ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 262, 263, 264, 265, 266, and 271

[EPA–HQ–RCRA–2005–0018; FRL–9098–7]

RIN 2050–AE93

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends certain existing regulations promulgated under the hazardous waste provisions of the Resource Conservation and Recovery Act (RCRA) regarding hazardous waste exports from and imports into the United States. Specifically, the amendments implement recent changes to the agreements concerning the transboundary movement of hazardous waste among countries belonging to the Organization for Economic Cooperation and Development (OECD), establish notice and consent requirements for spent lead-acid batteries intended for reclamation in a foreign country, specify that all exception reports concerning hazardous waste exports be sent to the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, DC, and require U.S. receiving facilities to match EPA-provided import consent documentation to incoming hazardous waste import shipments and to submit to EPA a copy of the matched import consent documentation and RCRA hazardous waste manifest for each import shipment.

DATES: This final rule is effective July 7, 2010. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of July 7, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2005–0018. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the RCRA Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270).

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SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Final Rule Apply to Me?

1. OECD Revisions

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

Industry sector	NAICS	SIC
Utilities	221100	4939
Petroleum and Coal Products Manufacturing	324	29
Chemical Manufacturing	325100	28
Primary Metal Manufacturing	331	33
Fabricated Metal Product Manufacturing	332	34
Machinery Manufacturing	333	35
Computer and Electronic Product Manufacturing	334110	357

Industry sector	NAICS	SIC
Electrical Equipment, Appliance, and Component Manufacturing	335	36
Transportation Equipment Manufacturing	336	37
Miscellaneous Manufacturing	339900	39
Scrap and Waste Materials	423930	5093
Material Recovery Facilities	562920	4953

2. SLAB Revisions

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

Industry sector	NAICS	SIC
Hazardous Waste Collectors	562112	4212
Recyclable Material Hauling, Long-Distance	484230	4213
Batteries, Automotive, Merchant Wholesalers	423120	5013
Lead-acid Storage Batteries, Manufacturing	335911	3691
Automotive Parts, Accessories, and Tire Stores	441310	5013
Tire Dealers	441320	5014
All other General Merchandise Stores	452990	5399
New Car Dealers	441110	5511
Recyclable Material Wholesaler	423930	5093
Other Waste Collection	562119	4212
Recyclable Material Collection	562111	4212
Services, Solid Waste Collection Marinas	713930	4493
General Freight Trucking, Long-Distance, TL	484121	4213
General Freight Trucking, Long-Distance, LTL	484122	4213
Specialized Freight Trucking	484200	4213
Freight Carriers (except air couriers), Air Scheduled	481112	4512
Freight Charter Services, Air	481212	4522
Freight Railways, Line-Haul	482111	4011
Freight Transportation, Deep Sea, to and from Domestic Ports	483113	4424
Freight Transportation, Deep Sea, to or from Foreign Ports	483111	4412

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

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

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

4. Import Revisions

The revisions regarding imports in this final rule affect all facilities receiving imported hazardous waste from a foreign country that must comply with either 264.71(a)(3) or 265.71(a)(3). This includes those hazardous waste import shipments originating in OECD Member countries, as well as in non-OECD countries. Potentially affected entities may include, but are not limited to:

Industry sector	NAICS	SIC
Hazardous Waste Collectors	562112	4212
Recyclable Material Wholesaler	423930	5093
Other Waste Collection	562119	4212
Recyclable Material Collection Services, Solid Waste Collection	562111	4212
Scrap and Waste Materials	423930	5093

Industry sector	NAICS	SIC
Material Recovery Facilities	562920	4953

The lists of potentially affected entities in the above tables may not be exhaustive. The Agency's aim is to provide a guide for readers regarding those entities that potentially could be affected by this action. However, this action may affect other entities not listed in these tables. If you have questions regarding the applicability of this final rule to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT.**

B. List of Acronyms Used in This Final Rule

Acronym	Meaning
BCI	Battery Council International.
CBI	Confidential Business Information.
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act.
CFR	Code of Federal Regulations.
EPA	U.S. Environmental Protection Agency.
FR	Federal Register.
HSWA	Hazardous and Solid Waste Amendments.
LAB	Lead-Acid Battery.
NAICS	North American Industrial Classification System.
NTTAA	National Technology Transfer and Advancement Act.
NAFTA	North American Free Trade Agreement.
OECD	Organization for Economic Cooperation and Development.
OMB	Office of Management and Budget.
OSWER	Office of Solid Waste and Emergency Response.
RCRA	Resource Conservation and Recovery Act.
RFA	Regulatory Flexibility Act.
SIC	Standard Industrial Classification.
SLAB	Spent Lead-Acid Battery.
SBREFA	Small Business Regulatory Enforcement Fairness Act.
TRI	Toxics Release Inventory.
UMRA	Unfunded Mandates Reform Act.

C. What Are the Statutory Authorities for This Final Rule?

The authority to promulgate this rule is found in sections 1006, 2002(a), 3001–3010, 3013, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), and as amended by the Hazardous and Solid Waste Amendments, 42 U.S.C. 6905, 6912, 6921–6930, 6934, and 6938.

II. Background

A. OECD Revisions

1. What Is the OECD?

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

2. What OECD Decisions Form the Basis of the OECD Revisions in This Final Rule?

The current RCRA regulations regarding waste shipments destined for recovery within the OECD are found in 40 CFR part 262, subpart H. These regulations are based on the March 30, 1992, "Decision of the Council C(92)39/FINAL Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery" (hereinafter referred to as the 1992 Decision) that EPA then promulgated as a final rule under RCRA on April 12, 1996 (61 FR 16289). Since that time, the OECD has made a number of changes to the waste shipment regime, necessitating changes to the RCRA regulations.

On June 14, 2001, the OECD Council amended the "Decision of the Council C(92)39/FINAL Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery" by adopting "Revision of Decision C(92)39/FINAL on the Control of Transboundary Movement of Wastes Destined for Recovery Operations" (hereafter referred to as the 2001 OECD Decision). The goal of the 2001 OECD Decision was to harmonize the procedures and requirements of the OECD with those of the Basel Convention [1] and to eliminate duplicative activities between the two

[1] The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal is a comprehensive global environmental agreement on hazardous and other wastes. The Convention has 172 Member countries, also known as Parties, and aims to protect human health and the environment against the adverse effects resulting from the generation, management, transboundary movements and disposal of hazardous and other wastes. A copy of the convention text has been placed in the docket established for this rulemaking. More information on the Basel Convention may be found at *http://www.basel.int.*

international organizations as much as practical. These changes include revisions to the original established framework (such as reducing the levels of control from a three-tiered system to a two-tiered system), while also adding entirely new provisions (for example, the new certificate of recovery requirement). Subsequent to the 2001 OECD Decision, an addendum, C(2001)107/ADD1 (hereafter referred to as the 2001 OECD Addendum), which consists of revised versions of the notification and movement documents and the instructions to complete them, was adopted by the OECD Council on February 28, 2002. The addendum was incorporated into the 2001 OECD Decision as section C of Appendix 8, and the combined version was issued in May 2002 as C(2001)107/FINAL. The appendices of Decision C(2001)107/Final were amended three times by C(2004)20, C(2005)141, and C(2008)156.[2] The Decision, "Decision of the Council C(2001)107/FINAL, Concerning the Control of Transboundary Movements of Wastes Destined for Recovery Operations, as amended by C(2004)20; C(2005)141 and C(2008)156," is hereinafter referred to as the Amended 2001 OECD Decision.

B. SLAB Revisions

1. What are SLABs?

Lead-acid batteries (LABs) are secondary, wet cell batteries that contain liquid and can be recharged for many uses. They are the most widely used rechargeable batteries in the world and are mainly used as starting, lighting, and ignition (SLI) power batteries found in automobiles and other vehicles. A rechargeable SLAB is spent if it no longer performs effectively and cannot be recharged. Battery failure is most commonly attributed to water loss and grid corrosion during normal use. SLABs are considered both solid and hazardous wastes under Subtitle C of RCRA, because they are classified as spent materials that exhibit the toxicity characteristic for lead (*e.g.,* D008), and the corrosivity characteristic for the sulfuric acid electrolyte in the battery (*e.g.,* D001). For a full discussion of SLAB composition and how SLABs are managed, please *see* Sections II.B.1 and II.B.2 of the proposed rule (73 FR 58393).

