ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 262, 263, 264, 265, 270, and 271

[SWH-FRL 2852-2]

Hazardous Waste Management System

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: In the May 19, 1980, hazardous waste regulations issued under the Resource Conservation and Recovery Act of 1976 (RCRA), EPA conditionally exempted most generators of less than 1000 kilograms ("kg") of hazardous waste per month from full regulation under Subtitle C of RCRA. Congress subsequently passed, and the President signed into law on November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 (HSWA). These amendments require the U.S. Environmental Protection Agency (EPA) to promulgate, no later than March 31, 1986, rules applicable to generators of between 100 kg and 1000 kg of hazardous waste in a calendar month ("100–1000 kg/mo generators").

The Agency is today proposing and requesting public comment on a regulatory scheme for generators of 100–1000 kg/mo that is based upon the regulatory requirements applicable to larger generators contained in 40 CFR Part 262. The intended effect of this scheme is to minimize the regulatory burden imposed on generators of 100–1000 kg/mo that manage their wastes off-site by reducing or eliminating a number of existing large quantity generator requirements for manifesting, recordkeeping and reporting. The proposal also extends the period of on-site storage allowed without the need for interim status or a permit for these generators to up to 180 days (or up to 270 days for quantities up to 6000 kg for generators that must ship their waste greater than 200 miles for treatment or disposal). Such storage would be subject to certain requirements under today's proposed rule.

Today's proposed rules would impose full Part 264 and 265 treatment, storage, and disposal standards on generators of 100–1000 kg/mo that treat, store, or dispose of their wastes on-site if not otherwise exempted. However, today's proposal would delay the effective date of these requirements to allow on-site facilities to come into compliance with the hazardous waste facility standards or shift their management practices away from on-site management.

DATES: Comments on this proposal must be received on or before September 30, 1985. Three public hearings are scheduled as follows: September 18, 1985—St. Louis, Missouri; September 20, 1985—Phoenix, Arizona; September 24, 1985—Washington, D.C.

The proposed Part 262 standards applicable to 100–1000 kg/mo generators would take effect six months after the date of publication in the **Federal Register** of the final rules.

The application of Part 264 and 265 standards to 100–1000 kg/mo generators treating, storing, or disposing of hazardous waste on-site using non-exempt management practices would take effect twelve months after the date of publication in the **Federal Register** of the final rules.

For off-site facilities managing wastes from 100–1000 kg/mo generators, the Part 264 or 265 standards would apply to the wastes from generators of 100–1000 kg/mo effective six months after the date of publication in the **Federal Register** of the final rules.

For off-site facilities managing wastes exclusively from generators of less than 1000 kg/mo, the requirement to obtain interim status as a hazardous waste facility for wastes from 100–1000 kg/mo generators would take effect 6 months from the date of publication in the **Federal Register** of the final rules.

Off-site facilities managing waste from both large generators and generators of 100–1000 kg/mo may need to modify their Part A permit applications (as well as Part B if already submitted) within six months from the date of publication in the **Federal Register** of the final rules to reflect these newly regulated wastes from 100–1000 kg/mo generators.

ADDRESSES: Comments on this proposal should be mailed to the Docket Clerk, Office of Solid Waste, WH–562, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 or delivered to the RCRA Docket located in RM S–212, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. The RCRA Docket is available for viewing 8:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays. Communications should identify the regulatory docket "Small Quantity Generators". The public hearings will be held at the following locations:

1. September 18, 1985—St. Louis, Missouri, Marriott Pavilion Hotel, One Broadway, St. Louis, Missouri, (314) 421–1776
2. September 20, 1985—Phoenix, Arizona, Hotel Westcourt, 10220 North Metro Parkway East, Phoenix, Arizona 85021, (602) 997–5900
3. September 24, 1985—Washington D.C., Department of Health and Human Services*, North Auditorium, 330 Independence Avenue, SW., Washington, D.C. 20201

A block of rooms has been reserved at the hotels in St. Louis and Phoenix for the convenience of individuals requiring lodging. Please make reservations directly with the hotel and refer to the EPA hearing. The hearings will begin at 9:30 a.m. with registration at 9:00 a.m. and will run until 4:30 p.m. unless concluded earlier. Anyone wishing to make a statement at the hearing should notify, in writing, Ms. Geraldine Wyer, Public Participation Officer, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Persons wishing to make oral presentations must restrict them to 15 minutes and are encouraged to have writen copies of their complete comments for inclusion in the official record.

FOR FURTHER INFORMATION CONTACT: Bernard J. Stoll, (202) 382–4761, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 or the RCRA/Superfund Hotline, (800) 424–9346, (in Washington D.C., call 382–3000).

SUPPLEMENTARY INFORMATION:

Preamble Outline

* Attendees should use the "C" Street entrance.

Part I—Introduction and Background

I. Authority

These regulations are being proposed under authority of Sections 2002(a), 3001, 3002, 3004, 3005, 3006, 3010, 3015, 3017, 3019, 9001, and 9003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6921, 6922, 6924, 6925, 6926, 6930, 6935, 6939, 6991, and 6993.

II. Organization

Today's proposal is divided into three major parts. Part I of the preamble summarizes today's proposal and discusses much of the background information relevant to this proposed rulemaking, including the previous rulemakings affecting small quantity hazardous waste generators, as well as the recent legislative amendments to the Resource Conservation and Recovery Act (RCRA) and the approach taken by EPA in today's action. Part II of the preamble addresses the applicability and scope of today's proposal and describes in detail the specific requirements with which 100–1000 kg/mo generators would be required to comply. Finally, Part III of the preamble addresses the impacts of the proposed rule on the State authorization process, as well as on the regulated community, small businesses, and the economy in general.

III. Summary of Today's Proposal

Under the existing Subtitle C hazardous waste management system, generators of less than 1000 kg of non-acutely hazardous waste in a calendar month are exempt from most of the regulations in 40 CFR Parts 262, 263, 264, 265, and 266 if they meet the conditions specified in 40 CFR 261.5.[1] The Hazardous and Solid Waste Amendments of 1984 (HSWA) specifically require EPA to expand its regulation of generators of between 100 and 1000 kg of hazardous waste in a calendar month to ensure, among other things, that these waste quantities are managed at approved hazarous waste management facilities. At the same time, however, Congress gave EPA clear authority to vary the standards for these generators from those requirements applicable to larger generators, provided that the requirements for generators of between 100 and 1000 kg/mo are protective of human health and the environment. Congress expressed concern that full regulation of these generators, many of which are small businesses, might not be appropriate. Today's proposal represents the Agency's efforts to balance the need for regulation of this group of generators in a manner protective of human health and the environment with the impacts of such regulation on small firms.

In essence, EPA has concluded that some relief from the administrative and paperwork requirements embodied in the Part 262 Generator Standards is appropriate for generators of 100–1000 kg/mo of hazardous waste because of the lesser quantities of waste involved and the generally small business nature of many of these firms. However. EPA is also proposing sufficient controls to ensure protection of human health and the environment.

Under today's proposal, the "small quantity generator" provision contained in 40 CFR § 261.5 would apply only to those generators producing no more than 100 kg of non-acutely hazardous waste in a calendar month.[2]

[1] EPA has listed certain wastes in § 261.33(e) as acutely hazardous wastes which are subject to a 1 kg/mo small quantity generator exclusion level. Acutely hazardous waste in quantities above 1 kg have been and will remain fully regulated under Parts 262–266.

[2] The reader should keep in mind that the provisions of today's proposal would *only* apply to hazardous waste generators producing between 100 kg and 1000 kg of non-acutely hazardous waste in a calendar month and to transporters and facilities handling wastes from these generators. Firms

Continued

Consequently, generators of between 100 and 1000 kg/mo of hazardous waste *would no longer be small quantity generators* for regulatory purposes. Instead, wastes from these 100–1000 kg/mo generators would be subject to the provisions of Part 262 as well as to the facility requirements of Parts 264 and 265 and the transporter requirements of Part 263.

Under the existing small quantity generator exclusion, 100–1000 kg/mo generators are only required to determine whether their waste is hazardous and ensure that the waste is managed at a facility that is *at least* approved by a State to manage municipal or industrial solid waste (*i.e.*, they do not currently have to manage their wastes at approved Subtitle C hazardous wastes facilities). In contrast, generators of more than 1000 kg of hazardous wastes in a calendar month (as well as generators of more than 1 kg of acutely hazardous waste in a calendar month) who ship their wastes off-site must comply with the following requirements:

- Determine whether their wastes are hazardous;
- Obtain an EPA identification number;
- Store hazardous wastes on-site for no more than 90 days in compliance with specific storage standards (unless they comply with the full regulations for hazardous wastes management facilities)
- Offer their wastes only to transporters and facilities with an EPA identification number;
- Comply with applicable Department of Transportation (DOT) and EPA requirements for shipping wastes off-site;
- Use a multi-part "round-trip" manifest to accompany the waste to its final destination;
- Maintain copies of manifests for three years;
- Report lost shipments to EPA; and
- Prepare and submit a biennial report of wastes generated during odd numbered calendar years.

Since under today's proposal, 100–1000 kg/mo generators would no longer be "small quantity generators" but subject instead to regulation under Part 262, the requirements listed above would apply to generators of 100–1000 kg/mo if no other Part 262 amendments were proposed. However, EPA is today proposing a series of amendments to Part 262 that would specifically exempt or modify certain of the Part 262 requirements for 100–1000 kg/mo generators. Under today's proposal, 100–1000 kg/mo generators would be required under Part 262 to:

- Determine whether their wastes are hazardous (already required under § 261.5);
- Obtain an EPA identification number;
- Store hazardous wastes on-site for no more than 180 or 270 days in compliance with specially modified storage standards (unless they comply with the full regulations for hazardous waste management facilities);
- Offer their wastes only to transporters and facilities with an EPA identification number;
- Comply with applicable Department of Transportation (DOT) requirements for shipping wates off-site;
- Use a single copy of the Uniform Hazardous Waste Manifest to accompany the waste from the generation site.

