes for companies to enter into this XL Project. Section F below describes the changes that may be necessary and the options available to Minnesota to implement the flexibility provided by the proposed federal rules.

### *B. Why is EPA Supporting this New Approach to USFRS XL Waste Management?*

EPA is supporting this new approach because it believes that it will provide superior environmental performance by promoting recycling of water and recovery and reuse of metals that would otherwise be land disposed. USFRS and its customers will be complying with requirements that are as protective of public health and the environment as the RCRA requirements that would otherwise be applicable. EPA also believes that implementation of this project will result in a significant cost savings to the participating customers (see section D below). The success of this project will be evaluated on an ongoing basis and will determine whether this new approach to waste management should be extended to other areas of the country.

### *C. How Have Various Stakeholders Been Involved in this Project?*

Stakeholder involvement is essential for the success of this innovative environmental program. Nine public meetings were held to inform the general public and environmental groups about the project and to invite their comments and participation. Additional public meetings may be held during implementation of the FPA based on public interest or as decided by direct participants. Stakeholder input and community goals have been and will continue to be considered throughout project implementation. USFRS shall report on a quarterly basis efforts to maintain stakeholder involvement and public access to information in accordance with the requirements of the new subpart N.

### *D. How Will this Project Result in Cost Savings and Paperwork Reduction?*

EPA believes that this project has the potential for cost savings by making recycling of water and waste more cost competitive with traditional treatment/disposal options. Costs savings may include those associated with: purchase of additional potable water for single use; capital and operating costs to treat mildly contaminated waste waters so that they meet pretreatment standards prior to discharge; discharge fees associated with wastewater discharge (including permits, monitoring and sewer access charges); transport and disposal of hazardous waste sludges; and taxes paid to local authorities.<sup>15</sup> A cost comparison will be conducted

<sup>15</sup> The counties each will decide whether to exempt the XL 001 waste from normal hazardous waste taxation.

during project implementation to evaluate the cost savings. EPA believes that the paperwork burden for the generator will be reduced as compared to current RCRA requirements. USFRS will be required to retain and submit certain reports which RCRA would normally require of its customers, and report ongoing environmental performance and success in meeting its targets. For further information about the impacts of this rule on paperwork reduction, please see section VI.D.

### *E. How Will EPA Ensure the Integrity of this XL Project?*

EPA will ensure the integrity of this project through the regulations that it is proposing today, its prior approval of the generators and transporters, its normal enforcement and oversight authority and coordination and cooperation with the state of Minnesota and appropriate county agencies.

The rules proposed today will be the primary vehicle EPA will use to ensure that USFRS and all generators or transporters of USFRS XL waste handle the USFRS XL wastes in a manner which is acceptable to EPA. According to the proposed rules, USFRS XL wastes may only be sent to USFRS' Roseville, Minnesota facility. That facility has a RCRA permit and must comply with the proposed rules. The proposed rules require USFRS to conduct a preliminary evaluation of any generator or transporter that it proposes to add to this XL Project. The rules specify the conditions and elements for such preliminary evaluations. For generators these requirements include appropriate training in handling the USFRS XL wastes, proper identification of their processes and an appropriately designed storage area. For the transporters these requirements include a satisfactory safety rating from the USDOT and training on the proper handling of the USFRS XL wastes. Once this pre-screening is completed, final approval is subject to EPA, MPCA and appropriate county agency oversight.

### *F. How Will the Terms of the USFRS XL Project and Proposed Rule be Enforced?*

All XL projects must include a legally enforceable mechanism to ensure accountability and superior environmental performance. EPA retains its full range of enforcement options under the proposed rule. Thus, once there is a federally enforceable mechanism in place, if EPA determines that a company is not in compliance with it then EPA and, under certain conditions, private citizens may take enforcement action against that company and may terminate that

person's continued participation in the project (section 3005(d), 3006(d) and 3008(a) of RCRA). In the event EPA terminates a person's continued participation in this XL Project, EPA will use the criteria and procedures identified in the proposed rules, not those contained in Minnesota's rules or statutes. (See proposed § 266.314–318). The enforcement response on the part of EPA would vary depending upon the actual performance of each generator, transporter and USFRS, the mechanism the State uses to implement this XL Project and the severity of any violation.

EPA will enforce the existing Minnesota hazardous waste management regulations which are part of the Minnesota authorized hazardous waste program. The flexibility proposed in the proposed regulations will not be available to USFRS, its generators and transporters until EPA promulgates these regulations and the State of Minnesota adopts equivalent flexibility which is federally applicable and enforceable. The instrument selected for the State's implementation of this XL Project must be one that is clearly federally enforceable.

Once all of the required federal and state legal authorities are in place, EPA will retain a role in evaluating this XL Project and each generator and transporter. EPA will evaluate each generator and transporter prior to it being accepted into the program. Additionally, once this XL Project is effective EPA may routinely inspect any of the participants to determine their compliance. If EPA determines that a participant has violated a particular provision of the proposed rules, then that participant may be subject to civil or criminal penalties pursuant to section 3008 of RCRA.

Today's proposed rule includes a termination provisions in § 266.314–318. EPA will use the termination provisions of today's rules independent of any contained within the Minnesota rules. Today's proposed rules recognize that a company may terminate its participation in the USFRS XL Project voluntarily and at any time; even before generating or transporting USFRS XL waste. Additionally, a company may be automatically terminated upon a change in ownership or at the conclusion of this Project. EPA, MPCA or the appropriate county agency may terminate a company's participation as a result of violations of the regulations. In the case of EPA initiated termination the rules provide the company with notice and an opportunity to correct any violations. This opportunity to correct the violation does not compromise EPA's authority to

initiate an enforcement action against the company for the non-compliance.

The proposed rule provides the federal procedures and time frame for termination of a company's continued participation in the USFRS XL Project. MPCA or the County Agencies may have their own procedures for terminating the participation of a person from their version of this federal USFRS XL Project. EPA is not bound by and will not follow those State or County procedures to terminate a person's continued participation in this USFRS XL Project. State or local procedures may be different but are expected to be equivalent in terms of the criteria and notice provisions.

In the event of a termination, the participant must remove the USFRS XL waste, take appropriate steps to decontaminate and return to compliance with RCRA.<sup>16</sup> The participants are provided with time to take these steps if the termination is the result of a change in ownership or a termination by EPA, MPCA or the appropriate county agency. USFRS XL waste transporters will have 30 days after receipt of EPA's notice of termination or a change in ownership to complete the termination procedures required by the proposed rules and return to compliance with RCRA. USFRS XL waste generators will have 60 days and USFRS will have 120 days. During the 30, 60 and 120 transition periods, the provisions of proposed subpart N would continue to apply in full. At the conclusion of the transition periods, the applicable RCRA regulations would again apply to the participant.

The rationale for the transition period is to allow sufficient time for the participant to reinstate the operational and administrative infrastructure necessary for proper RCRA compliance. EPA selected different time frames for the transporters, generators and USFRS based on the complexity of the activities they may have to engage in to return to compliance with RCRA.

USFRS XL waste transporters should be able to return to compliance with RCRA earlier since their obligations are expressed in terms of transportation of the USFRS XL waste. Since transportation of those wastes would normally be required within 30 days of receipt of the shipment, the USFRS XL

waste transporter should be able to ship any loads in its possession within the 30-day transition period.

USFRS XL waste generators need a longer transition time since they will have to remove the USFRS XL waste on-site, decontaminate any storage area and may need to make process changes. USFRS XL waste generators may also have to (1) make new hazardous waste determinations, (2) re-train facility personnel, (3) obtain the necessary state and local approvals for any changes in its waste water discharge to the POTW, or ensure a suitable alternative which complies with environmental statutes and regulations, (4) establish systems for proper record keeping and reporting, (5) obtain an EPA identification number, and (6) acquire funding and resources which were unnecessary under the XL Project (e.g., additional funding might be needed for the re-negotiation of contract terms with hazardous waste contractors who might be needed for additional hazardous waste pick-ups).

In the case of USFRS, a longer transition time is provided since its termination will effectively terminate the participation of all of the XL Project generators and transporters. All of the activities identified above for the USFRS XL waste generators and transporters will have to be undertaken as well as USFRS's closure of the project. Thus a longer period of time is necessary. EPA believes that 120 days is a reasonable time period. For the reasons presented in the preceding paragraphs and since the proposed rule would be fully applicable during any transition period, EPA is confident that the 30/60/120-day time frames are protective of human health and the environment.

#### *G. How Long Will this Project Last and When Will it be Completed?*

As with all XL projects testing alternative environmental protection strategies, the term of this XL Project is one of limited duration. Today's proposed rule would set the term of the XL Project at five years after the effective date of this rule.