2. How Must a Business Manage SLABs Intended for Domestic Recycling or Disposal?

Businesses subject to the RCRA hazardous waste regulations may choose from three options for managing hazardous waste spent lead-acid batteries. They may manage the batteries under the streamlined standards specifically for SLABs found in 40 CFR part 266, subpart G, the streamlined Universal Wastes standards for all hazardous waste batteries found in 40 CFR part 273, or the full Subtitle C hazardous waste management regulations found in 40 CFR parts 262–265, 267, 268, and 270. For the complete discussion of what these requirements entail for disposal or recycling within the United States, please *see* Section II.B.3 of the proposed rule (73 FR 58394).

3. What Does a Business Have To Do When Exporting SLABs for Recycling?

A company seeking to export SLABs may choose from the same three regulatory options described above. If they choose to follow the universal waste regulations, exporters of SLABs for reclamation are subject to the export requirements in 40 CFR part 273 (including the notice and consent requirements) or, if the SLABs are to be exported to an OECD Member country for recovery, the export requirements (including notice and consent) in 40 CFR part 262, subpart H. The second option would be for the export to follow the full subtitle C hazardous waste export regulations in 40 CFR part 262, subparts E or H. Most likely, SLAB exporters will choose to follow the regulatory provisions specific to SLABs in 40 CFR part 266, subpart G. Prior to today's rule, under part 266, SLABs that were destined for reclamation were exempt from the RCRA export requirements in 40 CFR part 262, subparts E and H (including the notice and consent requirements). Today's rule adds export requirements to part 266 that mirror those that apply to universal waste, as described later in this preamble.

C. Exception Reports for Hazardous Waste Exports

Prior to this final rule, under 40 CFR part 262, subparts E and H, exception reports were required to be submitted by the exporter to the EPA Administrator if any of the following occurred:

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

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

(3) The hazardous waste was returned to the United States.

D. Documenting Hazardous Waste Import Shipments

Prior to this final rule, under §§ 264.71(a)(3) and 265.71(a)(3), U.S. receiving treatment, storage, and disposal facilities (TSDFs) had to submit a copy of the hazardous waste manifest to EPA to document individual hazardous waste import shipments within 30 days of shipment delivery.

E. Proposed Rule

On October 6, 2008, EPA published a **Federal Register** notice seeking comment on proposed revisions to the requirements regarding the export and import of hazardous wastes from and into the United States (*see* 73 FR 58388 and following pages). First, we proposed to modify the requirements concerning the transboundary movement of hazardous waste destined for recovery among Member countries to the OECD in order to implement the Amended 2001 OECD Decision. The changes, largely in 40 CFR part 262, subpart H, included reducing the number of control levels, exempting qualifying shipments sent for laboratory analyses from certain paperwork requirements, requiring recovery facilities to submit a certificate of recovery, adding provisions for the return or re-export of wastes subject to the Amber control procedures, and clarifying certain existing provisions that were identified as potentially ambiguous to the regulated community. Second, we proposed to amend the regulations in 40 CFR part 266, subpart G regarding the management of SLABs being reclaimed to require notice and consent for those batteries intended for reclamation in a foreign country, mirroring the existing export requirements for exports of RCRA universal waste batteries, to create a more uniform practice for exporting SLABs for recovery under RCRA. Third, we proposed a technical correction in the exception reporting requirements of §§ 262.55 and 262.87(b) for hazardous waste exports to specify that all exception reports submitted to EPA be sent to the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, DC rather than to the Administrator to ensure better oversight of return shipments to the U.S. and compliance with the exception reporting requirements without any additional

[2] Copies of these amendments have been placed in the docket established for this rulemaking.

regulatory burden for U.S. exporters. Fourth and last, we proposed to amend: the hazardous waste import requirements in 40 CFR part 262, subpart F to require that U.S. importers give the initial transporter a copy of the EPA-provided documentation confirming EPA's consent to the import of the hazardous waste when they provide the RCRA hazardous waste manifest; and, the import shipment document submittal requirements in §§ 264.71(a)(3) and 265.71(a)(3) to require that the U.S. receiving facility submit to EPA a copy of the EPA consent documentation along with the RCRA hazardous waste manifest within thirty days of import shipment delivery. Both proposed amendments were intended to improve EPA's oversight of such imports. For a more detailed description of the proposed revisions, as well as the intended benefits of each revision, please *see* Section I.D of the proposed rule (73 FR 58390 and following pages).

The Agency received four sets of comments in response to its October 6, 2008 proposal. The more significant comments on this proposal are addressed later in this preamble, but all are addressed in background documents for today's final rule, which are in the docket. After considering all comments, we are finalizing the revisions substantially as proposed, with one modification.

III. Summary of the Final Rule

A. Changes to 40 CFR 262.10(d)

This final rule updates § 262.10(d) to reflect that export shipments of SLABs being managed under 40 CFR part 266, subpart G that are destined for recovery in any of the OECD Member countries listed in § 262.58(a)(1) are now subject to 40 CFR part 262, subpart H. This change is necessary to conform with the scope in the updated § 262.80(a).

B. Changes to 40 CFR Part 262, Subpart E

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

C. Changes to 40 CFR Part 262, Subpart H

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

1. Changes in Terminology

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

- "Transfrontier" to "transboundary";
- "Tracking document" to "movement document";
- "Amber-list controls" to "Amber control procedures";
- "Notifier" to "exporter"; and
- "Consignee" to "importer."[3]

2. The number of different levels of control is reduced from three (Green, Amber, and Red) to two (Green and Amber) and the waste lists have been updated.

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

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

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

U.S. importers and exporters of hazardous waste subject to the subpart H requirements of 40 CFR part 262 should be aware that wastes listed in Part I of both the new OECD Amber and Green waste lists have not retained their OECD waste codes. Consequently, the relevant Basel waste codes should be used when implementing the export and import procedures. However, wastes listed in Part II of both the new OECD Amber and Green waste lists do retain their original OECD waste codes, as listed in the 1992 Decision. This two-part system is necessary to ensure that wastes not yet explicitly listed under the Basel Convention will continue to have the same level of control applied to them when destined for recovery under the Amended 2001 OECD Decision.

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

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

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

Section 262.83(d) previously addressed the general notification requirements for unlisted wastes. Today's rule renumbers this section as § 262.83(c) since the previous § 262.83(c) addressed "Red-list wastes," which is no longer included in the final rule. Today's rule also replaces the term "unlisted wastes" with the phrase "wastes not covered in Appendices 3 and 4 of the OECD Decision,"[4] so that wastes not on these lists are not automatically subject to the Amber control procedures. Rather, "wastes not covered in Appendices 3 and 4 of the OECD Decision" will be subject to the domestic rules and regulations of the countries of concern.

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

The Amended 2001 OECD Decision allows Member countries to decide through their domestic laws and regulations that waste samples normally subject to the Amber control procedures will only be subject to the Green control procedures (*e.g.,* the existing controls normally applied in commercial transactions) if such samples are destined for laboratory analyses to assess its physical or chemical characteristics, or to determine its suitability for recovery operations, and providing that the amount of the waste samples qualifying for this exemption are not more than the minimum quantity reasonably needed to perform the analyses adequately in each particular case up to a maximum of twenty-five kilograms (25 kg/55 lbs). Analytical samples also must be appropriately packaged and labeled and must be carried out under the terms of all applicable international transport agreements. Furthermore, any transboundary movement of such samples through non-OECD Member countries shall be subject to international law and to all applicable national laws and regulations.

This final rule allows waste samples that are sent for laboratory analyses to be controlled under the Green control procedures, as opposed to the Amber control procedures, provided they meet the same conditions as set forth in the Amended 2001 OECD Decision.

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

5. Recovery Facilities Must Submit a Certificate of Recovery

This final rule implements the Amended 2001 OECD Decision's requirement that a duly authorized representative of the recovery facility submit a certificate of recovery to all interested parties (*i.e.,* exporter, country of export, country of import), documenting that recovery of the waste has been completed. A valid certificate of recovery is defined as a signed, written and dated statement that affirms that the waste was recovered in the manner agreed to by the parties to the contract.[5] This final rule also requires, as does the Amended 2001 OECD Decision, that the recovery facility send the certificate of recovery as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following the receipt of the waste by the recovery facility to the exporter and competent authorities of the countries of export and import by mail, e-mail followed by mail, or fax followed by mail. This final rule incorporates the certificate of recovery provisions of the Amended 2001 OECD Decision in § 262.83(e).