The proposed requirements for generators of 100–1000 kg/mo are less stringent than those applicable to larger quantity generators in two significant respects. First, under today's proposed rule, generators of 100–1000 kg/mo would not be requried to comply with the full manifest system currently required of larger hazardous wastes generators that ship waste off-site for treatment, storage, or disposal. They would, however, have to accompany such off-site shipments with a single copy of a completed manifest form. The purpose of this manifest requirement would be to serve as a "notification" to subsequent handlers of the waste (*i.e.*, transporters and facilities) that the material is a hazardous waste and to provide essential information to those handlers as well as emergency personnel. EPA is proposing to specifically exempt these generators from the existing manifest requirements pertaining to number and distribution of manifest copies as well as from the recordkeeping and reporting requirements associated with the full manifest system (*i.e.*, use and retention of manifest copies and exception and biennial reporting). Conforming amendments to Parts 263, 264, and 265 are also being proposed to exempt transporters and facilities that accept wastes from these generators from certain of the manifest requirements. In addition, EPA is proposing to exempt 100–1000 kg/mo generators from the requirement to complete the "single copy" manifest under certain circumstances where the waste is being reclaimed under contractual arrangements where either the generator, or a reclaimer retains ownership of the material throughout the generation, transportation and reclamation of the waste. Under such circumstances, EPA believes that the notice function of the manifest is unnecessary, provided that specific conditions are met.

A second significant difference for 100—1000 kg/mo generators will be the requirements affecting accumulation (*i.e.*, short-term storage) of hazardous waste on-site prior to shipping their waste to an off-site treatment, storage, or disposal facility. While § 262.34 of the existing RCRA hazardous waste regulatory program allows generators to store hazardous waste on-site in tanks or containers for up to 90 days without the need to obtain interim status or a RCRA permit (provided they comply with specific requirements), today's proposed rule would amend § 262.34 to allow 100–1000 kg/mo generators to accumulate (*i.e.*, store) waste on-site in tanks or containers for up to 180 days (or 270 days if they must ship their waste over 200 miles for treatment or disposal), without obtaining interim status or a permit, provided that these generators comply with specific requirements which have been reduced somewhat from those applicable to larger quantity generators. Unlike larger quantity generators, those producing between 100–1000 kg/mo would not be required to prepare a written contingency plan or have formalized personnel training programs. They would, however, be subject to a reduced set of specific requirements for contingency and emergency procedures, and for ensuring that their employees are fully cognizant of those procedures as well as proper hazardous waste handling methods. Generators of 100–1000 kg/mo that store wastes in tanks or containers would, however, be subject to the same requirements of existing Subparts I and J of Part 265 applicable to larger generators as well as to the preparedness and prevention standards contained in Subpart C of Part 265.

The most significant impact of today's proposed rule would be felt by those 100–1000 kg/mo generators who treat, store, or dispose of their hazardous waste in on-site facilities and who do not qualify for the 180-or 270-day exclusion. These activities would be subject to the full set of Part 264 and 265 facility standards currently applicable to

generating 100 kg or less of hazardous waste in a calendar month would continue to be subject to the conditional exclusion under § 261.5 currently applicable to generators of less than 1000 kg in a calendar month. Similarly, firms generating in excess of 1000 kg of hazardous waste in a calendar month, or firms generating or accumulating acutely hazardous wastes exceeding the quantities set forth in § 261.5, would continue to be subject to the full set of hazardous wastes regulations contained in 40 CFR Parts 262, 263, 264, 265, 266, 270, and 271 to the extent those regulations apply.

other hazardous waste treatment, storage, and disposal facilities, including the need to obtain interim status and a RCRA permit. EPA sees no basis for reducing the technical standards for these generators since the potential hazards to human health and the environment appear to be equivalent to those from other fully regulated treatment, storage, and disposal facilities. However, because of the major impact which these facility requirements are likely to have on many of these firms, the Agency is proposing to delay the effective date of this portion of the regulations an additional six months (*i.e.*, 1 year from the date of publication in the **Federal Register** of the final rules) to allow these firms additional time to either arrange for off-site management or to up-grade their on-site practices for compliance with the full set of Parts 264 and 265 facility standards.

IV. Background

A. The 1978 Proposal

On December 8, 1978, EPA proposed a set of regulations implementing Subtitle C of the Resource Conservation and Recovery Act (RCRA) (43 FR 58946). Among other things, the proposal sought to define a "generator" for purposes of imposing standards for the handling and management of hazardous wastes. At that time, EPA proposed a conditional exemption from portions of the Subtitle C regulations for generators that generated less than 100 kg of hazardous waste in a calendar month. Under the 1978 proposal, a firm generating less than 100 kg of hazardous waste per month could be exempted from the complete set of hazardous waste regulations provided the generator conducted a waste determination and disposed of his waste at either a State-approved solid or industrial waste facility or if the waste was treated, stored, or disposed at an authorized Subtitle C facility.

The Agency's rationale for the 100 kg/mo exemption level was expressed as follows:

> The principal element of this issue is how to balance the need to protect human health and the environment from the adverse impact of the potential mismanagement of small quantities of hazardous waste with the need to hold the administrative and economic burden of management of these wastes under RCRA within reasonable and practical limits (43 *FR* 58970).

In its 1978 proposal, EPA identified and sought public comment on a number of alternative regulatory schemes for small quantity generators and explicitly stated that it intended to consider establishing a small quantity generator exclusion level of 100 kg/mo. Among the alternatives the Agency considered were: (1) A conditioned exemption at either the 100 kg/mo or 1000 kg/mo level; (2) a degree of hazard approach that would take into account the relative hazard of various waste types in establishing exemption levels; (3) an unconditioned exemption for quantities of hazardous waste under 100 kg/mo where a State assumes the regulatory responsibilities for these quantities under either its Subtitle C or Subtitle D programs; (4) applying lesser administrative requirements (*e.g.*, applying manifest requirements but not recordkeeping and reporting requirements and/or lesser technical treatment, storage, and disposal requirements on small quantities of hazardous waste), without exempting or conditionally exempting these wastes from Subtitle C management; and (5) phasing regulatory coverage of small quantity generator quantities (*e.g.*, an initial conditioned exemption of quantities at a high cutoff level, and the imposition of a lower exemption limit in two or three years).

B. The May 19, 1980 Regulations

In finalizing its proposed regulations in May of 1980, the Agency decided to impose a system that contained elements from several of the approaches considered in the 1978 proposal. The final rules established a higher initial conditional exemption level of 1000 kg/mo for most hazardous wastes but set a 1 kg/mo level for acutely hazardous wastes. However, the Agency also concluded that information on environmental impacts and a review of damage cases tended to support a 100 kg/mo exclusion level (See 45 *FR* 33104) and stated its intention to initiate rulemaking to phase in Subtitle C coverage, within two to five years, of small quantity generators generating quantities greater than 100 kg/mo.

The decision to conditionally exempt generators of less than 1000 kg/mo of hazardous waste from full Subtitle C coverage was based on a number of factors. While EPA considered different schemes for using hazard in establishing quantity limitations, the primary reason for establishing the exemption level at 1000 kg/mo was administrative, expressed as follows:

> The Agency has determined that the enormous number of small generators, if brought entirely within the Subtitle C regulatory system, would far outstrip the limited Agency resources necessary to achieve effective implementation. (45 *FR* 33103)

At that time, EPA argued that, based on available data, 97% of the hazardous waste generators produced less than 1000 kg of hazardous waste per month, yet accounted for less than one percent of the total waste generated. The Agency concluded that instead of sacrificing other elements of the regulatory program such as permitting and enforcement through dilution of resources, the overall environmental objectives of RCRA would be best served by choosing an exclusion level such that its limited resources could be used to implement the full regulatory program for those generators producing 99% of the hazardous waste.

C. The Hazardous and Solid Waste Amendments of 1984

On November 8, 1984, the President signed Pub. L. 98-616, titled The Hazardous and Solid Waste Amendments of 1984 (HSWA). These comprehensive amendments will have far-reaching ramifications for EPA's hazardous waste regulatory program and will impact a very large number of businesses in the United States. Further, Congress has established in these amendments ambitious schedules for the imposition of the requirements that EPA must promulgate.

With respect to regulation of small quantity generators, the HSWA added a new subsection (d) to section 3001 of RCRA designed to modify EPA's current regulatory exemption of wastes generated by small quantity generators from full Subtitle C regulation (40 CFR 261.5). Section 3001(d) directs EPA to develop a comprehensive set of standards which will apply to hazardous wastes produced by small quantity generators of between 100 and 1000 kg of hazardous waste in a calendar month ("generators of 100-1000 kg/mo"). EPA is required to publish final standards in the **Federal Register** no later than March 31, 1986. In addition, section 3001(d) imposes certain minimum requirements on these generators prior to that date and requires EPA to complete a number of studies before April 1987.

1. *Early Implementation Provisions.* In the May 19, 1980 regulations, EPA established special requirements for hazardous waste generated by small quantity generators. In those regulations, two classes of small quantity generator were established: (1) Those generating or accumulating acutely hazardous wastes below specific quantity cutoffs, and (2) those generating or accumulating less than 1000 kg/mo of non-acutely hazardous wastes.

On July 15, 1985, EPA published in the **Federal Register** a Final Rule which codified a number of legislatively

mandated provisions contained in the HSWA in the Code of Federal Regulations (CFR) (See 50 FR 28702–28755, July 15, 1985). Among those provisions is the requirement of section 3001(d)(3) that effective 270 days from the date of enactment,[3] all off-site shipments of hazardous waste from generators of greater than 100 kg but less than 1000 kg of hazardous waste during a calendar month must be accompanied by a copy of the Uniform Hazardous Waste Manifest, signed by the generator, and containing the following information.

- The name and address of the generator of the waste;
- The U.S. Department of Transportation (DOT) description of the waste, including the proper shipping name, hazard class and identification number (UN/NA);
- The number and type of containers;
- The quantity of waste being transported; and
- The name and address of the facility designated to receive the waste.