Because Project XL is a voluntary and experimental program, today's proposed rule contains provisions that allow the project to conclude prior to the end of the five years in the event that it is desirable or necessary to do so. For example, an early conclusion would be warranted if the project's environmental benefits do not meet the Project XL requirement for the achievement of superior environmental results. In addition, new laws or regulations may become applicable to the wastes during the project term which might render the

<sup>16</sup> If a generator or transporter elects to terminate its participation prior to ever generating or transporting USFRS XL waste the rules provide a truncated termination procedure. This procedure does not require removal or decontamination of USFRS XL waste since none have been generated or transported. It also provides for a shorter time for notice to EPA, MPCA and the appropriate county agencies. (See proposed §§ 266.314 and 266.316).

project impractical, or might contain regulatory requirements that supersede the superior environmental benefits that are being achieved under this XL Project. Similarly, the participants may also ask to discontinue participation in this XL Project prior to the five years if the experimental project does not provide sufficient benefits for them to justify continued participation.

If an early conclusion to the project is determined to be appropriate, today's rule provides a mechanism for EPA to legally conclude the project prior to the five years. A notice of termination will trigger a transition period described above in section F of this preamble. While EPA, the state and county environmental agencies and the participants have broad discretion and latitude to initiate an early conclusion of the project, all are expected to exercise their good faith and judgment in determining whether exercising this option is appropriate.

EPA reserves the discretion to terminate a project and the FPA in the event a participant fails to comply with or meet its obligations in the proposed rule, or its supplementary commitments contained in the FPA. The FPA and the proposed rule also provide for the participant's return to compliance with existing RCRA regulatory requirements following termination.

## VI. Additional Information

### A. How to Request a Public Hearing

A public hearing will be held, if requested, to provide opportunity for interested persons to make oral presentations regarding this regulation in accordance with 40 CFR part 25. Persons wishing to make an oral presentation on the site specific rule to implement the U.S. Filter XL Project should contact Mr. Robert Egan of the Region 5 EPA office, at the address given in the **ADDRESSES** section of this document. Any member of the public may file a written statement before the hearing, or after the hearing, to be received by EPA no later than August 24, 2000. Written statements should be sent to EPA at the address given in the **ADDRESSES** section of this document. If a public hearing is held, a verbatim transcript of the hearing, and written statements provided at the hearing will be available for inspection and copying during normal business hours at the EPA addresses for docket inspection given in the **ADDRESSES** section of this preamble.

### B. How Does this Rule Comply with Executive Order 12866?

Because this rule affects only U.S. Filter, its transporters and its customers, it is not a rule of general applicability. It is therefore, not subject to OMB review and Executive Order 12866. In addition, OMB has agreed that review of site-specific rules under Project XL is not necessary. Further, under Executive Order 12866, the Agency first must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of this proposed rule would be significantly less than \$100 million and would not meet any of the other criteria specified in the Executive Order and because this proposed rule affects only USFRS and its transporters and generators, it is not a rule of general applicability or a "significant regulatory action" and therefore not subject to OMB review. Further today's proposed rule does not apply to any entity unless they choose on a voluntary basis to participate in this XL Project. Finally, OMB has agreed that review of site specific rules under Project XL is not necessary.

Executive Order 12866 also encourages agencies to provide a meaningful public comment period, and suggests that in most cases the comment period should be 60 days. However, in consideration of the very limited scope of today's rulemaking and the considerable public involvement in the development of the draft FPA, the EPA considers 30 days to be sufficient in providing a meaningful public comment period for today's action.

### C. Is a Regulatory Flexibility Analysis Required?

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et. seq.* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Administrator certifies that this proposal, if promulgated, will not have a significant economic impact on a substantial number of small entities for the reasons explained below. Consequently, EPA has not prepared a regulatory flexibility analysis.

Small entities include small businesses, small organizations and small governmental jurisdictions. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) a small business according to RFA default definitions for small business (based on SBA size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Today's rule amends EPA's RCRA Regulations to modify the handling and reporting requirements for certain hazardous waste generators and transporters, as well as for USFRS. USFRS is not a small entity. The modifications authorized by the rule would reduce costs to the generators to whom it applies and those modifications should have no impact on costs to the transporters. EPA has concluded, therefore, that the rule will not have a significant economic impact on a substantial number of small entities.

### D. Is an Information Collection Request Required for this Project Under the Paperwork Reduction Act?

The information collection requirements in this proposed rule have been submitted for approval to the

Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1755.04, OMB Control No. 2010-0026) and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 1200 Pennsylvania Avenue, N.W.; Washington, D.C. 20460, by e-mail at farmer.sandy.epa.gov, or by calling (202) 260-2740. A copy also may be downloaded off the internet at <http://www.epa.gov/icr>. EPA is requiring that information be collected regarding which generators and transporters are eligible for regulatory flexibility under the USFRS XL Project. Information is also needed in order to keep generators, transporters, USFRS, and emergency response teams abreast of XL 001 waste, its contents, and when it is shipped and received. Finally information is needed to determine whether the project produces superior economic and environmental benefits. The success of the project will help determine whether it should be extended to other areas of the country. Participation in the project is voluntary; however, if a generator or transporter decides to participate, EPA requires the filing of this information. Quarterly reports will be publicly available. The estimated total cost burden of collecting the information is \$224,940/year and the estimated total length of time to collect it is 3906 hours/year. The estimated total number of respondents is 90. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. EPA will amend the various regulations to list the

information requirements, if any, contained in the final rule. Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OP Regulatory Division; U.S. Environmental Protection Agency (2137); 1200 Pennsylvania Avenue, N.W.; Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, D.C. 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 17, 2000, a comment to OMB is best assured of having its full effect if OMB receives it by September 18, 2000. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

*E. Does This Project Trigger the Requirements of the Unfunded Mandates Reform Act?*

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

government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this proposed rule is limited to USFRS and certain of its customers and transporters. This proposed rule would create no federal mandate because it is a voluntary program proposed by USFRS. Further, EPA is imposing no enforceable duties that are anticipated to be more expensive or more onerous for the parties that would exist without this proposed rule. The rule does not change the authorization status of the State. Since the proposed rule is a relaxation of the federal regulatory program, it will not take effect until the State adopts the rule. The State is under no federal obligation to adopt less stringent requirements. EPA has also determined that this proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Nevertheless, in developing this proposed rule, EPA worked closely with MPCA, Ramsey, Hennepin, Anoka, Dakota, Carver, Scott and Washington Counties and received meaningful and timely input in the development of this proposed rule.

*F. Applicability of Proposed Subpart N under the Minnesota RCRA Authorized Hazardous Waste Program*

**1. Applicability of Rules in Authorized States**

Under section 3006 of RCRA, EPA may authorize qualified States to administer the RCRA hazardous waste program within the State. See 40 CFR part 271 for the standards and requirements for authorization. Following authorization, the State requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions for violations of the authorized requirements under RCRA sections 3007, 3008, 3013, and

7003. Authorized States also have independent authority to bring enforcement actions under State law. Additionally, citizens are provided with the opportunity to commence a civil action under section 7002 of RCRA for violations of the authorized program.

After a State receives initial authorization, new Federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that State until the State adopts and receives authorization for equivalent State requirements. Until these actions are completed, the State requirements which EPA previously authorized are the federally enforceable rules that apply pursuant to RCRA. The State must adopt any new more stringent Federal requirements to maintain authorization.

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

## 2. Effect on Minnesota Authorization

Today's proposed rules, if finalized, would be promulgated pursuant to EPA's non-HSWA authority, rather than its HSWA authority. Minnesota has received authority to administer most of the RCRA program; thus, authorized provisions of its hazardous waste program are administered and enforced in lieu of the federal program equivalent. Minnesota has received authority to administer hazardous waste standards for generators, transporters and facilities that treat, store or dispose of hazardous waste. As a result of this authorization, the substantive requirements contained in today's proposed rules, if finalized, will not be effective in Minnesota until the State adopts equivalent legal mechanisms or requirements as state law that are authorized by EPA.

It is EPA's understanding that subsequent to the promulgation of this rule, Minnesota intends to propose rules or other legal mechanisms containing requirements equivalent to those imposed by new part 266, subpart N. Minnesota may accomplish this through a number of mechanisms. One

mechanism is for Minnesota to revise its existing hazardous waste rules to mirror the changes contained in today's proposed rules. If Minnesota revises its rules in this manner then it will have to submit them to EPA for review and approval as part of the authorized state program. Until such time, EPA and citizens may enforce the previously authorized state rules, which do not provide the flexibility afforded by today's proposed rule.