The Amended 2001 OECD Decision states that the completion of block 19 of the OECD movement document, and the submission of signed copies to the exporter and relevant competent authorities, fulfils the certificate of recovery requirement. Although the OECD movement document is recommended, the Amended 2001 OECD Decision does not require recovery facilities to use it.

While some recovery facilities may not be subject to the import and other requirements because they are not importing RCRA hazardous waste, these entities should be aware that the competent authorities of the exporting Member countries may still impose the conditions outlined in the Amended 2001 OECD Decision before the transactions can be completed. Thus, if the waste is considered non-hazardous in the United States, EPA would not require a certificate of recovery from a U.S. facility. However, the competent authority of the country of export may require a certificate of recovery, and may require that the exporter include such a requirement in the contract between the exporter and importer.

6. Amendments to the Notification Requirements

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

- Exporter and importing recovery facility e-mail address;
- E-mail address for importer (if different from the importing recovery facility);
- Address, telephone, fax, and e-mail of intended transporter(s);
- Means of transport envisioned; and
- Specification of the type of recovery operation(s) that will be used.

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

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

[4] Section 262.81 in the final revisions to the regulatory text in 40 CFR part 262, subpart H defines "OECD Decision" as "Decision of the Council C(2001)107/FINAL, Concerning the Control of Transboundary Movements of Wastes Destined for Recovery Operations, as Amended by C(2004)20; C(2005)141 and C(2008)156" for the purposes of the subpart.

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

and may be revoked at any time by the relevant competent authority.

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

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

The final rule incorporates the Amended 2001 OECD Decision's new requirements for R12 and R13 recovery facilities. R12 and R13 recovery facilities are transfer and storage/accumulation facilities, respectively, that do not recover the wastes themselves. Because hazardous wastes destined for recovery may have to undergo treatment before a R1–R11 [6] recovery facility actually recovers them, the OECD considers R12 and R13 facilities as "intermediate or temporary operations." The primary reason for the new requirements is to ensure that the subsequent R1–R11 recovery operation receives the hazardous waste and completes its recovery in an environmentally sound manner.

Specifically, when the notification document lists an R12/R13 recovery facility, the exporter must indicate in the same notification document the recovery facility or facilities where the subsequent R1–R11 recovery operation takes place or may take place. In addition, the R12/R13 recovery facility shall:

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

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

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

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

The final rule incorporates all of these requirements in § 262.82(f).

9. New Provisions Regarding Mixtures of Hazardous Wastes

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

The Amended 2001 OECD Decision also provides that:

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

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

be defined according to national regulations and procedures.

• A mixture containing two or more Amber wastes is subject to the Amber control procedures.

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

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

Finally, the Amended 2001 OECD Decision requires that notification for a transboundary movement of a mixture of hazardous wastes falling under the Amber control procedures should be made by the person performing the mixing activity (the generator of the mixture) or any other person acting as an exporter in place of the person performing the mixing activity. In the notification, relevant information on each fraction of the waste, including its code numbers, has to be given in order of importance. This final rule imposes these requirements in 40 CFR 262.82(a)(3).

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

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

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

(a) Return of Hazardous Waste to the Country of Export

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

When the incident occurs in the United States, the U.S. importer must inform EPA of the need to return the shipment. EPA will then inform the countries of export and transit, citing the reason(s) for returning the waste, and request written consent to the return by any transit country as needed. If the return shipment will cross any transit country, the return shipment may only occur after EPA provides a copy of the transit country's consent to the U.S. importer. The U.S. importer must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste unless otherwise informed by EPA in writing of an alternate timeframe for the return.

When the incident involves an export shipment from the United States, the U.S. exporter must provide for the return of the hazardous waste shipment within ninety (90) days from the time the country of import informs EPA of the need to return the shipment unless otherwise informed by EPA in writing of an alternate timeframe for the return. The U.S. exporter must also submit an exception report to EPA.

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

Under the Amended 2001 OECD Decision, the re-export from the country of import to a third country is considered a new transboundary movement of hazardous waste. As a result, the Amber control procedures are applicable. The initial importer becomes the exporter of the hazardous waste and, consequently, assumes all responsibilities as an exporter. In addition, the notification must also include the competent authority of the initial country of export who, in accordance with the Amber control procedures, may object to the re-export if the movement does not comply with the requirements set out by its domestic law. Re-export of a hazardous waste shipment from the United States to a third country may therefore only occur after the importer (acting as the new exporter) submits a notification to EPA in compliance with the notice and consent procedures of § 262.83 and obtains consent from the original country of export, the new country of import, and any transit countries.

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

If the incident takes place in the country of transit, the exporter should make arrangements so that the hazardous waste still can be recovered in an environmentally sound manner in the recovery facility of the importing country to where it was originally destined. The competent authority of the country of transit is to immediately inform the competent authorities of the countries of export and import and any

other countries of transit. If the exporter is unable to arrange for the recovery of the hazardous waste in an environmentally sound manner at the recovery facility to where it was originally destined, the hazardous waste should be returned, adhering to subsection (a) above, to the country of export within ninety (90) days from the time when the country of export was informed of the incident or such other period of time as the concerned countries agree. The competent authorities of the country of export and the countries of transit are to be informed of the return, but they are prohibited from opposing or preventing the return of the hazardous wastes to the country of export, so long as the movement complies with the requirements set out by the country of export's domestic law.

When the United States is the transit country where the incident occurs, the U.S. transporter must inform EPA of the need to return the shipment. EPA will then inform the country of export, citing the reason(s) for returning the waste. The U.S. transporter must then complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste unless otherwise informed by EPA in writing of an alternate timeframe for the return.

When the waste shipment from the incident originated in the United States, the U.S. exporter must provide for the return of the hazardous waste shipment within ninety (90) days from the time the country of transit informs EPA of the need to return the shipment unless otherwise informed by EPA in writing of an alternate timeframe for the return. The U.S. exporter must also submit an exception report to EPA.

This final rule sets forth these re-export and return provisions of the Amended 2001 OECD Decision in §§ 262.82(c), 262.82(d), and 262.82(e).

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

This final rule updates § 262.80(a) and § 262.89(a) to reflect that export shipments of SLABs being managed under 40 CFR part 266, subpart G that are destined for recovery in any of the OECD Member countries listed in § 262.58(a)(1) are subject to 40 CFR part 262, subpart H.

12. Technical Corrections to EPA's OECD Rule

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

13. Change to the Submittal Address for Exception Reports

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

D. Changes to 40 CFR 263.10(d)

This final rule updates § 263.10(d) to reflect that export shipments of SLABs being managed under 40 CFR part 266, subpart G that are destined for recovery in any of the OECD Member countries listed in § 262.58(a)(1) are now subject to 40 CFR part 262, subpart H. This change is necessary to conform with the scope in the updated § 262.80(a).

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

This final rule amends §§ 264.12(a)(2) and 265.12(a)(2) by, among other things, requiring owners or operators of recovery facilities to submit a certificate of recovery as soon as possible after the recovery is completed, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following the receipt of the hazardous waste. This change is necessary to conform to the Amended 2001 OECD Decision.

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

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

G. Changes to 40 CFR 266.80(a)

EPA is amending the table located at 40 CFR 266.80 by including two additional rows to the current table. These additional rows contain the new provisions that require exporters and transporters of SLABs being sent to a foreign country for reclamation to meet the universal waste requirements concerning the export of SLABs for reclamation.

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

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

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

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

The new requirements at 40 CFR 266.80 will ensure greater protection of human health and the environment through notification, tracking, and management of SLABs. In addition to harmonizing the RCRA hazardous waste regulations for SLABs with the notification and consent requirements in the RCRA universal waste rules, today's final rule harmonizes the export requirements for SLABs with the Amended 2001 OECD Decision. (Note that the exemption from the RCRA hazardous waste manifest requirements for exporters and transporters of SLABs for reclamation will continue to remain in effect, although SLAB shipments for recovery to any of the OECD Member

countries listed in § 262.58(a)(1) must be accompanied by a movement document per § 262.84 that is separate from the RCRA hazardous waste manifest.)