The information required by this provision (codified at 40 CFR 261.5(h)(3)) corresponds to Items 3, 9, 11, 12, 13, 14, and 16, of EPA form 8700–22 and accompanying instructions promulgated on March 20, 1984 (49 FR 10490). These information requirements conform to DOT shipping requirements designed to provide necessary information to handlers of hazardous materials (*e.g.*, transporters and emergency response personnel). The absence in the HSWA of specific requirements for multiple copies, recordkeeping, and identification and signature of the transporter along with a review of the legislative history have led the Agency to conclude that Congress intended the "single copy" Uniform Hazardous Waste Manifest to serve primarily as a notification to the transporter and recipient facility that the material is a hazardous waste, and not as a "roundtrip" waste tracking instrument. In fact, the legislative history for the small quantity generator provision provides that:

> There is an immediate need to provide notice to transporters, treaters, storers, and disposers of small quantities of hazardous waste of what they are handling or receiving. Such notice will enable the handlers of those wastes to properly manage them and be aware of the dangers they present. S. Rep. No. 284, 98th Cong., 1st Sess. 8 (1983) ("Senate Report")

While 100–1000 kg/mo generators are not required to complete the entire manifest under Federal law beginning August 5, 1985, many States operating their own hazardous waste programs may require additional information on the manifest or require use of that State's version of the Uniform Hazardous Waste Manifest.

This manifest requirement applies only to generators generating between 100 and 1000 kg of hazardous waste in a calendar month. Section 3001(d)(7) of the HSWA expressly provides that existing EPA regulations pertaining to acutely hazardous waste are not affected by the amendments.

The HSWA provisions, together with existing regulations, distinguish three classes of small quantity generators for regulatory purposes: (1) Those generating between 100 and 1000 kg of non-acutely hazardous waste per calendar month; (2) those generating up to 100 kg of non-acutely hazardous waste per calendar month; and (3) those generating acutely hazardous wastes in quantities currently set forth in § 261.5(e).[4] These classes of small quantity generators are distinguished in the July 1985 "Codification Rule".

Under the regulatory system imposed by 40 CFR § 261.5 implementing section 3001(d) of the HSWA, a small quantity generator in the first group (*i.e.*, producing between 100 and 1000 kg of non-acutely hazardous waste in a calendar month) is currently subject to the following requirements:

(1) He must determine if his waste is hazardous under 40 CFR 262.11 (§ 261.5(h)(1));

(2) He may conditionally accumulate hazardous waste on-site provided he does not exceed the quantity limitation contained in § 261.5(h)(2);

(3) After August 5, 1985, he must partially complete and sign a single copy of the Uniform Hazardous Waste Manifest to accompany any off-site shipment of hazardous waste (§ 261.5(h)(3));

(4) He must treat or dispose of his hazardous waste on-site, or ensure delivery to an off-site treatment, storage, or disposal facility. The on-site or off-site facility must be either: (i) Permitted by EPA pursuant to Section 3005 of RCRA or by a State having an authorized permit program under Part 271; (ii) in interim status under Parts 270 and 265; (iii) permitted, licensed, or registered by a State to manage municipal or industrial solid waste; or (iv) a facility which beneficially uses or reuses, or legitimately recycles or reclaims the waste; or treats the waste prior to reuse, recycling or reclamation (§ 261.5(h)(4)).

Small quantity generators of less than 100 kg of hazardous waste in a calendar month remain subject to the requirements described in the preceding paragraph, *with the exception* of the requirement to partially complete a single copy of the Uniform Hazardous Waste Manifest when shipping waste off-site. Generators of less than 100 kg are not required to comply with the partial manifest requirement. No additional requirements apply to this class of hazardous waste generator under the existing rules unless the quantity limitations contained in § 261.5(g) are exceeded.

Small quantity generators that produce acutely hazardous waste and do not exceed the quantity limitations for such waste are subject to the same requirements as are generators of less than 100 kg of other hazardous wastes. No additional requirements apply to this class of small quantity generator unless the quantity limitations contained in § 261.5(e) are exceeded; at which point the acutely hazardous waste becomes subject to the full generator requirements of 40 CFR Part 262.

2. *Minimum Rulemaking Requirements.* Section 3001(d)(1) of the HSWA requires EPA to promulgate, by March 31, 1986, standards under Sections 3002, 3003, and 3004, for hazardous wastes generated by a generator in a total quantity greater than 100 but less than 1000 kilograms in a calandar month. Standards developed under this section must be sufficient to protect human health and the environment but "*may vary from the standards applicable to hazardous waste generated by larger quantity generators*" [emphasis added] (Section 3001(d)(2)). EPA is further authorized to promulgate standards for generators of less than 100 kg/mo of hazardous waste if the Administrator determines it is necessary to do so to protect human health and the environment (Section 3001(d)(4)).

At a minimum, standards issued pursuant to section 3001(d)(1) must require that all treatment, storage, and disposal of hazardous wastes from generators of between 100 and 1000 kg of hazardous waste in a calendar month occur at a facility with interim status or a permit issued under Section 3005 of RCRA. The standards must also allow generators of between 100 and 1000 kg of hazardous waste during a calendar

[3] The HSWA of 1984 was signed into law on November 8, 1984. The initial manifest requirement for generators of between 100 and 1000 kg/mo of hazardous waste, therefore, goes into effect 270 days later on August 5, 1985.

[4] The accumulation provisions of § 261.5 (f)(2), (g)(2), and (h)(2) imposing full regulation on generators that exceed the quantity limitations of this section remain unchanged by the July 1985 "Codification Rule".

month to store waste on-site for up to 180 days without being required to obtain a RCRA permit. If a generator must ship or haul his waste greater than 200 miles, that generator may store up to 6000 kg of hazardous wastes for up to 270 days without a permit (section 3001(d)(6)).

In addition, the Agency is interpreting the statute to require that, at a minimum, EPA's regulations must provide for continuation of the August 1985 requirement that off-site shipments of hazardous waste from 100–1000 kg/mo generators be accompanied by a single copy of the Uniform Hazardous Waste Manifest containing at least the information specified in section 3001(d)(3). This interpretation is supported by a Congressional debate on the small quantity generator provision:

> Another element of the minimum regulatory content provided in [the amendment] for small quantity generators is the requirement that all hazardous waste from generators producing more than 100 kilograms in a month be accompanied by a manifest. This will provide notice of the hazardous nature of the waste to transporters and disposal facilities. 130 Cong. Rec. S. 9150 (daily ed: July 25, 1984).

The Agency believes that at a minimum Congress intended that the Agency's regulations incorporate the partial Uniform Hazardous Waste Manifest requirements in order to provide notice of the hazardous nature of the waste to transporters and facilities.

3. *March 31, 1986 Hammer Provisions.* In the event that EPA fails to promulgate standards for hazardous waste generators producing greater than 100 kg but less than 1000 kg in a calendar month by March 31, 1986, these generators will be subject to certain legislatively stipulated provisions.

First, a 100–1000 kg/mo hazardous waste generator must continue to comply with the manifest requirements of section 3001(d)(3) and begin providing the names of the waste transporters on the manifest form (section 3001(d)(8)(A)).

Second, except for on-site storage for up to 180 days (or up to 270 days for quantities up to 6000 kg if the generator must ship his waste greater than 200 miles), the treatment, storage, or disposal of hazardous waste generated by 100–1000 kg/mo generators must occur at a facility with interim status or a permit under Subtitle C of RCRA [5] (section 3001(d)(8)(B)).

Third, these generators must retain for three years a copy of the manifest signed by the designated facility receiving the waste (section 3001(d)(8)(D)).

Finally, these generators must file semi-annual exception reports by January 31, for waste shipments occurring in the last half of the preceding calendar year and by July 31, for any waste shipment occurring in the first half of the calendar year (section 3001(d)(8)(C)).

The HSWA specifically states that the requirements of this section should not be construed to be determinative of the requirements appropriate for small quantity generators in developing a regulatory program. Thus, with the exception of a minimum requirements discussed above, EPA has flexibility to design a regulatory program for 100–1000 kg/mo generators that is protective of the environment and public health as well as tailored to the special conditions of generators of smaller quantities of hazardous waste.

4. *Small Quantity Generator Studies.* The HSWA of 1984 requires EPA to conduct, and report to Congress on, a series of studies designed to characterize the small quantity generator population and explore the feasibility and utility of various approaches to regulating small quantity generators of hazardous waste. Specifically, these studies will: (1) Characterize small quantity generator wastes and management practices as well as the risks associated with them and the potential costs which small quantity generators may incur in modifying those practices; (2) evaluate the existing manifest system for hazardous wastes as it applies to small quantity generators and recommend changes, as appropriate; (3) explore the feasibility of easing the administrative burden on small quantity generators, increasing compliance, and simplifying enforcement efforts through a program of licensing hazardous waste transporters to assume the responsibilities of generators relating to preparation of manifests and the associated recordkeeping and reporting requirements; and (4) assess the problems associated with the accumulation, storage, and disposal of hazardous wastes from educational institutions.

EPA has already completed or initiated work on most of the mandated studies. Much of the basis for today's proposal is drawn from a major mail survey of small quantity generators conducted in 1983 and 1984 to characterize the small quantity generator population and its waste generation and management practices. The results of that survey are discussed in detail in a later section of this preamble. EPA has also developed preliminary information for the manifest and transporter studies and these, too, form the basis for portions of today's proposal. Finally, the Agency intends to initiate the study of hazardous waste from educational institutions by the end of 1985. While the Agency does not anticipate that conclusions drawn from these studies will necessitate further regulatory changes, EPA will consider the adoption of regulatory amendments based on these studies, if appropriate, in a future rulemaking.

V. EPA's Approach To Regulating 100–1000 kg/mo Hazardous Waste Generators

Section 3001(d)(1) of the HSWA requires the Agency to promulgate standards for generators producing 100–1000 kg/mo of hazardous wastes. At a minimum, such standards require that these generators' wastes be managed at facilities with RCRA permits or interim status except that such generators may store wastes on-site without a permit for up to 180 days (or 270 days if such generator must transport the waste over 200 miles). Section 3001(d)(6). In enacting section 3001(d) of the HSWA, Congress contemplated that 100–1000 kg/mo generators would be treated differently than would generators of larger quantities of waste. This intent is manifested in section 3001(d)(2) of the HSWA which specifically provides that the Agency may vary the standards for 100–1000 kg/mo generators from those standards applicable to larger quantity generators. The authority to vary such standards is, however, statutorily circumscribed by the need to protect human health and the environment. Section 3001(d)(2).