Minnesota also may choose to rely on its existing statutory and regulatory authority under RCRA to issue a variance to individual or categories of companies covered by today's proposed rules. To the extent that MPCA relies on existing statutory and regulatory authority which is part of the authorized state hazardous waste program, then further federal review and authorization would not be necessary.

Through its existing hazardous waste management statutes and regulations—Minn. Stat. section 116.07, subd. 5 and chapter 7045 of Minnesota Rules (Minn. R. ch. 7045), the MPCA has specific authority to provide regulatory flexibility through the inclusion of variances in state-issued RCRA permits. Minn. R. 7045.0060 sets out the procedural and substantive requirements for issuance of a variance. It allows a variance from any requirement of the hazardous waste rules—including Minnesota's regulation of the generators, transporters and facilities. However, this authority is limited in a manner such that Minnesota may not grant a variance which would result in noncompliance with the federal hazardous waste regulations.

Any appropriate variance validly issued pursuant to the state's authorized RCRA program would be immediately applicable pursuant to RCRA and therefore federally enforceable. In order for such a variance to be immediately federally enforceable, thus replacing the current authorized requirements, it would have to meet the substantive criteria of Minn. R. 7045.0060 (*i.e.*, not result in noncompliance with the EPA regulations); in this case, that would mean that the variance would have to incorporate all of the conditions which are the same as those identified in new part 266, subpart N.

Another mechanism that Minnesota has indicated it might use to implement new part 266, subpart N is the Minnesota Environmental Regulatory Innovations Act, also known as the Minnesota XL statute (MS 114C). The Minnesota XL statute is not part of the authorized state hazardous waste management program, and without itself

being federally approved cannot legally change or vary any requirement of the state's federally-approved RCRA program, nor would it have any legal effect on the applicable RCRA requirements and the federal or citizen suit enforcement authorities provided under RCRA. As such, it would not affect the enforceability of the requirements of today's proposed XL rule or the state-issued variance, as described in the previous paragraph.

The Minnesota XL statute allows the MPCA to issue XL permits which may vary the substantive requirements of state rules and local ordinance as a method of implementing XL projects. It also allows the State to substitute the specific public participation requirements of the XL statute for those detailed in MPCA permit rules. The statute identifies procedural elements which include a draft permit, public noticing of the draft permit, a public comment period and an opportunity for a hearing prior to issuance of a final permit. Once a permit is issued it may be revoked, after notice and an opportunity to request a hearing, and for specific reasons, including significant non-compliance with the permit.

Minnesota has indicated that it could, under its XL statute, issue a general permit to the category of generators covered by today's rule and a specific permit to USFRS. As specific generators are approved MPCA believes that it could add them to the general permit. Minnesota believes that the conditions imposed upon the generators and USFRS could be the same as those imposed by new part 266, subpart N. These state law XL permits would not be federally enforceable, and thus would have no legal effect on the federal applicability and enforceability of the current federally authorized rules, today's proposed rule (if finalized) or the variance issued by the state pursuant to its authorized regulations, until the State receives authorization for the changes. After authorization by EPA, these State XL permits would be federally enforceable.

Whatever instrument the State selects to implement the federal XL project it must be one that is clearly federally enforceable.

### *G. How Does this Rule Comply with Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks?*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive

Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental, health or safety risks addressed by this action present a disproportionate risk to children. The proposed rule has no identifiable direct impact upon the health and/or safety risks to children and adoption of the proposed regulatory changes would not disproportionately affect children. Finally, all XL projects must demonstrate superior environmental performance. Therefore, EPA anticipates that the proposed rulemaking will benefit all people, including children. The proposed rulemaking is thus in compliance with the intent and requirements of the Executive Order.

#### *H. How Does this Rule Comply with Executive Order 13132 on Federalism?*

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

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the

process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The requirements outlined in today's proposed rule would apply only to the USFRS facility and generators and transporters of USFRS XL waste and will not take effect unless Minnesota chooses to adopt equivalent legal mechanisms or requirements under state law. Thus, the requirements of Section 6 of the Executive Order do not apply to this rule. Although Section 6 of Executive Order 13132 does not apply to this rule, EPA did fully coordinate and consult with State and local officials in developing this rule.

#### *I. How Does this Rule Comply with Executive Order 13084: Consultation and Coordination with Indian Tribal Governments?*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. EPA anticipates that the generators who will take advantage of this rulemaking will be in Ramsey and Hennepin Counties. There are no communities of Indian tribal governments located in the vicinity of Ramsey and Hennepin

Counties. Further, as stated above, all XL projects must demonstrate superior environmental performance. Therefore, EPA anticipates that the proposed rulemaking will benefit all people, including any Indian Tribal communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### *J. Does this Rule Comply with the National Technology Transfer and Advancement Act?*

Section 12(d) of NTTAA, Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary standards. This proposed rulemaking sets alternative handling and paperwork requirements for certain hazardous wastes; it does not set technical standards. EPA is not considering the use of any voluntary consensus standards.

#### **List of Subjects**

##### *40 CFR Part 261*

Environmental Protection, Hazardous Waste, Recycling, Reporting and Recordkeeping Requirements.

##### *40 CFR Part 266*

Environmental Protection, Hazardous Waste, Recycling, Reporting and Recordkeeping Requirements.

Dated: August 4, 2000.

**Carol M. Browner,**  
*Administrator.*

For the reasons set forth in the preamble, parts 261 and 266 of Chapter I of title 40 of the Code of Federal Regulations are proposed to be amended as follows:

#### **PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE**

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

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

##### **Subpart A—General**

2. Section 261.6 is amended by revising paragraph (a)(2) introductory

text and by adding paragraph (a)(2)(v) to read as follows:

**§ 261.6 Requirements for recyclable materials**

(a) \* \* \*

(2) The following recyclable materials are not subject to the requirements of this section but are regulated under subparts C through N of part 266 of this chapter and all applicable provisions in parts 270 and 124 of this chapter:

\* \* \* \* \*

(v) U.S.Filter Recovery Services XL waste (subpart N).

\* \* \* \* \*

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

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

**Authority:** 42 U.S.C. 6905, 6906, 6912, 6922–6925, 6934 and 6937.

2. Part 266 is amended by adding a new subpart N to read as follows:

**Subpart N—Standards applicable to U.S. Filter Recovery Services XL waste and U.S.Filter Recovery Services, Inc.**

**§ 266.300 Purpose, scope, and applicability.**

The purpose of this subpart is to implement the U.S. Filter Recovery Services (USFRS) eXcellence in Leadership (XL) Project. Any person who is a USFRS XL waste generator or transporter must handle the USFRS XL waste in accordance with the requirements contained within this subpart. The standards and requirements of this subpart also apply to USFRS and its facility located at 2430 Rose Place, Roseville, Minnesota. These requirements are imposed on USFRS in addition to any requirements contained in its RCRA hazardous waste permit or other applicable state or federal law. USFRS XL waste generators and transporters are not required to comply with the requirements of 40 CFR 261.5, parts 262 through 266 (except this subpart N), parts 268, 270, 273 and 279 provided they manage USFRS XL waste in compliance with the requirements of this subpart N.

**§ 266.301 Definitions.**

*County Environmental Agencies or County Agencies* means the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington in Minnesota.

*USFRS* means U.S. Filter Recovery Services, Inc. whose principal place of business for the purposes of these rules

is 2430 Rose Place, Roseville, Minnesota.

*USFRS XL Waste* means one or more USFRS used water treatment resin canisters and their contents from a USFRS XL waste generator located within the State of Minnesota. USFRS XL waste includes the ion exchange resins, the wastes contained on or within the ion exchange resins and any other wastes contained within the water treatment resin canisters. *USFRS XL waste* also includes spills of XL waste which are handled in accordance with the requirements in this subpart. USFRS XL waste is limited to wastes which are derived from processes subject to the EPA F006 waste code designation (i.e. waste water treatment sludges from specified electroplating operations). These wastes may also exhibit a characteristic of hazardous waste as a result of the operations of a particular company. This definition includes only those ion exchange resin canisters which result in reuse of substantially all of the treated waste waters in the industrial process. This definition does not include those ion exchange resins canisters which result in the disposal of the treated waste waters, without any reuse of the treated waste waters in the industrial process. This definition does not include wastes that were generated prior to the date a generator is added to this USFRS XL Project. USFRS XL waste shall be identified by the waste code XL001.

*USFRS XL Waste Application Form* means the form approved by EPA and Minnesota Pollution Control Agency (MPCA) as part of the USFRS XL Waste Project or subsequently modified by USFRS and approved by EPA and MPCA and used for characterization of the chemical constituents of a person's USFRS XL waste. The USFRS XL Waste Application Form shall include all attachments by USFRS or the applicant, including but not limited to, the USFRS Site Engineering Form, Systems Engineering Form and any waste analysis.