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

1. Export Shipments of SLABs to OECD Member Countries Listed in § 262.58(a)(1)

Exporters and transporters of SLABs destined for reclamation in any of the OECD Member countries listed in § 262.58(a)(1) will have to comply with all applicable sections of 40 CFR part 262, subpart H for wastes subject to the Amber control procedures. For a complete listing of the final OECD requirements, exporters and transporters should consult the regulatory text for 40 CFR part 262, subpart H in this final rule. In addition to the changes in subpart H discussed in earlier sections, the applicable Amber control procedures include, but are not limited to, the following:

(a) Notification of Intent To Export

Exporters of SLABs destined for reclamation are required to comply with the Amber control procedures in § 262.83. Under the Amber control procedures, an exporter must submit a complete notification to EPA of its intent to export at least 45 days before the export is scheduled to leave the United States (or at least ten days if the shipment is going to a pre-approved facility in the country of import). The notification can cover export activities spanning a period of up to and including 12 months (or up to three years, depending on the procedures of the importing country, if the shipment is going to a pre-approved facility in the country of import). Exporters may use the OECD Notification form in Appendix 8 of the Amended 2001 OECD Decision, or whatever notification form may be required by the country of import, but are not required by EPA to do so.

A complete notification includes, but is not limited to:

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

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

The subsequent SLAB shipments must be in accordance with the information from the notification that was reviewed and approved by the receiving country in its consent. Any changes to the information listed in the notification, such as changes to proposed total amounts to be exported or the ports of entry to be used, would require renotification and shipments could not take place until either tacit or written consent was obtained.

(b) Shipment Tracking

Under § 262.84, shipments of SLABs that are exported must be accompanied by a movement document from the initiation of the shipment until it reaches the final recovery facility. This movement document is described in § 262.84 and is different from the RCRA hazardous waste manifest. Exporters may use the OECD Movement form in Appendix 8 of the Amended 2001 OECD Decision, or whatever movement form may be required by the country of import, but are not required by EPA to use any particular form. Exporters must provide the initial transporter with the movement document. Transporters are prohibited from accepting a shipment of SLABs without such a movement document, and are required to ensure that the movement document accompanies the shipment from the initiation of the shipment until it reaches the final recovery facility. The movement document must include all the information from the notification, as well as the following:

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

(c) Annual Reporting

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

(d) Exception Reporting

Under § 262.87(b), any person exporting SLABs who meets the definition of primary exporter in § 262.51 or who initiates the movement

document under § 262.84 must file an exception report with the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, DC, if either of the following occurs:

- Within ninety (90) days from the date the SLAB shipment was accepted by the initial transporter, the exporter has not received written confirmation from the recovery facility that the SLAB shipment was received; or
- The SLAB shipment is returned to the United States.

(e) Recordkeeping

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

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

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

(a) Notification of Intent To Export

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

- Contact information and the EPA ID number (if applicable) for the primary exporter;
- A description and quantity of the SLABs to be exported;
- The RCRA waste code(s) (if applicable), U.S. DOT proper shipping name, hazard class, and United Nations number as identified in 49 CFR parts 171 through 177;
- Planned mode(s) of transportation and type(s) of containers;
- A description of the manner in which the SLABs will be treated, stored, or disposed of (including recovery) in the receiving country;
- The planned frequency and time period of exportation;
- A list of all transit countries through which the SLABs will be sent, and a description of the approximate length of time the hazardous waste will remain in each country and the nature of its handling while there;
- All points of entry to and departure from each foreign country through which the SLABs will pass; and
- The name and site address of the consignee [7] and any alternate consignee.

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

The subsequent SLAB shipments must be in accordance with the information from the notification that was reviewed and approved by the receiving country in its consent. Any changes to the information listed in the notification (with the exception of changes to the primary exporter's telephone number, the listed means of transportation, or a decrease in the total amount to be exported) would require renotification and shipments could not take place until the exporter received an EPA Acknowledgement of Consent for the renotification.

(b) Shipment Documentation and Tracking

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

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

Unlike SLAB export shipments to countries listed in § 262.58(a)(1) that must comply with 40 CFR part 262, subpart H, SLAB export shipments destined for countries not listed in § 252.58(a)(1) do not have any shipment tracking documentation requirements or exception reporting requirements because they are exempt from the RCRA hazardous waste manifest requirements and are not required to comply with the movement document requirements in § 262.84.

(c) Annual Reporting

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

(d) Recordkeeping

Under § 262.57, exporters of SLABs must keep the following records:

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

H. Changes to 40 CFR 271.1

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

[7] As noted previously, this is equivalent to the "importer" in the final revisions to 40 CFR part 262, subpart H.

IV. Discussion of Comments Received in Response to the Proposed Rulemaking and the Agency's Responses

The Agency received comments from four entities: the Basel Action Network (BAN), a nongovernmental organization focused on the Basel Convention and in particular on the issue of illegal trade in hazardous wastes to developing countries; the Association of Battery Recyclers (ABR), a national trade association representing the lead recycling industry; Johnson Controls, Inc. (JCI), a global supplier of batteries to the automotive aftermarket and original equipment manufacturers; and Dow Chemical Company (DOW), a global chemical manufacturer. The comments were focused on specific issues or provisions in the proposed rule. To the extent that comments were not submitted on various aspects or provisions of the proposal, the Agency is finalizing those portions of the proposal, as-is, except in one case. That exception is discussed in section C below.

A. OECD Revisions

BAN argued that EPA should subject all wastes on the OECD amber list to amber control procedures when being exported regardless of whether the materials are RCRA hazardous wastes. This comment is outside the scope of this rulemaking, as EPA did not propose any changes to the fundamental regulatory framework regarding the applicability of the OECD provisions in 40 CFR part 262, subpart H (*see* Section II.A.5 of the proposed rule at 73 FR 58393). Moreover, it is important to recognize that the Amended 2001 OECD Decision and its predecessor have long recognized and allowed a Member country to determine if a waste on an OECD list is hazardous based on its "national procedures" (*see* Annex I, Section II.4 of the "Decision of the Council C(92)39/FINAL Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery" and Chapter II, Section B.4 of the Amended 2001 Decision). Discussion on how RCRA implementation of "national procedures" impacts transboundary movements of wastes subject to the RCRA exemptions, exclusions and recycling provisions can be found in the April 12, 1996, preamble to the original OECD rule (61 FR 16290–16316). EPA is therefore finalizing the scope of the OECD provisions in subpart H, as proposed.

BAN also commented that EPA should prohibit all exports of OECD amber listed wastes to non-OECD countries for any reason. ABR similarly commented that EPA should prohibit all exports of SLABs to non-OECD countries. EPA cannot grant this request since the statute does not give EPA the legal authority to implement an outright ban on hazardous waste exports. Specifically, RCRA section 3017 prohibits exports of hazardous waste unless either: (1) The shipments are covered under and conform to the terms specified in an agreement between the U.S. and the receiving country; or (2) the exporter has submitted written notification to EPA, obtained written consent from the receiving country via EPA, attached a copy of the written consent to the RCRA hazardous waste manifest for each shipment, and ensures that the shipments comply with the terms of the receiving country's consent. Moreover, section 3017 directs the State Department, on behalf of EPA, to forward a copy of the notification to the intended country of import within 30 days of EPA receiving a complete notification concerning a proposed waste export that would not be covered under the terms of an existing international agreement. Therefore, an outright ban regarding all exports of any individual hazardous waste (*e.g.* SLABs) or all hazardous wastes to non-OECD countries would require changes to the statutory language and is outside the scope of this regulatory action.

In practice, EPA has rarely received inquiries for hazardous waste exports to non-OECD countries. When approached by potential exporters who ask about exporting hazardous wastes to non-OECD countries that are, however, parties to the Basel Convention, it is EPA's practice to actively discourage such exports by informing them of the Basel Convention prohibition on transboundary shipments of hazardous waste between Basel Parties and a non-Party like the United States in the absence of a formal agreement per Article 11 of the Basel Convention (*e.g.,* the U.S.-Canada bilateral agreement, the U.S.-Mexico bilateral agreement, or the OECD multilateral agreement). The United States has no agreement with a non-OECD country for exports of RCRA hazardous wastes. A review of hazardous waste export notices between 1995–2007 indicates no approved or even proposed exports of RCRA hazardous waste to a non-OECD country. In the interest of transparency, however, EPA intends to post online at *http://www.epa.gov/epawaste/hazard/international/hazard/index.htm* summary information for all future notices we receive concerning a proposed export of RCRA hazardous waste to a non-OECD country. The online information will list the exporter name, exporter address, waste text description, proposed receiving country, and consent status (*e.g.,* notice submitted to foreign country, whether the foreign country consents or objects). Moreover, EPA's cover letters for notices concerning exports to non-OECD countries will remind the countries, when appropriate, of the relevant Basel hazardous waste listing and the Basel Convention prohibition on transboundary shipments of hazardous waste between Basel Parties and a non-Party like the United States.