In developing standards for 100–1000 kg/mo generators, the Agency has honored the general Congressional intent underlying these amendments. EPA believes that the pertinent legislative history in conjunction with the requirements embodied in section 3001(d) reveals that Congress generally intended the Agency to analyze two themes when developing such standards: impacts on 100–1000 kg/mo generators and the protection of human health and the environment.

[5] Section 3005(e)(1)(A)(ii) allows facilities that were in existence on the date that they first became subject to the requirement to obtain a permit to obtain interim status. The effect of this provision on 100–1000 kg/mo generators that manage their hazardous waste on-site is discussed in Part II, Section IV. D. of this preamble.

A. Impacts on 100–1000 kg/mo Generators

The legislative history underlying the section 3001(d) amendments indicates that Congress intended the Agency to take into account impacts on 100–1000 kg/mo generators when developing standards for this class of generator. Congress specifically recognized that "many small quantity generators may be small businesses that may be adversely affected if the full set of Subtitle C regulations are required." H. Rep. No. 1133, 98th Cong., 2d Sess. 103 (1984) reprinted at 130 Cong. Rec. H 11132 (daily ed. Oct. 3, 1984) ("Conference Report"). Due to these perceived impacts, the Agency was instructed to determine whether requirements for 100–1000 kg/mo generators could be varied from requirements applicable to other generators. *Id.* In particular, Congress specified that the Agency should consider limiting the administrative burden for this class of generator. H.R. Rept. No. 198 (Part 1), 98th Cong., 1st Sess. 26 (1983) ("House Report"). In the context of minimizing the administrative burden on this class of generator, Congress specifically requested the Administrator to examine whether it was possible to simplify, reduce the frequency of, or eliminate the existing reporting and recordkeeping requirements. Conference Report at 103.

In developing standards for 100–1000 kg/mo generators, the Agency analyzed the impacts these generators would experience if full Subtitle C regulations were imposed. Under this analysis, the Agency considered whether 100–1000 kg/mo generators would experience impacts more severe than those realized by larger quantity generators which would, in turn, justify varying the standards for the 100–1000 kg/mo generators. The Agency relied upon two criteria in conducting this impact analysis: the types of businesses generating hazardous wastes and the business size of hazardous waste generators.

1. *Types of Businesses Generating Hazardous Wastes.* When EPA promulgated its intitial set of hazardous waste management standards in May 1980, limited information was available concerning the types of business activities generating hazardous waste. Data presented in the preamble to the May 19, 1980, regulations were drawn from existing estimates developed by states, industries, and others (45 FR 33102). As discussed earlier, the Agency has greatly increased its knowledge of hazardous waste generation and management since 1980, principally through the design and implementation of two major surveys.[6]

Results from these surveys tend to verify and reinforce the Agency position in the May 19, 1980 preamble that "the types of business activity generating small quantities of hazardous waste differ markedly from those generating large quantities of hazardous waste" (45 FR 33103). Generators of 100–1000 kg/mo of hazardous wastes are found in many industries, but tend to be concentrated in the non-manufacturing or service sector (85 percent according to survey estimates). Within this sector, nearly 70 percent of 100–1000 kg/mo generators are engaged in vehicle maintenance, with others dispersed across a variety of activities, including printing, photography, drycleaning, and pesticide application services. In comparison, large quantity generators of more than 1000 kg/mo are nearly all concentrated in the manufacturing sector and include such business activities as metal fabrication, electrical equipment production, chemical manufacturing, and other manufacturing related industries.

Generators concentrated in the service or non-manufacturing sectors are generally less sophisticated than chemical and manufacturing plants about regulatory requirements because they are less likely to have environmental program directors or environmental counsel to advise them regarding compliance with an extensive regulatory scheme. The imposition of full Subtitle C standards on these generators would probably result in a greater administrative burden than would be experienced by chemical and manufacturing generators. Given this distinction (non-manufacturing vs. manufacturing) between 100–1000 kg/mo generators and larger generators, the Agency believes that it is appropriate to adopt a modified regulatory program for these generators which relaxes the administrative burden for this class of generator.

2. *Business Size.* Based on the survey of small quantity generators, the Agency estimates that over 85 percent of 100–1000 kg/mo generators have fewer than 50 full-time employees. While similar information on large quantity generators is not in the Agency's possession, the fact that over 70% of large generators are engaged in chemical manufacturing and petroleum refining supports the conclusion that most generators of large amounts of hazardous waste are likely to be owned and operated by large corporations. In contrast, a substantial portion of the non-manufacturing 100–1000 kg/mo generators, such as those involved in vehicle maintenance activities, laundry and drycleaning and other service industries, are believed by the Agency to be locally owned or operated small businesses.

Since 100–1000 kg/mo generators are likely to be small businesses, the Agency assumes that these generators will be less likely to have the capability to comply with the full set of hazardous waste regulations currently applicable to large quantity generators. This assumption is confirmed by the Agency's experiences with the Small Business Hotline. According to EPA's Small Business Ombudsman, firms with fewer than 100 employees typically account for more than 80 percent of the calls received by the Small Business Hotline. The majority of these calls involve requests for information and assistance in interpreting and complying with EPA regulations. Given the general unfamiliarity of the small businessperson with the RCRA regulations, EPA believes that these small businesses may have a more difficult time interpreting and complying with complicated RCRA regulations. Since they are smaller businesses, we also assume that they have lower profit margins and fewer financial resources to comply with full Subtitle C regulations. Therefore, the Agency is today proposing to modify the standards for these generators.

B. Protection of Human Health and the Environment

Generators of 100–1000 kg/mo would be less capable of absorbing the impacts of full regulation than would generators producing over 1000 kg/mo of hazardous wastes because of the distinction in business size and business type as discussed above. However, Congress did not intend that the Agency consider impacts on these generators in a void. The second theme that emerges from the statute and the legislative history is that the Agency must assume protection of human health and the environment when developing standards for 100–1000 kg/mo generators.

The legislative history construing the Agency's mandate to asssure protection of human health and the environment attempts to furnish a framework by which Administrator may assure protection of human health and the environment while varying the standards for 100–1000 kg/mo

[6] *Natinal Small Quantity Hazardous Waste Generator Survey;* Abt Associates, Cambridge, MA; February 28, 1985. *National Survey of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities Regulated Under RCRA in 1981;* Westat, Rockville, MD; April 20, 1984.

generators. The factors specified by Congress as necessary for such a determination are waste characteristics, waste management practices and locational criteria. Conference Report at 103. Congress anticipated that based upon these three criteria, the Administrator would be able to make distinctions between 100–1000 kg/mo generators and generators of larger quantities of waste.

The Agency believes that Congress did not intend the Agency to exclusively rely upon these factors. First, as a general matter, the Agency has always had the authority to consider these factors when making risk judgments for all hazardous wastes and has traditionally evaluated these criteria when making hazardous waste regulatory decisions. The Agency would, as a matter of course, have evaluated these criteria as part of this rulemaking irrespective of this legislative discussion. Consequently, the Agency believes that Congress must have intended that the Agency consider, and rely upon, other criteria as well when developing such standards.

Second, the Agency has considered the three criteria specified by Congress as providing a distinction between large quantity generators and 100–1000 kg/mo generators. After evaluating these criteria, the Agency has been unable to rely upon waste management practices, locational criteria or waste characteristics to draw meaningful distinctions between the two classes of generators. Data from EPA's survey of small quantity generators indicate that both small and large quantity generators produce many of the same types of waste and use many of the same waste management practices. Moreover, the Agency is unaware of any significant differences in locational criteria for the two classes of generators.

Therefore, under its broad discretion to protect human health and the environment, the Agency has evaluated the available survey data in order to determine if there are other factors which should also be considered by the Agency when fashioning such standards. As a result of such an evaluation, the Agency believes that it is both appropriate and consistent with Congressional intent to consider the "relative risk" posed by smaller quantities of waste when developing standards which assure protection of human health and the environment.

Based on survey data, the Agency now estimates that there are 630,000 generators of hazardous waste producing less than 1000 kg/mo of such wastes. This class of hazardous waste generator produces approximately 940,000 tons of hazardous waste annually. At levels of generation below 100 kg/mo, 455,000 generators account for only 0.07 percent of the hazardous waste generated annually (180,000 tons). This leaves an estimated 175,000 100–1000 kg/mo generators producing 760,000 tons of hazardous waste annually. In contrast, fewer than 14,000 generators produce more than 1000 kg/mo, yet these generators account for approximately 264 million tons of hazardous waste annually. In short, the 100–1000 kg/mo generators subject to today's proposal produce less than 0.3 percent of the hazardous waste generated annually when compared to the larger generators. In general, the Agency believes that given the small aggregate amounts of hazardous waste generated by 100–1000 kg/mo generators and the large number of potentially affected firms, the impacts of hazardous waste regulation must be carefully weighed against the need to protect human health and the environment.

While the Agency believes that wastes from small quantity generators, when aggregated, pose substantial overall risks, our analysis indicates that on a per-firm basis, the lesser quantities of waste managed by these generators may pose less relative risk than the significantly larger quantities of waste managed by larger generators.

A necessary component when comparing relative risks is an analysis of environmental threat. The environmental threat posed by a particular waste is most often associated with (1) spills resulting from transportation accidents and mishandling during transit, and (2) leaks from treatment, storage, or disposal facilities. These criteria are, for the most part, quantity-related. For instance, given a specific waste stream, a large spill from a hazardous waste transporter is likely to cause greater environmental damage (in a relative sense) than is a small spill. Likewise, major leaks from treatment, storage, or disposal facilities are likely to result in more significant environmental damage (again, in a relative sense) than are small leaks from such facilities.

This being the case, the Agency believes that in a qualitative sense the relative impact of a spill or leak is proportional to the quantity of the waste released. Since the quantity of waste generated by a 100–1000 kg/mo generator is substantially lower than the quantity generated by a larger generator, in terms of annual waste generation, the relative risk to human health and the environment from any given 100–1000 kg/mo generator's waste is also lower. Given this difference in relative risk, varying standards for 100–1000 kg/mo generators from those applicable to large generators would still assure protection of human health and the environment.