*USFRS XL Waste Approved Customer* means only those persons located in Minnesota who have properly identified their wastes and processes on the USFRS XL waste application form; have not been excluded by EPA, MPCA or the County Agencies from participation in the USFRS XL waste project; have signed the USFRS XL waste Final Project Agreement (FPA); have certified that they have read and understand the USFRS XL waste training module; and have not generated USFRS XL wastes.

*USFRS XL waste approved transporter* means a transporter located within the State of Minnesota who has

a satisfactory safety rating from the United States Department of Transportation (USDOT) in the last year; has not been excluded by EPA, MPCA or the County Agencies from participation in the USFRS XL waste project; has signed the USFRS XL waste FPA; and has signed a certification that it has been trained by USFRS on the proper handling of USFRS XL wastes and understands its responsibilities under this subpart.

*USFRS XL Waste Facility* or *USFRS Facility* means the U.S.Filter Recovery Service, Inc. operations located at 2430 Rose Place, Roseville, Minnesota.

*USFRS XL Waste Final Project Agreement (FPA)* means the agreement signed by USFRS, EPA, MPCA, the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington in Minnesota, Pioneer Transport and USFRS XL waste customers, generators and transporters. The FPA may be modified to add or delete participants, subject to the approval of EPA and MPCA.

*USFRS XL Waste Generator* means a USFRS XL waste approved customer who generates or generated USFRS XL waste.

*USFRS XL Waste Project, USFRS XL Project* or *XL Project* means the program identified in the Final Project Agreement and this part for the generation, transportation and subsequent treatment, storage and disposal of USFRS XL waste.

*USFRS XL waste training module* means the recorded training program approved by EPA and MPCA as part of the USFRS XL Waste Project or subsequently modified by USFRS and approved by EPA and MPCA and developed by USFRS for the purpose of informing USFRS XL waste approved customers, generators and transporters of the special requirements imposed on them by this part and the proper method of handling USFRS XL wastes.

*USFRS XL Waste Transportation Tracking Document* means the Transportation Tracking Document developed by USFRS which was approved by EPA and the MPCA as part of the USFRS XL Waste Project or subsequently modified by USFRS and approved by EPA and MPCA; and used when USFRS XL waste is transported off-site from a generator.

*USFRS XL Waste Transporter* means USFRS or a USFRS XL waste approved transporter who transports USFRS XL waste.

**§ 266.302 Procedures for adding persons as generators to EPA's USFRS XL Project.**

(a) Any person who wishes to participate in the USFRS XL Project as

a generator must obtain the approval of the EPA and the Minnesota Pollution Control Agency (MPCA). The approval of the County Agency is also required if that person will generate USFRS XL waste at a location in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington, Minnesota. The procedures identified in this subpart are to be followed to obtain EPA approval to add a person to the federal USFRS XL Project. USFRS and a proposed generator must also comply with the procedures identified by the MPCA, and appropriate County Agencies. A person may not be added to the federal USFRS XL Project unless it has the approval of EPA, MPCA and as appropriate the County Agencies.

(b) USFRS is the only entity which may propose to add a person as a generator to the USFRS XL Project. USFRS may propose to EPA to add persons to the USFRS XL Project at any time provided, USFRS complies with the requirements of this section. Prior to being considered a USFRS XL waste generator, a person must first be approved as a USFRS XL waste approved customer. Only a USFRS XL waste approved customer may become a USFRS XL waste generator. A person becomes a USFRS XL waste generator after it first generates or causes USFRS XL waste to be regulated.

(c) USFRS will conduct a preliminary evaluation of any person it wishes to propose to EPA to add to the USFRS XL Project as a generator. USFRS will complete this preliminary evaluation prior to proposing to EPA to add such a person to the USFRS XL Project. The preliminary evaluation will consist of the following activities: USFRS will require any person who wishes to become a USFRS XL waste generator to complete and sign the USFRS XL Waste Application Form; USFRS will complete the waste characterization required by 40 CFR 266.306(b); USFRS will evaluate the person's storage area for the USFRS XL waste to determine whether it meets the standards of this subpart N; and USFRS will provide the person with a copy of the USFRS XL waste MSDS, FPA and training module.

(d) After successfully completing the activities identified in paragraph (c) of this section, USFRS will provide EPA with the name and such other information as the Agency may require to determine if a person may participate in the USFRS XL Project as a generator. USFRS will propose for inclusion into the USFRS XL Project only those person(s) whose wastes are compatible with the ion exchange process and canisters, whose storage area meets the standards in this subpart N, and whose

process will be able to reuse substantially all of its waste water. EPA's approval shall be effective within twenty one days of EPA's receipt of USFRS's written notice proposing to add a person to the USFRS XL Project unless EPA, within that time period, provides USFRS with a written notice rejecting such person.

(e) After securing the approval of EPA, MPCA and the County Agencies, USFRS shall notify the person it proposed to add to the USFRS XL Project in writing that it is approved for participation in the USFRS XL Project. USFRS will assign to that person a unique client number and waste profile number for each waste stream approved for this XL project. USFRS will obtain from that person a copy of the signed USFRS XL waste FPA and a certification that it has read and agrees to follow the USFRS XL waste training module. USFRS shall also ensure that as part of this certification the approved customer identifies its contact person as required by 40 CFR 266.308(h). Upon request by EPA, USFRS will provide EPA with a copy of the signed documents or other documents it requests.

(f) USFRS will accept USFRS XL waste only from those persons who have received the approval of EPA, MPCA and, as appropriate, the County Agencies and who have signed the USFRS XL Project FPA and the certification identified in paragraph (e) of this section. A person's participation in this USFRS XL Project is effective after EPA, MPCA and, as appropriate, the County Agency approve of them and on the date that USFRS receives the signed USFRS XL waste FPA and certification. At that time the person is a USFRS XL waste approved customer. A USFRS XL waste approved customer becomes a USFRS XL waste generator when it first generates or causes USFRS wastes to be regulated. A USFRS XL waste generator must handle all USFRS XL wastes generated after the effective date of it being added to the USFRS XL Project in accordance with the provisions of this subpart N. USFRS XL waste that is generated prior to this date is not subject to this subpart N and it must be handled according to the appropriate hazardous waste characterization for that waste, (e.g., F006 and any other applicable waste code).

(g) USFRS will require a USFRS XL waste approved customer and generator to update the USFRS XL waste application form prior to it adding to or modifying the waste streams or processes it identified on its initial USFRS XL waste application form. USFRS will notify EPA, MPCA and as

appropriate, the County Agencies whenever a customer or generator notifies USFRS that it has or will add or modify waste streams or processes. EPA will notify USFRS if any further EPA approvals are required.

**§ 266.303 Procedures for adding persons as transporters to EPA's USFRS XL Project.**

(a) Any person who wishes to participate in the USFRS XL Project as a transporter must obtain the approval of the EPA and the MPCA. The approval of the County Agencies is also required if that person's principal place of business is located in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington. The procedures identified in this subpart are to be followed to obtain EPA approval to add a person as a transporter to the federal USFRS XL Project. USFRS and a proposed transporter must also comply with the procedures identified by the MPCA, and as appropriate the County Agencies. A person may not be added to the federal USFRS XL Project unless it has received the approval of EPA, MPCA and as appropriate the County Agencies.

(b) USFRS is the only entity which may propose to EPA to add a person as a transporter to the USFRS XL Project.

(c) USFRS and Pioneer Transport are approved USFRS XL waste transporters. USFRS may propose to EPA to add other persons as USFRS XL waste transporters provided USFRS complies with the requirements of this section. USFRS will conduct a preliminary evaluation of any person who it proposes to add as a USFRS XL waste transporter. As part of that preliminary evaluation USFRS will ascertain whether the transporter has a valid EPA identification number, a valid Minnesota hazardous materials registration ("Minnesota registration") and a satisfactory safety rating from USDOT within the last year.

(d) After successfully completing the activities identified in paragraph (c) of this section, USFRS will provide EPA with the name of the transporter, the unique USFRS client identification number for the transporter, the results of its preliminary evaluation identified in paragraph (c) of this section, and other information as EPA may require to determine if that person may participate in the USFRS XL Project. USFRS will propose for inclusion into the USFRS XL Project only those person(s) who have a satisfactory safety rating from USDOT. EPA's approval shall be effective within twenty one days of its receipt of USFRS's written notice proposing to add a person to the USFRS XL Project unless EPA, within that time

period, provides USFRS with a written notice rejecting such person.