In another comment, BAN asserted that EPA has not yet implemented the 1986 OECD Council Decision-Recommendation C(86)64(final)[8] ("1986 OECD Decision-Recommendation"), and should do so immediately. This comment is outside the scope of this rulemaking, as EPA proposed revisions to the OECD provisions to implement the Amended 2001 OECD Decision.

Finally, BAN suggested that the U.S. should simultaneously ratify the Basel Convention and the Basel Ban Amendment. However, ratification of the Basel Convention, with or without the Basel Ban Amendment, would require Congressional action to provide EPA the legislative authority to implement either of these, and thus, is outside the scope of this rulemaking.

Dow stated that it supported EPA revising the existing regulations to implement the Amended 2001 OECD Decision, and that the revisions will clarify and streamline the import and export process among OECD Member countries.

B. SLAB Revisions

Three of the commenters recognized the need to require notification and consent for SLABs being exported for reclamation in a foreign country, and all four commenters supported EPA establishing the notice and consent export requirements.

As part of ABR's comment suggesting that EPA ban all exports of SLABs to non-OECD countries (which is discussed in the previous section), ABR submitted data that analyzed export shipments of SLABs and other lead scrap based on the harmonized tariff code classifications between 2006–2008. The data indicated shipments of lead scrap and/or SLABs to non-OECD

[8] "Decision-Recommendation of the Council on Exports of Hazardous Wastes from the OECD area," issued June 5, 1986. This document is available online at *http://webdomino1.oecd.org/horizontal/oecdacts.nsf/linkto/C(86)64,* and a copy has been placed in the docket established for this rulemaking.

countries (*e.g.,* China and India). ABR asserted that this data demonstrates that many exporters were mislabeling their SLAB shipments as non-battery scrap, and that EPA might be underestimating the amount of SLABs that were exported for reclamation between 2006–2008. However, after reviewing the analysis conducted by ABR, who generally supports the proposed rule, we do not believe that ABR's data would lead to a significantly different answer, and cause EPA to reconsider its position. In particular, ABR's data indicated total exports of SLABs and lead scrap were approximately 220,000 metric tons in 2006 and approximately 250,000 metric tons in 2007, with about 8% of the total exports in 2006 going to non-OECD countries. In comparison, EPA's data on SLAB exports estimated that 269,171 metric tons were exported in 2006, and that 1.77% went to non-OECD countries. Because the maximum annual amount of SLABs exported between 2006–2007 based on ABR's data is less than the annual amount based on EPA's data, the Agency believes it most appropriate that the data used in the economic analysis for the proposed rule should continue to be used, and not revised to include the ABR data in the economic analysis for the final rule. As a general note, if anyone has specific knowledge pertaining to specific export shipments that they believe are in violation of the RCRA hazardous waste regulations, we encourage them to submit it using EPA's Web site at *http://www.epa.gov/compliance/complaints/index.html.*

ABR further commented that adding export requirements to 40 CFR part 266, subpart G that reference the 40 CFR part 262 requirements was confusing, and instead recommended that EPA simply require that all SLABs destined for export to be managed as Universal Waste batteries under 40 CFR part 273. EPA does not agree that requiring all SLABs that will be exported in the future be managed under 40 CFR part 273 would be easier or less confusing. EPA's policy has long allowed collectors and managers of SLABs destined for recycling to choose either Part 273 or Part 266 (*see* Section IV.B.2.b of the 1995 Final Universal Waste Rule at 60 FR 25504 and following pages). We believe that having the same export requirements for SLAB exports in 40 CFR part 273 and 40 CFR part 266, subpart G is the most straightforward approach to ensuring that SLAB exports for reclamation are appropriately controlled, and the references to requirements in 40 CFR part 262 should be no more confusing than the previously established references to 40 CFR parts 261 and 268. EPA is therefore finalizing the 40 CFR part 266, subpart G requirements as proposed.

JCI commented that a three-year time period for notice and consent of exports (as opposed to a one-year time period) would reduce the burden on U.S. exporters while still providing sufficient notification to the importing country of proposed shipments. While the Amended 2001 OECD Decision does allow importing countries to issue extended consents that last for up to three years when the proposed shipment is destined for a facility that the importing country has "pre-approved" for such imports, OECD countries are neither required to pre-approve facilities nor to issue such extended consents. The international agreements covering exports from the United States that are in place with Canada, Mexico, and the OECD all specify a one-year time period as the standard maximum length of time that a notification and consent can cover. Consistent with those agreements and with all other RCRA export regulatory requirements in 40 CFR parts 261, 262 and 273, EPA is therefore retaining the one-year time period for SLABs being exported under 40 CFR part 266, subpart G.

Dow made a general comment of support for the revisions to the SLAB regulations.

C. Export Exception Report Technical Correction and Import Revisions

BAN and Dow both made a general comment of support for the proposed technical corrections regarding export exception reports and import consent documentation submissions, as proposed. Therefore, EPA is finalizing the technical corrections as proposed. The final rule however, does not include the proposed requirement in 40 CFR part 262, subpart F that RCRA hazardous waste importers give a copy of the EPA-provided import consent documentation to the initial transporter along with the RCRA hazardous waste manifest.

According to longstanding EPA policy, any party who helped arrange for the importation (*e.g.,* a broker, a transporter, or the waste management facility), may be considered an importer.[9] Because EPA's consents are currently communicated only to the competent authority of the exporting country, the proposal stated that EPA would need to provide or otherwise make available to U.S. importers the documentation confirming the Agency's consent. We asked for comment in the proposed rule on how best to provide the consent documentation to the RCRA importer, but received no comments on this issue. Foreign notices we receive regarding proposed imports of hazardous waste do not generally identify the party acting as the importer under the RCRA regulations, but the notices always have to list the foreign generator, the waste to be imported, the intended management of the waste, and the U.S. TSDF that will dispose of or recover the imported hazardous waste.

Since we should be able to reliably identify the TSDF, and the TSDF should have enough knowledge of their individual customers and contracts to match up the incoming shipment manifests with the EPA-provided import consent documentation, we have decided to provide the import consent documentation directly to the TSDF listed on each consent document and require each TSDF receiving hazardous waste from a foreign source to send back a copy of the relevant import consent documentation along with a signed copy of the RCRA hazardous waste manifest within 30 days of delivery. Because receiving facilities would have received the consent documentation directly under the proposal for those instances when they were acting as the RCRA importer of record, making this change is a logical outgrowth of the proposal and does not require a supplemental notice.

V. Future Rulemaking

1. Changes to OECD Member Country List

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

In order to accommodate changes in OECD membership as quickly as possible, EPA will publish in the **Federal Register** any future amendments to the list of OECD Member countries set forth in

[9] *See* June 25, 1985, memo from John H. Skinner, Director of the Office of Solid Waste to Harry Seraydarian, Director, Toxics and Waste Management Division, EPA Region IX, "Determining Who Assumes Generator Responsibilities for Importations of Hazardous Waste."

§ 262.58(a)(1), as a final rule without prior notice and opportunity for comment. EPA believes that the Agency would be able to make a "good cause" finding under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B) to make these future amendments without prior notice and comment. EPA believes notice and an opportunity for comment on future amendments to § 262.58(a)(1) to reflect the updates to the OECD list of Member countries would be unnecessary, because the United States, as an OECD Member country, is legally obligated to implement OECD Decisions with respect to all OECD Member countries.

2. Changes to OECD Waste List

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

VI. Costs and Benefits of the Final Rule

A. Introduction

The value of any regulatory action is traditionally measured by the net change in social welfare that it generates. The Agency's economic assessment conducted in support of this final action evaluates costs, cost savings, benefits, and other impacts, such as environmental justice, children's health, unfunded mandates, regulatory takings, and small entity impacts. To conduct this analysis, we developed and implemented a methodology for examining the impacts, and followed appropriate guidelines and procedures for examining equity considerations, children's health, and other impacts.