Relying upon a relative risk approach may arguably conflict with some specific legislative history. Congress asserted that the hazardousness of a given waste is imparted by its inherent properties and is not a function of the specific volume of those wastes. House Report at 26. The literal language of this legislative history could be read to conflict with the relative risk concept just discussed. Nonetheless, EPA believes that factually the quantity of a waste affects the relative risk it presents.[7] Therefore, the Agency believes that it is important to consider the quantity of waste involved in honoring the underlying Congressional theme of assuring protection of human health and the environment when fashioning alternate standards for 100–1000 kg/mo generators.

C. Balancing Impacts and Protection of Human Health and the Environment

The Agency confronts a challenge when fashioning standards for 100–1000 kg/mo generators of hazardous waste. On the one hand, the Agency is cognizant of the impacts which may be suffered by these generators if full Subtitle C standards are imposed. As discussed previously, the specific legislative history requires the Administrator to consider varying such standards in light of these perceived impacts. On the other hand, the Agency is mindful of its mandate to assure protection of human health and the environment when fashioning alternate standards for 100–1000 kg/mo generators.

In order to honor the two major themes inherent in section 3001(d)—protecting human health and the environment and avoiding unreasonable burdens on 100–1000 kg/mo generators—the Agency must, of necessity, engage in some balancing of these two competing goals. It appears that Congress anticipated that EPA would have to do some such balancing when writing the small quantity generator provisions. In a Congressional debate, the small quantity generator amendment was referred to as "an amendment that would be balanced between the protection of public health

[7] By way of analogy, it should be pointed out that the quantity of waste present is a factor in the statutory definition of hazardous waste, section 1004(5), and in the regulatory criteria for listing hazardous waste in § 261.11.

from the potential dangers that are associated with the disposal of hazardous waste on the one hand and the protection of over a million small businesses in America from burdensome, unnecessary regulations and paperwork." 129 Cong. Rec. H 9712 (daily ed. Nov. 3, 1983).

In order to develop standards which adequately balance impacts and protection of human health and the environment, the Agency has evaluated the potential impact of full Subtitle C regulation with respect to both administrative and technical considerations. As a result of this evaluation, the Agency is today proposing standards for 100–1000 kg/mo generators. A detailed discussion of these standards is presented in Part II of this package. This section merely sets forth the general rationale for EPA's approach in developing such standards.

1. *Administrative Standards.* The Subtitle C regulations impose administrative requirements on generators of hazardous wastes which include various recordkeeping and reporting requirements. In determining whether or not administrative requirements should be varied for 100–1000 kg/mo generators, the Agency first evaluated the impact of imposing full Subtitle C requirements on these generators. As suggested previously, Congress anticipated varying standards for these generators as a means of reducing impacts. In particular, the legislative history provides strong support for a minimization of reporting and recordkeeping requirements in order to relieve the administrative burden on this class of generators. Therefore, the Agency believes that it is in keeping with the legislative history to provide administrative relief for these generators.

The Agency next analyzed whether protection of human health and the environment would be assured if administrative relief were accorded these generators. As a general matter, the Agency believes that these administrative requirements, while environmentally significant, do not always constitute the essence of various environmental requirements. For example, while roundtrip manifesting of hazardous waste is important, a key purpose of the manifesting requirements is to ensure that the wastes are sent to the proper treatment, storage or disposal facility. Today's proposed rulemaking does not change that duty. Only the "round-trip" nature of the manifest has changed. In some circumstances such as the "round-trip" manifest, it may be appropriate to relieve a generator of administrative requirements when basic underlying concerns of the RCRA program would still be met.

In analyzing the importance of administrative requirements for the protection of human health and the environment the Agency evaluated the relative risk posed by smaller quantities of hazardous waste. This evaluation differed depending on whether there was on-site or off-site accumulation of these hazardous wastes. The statute allows generators to store hazardous waste on-site for less than 180 days (or 270 days if the waste was transported greater than 200 miles) without a permit or interim status. As discussed in Part II, Section II.D., there is a limitation on such on-site accumulation of 6,000 kg of hazardous waste. Generators storing for less than 180 days (or 270 days) would be storing smaller quantities of hazardous waste (in a relative sense) because the amount of wastes which could be accumulated would necessarily be limited. Therefore, the relative risk from releases of such wastes would be less. Given this relative risk factor in conjunction with the need to alleviate impacts for these generators, the Agency is today proposing to relieve some Part 262 standards which are administrative in nature, for 100–1000 kg/mo generators accumulating hazardous wastes on-site for less than 180 days (or, if appropriate, 270 days). These proposed standards are discussed in Part II, Section II.D.

For 100–1000 kg/mo generators who do not store hazardous wastes on-site for less than 180 days (or in certain circumstances, 270 days) or off-site facilities that manage wastes *only* from 100–1000 kg/mo generators, the evaluation of relative risk is slightly different. Under section 3001(d), these facilities are required to obtain either a permit or interim status, and would accordingly be subject to Part 264 or Part 265 standards. Since these facilities have no limits on the amount of hazardous waste accumulated it does not necessarily follow that these generators will be accumulating minimal amounts of waste. Therefore, the relative risk from releases of such wastes are not necessarily small for these facilities. Given the higher risk posed by such facilities, the Agency is not lessening the Part 264 or Part 265 administrative standards for such generators.

2. *Technical Standards.* The RCRA regulations in Parts 264 and 265 contain various technical standards governing the accumulation of hazardous wastes. In developing regulations for 100–1000 kg/mo generators, the Agency examined whether such technical standards were appropriate for hazardous wastes produced by these generators in the context of the balancing approach described above.

The Agency first evaluated the impact of imposing full Subtitle C technical standards on 100–1000 kg/mo generators. Given the distinctions in business size and business types between these generators and larger generators, the Agency believes that the imposition of certain technical standards could cause a small business to experience greater impacts than would a larger generator. Although the Agency believes that Congress primarily intended to relieve these generators from administrative impacts, it is arguable that Congress was also concerned with other requirements which would impose burdens on small businesses. *See* Conference Report at 103. This would include technical requirements.

The second tier of the balancing approach involves an evaluation of whether human health and the environment would be protected if Subtitle C technical standards were varied for these wastes. Clearly the technical requirements are more essential than the administrative requirements to the general goal of protecting human health and the environment because they are directly concerned with controlling releases to the environment. Thus, EPA believes that the decision to waive technical requirements for management of small quantity generator wastes must be made with great care. At this time, the Agency believes that protection of human health and the environment overrides the potential impacts which the technical standards may cause on these firms and is not, therefore, proposing to relieve 100–1000 kg/mo generators of any of the existing technical requirements. However, as discused in the next Section, EPA may decide to modify for 100–1000 kg/mo generators the proposed technical standards for accumulation tanks. The Agency may find, based on a risk assessment now being conducted for hazardous waste accumulation tanks, that the impacts of the proposed amendments would outweigh the risks from these generators' accumulation tanks.

VI. Impact of Proposed Hazardous Waste Tank Amendments on 100–1000 kg/mo Generators

On June 26, 1985, EPA proposed amendments to the technical standards for hazardous waste tanks contained in Subpart J of Parts 264 and 265. (See 50 FR 26444–26504.) Among other things,

these amendments would generally require that hazardous waste tanks be equipped with a secondary containment system to contain releases of hazardous waste that pose a threat to human health and the environment. This section discusses the impacts which those proposed amendments could have on generators of 100–1000 kg/mo that manage hazardous waste in tanks, if the tank amendments are finalized.

1. Short-Term Accumulation

As discussed in detail in Part II of today's preamble, EPA is proposing to subject generators of 100–1000 kg/mo to most of the existing Part 262 standards applicable to larger generators, with the exception of certain manifest and recordkeeping and reporting requirements. Among the standards which EPA is proposing to apply to 100–1000 kg/mo generators are the requirements of § 262.34 applicable to generators that accumulate hazardous waste on-site prior to off-site shipment. Today's proposal would extend the period of on-site accumulation from the current 90 days to 180 (or 270) days for 100–1000 kg/mo generators without the requirement to obtain a RCRA permit, in accordance with the HSWA of 1984. In addition, the Agency is today proposing to modify for these generators the requirements for contingency plans and personnel training (contained in Subpart D of Part 265 and § 265.16). However, the Agency is proposing to apply the existing requirements for preparedness and prevention (contained in Subpart C of Part 265), for storage in containers (contained in Subpart I of Part 265), as well as the *existing* requirements for storage in tanks (contained in Subpart J of Part 265). (See Part II, Section II.D.2. of today's preamble.)

EPA has initially concluded that the existing Subpart J requirements for accumulation in tanks are those necessary to protect human health and the environment from wastes stored by these generators. However, the Agency has not yet determined whether the *proposed* amendments to Subpart J of Part 265 requiring secondary containment for short term accumulation tanks should also be applied to generators of 100–1000 kg/mo since the Agency has not yet completed an assessment of the potential risks which such accumulation tanks may pose. Pending the completion of such a risk assessment for these generators, the Agency is not proposing the application of the secondary containment requirement to these generators, particularly in light of the significant impacts which such a requirement could have on generators of 100–1000 kg/mo. The Agency estimates that these tank amendments, if finalized as proposed and applied to the accumulation tanks of 100–1000 kg/mo generators, could impose additional annualized compliance costs of from $23 million to $26 million.

While the proposed amendments to Subpart J of Part 265 would impose secondary containment requirements upon generators accumulating hazardous waste in tanks, the Agency also invited comment on several other options that would tailor standards to risks posed by different wastes and environments. The Agency will also consider the application of those options to 100–1000 kg/mo generators.

Today, the Agency is not proposing to apply the secondary containment requirement to 180 (or 270) day accumulation tanks operated by 100–1000 kg/mo generators. However, if secondary containment is chosen for Subpart J of Part 265, the Agency will consider, and is requesting public comment on, four options for applying those amendments to 100–1000 kg/mo generators. The first option is a conditional exemption from secondary containment for generators of 100–1000 kg/mo who store relatively small amounts of waste for less than the statutorily exempted period of 180 (or 270) days. This exemption would be available under conditions that restrict both the amount of waste stored and the duration of storage. Further, the exemption could be withdrawn at the discretion of the Regional Administrator in situations that were known to pose an unacceptable risk to human health and the environment. The Agency solicits comment on the construction of such an exemption, both in terms of what constitutes a safe level of storage and a safe storage duration for 100–1000 kg/mo generators.