(e) After receiving the approval of EPA, MPCA and as appropriate the County Agencies USFRS shall notify the person in writing that it is approved for participation in the USFRS XL Project. USFRS will obtain from that person a copy of the signed USFRS XL waste FPA and a certification that it has been trained by USFRS on the proper handling of USFRS XL wastes and understands its responsibilities under this subpart N.

(f) USFRS will allow only USFRS XL approved transporters to transport USFRS XL wastes. A person's participation in this USFRS XL Project is effective after it receives the approval of EPA, MPCA and the County Agencies, as appropriate, and on the date that USFRS receives the signed USFRS XL waste, FPA and certification. A USFRS XL waste approved transporter becomes a USFRS XL waste transporter when it first transports or accepts for transport USFRS XL waste.

(g) USFRS will require a USFRS XL waste approved transporter or USFRS XL waste transporter to notify it of any change in its rating from USDOT, its Minnesota registration or its EPA identification number. USFRS will notify EPA, MPCA and, the appropriate County Agencies in writing of any such changes. EPA will notify USFRS in writing of any additional information or steps that may be required as a result of such changes.

**§ 266.304 USFRS requirements related to the development, use and content of USFRS XL Waste Training Module.**

(a) USFRS will develop, implement and maintain a USFRS XL Waste Training Module. USFRS will provide this training module to every person who applies for participation in the USFRS XL Project. USFRS may use any recorded communication media that is appropriate for communicating the requirements of this subpart (e.g., printed brochures, videos, etc.).

(b) The Training Module will, at a minimum, identify the hazards presented by the USFRS XL waste: for generators, explain how to handle the installation and replacement of the ion exchange resin canisters; and explain the requirements imposed on the generator or transporter pursuant to this part.

(c) USFRS shall submit this training module to EPA for approval prior to accepting the first shipment of USFRS XL wastes.

**§ 266.305 USFRS requirements relative to the development, use and content of USFRS XL Waste MSDS.**

USFRS will develop a material safety data sheet (MSDS) for the resins contained in the USFRS XL waste. The MSDS will comply with the requirements for MSDS imposed by the Occupational Safety and Health Administration (OSHA). USFRS will provide a copy of this MSDS to every person who applies for participation in the USFRS XL Project. USFRS will ensure that the MSDS prominently instructs individuals in the proper handling and emergency response procedures for spills or leaks of the USFRS XL wastes.

**§ 266.306 Waste characterization.**

(a) Submission of USFRS XL Waste Application Form by USFRS XL Waste Generator. A person who proposes to participate in the USFRS XL Project as a generator of USFRS XL wastes must properly identify the wastes and processes which contribute to the production of the USFRS XL waste at its company. For the purposes of this subpart N it shall identify only those waste streams which meet the F006 listing and shall identify them on the USFRS XL waste application form. It shall complete and submit to USFRS the USFRS XL Waste Application Form. It shall update and submit to USFRS the XL Waste Application prior to changing any process which contributes to the USFRS XL waste it generates.

(b) USFRS Waste Profile Analyses. For any person which USFRS proposes to add to the USFRS XL Project as a generator, USFRS will perform a waste profile analysis of the waste stream(s) and process(es) which will contribute to the USFRS XL waste at that company. USFRS will update such analyses whenever a USFRS XL waste generator notifies USFRS of a change or modification to its waste stream or process contributing to its USFRS XL waste. USFRS will include in the waste profile analysis a complete chemical analysis of the waste stream(s) and a determination of its compatibility with the ion exchange resin process and canisters. USFRS shall complete such analysis in accordance with the testing methods identified in the waste analysis plan contained within its RCRA hazardous waste permit. USFRS shall assign to each generator a unique customer identification number and waste profile number.

**§ 266.307 USFRS XL waste identification, handling, and recycling.**

(a) USFRS XL waste will be denoted by the hazard waste code XL001 while

it is handled by the USFRS XL waste generator or transporter. At the USFRS facility, the USFRS XL waste will be denoted by the waste code(s) it would have had at the generator but for its characterization as USFRS XL waste (i.e., F006 and any other applicable characteristic waste code). USFRS and others who may receive residuals from the USFRS XL waste will handle the USFRS XL waste and residuals according to the wastes code(s) it would have had at the generator (i.e., F006 and the appropriate characteristic hazardous waste code) and not according to the XL001 designation. USFRS shall handle the USFRS XL waste at its facility in accordance with its State issued RCRA hazardous waste permit and any applicable Federal requirements.

(b) USFRS may not accept any customers into this Project unless and until it has arranged for recycling of the metals contained in the XL001 wastes it receives. USFRS shall continue to recycle the metals contained in the XL001 waste it receives throughout the duration of the XL Project.

(c) USFRS shall identify a spill response coordinator at its facility. This person shall be responsible for coordinating the proper response to any spill, leaks or emergencies of USFRS XL wastes at the generator or during transport. He will also be responsible for receiving the calls from the generators and transporters required by this subpart N for such spills, leaks or emergencies.

**§ 266.308 Accumulation and storage prior to off-site transport.**

A USFRS waste generator may store its USFRS XL waste on-site for less than 90 days, provided it complies with the following:

(a) *Condition and use of containers.* Except as provided in paragraph (e) of this section, the USFRS waste generator will store the USFRS XL waste in the USFRS water treatment resin canisters. At the time it places the canister in storage it will ensure that the water treatment resin canisters are disconnected from any processes and are sealed. It will ensure that the USFRS XL wastes are not mixed with other solid wastes. It will affix to the canisters a warning statement containing the information presented in paragraph (c) of this section.

(b) *Condition of storage area.* It will store the USFRS XL waste on an impervious surface. The USFRS waste generator will store the USFRS XL waste separately from other wastes or materials and will ensure that there is adequate aisle space to determine the condition of the USFRS XL waste and

to notice and respond to any leaks of USFRS XL waste.

(c) *Pre-transport requirements.* It will place the following warning statement prominently on the USFRS XL waste XL001 wastes—USFRS ion exchange resin canister wastes—Federal Law Prohibits Improper Disposal. This is USFRS XL waste from (insert XL waste generator's name). Handle as a hazardous waste and ship only to USFRS located at 2430 Rose Place, Roseville, MN. This waste was placed in this container on (date) and placed in storage at (insert USFRS XL waste generator's name) on (insert date). *If found, contact USFRS and the nearest police, public safety authority, EPA or MPCA. The USFRS telephone number is (insert phone number). USFRS Transportation Tracking Document Number \_\_\_\_". If spilled immediately contain the spill and prevent it from going into any water body; collect the spilled material and place in a 55 gallon steel drum; contact USFRS and the nearest police, public safety authority, EPA or MPCA.*

(d) *Inspections.* The USFRS waste generator will inspect the condition of the USFRS XL waste weekly while it is in storage at its company. It will maintain a log of these inspections. The log will indicate the date the USFRS XL waste was placed in storage, the condition of the water treatment resin canister at that time, the date(s) of the inspection, the person conducting the inspection, and the condition of the water treatment resin canisters and the storage area at the time of the inspection.

(e) *Response to spills or leaks.* The USFRS waste generator will immediately contain and collect any spill or leak of USFRS XL wastes. It will orally notify USFRS, and the duty officer at MPCA (Non-metro: 1-800-422-0798; Metro: 651-649-5451) within 24 hours of discovery of the spill or leak. It will place any spilled or leaked materials in a 55 gallon steel drum compatible with the USFRS XL wastes and comply with the requirements of paragraphs (a) to (c) of this section. It will arrange with USFRS for the disposal of that spilled or leaked material with the next shipment of USFRS XL wastes from its company. If allowed by the local POTW it may discharge any leaked or spilled water to its permitted drainage system. Otherwise, such wasters will be sent to USFRS.

(f) *Decontamination of storage area.* The USFRS waste generator will decontaminate all areas, equipment or soils used for or contaminated with USFRS XL waste no later than the dates

provided in section §§ 266.312, 266.314 and 266.315.

(g) *USFRS XL Waste MSDS.* It shall maintain and exhibit in a prominent location the USFRS MSDS. It shall provide a copy of the USFRS XL waste MSDS to all local entities responsible for responding to releases of hazardous materials or wastes, (e.g., local police and fire departments, hospitals, etc.). It shall retain documentation of its efforts to comply with this paragraph (g).

(h) *Contact person.* No later than the date that it signs the FPA it will designate to USFRS a person who is responsible for handling its USFRS XL waste and its compliance with this subpart. That person shall complete training for the proper handling of USFRS XL waste and shall certify that he has read and understands the requirements imposed by this subpart N and the USFRS XL waste training module. That person shall also be responsible for responding to spills or leaks at the generator.