B. Analytical Scope

This analysis assesses the final integration of the Amended 2001 OECD Decision into the existing U.S. regulations governing shipments (export/import/transit) of hazardous wastes destined for recovery between the U.S. and other OECD Member countries. In addition, we assess the newly final export regulations for SLABs to OECD and non-OECD countries. Also incorporated into the analysis is the requirement that a receiving facility subject to 40 CFR parts 264 or 265 submit to EPA a copy of the documentation confirming EPA's consent to the import when it submits to EPA the RCRA hazardous waste manifest for the import shipment of hazardous waste. Finally, this action revises the current language in §§ 262.55 and 262.87(b) to require exception reports to be submitted directly to the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, DC, rather than to the EPA Administrator. There is no discernable cost impact associated with this final requirement for exception reports to be submitted directly to the Director.

First, we assessed potential cost impacts (positive and negative) of the final revisions to the OECD rule, including:

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

Next, we assessed potential cost impacts (positive and negative) of the final revisions to the SLAB regulations, including:

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

Finally, we analyzed the final requirements that a receiving facility subject to 40 CFR parts 264 or 265 submit to EPA a copy of the documentation confirming EPA's consent to the import when it submits to EPA the RCRA hazardous waste manifest for the import shipment of hazardous waste.

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

C. Cost Impacts

The total incremental cost for the OECD portion of the final rule during the first year of implementation, including reading the rule, is estimated to be $14,494. This is a net impact estimate that includes a total net incremental cost increase to the regulated community of $13,656, and a total net cost increase to EPA of $838. The total incremental annual net cost for the OECD portion after the first year of implementation, excluding reading the rule, is estimated to be $9,700.

The total incremental cost for the SLAB portion of the final rule during the first year of implementation, including reading the rule, is estimated at $850,000. The first year total incremental cost is expected to be about $780,000 for the affected U.S. industry and about $71,000 for EPA. The total incremental annual cost after the first year of implementation, excluding reading the rule, is estimated to be $400,000.

The combined total cost of the final rule (OECD portion, plus SLAB portion, plus import consent documentation portion) is estimated at $910,000 for the first year. Approximately 93% of this total is attributable to the SLAB portion of the rule, followed by the EPA import consent documentation requirements representing about 5% of the total. The OECD portion accounts for less than 2% of the total first year cost of the rule. After the first year, the total incremental cost of the final rulemaking is estimated at $460,000.

Cost estimates presented in this section are based on our estimates for the number of potentially affected importers, exporters, and transporters. Numerous data sources were used in the derivation of these estimates, including: RCRAInfo, the Waste International Tracking System (WITS), industry consultations, the Biennial Report, the International Trade Commission (ITC), Environment Canada, and SEMARNAT [10] data. A full explanation of the data sources, analytical methodology, assumptions, and limitations associated with the findings presented above is presented in our Cost Assessment [11] document prepared in support of this final action. This document is available in the docket to today's rule.

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

[11] *Cost Assessment for the Final Rule on Exports and Imports of Hazardous Waste Destined for Recovery Among OECD Countries, Exports of Spent Lead-Acid Batteries from the U.S., and Import Consent Documentation.*

D. Benefits

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

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

VII. State Authorization

A. Applicability of Rules in Authorized States

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

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

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

Authorized States are required to modify their programs only when EPA enacts Federal requirements that are more stringent than existing Federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program (*see also* 40 CFR 271.1). Therefore, authorized States may, but are not required to, adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous Federal regulations.

B. Effect on State Authorization

Because of the Federal government's special role in matters of foreign policy, EPA does not authorize States to administer Federal import/export functions in any section of the RCRA hazardous waste regulations. This promotes national coordination, uniformity and the expeditious transmission of information between the United States and foreign countries. Although States do not receive authorization to administer the Federal government's export functions in 40 CFR part 262, subpart E, import functions in 40 CFR part 262, subpart F, import/export functions in 40 CFR part 262, subpart H, or the import/export related functions in any other section of the RCRA hazardous waste regulations, State programs are still required to adopt those provisions in today's rule that are more stringent than existing Federal requirements to maintain their equivalency with the Federal program (*see* for example, 40 CFR 271.10(e)). Today's rule contains many amendments to 40 CFR part 262, subpart H, a number of which are more stringent. The rule also contains amendments to § 262.10, § 262.55, § 262.58, § 263.10(d), § 264.12(a)(2), § 264.71, § 265.12(a)(2), and § 265.71, almost all of which are more stringent. The States that have adopted 40 CFR part 262, subparts E and H, 40 CFR part 263, 40 CFR part 264 or 40 CFR part 265 must adopt the provisions listed above that are more stringent. In addition, States that have adopted management standards for spent lead-acid batteries analogous to 40 CFR part 266, subpart G must adopt the changes in today's rule which are more stringent.

States are not required to adopt the amendments in this rule that are not more stringent. However, EPA strongly encourages States to incorporate all the import and export related requirements into their regulations for the convenience of the regulated community and for completeness, particularly where a State has already incorporated 40 CFR part 262, subparts E, and H, the import/export manifest and OECD movement document related requirements in § 263.10(d), the import manifest and OECD movement document submittal requirements in §§ 264.12(a)(2), 264.71, 265.12(a)(2), and 265.71, or the management provisions for SLABs in 40 CFR part 266, subpart G. When a State adopts the import/export provisions in this final rule, care should be taken not to replace Federal or international references with State terms.

The provisions of today's notice take effect in all States on July 7, 2010, since these import and export requirements will be administered by the Federal government as a foreign policy matter, and will not be administered by States.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

This final rule is projected to result in a net increase in costs to certain importers, exporters, and transporters of affected hazardous wastes. Increased costs are also projected for the Federal government. The total net cost of this rule is estimated to be $910,000 during the first year following rule implementation. Exporters are projected to account for approximately 69 percent of this total. Benefits of this action include increased regulatory efficiency, reduced risks associated with the treatment and disposal of hazardous wastes, and improved data collection.

The total net cost estimate for this rule is significantly below the $100 million threshold [12] established under part 3(f)(1) of the Order. Thus, this rule is not considered to be an economically significant action. However, in an effort to comply with the spirit of the Order, we have prepared an economic assessment [13] in support of this final rule. The RCRA docket established for today's rulemaking contains a copy of this document.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them. The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2308.02.

The final rule requires that the affected sources submit the following:

- *Under the final OECD revisions:* U.S. recovery facilities will have to submit a certificate of recovery to the foreign exporter, and to the competent authority of the country of export and EPA, as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following receipt of the waste; U.S. facilities that exchange or accumulate waste shipments (*e.g.,* R12/R13 facilities) before final recovery at another facility (*e.g.,* R1–R11 facilities) will have to prepare and provide a certificate of recovery for the R12/R13 recovery operations, and provide and maintain a copy of the certificate of recovery for the subsequent R1–R11 recovery operations; U.S. recovery facilities, including R12/R13 facilities, that must re-export or otherwise return the hazardous waste shipment will have to submit new notification documents and comply with the associated Amber control procedures; and U.S. exporters will have to keep records of the additional certifications of recovery and any R12/R13 certifications they receive from recovery facilities in other OECD Member countries.
- *Under the final SLAB revisions:* SLAB exporters will have to comply with the full subpart H requirements if going to the OECD Member countries listed in § 262.58(a)(1) (*e.g.,* submitting notices, originating a movement document for each shipment, keeping records of all confirmations of receipt and recovery they receive, submitting exception reports and annual reports, and recordkeeping); and comply with portions of the subpart E requirements if going elsewhere (*e.g.,* submitting notices, providing a copy of EPA's Acknowledgement of Consent for each shipment, submitting annual reports and recordkeeping).
- *Under the final import documentation revisions:* U.S. receiving facilities will have to submit to EPA copies of the documentation confirming EPA's consent to the import each time they submit to EPA a copy of the RCRA hazardous waste manifest for each hazardous waste import shipment within thirty (30) days of shipment delivery.