A second option the Agency is considering would require secondary containment for 180 (or 270) day accumulation tanks only for new tanks and those existing tanks that have been determined to be leaking, based on application of a leak detection scheme.

A third option would require secondary containment for all tanks operated by 100–1000 kg/mo generators, regardless of quantity stored or duration of storage. Such an option would be selected only if the results of the Agency's risk assessment indicated that the potential risk reduction would justify imposing secondary containment for all tanks in order to protect human health and the environment.

The final option the Agency is considering would simply delay the effective date of secondary containment requirements as applied to 180 (or 270) day accumulation tanks operated by 100–1000 kg/mo generators. Such an option could be applied to only new or leaking tanks, as discussed in the second option, above, or to all tanks of 100–1000 kg/mo generators.

Based on the results of the risks assessment now being conducted for 100–1000 kg/mo generator tanks and the comments received on both the Subpart J proposal and today's proposed rules for 100–1000 kg/mo generators, EPA will make a final determination on the application of secondary containment requirements to generators of 100–1000 kg/mo that accumulate waste on-site for up to 180 (or 270) days. However, at this time, EPA is proposing that only the existing Subpart J requirements for storage in tanks would apply to these generators. The Agency will determine, based upon comment, what rules are appropriate for 100–1000 kg/mo generators who accumulate in tanks when it publishes this rule in final form, unless this final rulemaking occurs prior to the final rulemaking which amends Subpart J of Part 265. Should this occur, the Agency will address accumulation in tanks by 100–1000 kg/mo generators in the final Subpart J rulemaking. For this reason, the Agency encourages the submission of comments addressing secondary containment requirements in response to both today's proposal and the proposed amendments to Subpart J.

2. Storage Tanks Subject to Permit Requirements

Under today's proposal, generators of 100–1000 kg/mo that store hazardous waste in tanks for longer than 180 (or 270) days would be subject to full regulation under Parts 264 and 265 of the hazardous waste regulations as a hazardous waste facility. As discussed in Part II, Section IV.A. of this preamble, the Agency sees no basis for distinguishing these generators from other hazardous waste facilities. Since such generators would be considered hazardous waste facilities under today's proposal and subject to the interim status standards of Part 265 and the permitting standards of Part 264, the secondary containment requirements for tanks, if finalized, would apply to such facilities. The Agency estimates that the application of the proposed secondary containment requirement (as well as the other proposed Subpart J technical amendments) to storage tanks of 100–1000 kg/mo generators that would require a permit under today's proposal could impose estimated additional

annualized compliance costs on these generators of $11 million.

Part II—Detailed Discussion of Proposed Regulations for Generators of 100–1000 kg/mo of Hazardous Waste

I. Applicability and Scope of Today's Proposal

This section addresses the scope of today's proposed rulemaking with respect to those generators covered by the proposed rule as well as those who are not affected by today's action and discusses those materials and practices which are subject to regulation and those which are not.

A. Proposed Redefinition of Small Quantity Generator—§ 261.5

EPA is today proposing to amend 40 CFR § 261.5 to redefine a small quantity generator as a generator that produces no more than specified quantities of acutely hazardous waste and no more than 100 kg of hazardous waste in a calendar month. By removing them from the § 261.5 exemption for small quantity generators, 100–1000 kg/mo generators would, instead, be subject to Parts 262—265, and 270 and 124 of the hazardous waste regulatory program.[8] However, EPA is proposing specific amendments to Part 262 that would relieve 100–1000 kg/mo generators from some of the administrative burden of complying with the hazardous waste regulations. The specific exemptions from Part 262 which would be applicable to 100–1000 kg/mo generators are discussed in detail in this Part of the preamble and will be specified in the regulatory language.

The term "small quantity generator" has, to date, referred to those generators who have been exempt from most of the hazardous waste regulatory program (*i.e.*, those generating less than 1000 kg/mo of non-acutely hazardous waste and those generating less than specified quantities of acutely hazardous waste). Since generators of 100–1000 kg/mo of hazardous waste would be subject under today's proposal to most of the hazardous waste regulatory program, the Agency believes that continuing to call such generators small quantity generators will result in substantial confusion as to the requirements that apply to the various classes of generator.

The proposed redefinition of "small quantity generator" would, therefore, result in there being two classes of large quantity generator (*i.e.*, those generating above 1000 kg/mo and those generating between 100 and 1000 kg/mo of hazardous waste), and two classes of small quantity generator *i.e.*, those generating less than 100 kg/mo of non-acutely hazardous waste and those generating specific quantities of acutely hazardous waste).

EPA is also proposing a clarifying amendment to § 261.5(c) to help reduce the confusion over what wastes are and are not counted in making quantity determinations for purposes of § 261.5. Section 261.5(c) currently states that in determining the quantity of hazardous waste he generates, a generator need not include those hazardous wastes that are recycled and exempted from regulation. However, the Agency believes that *all* hazardous wastes that are exempt from regulation should not be included in the quantity determinations. This principle has been in effect for recycled hazardous waste since May 19, 1980 (see 45 FR 33084–33133), and there is no basis for limiting the principle to recycling situations. An interpretation limited to recycling situations could lead to a circumstance where someone generating hazardous waste which is completely exempt from regulation would still be a large quantity generator; such an outcome does not make sense. We are, therefore, proposing to amend § 261.5(c) to make it clear that all hazardous waste that is excluded or exempted from regulation need not be included in the quality determinations.

In addition, there may be situations where generators are exempt from the substantive requirements (*i.e.*, manifesting or storage or accumulation) but are still subject to minimal regulation (*e.g.*, hazardous waste determination and notification). We believe that in these situations, the quantity of hazardous waste generated also need not be included in the quantity determination to avoid the same circumstances discussed in the preceding paragraph. Therefore, we are proposing to add a sentence to § 261.5(c) which would indicate that any hazardous waste that is exempted from regulation under 40 CFR Part 263, 264, 265 or 262.34 and the consequent permitting requirements need not be included in the quantity determination. This provision would eliminate counting of wastes exempted from regulation (see, *e.g.*, § 261.4, or § 264.1(g) (2), (4), (5) and (6)). This provision also would eliminate, among other things, the multiple counting of wastes which are reclaimed and then reused many times during the calendar month provided the material is not stored or accumulated before being reclaimed. For example, under today's proposed amendment, generators would need count the quantity of a spent solvent only if it becomes subject to substantive regulatory requirements.

B. Generators of Acutely Hazardous Waste

The HSWA explicitly states that the requirements applicable to generators of acutely hazardous waste (*i.e.*, those wastes listed in § 261.33(e)) are not affected by the HSWA amendments. (Section 3001(d)(7)). Thus, today's regulatory amendments will not alter those requirements applicable to generators of acutely hazardous wastes and these generators will remain subject to the exclusion limits contained in § 261.5(e).

C. Generators of Non-Acutely Hazardous Waste in Quantities Less Than 100 kg/mo.

The HSWA gives EPA authority to promulgate regulations for generators of less than 100 kg of hazardous waste per month if the Administrator determines that such standards are necessary to protect human health and the environment. However, the Agency is not required to promulgate such regulations. The Agency is not proposing to further extend coverage of the hazardous waste program to this class of hazardous waste generator at this time, beyond the minimal requirements currently in effect, for two reasons.

First, the Agency has no data to indicate that regulation of generators of less than 100 kg/mo of non-acutely hazardous waste will provide any significant additional level of environmental protection. Generators of less than 100 kg/mo of hazardous waste account for only 20% of the wastes generated by small quantity generators and less than .07 percent of the total quantity of hazardous waste generated nationally. A review of damage cases also indicates that very few incidents involved quantities below 100 kg.

Second, if full Subtitle C regulation were extended to generators of less than 100 kg of hazardous waste in a calendar month, as many as 455,000 additional establishments could be brought into the regulatory system.[9] Implementation of even minimal regulation on a population of this size would seriously weaken the Agency's efforts to permit existing

[8] Generators of hazardous waste in quantities greater than 100 kg but less than 1000 kg in a calendar month who do not qualify for the 180 or 270 day exemption will be required to comply with the full set of facility standards in Parts 264 and 265, to the extent that those standards apply.

[9] See Abt Associates Inc., *National Small Quantity Hazardous Waste Generator Survey:* February 28, 1985.

hazardous waste management facilities and enforce the existing regulations.

D. Materials That Are Not Solid Wastes

Certain materials are specifically excluded under § 261.4(a) from being considered solid wastes and are fully exempted from coverage under today's proposal since a material must first be a solid waste to be considered hazardous waste and, therefore, subject to regulation under Subtitle C of RCRA. Of specific importance to 100–1000 kg/mo generators is the exclusion for domestic sewage, and any mixture of domestic sewage and other wastes, which passes through a sewer system to a publicly owned treatment works (POTW) for treatment. Such sewage is not considered to be a solid waste, and is, therefore, exempt from regulation under Subtitle C of RCRA and regulated instead under the Clean Water Act.[10] The HSWA directs EPA, however, to study the existing exemption under RCRA for hazardous materials that are mixed with domestic sewage and discharged to a POTW, and to report to Congress early in 1986. The Agency is currently conducting this study, and may propose amendments to existing requirements under RCRA and CWA, if appropriate.

E. Requirements for Recyclable Materials—§ 261.6

Section 261.6 contains special requirements for materials that are recycled. In general, most materials that are recycled are subject to regulation under Parts 262 through 266 and Parts 270 and 124 of the hazardous waste regulations unless specifically excluded from regulation under § 261.6(a)(3).

While the diversity of materials generated and recycling practices utilized by 100–1000 kg/mo generators precludes a complete discussion of which materials and practices are exempted and which must be considered in the small quantity generator calculation, two specific materials—spent lead-acid batteries that are reclaimed and used oil—merit some discussion because of the prevalence of these materials among generators of between 100 and 1000 kg/mo of hazardous waste.