(i) *Communication devices.* It shall have an operating communication device (e.g., telephone, alarm, etc.) which allows the contact person to notify the appropriate state, local and federal officials and local hospitals and company personnel in case of an emergency.

**§ 266.309 USFRS XL waste transporter pre-transport requirements.**

A USFRS XL waste transporter will ensure that the USFRS XL waste is within an approved container which prominently displays the following warning statement: XL001 wastes—USFRS ion exchange resin canister wastes—Federal Law Prohibits Improper Disposal. This is USFRS XL waste from (insert XL waste generator's name). Handle as a hazardous waste and ship only to USFRS located at 2430 Rose Place, Roseville, MN. This waste was placed in this container on (date) and placed in storage at (insert USFRS XL waste generator's name) on (insert date). *If found, contact USFRS and the nearest police, public safety authority, MPCA or EPA. The USFRS telephone number is (insert phone number). USFRS Transportation Tracking Document Number \_\_\_\_". If spilled immediately contain the spill and prevent it from going into any water body; collect the spilled material and place in a 55 gallon steel drum; contact USFRS and the nearest police, public safety authority, EPA or MPCA.*

**§ 266.310 USFRS XL Waste Transport and Transportation Tracking Document.**

A USFRS XL Transportation Tracking Document and USFRS XL Waste MSDS

will accompany every shipment of USFRS XL waste from a USFRS XL waste generator off-site. Each canister will have the warning statement required by §§ 266.308(c) and 266.309 affixed to it. USFRS, and the USFRS XL waste generator and transporter shall comply with the following requirements:

(a) *USFRS.* USFRS will require each USFRS XL waste generator to contact USFRS to arrange for the transportation of the USFRS XL waste. USFRS will contact and use only USFRS XL waste transporters to transport the USFRS XL waste. USFRS will arrange for the USFRS XL waste transporter to pick-up the USFRS XL waste within 30 days of a USFRS' receipt of a request from a USFRS XL waste generator for such services. USFRS will complete and send to the USFRS XL waste generator the USFRS XL Waste Transportation Tracking Document and warning statement identified in §§ 266.308(c) and 266.309 prior to the arrival of the transporter at the generator. USFRS will include on the Transportation Tracking Document all information EPA determines is required to comply with this subpart N. USFRS will direct the USFRS XL waste transporter to ship the USFRS XL waste to its facility at 2430 Rose Place, Roseville, Minnesota within 30 days of its pick-up from a USFRS XL waste generator. If a shipment is not received within 30 days, USFRS will contact the transporter to determine the disposition of the load. If USFRS does not receive the shipment within 5 days of its scheduled arrival date, it will notify EPA, MPCA, the USFRS XL generator and as appropriate the County Agencies. USFRS will send a copy of the Transportation Tracking Document to the USFRS XL waste generator within 5 days of USFRS' receipt of the XL001 waste from the transporter.

(b) *USFRS XL waste generators.* A USFRS XL waste generator must contact USFRS for the off-site transport, treatment, storage or disposal of USFRS XL wastes. A USFRS waste generator will use only a USFRS XL waste transporter to transport the USFRS XL waste to the USFRS Roseville, Minnesota facility located at 2430 Rose Place. It must verify the accuracy of the USFRS XL Waste Transportation Tracking Document and warning statement, make any corrections to them that are necessary and sign the Transportation Tracking Document. It must affix the warning statement to each canister and provide a copy of the USFRS XL Waste Transportation Tracking Document and USFRS XL waste MSDS to the USFRS XL waste

transporter at the time it provides the transporter with the USFRS XL waste.

(c) *USFRS XL waste transporter.* A USFRS XL waste transporter shall verify the accuracy of the information contained on the USFRS XL Waste Transportation Tracking Document and on the canister warning statement. It shall sign and date the USFRS Transportation Tracking Document for each shipment of USFRS XL waste it transports and carry it with each shipment that it carries. It shall carry the USFRS XL waste MSDS with each shipment. It shall pick-up each shipment of USFRS XL waste within 30 days of it receiving a request for such services from USFRS. It shall deliver each shipment of USFRS XL waste to the USFRS Roseville, Minnesota facility located at 2430 Rose Place within 30 days of it being picked-up at a USFRS XL waste generator. A USFRS transporter may store XL waste for no more than 10 days at a transfer facility without being subject to regulation under 40 CFR parts 264, 265, 268, and 270 for the storage of those wastes.

**§ 266.311 Releases of USFRS XL waste during transport.**

In the event of a release of USFRS XL waste during transportation, a USFRS XL waste transporter must take appropriate immediate action to protect human health and the environment, including preventing the spilled material from entering a water system or a water body. The USFRS XL waste transporter also must comply with the provisions of § 263.31. The USFRS XL waste transporter will contact USFRS and the nearest police, public safety authority, EPA or MPCA, provide any emergency responder with a copy of the USFRS XL waste MSDS, handle the spilled material in accordance with the USFRS XL waste MSDS and the direction of any governmental entity charged with emergency response authority; and transport any spilled USFRS XL waste and contaminated soils or equipment to the USFRS facility located at 2430 Rose Place, Roseville, Minnesota in a metal 55 gallon drum compatible with the wastes.

**§ 266.312 USFRS XL Waste Generator Closure.**

(a) *Generator responsibilities.* At the time of termination of a USFRS XL generator's participation in the USFRS XL Project, the USFRS XL waste generator will disconnect its process(es) from the water treatment resin canisters; implement the alternative treatment or disposal required by § 266.313; arrange for the transport to USFRS of all USFRS XL waste that it has in storage;

decontaminate any contamination resulting from the storage or handling of USFRS XL waste; and document its efforts to comply with this closure requirement.

(b) *USFRS responsibilities.* Prior to termination of a USFRS XL waste generator's participation in the USFRS XL Waste Project USFRS will remove all of the USFRS XL waste in the generator's storage area. USFRS will inspect the USFRS XL waste generator to determine if all USFRS XL wastes have been removed and to document the condition of the USFRS XL waste storage area. USFRS will provide a written summary to the customer, EPA, MPCA and as appropriate the County Agencies of its evaluation pursuant to this paragraph (b).

**§ 266.313 USFRS XL waste generator requirements to maintain alternate treatment or disposal capacity.**

During the period that it is participating in the USFRS XL waste Project, a USFRS XL waste generator shall maintain the ability to legally treat or dispose of its process wastes contributing to the USFRS XL waste by methods other than through transportation and treatment to USFRS' Roseville, Minnesota facility. A USFRS XL waste generator may use this alternative treatment or disposal method only after it has discontinued participation in this XL Project.

**§ 266.314 Termination of a USFRS XL waste approved customer's participation in the USFRS XL Project.**

The provisions in this section apply to a USFRS XL waste approved customer who has not yet generated USFRS XL waste. If a USFRS XL waste approved customer has generated or first caused to be regulated USFRS XL waste, then it is a USFRS XL waste generator and must comply with the termination provisions contained in § 266.315. The following procedures are to be followed to terminate a person's participation in the federal USFRS XL Project. A USFRS waste approved customer's participation in the USFRS XL Project will terminate [Date 5 years from effective date of final rule], but may terminate earlier either voluntarily, upon changes in ownership, or upon notice by USFRS, EPA, MPCA or the appropriate County Agency.

(a) *Termination by the USFRS XL waste approved customer.* A USFRS XL waste approved customer may terminate its participation in the USFRS XL Project at any time prior to its first generating USFRS XL wastes. The USFRS XL waste approved customer will provide 5 days written notice to

USFRS, EPA, MPCA and as appropriate the County Agencies its desire to discontinue participation in the USFRS XL Project. No further action is required by such USFRS XL waste approved customer.

(b) *Change in ownership.* A USFRS XL waste approved customer will be automatically terminated upon a change in ownership. A USFRS XL waste approved customer must notify USFRS, EPA, MPCA and as appropriate the County Agencies within 5 days of a change in its ownership.

(c) *Termination by EPA, MPCA, County Agency or USFRS.* If EPA or USFRS propose to terminate a USFRS XL waste approved customer they shall provide it with 5 days written notice. If MPCA or the County Agency propose to terminate such person they shall follow their own procedures and provide EPA and USFRS with the results of such proceedings. If MPCA or the County Agency terminates such person's participation in the federal USFRS XL Project, such person will be automatically terminated without further proceedings under this subpart N.

**§ 266.315 Termination of a USFRS XL waste generator's participation in the USFRS XL Project.**

The procedures identified in this subpart are to be followed to terminate a waste generator's participation in the federal USFRS XL Project. A USFRS waste generator's participation in the USFRS XL Project will terminate [Date 5 years from effective date of final rule], but may terminate earlier either voluntarily, upon changes in ownership, or upon notice by USFRS, EPA, MPCA or the County Agency.