All affected sources will have to retain records of this paperwork for a period of three (3) years, which is consistent with the RCRA hazardous waste requirements of §§ 262.53, 262.56, 262.57, 262.83, 262.87, 264.71 and 265.71. The collection of the requested information is mandatory, as it is needed by EPA as a part of its overall compliance and enforcement program for the protection of human health and the environment.

The estimated annual public reporting burden for the new paperwork requirements in the final rule is 4.63 hours/year per respondent under the final OECD revisions; 20.74 hours/year per respondent under the final SLAB revisions; and 8.44 hours/year per respondent under the final import consent documentation. The annual public recordkeeping burden is estimated to average 10.20 hours/year per respondent under the final OECD revisions, and 0.25 hours/year per respondent under the final SLAB revisions. The total annual public burden is estimated to be 14,854 hours at a cost of $832,400 during the first year of implementation, and 8,799 hours at a cost of $381,400 after the first year. The capital and start-up costs plus total operation and maintenance costs are expected to be negligible. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

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

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

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

While a significant number of exporters may be small businesses, the results of our analysis indicate that the cost to individual small entities in each potentially affected sector (as identified by NAICS codes) is likely to be insignificant. This determination was made by comparing annual compliance costs under the rule to the average annual sales of small business in the industry sectors likely affected by the rule. According to the U.S. Small Business Administration's small business size standards, firms in most of these industry sectors are classified as a

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

[13] *Cost Assessment for the Final Rule on Exports and Imports of Hazardous Waste Destined for Recovery Among OECD Countries, Exports of Spent Lead-Acid Batteries from the U.S., and Import Consent Documentation (Cost Assessment).*

"small business" if they have fewer than 750 employees. For purposes of this analysis, the Agency examined a subset of small entities expected to face the largest relative impacts as measured by cost to sales ratios. The average annual gross sales of the potentially impacted small companies within this subset with fewer than 20 employees were found to range from $0.4 million to $4.1 million, depending upon the NAICS sector. The annual compliance costs for these companies, as a percentage of average annual gross sales, was found to range from 0.01 percent to 0.08 percent. The regulatory flexibility screening analysis prepared in support of this determination is incorporated into the *Cost Assessment,* which is available in the docket established for this rule.

D. Unfunded Mandates Reform Act of 1995

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. UMRA does not apply to rules that are necessary for the national security or the ratification or implementation of international treaty obligations (*e.g.,* the Amended 2001 OECD Decision, the U.S.-Canada bilateral waste agreement). Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. Finally, this action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As explained previously, EPA does not authorize States to administer Federal import/export functions in any section of the RCRA hazardous waste regulations because of the Federal government's special role in matters of foreign policy.

E. Executive Order 13132: Federalism

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

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

This final rule does not have Tribal implications, as specified in Executive Order 13175. No Tribal governments are known to own or operate businesses that may be affected by this rule. Thus, Executive Order 13175 does not apply to this final rule.

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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children residing in the United States. This rule is intended to improve regulatory efficiency, enhance waste tracking procedures, and increase accountability among all parties associated with international shipments, and does not directly affect the level of protection provided to human health or the environment in the United States.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866. This rule will not seriously disrupt energy supply, distribution patterns, prices, imports or exports. In fact, this rule is designed to improve regulatory efficiency and improve information collection, in part by implementing revisions and clarifications to the existing regulations.

I. National Technology Transfer Advancement Act

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

This final rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

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

EPA has determined that this final rule will not have disproportionately high and/or adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment in the United States. This rule is intended to improve regulatory efficiency, enhance waste tracking procedures, and increase accountability among all parties associated with international shipments.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective July 7, 2010.

List of Subjects

40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, International

organizations, Labeling, Packaging and containers, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 263

Environmental protection, Hazardous materials transportation, Hazardous waste, Imports.

40 CFR Part 264

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

40 CFR Part 265

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

40 CFR Part 266

Environmental protection, Exports, Spent lead-acid batteries, Recycling, Waste treatment and disposal.

40 CFR Part 271

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

Dated: December 23, 2009.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter 1 of the Code of Federal Regulations is amended as follows.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

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

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

2. Section 262.10(d) is amended by revising paragraph (d) to read as follows:

§ 262.10 Purpose, scope, and applicability.

* * * * *

(d) Any person who exports or imports wastes that are considered hazardous under U.S. national procedures to or from the countries listed in § 262.58(a)(1) for recovery must comply with subpart H of this part. A waste is considered hazardous under U.S. national procedures if the waste meets the Federal definition of hazardous waste in 40 CFR 261.3 and is subject to either the Federal RCRA manifesting requirements at 40 CFR part 262, subpart B, the universal waste management standards of 40 CFR part 273, State requirements analogous to 40 CFR part 273, the export requirements in the spent lead-acid battery management standards of 40 CFR part 266, subpart G, or State requirements analogous to the export requirements in 40 CFR part 266, subpart G.

* * * * *

3. 262.55 is amended by revising the introductory text to read as follows:

§ 262.55 Exception reports.

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

* * * * *

4. Section 262.58 is revised to read as follows:

§ 262.58 International agreements.

(a) Any person who exports or imports wastes that are considered hazardous under U.S. national procedures to or from designated Member countries of the Organization for Economic Cooperation and Development (OECD) as defined in paragraph (a)(1) of this section for purposes of recovery is subject to subpart H of this part. The requirements of subparts E and F of this part do not apply to such exports and imports. A waste is considered hazardous under U.S. national procedures if the waste meets the Federal definition of hazardous waste in 40 CFR 261.3 and is subject to either the Federal RCRA manifesting requirements at 40 CFR part 262, subpart B, the universal waste management standards of 40 CFR part 273, State requirements analogous to 40 CFR part 273, the export requirements in the spent lead-acid battery management standards of 40 CFR part 266, subpart G, or State requirements analogous to the export requirements in 40 CFR part 266, subpart G.

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

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

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

5. Subpart H is revised to read as follows:

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

Sec.

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

§ 262.80 Applicability.

(a) The requirements of this subpart apply to imports and exports of wastes that are considered hazardous under U.S. national procedures and are destined for recovery operations in the countries listed in § 262.58(a)(1). A waste is considered hazardous under U.S. national procedures if the waste:

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

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

(b) Any person (exporter, importer, or recovery facility operator) who mixes two or more wastes (including hazardous and non-hazardous wastes) or otherwise subjects two or more wastes (including hazardous and non-hazardous wastes) to physical or chemical transformation operations, and thereby creates a new hazardous waste,

becomes a generator and assumes all subsequent generator duties under RCRA and any exporter duties, if applicable, under this subpart.

§ 262.81 Definitions.

The following definitions apply to this subpart.

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

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

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

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

Country of transit means any designated OECD Member country listed in § 262.58(a)(1) and (a)(2) other than the country of export or country of import across which a transboundary movement of hazardous wastes is planned or takes place.

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

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

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

OECD means the Organization for Economic Cooperation and Development.

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

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

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

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

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

§ 262.82 General conditions.

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

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

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

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

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

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

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

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

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

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

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

(3) Procedures for mixtures of wastes.

(i) A Green waste that is mixed with one or more other Green wastes such that the resulting mixture is not considered hazardous under U.S.

national procedures as defined in § 262.80(a) shall be subject to the Green control procedures, provided the composition of this mixture does not impair its environmentally sound recovery.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

submit an exception report to EPA in accordance with § 262.87(b).

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

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

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

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

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

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

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

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

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

§ 262.83 Notification and consent.

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

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

(1) Transactions requiring specific consent:

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

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

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

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

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

movement document pursuant to § 262.84.

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

(c) *Wastes not covered in the OECD Green and Amber lists.* Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists, incorporated by reference in § 262.89(d), but which are considered hazardous under U.S. national procedures as defined in § 262.80(a), are subject to the notification and consent requirements established for the Amber control procedures in accordance with paragraph (b) of this section. Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists incorporated by reference in § 262.89(d), and are not considered hazardous under U.S. national procedures as defined by § 262.80(a) are subject to the Green control procedures.

(d) *Notifications submitted under this section must include the information specified in paragraphs (d)(1) through (d)(14) of this section:* (1) Serial number or other accepted identifier of the notification document;

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

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

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

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

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

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

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

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

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

(11) Means of transport envisaged;

(12) Designation of waste type(s) from the appropriate OECD list incorporated by reference in § 262.89(d), description(s) of each waste type, estimated total quantity of each, RCRA waste code, and the United Nations number for each waste type;

(13) Specification of the recovery operation(s) as defined in § 262.81.