1. *Spent Lead-Acid Batteries*—According to EPA's survey of small quantity generators, spent lead-acid batteries account for roughly 370,000 metric tons a year, or 62 percent of the hazardous waste generated by 100–1000 kg/mo generators. The survey data also indicate that roughly 90 percent of these batteries are reclaimed.

Under § 261.6(a), persons who generate, transport, or collect spent batteries, or who store spent batteries prior to recycling, but do not recycle the batteries themselves, are not subject to regulation under Parts 262 through 266 and Parts 270 and 124 or the notification requirements of Section 3010 of RCRA. In addition, generators of spent lead-acid batteries that are destined for recycling do not have to count the weight of their batteries in determining if they are excluded from regulation as a small quantity generator under proposed § 261.5 or if they are subject to regulation under Part 262 as a 100–1000 kg/mo hazardous waste generator. (see 50 FR 665, January 4, 1985).[11]

2. *Used Oil*—Under the existing regulatory scheme, used oil is not considered a hazardous waste unless it exhibits one of the characteristics of hazardous waste, usually ignitability. Unless the oil has been mixed with solvents or other ignitable materials, it is unlikely that used oil would exhibit a characteristic of hazardous waste. Furthermore, even if the oil does exhibit a characteristic, the revised definition of solid waste specifically excludes used oil from being considered in the small quantity generator determination provided it is recycled (See 50 FR 665). Thus, as is the case with lead-acid batteries, 100–1000 kg/mo generators are not required to count the weight of any used oil when determining whether they are subject to the small quantity generator exclusion under proposed § 261.5 or subject, instead, to Part 262 as a generator of 100–1000 kg/mo of hazardous waste.

II. Standards for Generators of Hazardous Waste

A. Overview of Part 262 Standards for 100–1000 kg/mo Generators

As discussed in Section I.A. of this part of the preamble, EPA is today proposing to subject hazardous waste generators of 100–1000 kg/mo to the Part 262 generator standards and to amend a number of those requirements to simplify the regulatory system for this group of generator. Part 262 is divided into five subparts: Subpart A, General; Subpart B, The Manifest; Subpart C, Pre-Transport Requirements; Subpart D, Recordkeeping and Reporting; and Subpart E, Special Conditions. This section of the preamble discusses the existing Part 262 requirements in each of the Subparts and the Agency's proposals with respect to whether the requirement should be retained, modified, or waived for 100–1000 kg/mo generators. In many cases, EPA has concluded that the existing requirement is both necessary and appropriate for 100–1000 kg/mo generators and is not proposing any modification.

The specific Part 262 requirements which EPA *is* proposing to amend for application to 100–1000 kg/mo generators are as follows:

- Section 262.20 (General Manifest Requirements) would be amended to exempt generators of 100–1000 kg/mo from all manifest requirements if their hazardous waste is reclaimed under contractual agreements whereby ownership of the material does not change hands and provided the generator complies with specific recordkeeping requirements set forth in this section.
- Section 262.22 (Number of Copies) and § 262.23 (Use of the Manifest) are proposed to be modified to require that the 100–1000 kg/mo generator use only a single copy of the Uniform Hazardous Waste Manifest and give the transporter the single copy. Generators of 100–1000 kg/mo would be excluded from the requirement to retain one copy of the manifest.
- Section 262.32 (Marking) would be modified to exempt 100–1000 kg/mo generators from the requirement to mark containers with a Manifest Document Number;
- Section 262.34 (Accumulation Time) is proposed to be amended to extend the period of on-site storage allowed for 100–1000 kg/mo generators without the need to obtain interim status or a RCRA permit to 180 or 270 days for quantities not to exceed 6000 kg. In addition, § 262.34 would be amended to specify the requirements that would apply to such on-site storage by these generators.
- With the exception of records pertaining to hazardous waste determination under § 262.40(d) and the extension of retention periods under § 262.40(c), EPA is proposing to exempt generators of 100–1000 kg/mo from all of

[10] Waste discharged to a public sewer system is exempted from RCRA to avoid duplicative regulation since such wastes are regulated under the Clean Water Act. While disposal of hazardous wastes in this manner is not a violation of RCRA, the general pretreatment standards under the Clean Water Act contained in 40 CFR 403.5 prohibit the introduction of wastes into POTWs that would interfere with the operation of the treatment plant or subsequent POTW sludge management.

[11] It should be noted that while this exemption may significantly impact the number of 100–1000 kg/mo generators actually subject to regulation under the new RCRA amendments, used lead acid batteries sent off-site for reclamation are still subject to DOT requirements for packaging, labeling, and shipping. In addition, some States which regulate small quantity generators more stringently than EPA may require that spent lead-acid batteries be included in the small quantity generator calculation.

Subpart D—Recordkeeping and Reporting.

B. Part 262, Subpart A—General Standards Applicable to 100–1000 kg/mo Generators

1. *Purpose, Scope, and Applicability (§ 262.10)*—This section addresses the general applicability of Part 262 to hazardous waste generators. Since 100–1000 kg/mo generators are no longer excluded by § 261.5 from regulation under Part 262, the requirements of this section would apply to these generators. No amendments to § 262.10 are being proposed in today's notice.

2. *Hazardous Waste Determination (§ 262.11)*—Currently, in order to qualify for the existing small quantity generator exclusion in § 261.5, a generator must comply with § 261.11 to determine whether or not it generates a hazardous waste. This requirement is a crucial first condition for any generator to know that he is subject to the requirements of Part 262. In addition, the existing waste determination requirements do not require the generator to conduct expensive tests to determine if it generates a hazardous waste; instead, he may apply other knowledge of the material in order to make the necessary determination. Since the potential for widespread evasion of responsibilities under RCRA would be significant if potential generators were not responsible for determining whether their wastes are hazardous, EPA sees no reason to amend this requirement for 100–1000 kg/mo generators.

EPA recognizes that many 100–1000 kg/mo generators are likely to be unaware that they generate hazardous waste or have difficulty interpreting or applying the criteria for determining whether a waste is hazardous. The Agency is developing an education program designed to assist these generators in determining if they generate a waste regulated under RCRA and to help them understand the requirements which apply to them.

3. *EPA Identification Numbers (§ 262.12)*—Section 262.12 currently applies to hazardous waste generators not excluded under the small quantity generator provisions of § 261.5 or otherwise excluded under § 262.10. Under this provision, a generator: (1) May not treat, store, dispose of, transport, or offer for transportation, hazardous waste without receiving an EPA identification number; (2) may obtain an EPA Identification Number by applying to the Administrator on EPA form 8700–12; and (3) may not offer his hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.

Today's proposal would subject generators of 100–1000 kg/mo to the requirements of this section for several reasons.

First, the EPA identification number allows the Agency to identify each member of the regulated community and establish a centralized data base of establishments subject to regulation under the hazardous waste provisions of RCRA. This data base is essential for effective compliance monitoring and enforcement, for characterizing the regulated community for its own analyses and in response to requests from others, including the Congress, and for making resource projects. The assignment of a unique identification number as an adjunct to names and addresses is essential for the type of automated filing and data processing necessary to effectively manage any large population.

Second, the Agency does not believe that the requirement to obtain a U.S. EPA Identification Number poses an unreasonable burden for 100–1000 kg/mo generators since it is a one time requirement with associated costs estimated at less than $40 per establishment.[12] In fact, many of these generators have already obtained an EPA identification number and would not be required to do so again. Further, in order to keep accurate records, it is likely that transporters, disposal facilities, and many of the states will require 100–1000 kg/mo generators to obtain EPA identification numbers even if EPA chose not to require such numbers.

Finally, the requirement to offer hazardous wastes only to treatment, storage, and disposal facilities with an EPA identification number (taken along with the requirements of § 262.20) establishes the obligation of generators to ensure that their wastes are managed in accordance with Subtitle C of RCRA.

In light of the predominantly small business nature of 100–1000 kg/mo generators, EPA considered whether to propose a simpler system for obtaining ID numbers for these generators. Among the alternatives considered were: (1) A simplified notification form which would ask only for name, address, and certification and not require the identification of wastes generated by that establishment, and (2) a system that would allow an identification number to be obtained over the telephone.

[12] Estimate updated from *Economic Impact Analysis of RCRA Interim Status Standards—Volume II;* Arthur D. Little: November 1981.

The Agency has concluded that the first approach, a simplified form, would not result in any significant savings for these generators. The existing notification form is a relatively simple and easily completed form and the Agency is not aware of instances where generators have had difficulty understanding or completing the form. The only potential area of confusion is the requirement to list the wastes generated by the establishment on the reverse side of the form. Currently, any hazardous waste generator is required under § 262.11 to determine if his waste is hazardous. The requirement to list those wastes on the notification form would not impose any significant additional burden.

The second approach we considered would allow these generators to obtain a U.S. EPA Identification Number by telephone. Administrative and technical considerations forced us to reject this approach. Lack of a verifiable record, signed by the waste handler, would yield a high potential for misrepresentation or confusion, resulting in a single U.S. EPA Identification Number assigned to multiple facilities or one facility having more than one U.S. EPA Identification Number.

While EPA believes that requiring identification numbers from generators of between 100 and 1000 kg of hazardous waste in a calendar month is both necessary and appropriate, the Agency is requesting public comment on this issue. Specifically, is a requirement to obtain a U.S. EPA Identification Number necessary to ensure protection of human health and the environment from the potential mismanagement of small quantities of hazardous waste? Is the existing system of obtaining an identification number appropriate for these hazardous waste generators?