(a) *Termination by the USFRS XL waste generator.* The USFRS XL waste generator will provide 60 days written notice to USFRS, EPA, MPCA and the County Agencies of its desire to discontinue participation in the USFRS XL Project. Within the 60 days the USFRS XL waste generator shall accomplish the closure required by § 266.312.

(b) *Termination by EPA, MPCA or the County Agency.* EPA, MPCA or the County Agency may terminate a USFRS XL waste generator's participation. If EPA proposes to terminate such person's participation then it will provide the generator with written notice. EPA retains the right to terminate a USFRS XL waste generator's participation in the USFRS XL Project if the USFRS XL waste generator is in non-compliance with the requirements of this subpart. In the event of

termination by EPA, EPA will provide USFRS, the USFRS XL waste generator, MPCA, and as appropriate the County Agencies with 15 days written notice of its intent to terminate a generator's continued participation in the USFRS XL Project. During this period, which commences on receipt of the notice to terminate by the generator, the generator will have the opportunity to come back into compliance or to provide a written explanation as to why it was not in compliance and how it intends to return to compliance. If, upon review of the written explanation EPA re-issues a written notice terminating the generator from this XL Project the generator shall close in accordance with § 266.312. The USFRS XL waste generator shall complete the closure and comply with § 266.312 within sixty days of EPA's re-issuance of the notice of termination. If MPCA or the County Agency propose to terminate such person they shall follow their own procedures and provide EPA and USFRS with the results of such proceedings. If MPCA or the County Agency terminates such person's participation in the federal USFRS XL Project, that person's participation will be automatically terminated without further proceedings under this rule and such person must comply with the closure requirements contained in § 266.312.

(c) Termination by USFRS. USFRS may terminate a USFRS XL waste generator's participation in the USFRS XL Project only after providing 60 days written notice to the generator, EPA, MPCA and the county agency. Within this time USFRS will arrange for the transport to its facility of the USFRS XL waste in storage. Additionally, USFRS will inspect the USFRS XL waste generator in accordance with § 266.312(b).

(d) Termination as a result of changes in ownership. A USFRS XL waste generator will provide written notice to USFRS, EPA, MPCA and as appropriate the County Agencies of a change in its ownership. It will provide such notice within 10 days of the change in ownership. Within the 60 days of the change in ownership the USFRS XL waste generator shall accomplish the closure required by § 266.312.

**§ 266.316 Termination of a USFRS XL waste approved transporter's participation in the USFRS XL Project.**

The provisions in this subpart apply to a USFRS XL waste approved transporter who has not transported or accepted for transport USFRS XL waste. If a USFRS XL waste approved transporter has transported or accepted for transport USFRS XL waste it is a

USFRS XL waste transporter and must comply with the termination provisions contained in § 266.317. The procedures identified in this subpart are to be followed to terminate a person's participation in the federal USFRS XL Project. MPCA or the County Agencies may have their own procedures for terminating the participation of a person from their version of this Federal USFRS XL Project. EPA is not bound by and will not follow those State or County procedures to terminate a person's continued participation in this USFRS XL Project. A USFRS waste approved transporter's participation in the USFRS XL Project will terminate [Date 5 years from effective date of final rule], but may terminate earlier either voluntarily, upon changes in ownership, or upon notice by USFRS, EPA, MPCA or the County Agency.

(a) Termination by the USFRS XL waste approved transporter. A USFRS XL waste approved transporter may terminate its participation in the USFRS XL Project at any time prior to its first transporting or accepting for transport USFRS XL wastes. The USFRS XL waste approved transporter will provide 5 days written notice to USFRS, EPA, MPCA, and as appropriate the County Agencies of its desire to discontinue participation in the USFRS XL Project. No further action is required by such USFRS XL waste approved transporter.

(b) Change in ownership. A USFRS XL waste approved transporter will be automatically terminated upon a change in ownership. A USFRS XL waste approved transporter must notify USFRS, EPA, MPCA and as appropriate the County Agencies within 5 days of a change in its ownership.

(c) Termination by EPA, MPCA, the County Agencies or USFRS. EPA, MPCA, the County Agencies and USFRS may also terminate a USFRS XL waste approved transporter's participation in the USFRS XL. If EPA or USFRS propose such termination they will provide the transporter, each other, MPCA and the appropriate County Agencies with 5 days written notice.

**§ 266.317 Termination of a USFRS XL waste transporter's participation in the USFRS XL Project.**

The procedures identified in this subpart are to be followed to terminate a person's participation in the federal USFRS XL Project. MPCA or the County Agencies may have their own procedures for terminating the participation of a person from their version of this Federal USFRS XL Project. EPA is not bound by and will not follow those State or County procedures to terminate a person's

continued participation in this USFRS XL Project. A USFRS waste transporter's participation in the USFRS XL Project will terminate [Date 5 years from effective date of final rule], but may terminate earlier either voluntarily, upon a change in ownership of the transporter, or upon notice by USFRS, EPA, MPCA or the County Agency.

(a) Termination by the USFRS XL waste transporter—voluntary and changes in ownership. The USFRS XL waste transporter will provide 10 days written notice to USFRS, EPA, MPCA and as appropriate the County Agencies of its desire to discontinue participation in the USFRS XL Project or of a change in ownership. Within 30 days of that notice the USFRS XL waste transporter will ensure that all of its shipments of USFRS XL waste are delivered to the USFRS facility.

(b) Termination by EPA, MPCA or the County Agencies. EPA, MPCA or the County Agencies may terminate a USFRS XL waste transporter's participation in the USFRS XL Project. If MPCA or the County Agency propose to terminate such person they shall follow their own procedures and provide EPA and USFRS with the results of such proceedings. If MPCA or the County Agency does terminate such person's participation, such person's participation in the Federal USFRS XL Project will be automatically terminated without further proceedings under this subpart and the transporter shall ensure that all shipments of XL waste are delivered to the USFRS facility within 30 days of notice of termination. If EPA proposes to terminate a transporter's participation in the USFRS XL Project EPA will provide such person, MPCA, the County Agency and USFRS with a 30 days written notice prior to terminating such person's participation in the USFRS XL Project. EPA retains the right to terminate a USFRS XL waste transporters participation in the USFRS XL Project if the USFRS XL waste transporter is not in compliance with the requirements of this subpart N. During this period, which commences on receipt of the notice by the transporter, the USFRS XL waste transporter will have the opportunity to come back into compliance or to provide a written explanation as to why it was not in compliance and how it intends to return to compliance. If, upon review of the written explanation EPA re-issues a written notice terminating the USFRS XL waste transporter from this XL Project the USFRS XL waste transporter shall ensure that all shipments of USFRS XL waste are delivered to the USFRS facility within 30 days of such re-issued notice.

(c) Termination by USFRS. USFRS may terminate a USFRS XL waste transporter's participation in the USFRS XL Project only after providing 30 days written notice to the transporter, EPA, MPCA and as appropriate the County Agencies. Within this time USFRS will arrange for the transport to its facility of the USFRS XL waste in the possession of the USFRS XL waste transporter.

(d) Change in ownership. A USFRS XL waste transporter will be automatically terminated upon a change in ownership. A USFRS XL waste transporter must notify USFRS, EPA, the County Agencies and MPCA within 5 days of a change in its ownership.

**§ 266.318 Termination of USFRS' participation in this XL Project.**

The procedures identified in this subpart are to be followed to terminate USFRS' participation in the federal USFRS XL Project. MPCA or the County Agencies may have their own procedures for terminating USFRS' participation from their version of this federal USFRS XL Project. EPA is not bound by and will not follow those State or County procedures to terminate USFRS' continued participation in this USFRS XL Project. USFRS' participation in the USFRS XL Project will terminate [Date 5 years from effective date of final rule], but may terminate earlier either voluntarily, upon a change in ownership of USFRS, or upon notice of EPA, MPCA or as appropriate the County Agency. If there is a change of ownership at USFRS, USFRS shall give EPA, MPCA and the appropriate County Agencies 30 days notice of the change. EPA will notify USFRS if its participation in this USFRS XL Project will terminate. The USFRS XL Waste Project is terminated if USFRS' participation is terminated. In such an instance USFRS must supply EPA, MPCA and the County Agencies with a proposed schedule for transitioning all USFRS XL Project participants to compliance with the RCRA requirements within 120 days of a notice to terminate pursuant to this section.