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

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

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

(e) *Certificate of Recovery.* As soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following receipt of the waste, the U.S. recovery facility shall send a certificate of recovery to the exporter and to the competent authorities of the countries of export and import by mail, e-mail without a digital signature followed by mail, or fax followed by mail. The certificate of recovery shall include a signed, written and dated statement that affirms that the waste materials were recovered in the manner agreed to by the parties to the contract required under § 262.85.

§ 262.84 Movement document.

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

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

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

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

(1) Date movement commenced;

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

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

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

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

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

> I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement, and that:
>
> 1. All necessary consents have been received; OR
>
> 2. The shipment is directed to a recovery facility within the OECD area and no objection has been received from any of the countries concerned within the thirty (30) day tacit consent period; OR
>
> 3. The shipment is directed to a recovery facility pre-approved for that type of waste within the OECD area; such an authorization has not been revoked, and no objection has been received from any of the countries concerned.
>
> (Delete sentences that are not applicable)
>
> Name: _____
>
> Signature: _____
>
> Date: _____

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

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

requirements of 40 CFR part 262, subpart F.

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

(e) Within three (3) working days of the receipt of imports subject to this subpart, the owner or operator of the U.S. recovery facility must send signed copies of the movement document to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and to the competent authorities of the countries of export and transit. If the concerned U.S. recovery facility is a R12/R13 recovery facility as defined under § 262.81, the facility shall retain the original of the movement document for three (3) years.

§ 262.85 Contracts.

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

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

(1) The generator of each type of waste;

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

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

(4) The recovery facility.

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

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

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

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

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

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

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

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

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

§ 262.86 Provisions relating to recognized traders.

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

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

§ 262.87 Reporting and recordkeeping.

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

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

(2) The calendar year covered by the report;

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

(4) By final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from 40 CFR

part 261, subpart C or D), designation of waste type(s) and applicable waste code(s) from the appropriate OECD waste list incorporated by reference in § 262.89(d), DOT hazard class, the name and U.S. EPA identification number (where applicable) for each transporter used, the total amount of hazardous waste shipped pursuant to this subpart, and number of shipments pursuant to each notification;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 262.89 OECD waste lists.

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

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

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

(b) If a waste is hazardous under paragraph (a) of this section, it is subject to the Amber control procedures, regardless of whether it appears in Appendix 4 of the OECD Decision, as defined in § 262.81.

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

(d) The OECD waste lists, as set forth in Annex B ("Green List") and Annex C ("Amber List") (collectively "OECD waste lists") of the 2009 "Guidance Manual for the Implementation of Council Decision C(2001)107/FINAL, as Amended, on the Control of Transboundary Movements of Wastes Destined for Recovery Operations," are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**. The materials are available for inspection at: the U.S. Environmental Protection Agency, Docket Center Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004 (Docket # EPA–HQ–RCRA–2005–0018) or at the National Archives and Records Administration (NARA), and may be obtained from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue André Pascal, F–75775 Paris Cedex 16, France. For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.* To contact the EPA Docket Center Public Reading Room, call (202) 566–1744. To contact the OECD, call +33 (0) 1 45 24 81 67.

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

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

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

Section 263.10(d) is amended by revising paragraph (d) to read as follows:

§ 263.10 Scope.

* * * * *

(d) A transporter of hazardous waste subject to the Federal manifesting requirements of 40 CFR part 262, or subject to the waste management standards of 40 CFR part 273, or subject to State requirements analogous to 40 CFR part 273, that is being imported

from or exported to any of the countries listed in 40 CFR 262.58(a)(1) for purposes of recovery is subject to this Subpart and to all other relevant requirements of subpart H of 40 CFR part 262, including, but not limited to, 40 CFR 262.84 for movement documents.

* * * * *

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

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

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

9. Section 264.12 is amended by revising paragraph (a)(2) to read as follows:

§ 264.12 Required notices.

(a) * * *

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

* * * * *

10. Section 264.71 is amended by revising paragraphs (a)(3) and (d) to read as follows:

§ 264.71 Use of manifest system.

(a) * * *

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

* * * * *

(d) Within three (3) working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and to competent authorities of all other concerned countries. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature.

* * * * *

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

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

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

12. Section 265.12 is amended by revising paragraph (a)(2) to read as follows:

§ 265.12 Required notices.

(a) * * *

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

* * * * *

13. Section 265.71 is amended by revising paragraphs (a)(3) and (d) to read as follows:

§ 265.71 Use of manifest system.

(a) * * *

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

* * * * *

(d) Within three (3) working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and to competent authorities of all other countries concerned. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature.

* * * * *

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

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

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

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

§ 266.80 Applicability and requirements.

(a) * * *

If your batteries . . .	And if you . . .	Then you . . .	And you . . .
(1) Will be reclaimed through regeneration (such as by electrolyte replacement).	.....	are exempt from 40 CFR parts 262 (except for § 262.11), 263, 264, 265, 266, 268, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	are subject to 40 CFR parts 261 and § 262.11 of this chapter.
(2) Will be reclaimed other than through regeneration.	generate, collect, and/or transport these batteries.	are exempt from 40 CFR parts 262 (except for § 262.11), 263, 264, 265, 266, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	are subject to 40 CFR parts 261 and § 262.11, and applicable provisions under part 268.
(3) Will be reclaimed other than through regeneration.	store these batteries but you aren't the reclaimer.	are exempt from 40 CFR parts 262 (except for § 262.11), 263, 264, 265, 266, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	are subject to 40 CFR parts 261, § 262.11, and applicable provisions under part 268.
(4) Will be reclaimed other than through regeneration.	store these batteries before you reclaim them.	must comply with 40 CFR 266.80(b) and as appropriate other regulatory provisions described in 266.80(b).	are subject to 40 CFR parts 261, § 262.11, and applicable provisions under part 268.
(5) Will be reclaimed other than through regeneration.	don't store these batteries before you reclaim them.	are exempt from 40 CFR parts 262 (except for § 262.11), 263, 264, 265, 266, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	are subject to 40 CFR parts 261, § 262.11, and applicable provisions under part 268.
(6) Will be reclaimed through regeneration or any other means.	export these batteries for reclamation in a foreign country.	are exempt from 40 CFR parts 263, 264, 265, 266, 268, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA. You are also exempt from part 262, except for 262.11, and except for the applicable requirements in either: (1) 40 CFR part 262 subpart H; or (2) 262.53 "Notification of Intent to Export, 262.56(a)(1) through (4)(6) and (b) "Annual Reports," and 262.57 "Recordkeeping".	are subject to 40 CFR part 261 and § 262.11, and either must comply with 40 CFR part 262, subpart H (if shipping to one of the OECD countries specified in 40 CFR 262.58(a)(1)), or must: (a) Comply with the requirements applicable to a primary exporter in 40 CFR 262.53, 262.56(a) (1) through (4), (6), and (b) and 262.57; and (b) Export these batteries only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in subpart E of part 262 of this chapter; and (c) Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.
(7) Will be reclaimed through regeneration or any other means.	Transport these batteries in the U.S. to export them for reclamation in a foreign country.	are exempt from 40 CFR parts 263, 264, 265, 266, 268, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	must comply with applicable requirements in 40 CFR part 262, subpart H (if shipping to one of the OECD countries specified in 40 CFR 262.58(a)(1)), or must comply with the following: (a) you may not accept a shipment if you know the shipment does not conform to the EPA Acknowledgment of Consent; (b) you must ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment; and

If your batteries . . .	And if you . . .	Then you . . .	And you . . .
			(c) you must ensure that the shipment is delivered to the facility designated by the person initiating the shipment.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

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

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

17. Section 271.1(j) is amended by adding the following entry to Table 1 and Table 2 in chronological order by date of publication in the **FEDERAL REGISTER,** to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

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

Promulgation date	Title of regulation	**Federal Register** reference	Effective date
* *	* *	* *	*
Jan. 8, 2010	Exports of hazardous waste	[Insert FR page numbers]	July 7, 2010.

* * * * *

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

Effective date	Self-implementing provision	RCRA citation	**Federal Register** reference
* *	* *	*	* *
July 7, 2010	Exports of hazardous waste	3017(a)	[Insert **Federal Register** reference for publication of final rule].

* * * * *

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