(a) USFRS' termination of its participation in this XL Project—voluntary termination. USFRS will provide written notice to all USFRS XL Project participants (e.g., USFRS XL waste approved customers and approved transporters, USFRS XL waste generators and transporters), EPA, MPCA and the County Agencies of its desire to discontinue participation in the USFRS XL Project (“voluntary termination”) USFRS will provide its notice of voluntary termination 120 days prior to the date it proposes to

terminate this XL Project. Within this 120 days USFRS will arrange for the transition of it and the USFRS XL waste Project participants to return to compliance with the RCRA requirements. During this time all USFRS XL Project participants will complete all closure activities required by § 266.312.

(b) Termination as a result in a change of ownership of USFRS. USFRS will provide written notice to EPA, MPCA and the County Agencies of any change in ownership of USFRS. USFRS will provide this notice within 30 days of the change in ownership. Within 90 days of USFRS's notice of a change in ownership USFRS will arrange for the transition of all USFRS XL waste Project participants to return to compliance with the RCRA requirements. All USFRS XL waste Project participants will complete all closure activities required by § 266.312.

(c) EPA or MPCA termination of the USFRS XL Project.

(1) EPA or MPCA may terminate this XL Project after providing written notice to USFRS. EPA retains the right to terminate this XL Project if:

- (i) USFRS is in non-compliance with the requirements of this subpart;
- (ii) This Project does not provide superior environmental benefit; or
- (iii) There is repeated non-compliance by USFRS XL waste generators or transporters.

(2) In the event of termination by EPA, EPA will provide USFRS, MPCA and the County Agencies with 30 days written notice of its intent to terminate USFRS' participation in this XL Project. During this period, which commences on receipt of the notice by USFRS, USFRS will have the opportunity to come back into compliance, to provide a written explanation as to why it was not in compliance and how it intends to return to compliance or otherwise respond to the reasons for EPA's proposed termination. If, upon review of the written explanation EPA re-issues a written notice terminating this XL Project then USFRS shall submit to EPA within 30 days of its receipt of the re-issued notice its plan for transitioning all USFRS XL waste Project participants to compliance with the RCRA requirements. This transition plan shall contain a proposed schedule which accomplishes compliance with RCRA within 120 days of EPA's re-issued written notice.

**§ 266.319 USFRS recordkeeping and reporting requirements.**

(a) *Annual reporting.* USFRS will provide an annual report, on October 1, on all USFRS XL wastes. It will provide

the information separately for each USFRS XL waste generator. The annual report, at a minimum, will include:

(1) An identification of each USFRS XL waste generator who sent USFRS XL wastes to USFRS; the quantity of XL waste that USFRS received from each USFRS XL waste generator during the calendar year and a certification by USFRS that those USFRS XL wastes were treated and recycled at USFRS in accordance with this subpart N;

(2) The amount of water recycled by the generators, the pretreatment chemicals and energy the generators did not use as a result of participating in this USFRS XL Project, the amount of water discharged to the local POTW before and during this project, the amount of sludge recovered by USFRS before and during this project, the amount of sludge recovered as opposed to disposed of by a generator (if the generator disposed of the sludge prior to participating in this project), the quantity of material (ion exchange resins, other wastewater treatment sludge, residues) collected from each facility (monthly), the frequency of canister replacement in terms of process volume, the constituents in the material (ion exchange resins, other wastewater treatment sludge, residues) collected at each facility (e.g., recoverable metals, contaminants/non-recoverable materials), and constituents in the material (ion exchange resins, other wastewater treatment sludge, residues) disposed by each facility (e.g., contaminants/non-recoverable material);

(3) Quantity of material (ion exchange resins, other wastewater treatment sludge, residues) to be processed from the XL waste at the USFRS Roseville facility, quantity of the metals recovered from the XL waste at the USFRS Roseville facility, the constituents of the recovered material (ion exchange resins, other wastewater treatment sludge, residues from the XL waste), quantity and constituents of the non-recoverable material from the XL waste (ion exchange resins, other wastewater treatment sludge, residues), and how it was disposed of; and

(4) The quantity of each metal recovered at each metals reclamation facility it uses for this Project.

(b) *Quarterly reporting.* USFRS will submit a quarterly report to EPA, MPCA and the County Agencies on October 1, January 1, April 1 and July 1 which will include:

(1) Sufficient information for EPA to determine the amount of superior environmental benefit resulting from this project. That report will, at a minimum, contain information which includes, but is not limited to: the

volume of water and waste collected and recycled; the amount of metals recycled; the volume of recycled material sold to others; data regarding the management of the ion exchange canisters; the constituents of the sludge; and information regarding how the sludge and residues are managed;

(2) Financial information related to the costs and savings realized as a result of implementation of this project. USFRS will collect baseline and XL costs.

(i) The baseline costs shall be calculated using two scenarios:

(A) Typical expenses (including any hazardous waste taxes) of the generator (prior to the XL Project) for pretreating and disposing effluent wastewater under the applicable Clean Water Act requirements and the costs for manifesting, transporting and disposing of F006 sludges; and

(B) Typical expenses of the generator that would be incurred if waste were recycled in compliance with RCRA and requirements for manifesting and transportation of those hazardous wastes (including tax obligations under both scenarios).

(ii) The XL costs will include the costs to the generator for completing the Transportation Tracking Document, the transportation costs for XL wastes, the generator's cost to install the ion exchange canisters, any other costs the generator incurs such as cleaning up any spills, payment of hazardous waste taxes, etc., the cost to USFRS of metals reclamation off-site (including costs associated with transportation or disposal). USFRS will compare the baseline costs to the XL costs and provide an analysis of whether the project is resulting in cost savings for generators and which aspects of the XL Project produce any savings.

USFRS will also submit any of the information required in paragraphs (b)(2)(i) (A) and (B) of this section upon request by EPA, MPCA or the County Agency;

(3) A list of all USFRS XL Waste Approved Customers and Generators.

USFRS shall include on that list the customer and generator's name, a summary of the results of the USFRS waste characterization of the customer and generator's waste stream(s) and process(es), the customer's and generator's process waste streams approved for participation in the USFRS XL Waste Project, the unique client number USFRS has assigned to the customer and generator and its waste stream, the date of USFRS notice to EPA and MPCA proposing to add the customer and generator to the USFRS XL Project; the date on which USFRS notified the customer that it is approved for participation in this USFRS XL Project; and the date USFRS received the signed FPA and certification from the customer or generator. The list shall also contain the date of any notice of termination, and if there is a termination, the date on which USFRS recovered all of its USFRS XL wastes from the generator and the date USFRS conducted its visual evaluation of the condition of the USFRS XL waste storage areas and notice of compliance with § 266.312. USFRS will update its waste customer and generator list when new customers and generators have been approved by EPA, MPCA and the County Agencies or when a customer or generator has been terminated from this XL Project; and

(4) A list of all USFRS XL Waste Approved Transporters. USFRS shall include on this list the transporter's unique USFRS client number, the transporter's name, and if available, EPA identification number and its Minnesota registration number, the date of USFRS notice to EPA and MPCA proposing to add the transporter to the USFRS XL Project; the date on which USFRS notified the transporter that it is a USFRS XL Waste Approved Transporter; and the date on which it received the signed USFRS XL waste FPA and certification. The list shall also contain the date of any notice of termination, and if there is a termination, the date on which USFRS

recovered all of its USFRS XL wastes from the transporter. This USFRS XL waste transporter list may be modified upon approval of EPA and MPCA.

(c) *Recordkeeping.* USFRS will retain for three years a copy of USFRS XL waste application forms, and correspondence with each USFRS XL waste approved customer and generator; records of any spill or leak notifications it receives; records of its compliance with this subpart N; and the USFRS XL waste Transportation Tracking Document for each shipment from a USFRS XL waste generator.

**§ 266.320 USFRS XL waste generator recordkeeping and reporting requirement.**

A USFRS XL waste generator will retain for three years a copy of the USFRS XL Waste FPA, with all appropriate signatures; its USFRS XL waste certification; its log of weekly inspections required by § 266.308(d); its record of any notification of spills or leaks of its USFRS XL wastes required by § 266.308(e); its compliance with the training and facility contact requirements of § 266.308(h); a copy of the signed Transportation Tracking Document for USFRS XL waste it generated; and documentation of its compliance with § 266.312.

**§ 266.321 USFRS XL waste transporter recordkeeping and reporting requirement.**

A USFRS XL waste transporter will retain for three years a copy of the USFRS XL Waste FPA, with all appropriate signatures; its USFRS XL waste certification; a copy of the signed Transportation Tracking Document for USFRS XL waste it transported; and its record of any notification of spills or leaks of its USFRS XL wastes required by § 266.311.

**§ 266.322 Effective dates.**

This subpart N is effective from [Effective date of final rule] until [Date 5 years from effective date of final rule].

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