C. Part 262, Subpart B—The Manifest

1. *General Overview.* Under today's proposed redefinition of a small quantity generator (See Part II, Section I.A.), generators of 100–1000 kg/mo would be subject to Part 262, including the manifest provisions of Subpart B. However, EPA is today proposing to modify the manifest system currently applicable to larger generators of hazardous waste to exempt generators of 100–1000 kg/mo from the requirements to prepare multiple copies of the Uniform Hazardous Waste Manifest (§ 262.22), retain a copy for the generator's records (§ 262.23(a)(3)), and provide multiple copies to the transporter (§ 262.23(b)). In essence, EPA is proposing to exempt generators

of 100–1000 kg/mo from the "roundtrip" or "tracking" function of the manifest (*i.e.*, establishment of a paper trail for enforcement purposes) while preserving and expanding the notice functions of the "single copy" manifest discussed earlier.[13] EPA has concluded that the information contained on the manifest is necessary to ensure that emergency personnel and others handling the waste during transportation and subsequent management have sufficient information to handle the waste safely. Under this system, 100–1000 kg/mo generators would be required to complete a single copy of the manifest in its entirety (with the exception of the manifest document number) and ensure that this manifest accompany the waste when it is shipped off-site. Section 261.5(h) currently provides for a partial manifest system for generators of 100–1000 kg/mo, as required by HSWA section 3001(d)(3). (See 50 FR 28702–28755, July 15, 1985.) Since generators of 100–1000 kg/mo would be subject to Part 262 under today's proposed rulemaking, the manifest requirements for these generators in § 261.5(h) would be deleted and 100–1000 kg/mo generators would be subject to the applicable requirements in Part 262, Subpart B.

The HSWA explicitly requires EPA to study the existing manifest system as it applies to small quantity generators and recommend whether the current system should be retained or whether a new system should be introduced. In addition, as noted earlier, the legislative history accompanying the HSWA makes it clear that Congress believed that small quantity generators are generally smaller businesses and intended for the Agency to relieve these generators of as much of the administrative burden of the hazardous waste regulations as possible, consistent with the Agency's mandate to place protection of human health and the environment above other considerations.

Thus, a review of the entire manifest system, including the format of the manifest that should ultimately apply to generators of 100–1000 kg/mo, is being conducted with the goal of reducing the administrative burden on these generators while assuring protection of human health and the environment. EPA has concluded that imposition of the full manifest system for generators of 100–1000 kg/mo is not warranted at this time. The Agency believes that requiring 100–1000 kg/mo generators to obtain an EPA identification number (§ 262.12), to complete a copy of the manifest for all off-site shipments (§ 262.20), and requiring facilities to retain copies of each manifest they receive (§ 265.71(a)(5)) creates a substantial legal obligation that the waste be managed at approved hazardous waste management facilities and thus assures protection of human health and the environment. EPA does not believe that this obligation would be significantly enhanced by requiring the use and distribution of multiple copies of the manifest.

While the Agency is proposing to reduce the manifest requirements for generators of 100–1000 kg/mo by eliminating the need for multiple copies, we are requesting specific public comment on the utility of the single copy manifest system being proposed today for these generators. Specifically, will the "single copy" manifest significantly ease the burden on 100–1000 kg/mo generators? Will this reduced burden offset: (1) The potential confusion that separate manifest systems may cause; and (2) the elimination of the tracking function of the manifest for wastes from 100–1000 kg/mo generators?

A second manifest modification being proposed today would exempt 100–1000 kg/mo generators from all of the requirements of Part 262, Subpart B with respect to the manifest if the generator's waste is reclaimed under a contractual arrangement whereby the generator or the reclaimer retains ownership of the material at all times and provided specific recordkeeping requirements are fulfilled.

2. *Proposed Amendments to Subpart B—The Manifest*—a. *Proposed Manifest Exemption for Certain 100–1000 kg/mo Generators.* EPA is today proposing to exempt *certain* 100–1000 kg/mo generators from all of the Part 262, Subpart B manifest requirements under the following conditions:

1. The generators must have a written reclamation agreement with a recycling facility to collect and reclaim a specified waste and to deliver regenerated material back to the generator at a specified frequency;

2. The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator must be owned and operated by the reclaimer of the waste;

3. Either the generator or the reclaimer must retain title to the material at all times; and

4. The generator and transporter/reclaimer must comply with specific recordkeeping requirements.

It is the Agency's belief that wastes transported and reclaimed according to the above requirements satisfy the intent of the "single copy" manifest as described in today's proposal. As mentioned earlier, Congress intended the manifest system proposed for generators of 100–1000 kg/mo of hazardous waste primarily as a notification to subsequent handlers that the waste is hazardous. To the extent that all subsequent handlers of the waste are owned and operated by a single company and this company either owns the material or has been made aware of its nature through a contractual agreement, no additional notification appears necessary. Furthermore, such materials will continue to be subject to DOT shipping paper requirements which would provide necessary information to emergency personnel, should the need arise.

In addition, because ownership of the material does not change hands, reclamation agreements organized in the above fashion satisfy the Agency's concern that materials will be tracked properly and safely from the generator to the reclaimer since the owner of the material has a vested interest in ensuring that the material is managed properly. The existence of a contractual agreement also serves as a strong incentive for safe management because nonconforming shipments would constitute a breach of contract.

EPA has concluded that this type of recycling operation is environmentally desirable (this type of arrangement was complimented during the House of Representatives debate on H.R. 6307 for providing environmental safeguards; 128 Cong. Rec. H. 6740, daily ed. September 8, 1982) and the use of the manifest as a notification device would impose additional requirements on this segment of the regulated community without any corresponding benefits.

EPA is, therefore, proposing to amend § 262.20 by adding a new paragraph (e) to exempt from the manifest requirements of Part 262, Subpart B wastes produced by 100–1000 kg/mo generators if the generator meets the previous criteria, provided that:

1. A copy of the reclamation agreement is kept in the files of both the reclaimer and the generator;

2. The reclaimer/transporter records (for example, on a log or shipping document) the following information (which would be required of transporters in a proposed amendment to § 263.20):

- The name, address and EPA identification number of the generator;
- The quantity of waste accepted;
- All DOT required shipping information;

[13] The manifest system now in effect for 100–1000 kg/mo generators is described in Part I, Section IV.C.1.

• The date the waste is accepted.

3. The above record accompanies the waste as it is shipped from generator to recycling facility; and

4. The reclaimer/transporter keeps these records for at least three years.

EPA requests comment on this proposed exemption from the manifest requirements. In addition, the Agency is interested in comments concerning other situations in which the "notice" function of the single copy manifest may be unnecessary or where a simplified manifest form may be more appropriate.

b. *Proposed Amendment to § 262.20—General Requirements.* Section 262.20(a) requires a generator to prepare a manifest (EPA form 8700–22) according to the instructions included in the Appendix to 40 CFR Part 262 before transporting, or offering for transportation, hazardous waste. EPA is today proposing to amend § 262.20 to eliminate the manifest document number from the required manifest information for 100–1000 kg/mo generators. Since the manifest document number is intended to allow the multiple copies of a single manifest to be compared for tracking and recordkeeping purposes, it will not serve any specific purpose under the manifest system being proposed today for generators of 100–1000 kg/mo.

Under today's rulemaking 100–1000 kg/mo generators would be required to comply with all other manifest information requirements. Many of these requirements are already required for these generators under the manifest system now required by the statute, as well as by DOT requirements, with the exception of complete identification of the generator, transporter and facility, including EPA identification numbers. (See Part I, Section IV.C.1.) EPA is today requiring 100–1000 kg/mo generators to use EPA identification numbers on the manifest form since such numbers will serve to demonstrate that these generators have: (1) Complied with the requirement to obtain an EPA identification number and to offer their wastes only to transporters and facilities that have also received an EPA identification number (§ 262.12); and, (2) have complied with the requirement to ship their waste only to facilities authorized to manage that waste (§ 262.20).

The generator must designate at least one facility permitted to handle his waste and may designate an alternate facility if an emergency prevents the transporter from delivering the waste to the originally designated facility (§ 262.20 (b) & (c)). If the transporter is unable to deliver the waste to either the designated facility or the alternate facility, the generator must either specify another facility or instruct the transporter to return the waste to the generator (§ 262.20(d)).

As discussed in the background section of today's proposal, Congress specified in the HSWA that, at a minimum, EPA must require that all wastes from 100–1000 kg/mo generators be managed at a Subtitle C hazardous waste facility with interim status or a permit under Section 3005 of RCRA. Under the existing regulatory scheme, generators that do not manage their wastes on-site are required, by virtue of the general requirements for use of the manifest, to send their wastes only to Subtitle C facilities authorized to handle their wastes (§ 262.20(b)). By subjecting generators of 100–1000 kg/mo to Part 262 and removing them from the small quantity generator exclusion contained in § 261.5, these generators would, as a result of today's proposal, become subject to the requirement to send their wastes only to a facility authorized to manage that waste. Thus, the general requirements for use of the manifest embody the statutory requirement that wastes from small quantity generators producing more than 100 kg but less than 1000 kg in a calendar month manage their wastes at Subtitle C facilities.

c. *Acquisition of Manifests—§ 262.21.* This section describes the hierarchy for obtaining copies of the manifest form which currently applies to hazardous waste generators. If the State to which the shipment of waste is destined supplies a copy of the manifest and requires its use, the generator must use that manifest form. If the consignment State does not supply the manifest, but the State in which the generator is located supplies the manifest and requires its use, then the generator must use that State's manifest. If neither the generating State nor the destination State supplies the manifest, the generator may obtain and use a manifest from any source (*e.g.*, a transporter or facility).

In developing its hazardous waste program, EPA gave great weight to RCRA's emphasis on the role of the States in implementing the hazardous waste program. Both Sections 3006 and 3009 recognize the right of the States to impose requirements more stringent than the Federal requirements. EPA believes, therefore, that it is appropriate to consider the States' interest in designing their own unique procedures beyond the Federal requirements when establishing regulations. As a result, the Agency sees no reason to alter the hierarchy for obtaining the appropriate form since some existing State requirements mandating use of the manifest by their small quantity generators may be more stringent than EPA's proposed requirements and will, therefore, apply in those States.

d. *Proposed Amendment to § 262.22—Number of Copies.* This section states that the manifest consists of at least the number of copies which will provide the generator, each transporter, and the owner and operator of the designated facility with one copy each for their records and another copy to be returned to the generator.

Today's proposal would exempt 100–1000 kg/mo generators from the requirement to use a multiple copy manifest.[14] However, the designated facility would be required to retain in its files the single copy manifest. (See proposed amendments to § 264.71 and § 265.71—Use of Manifest.)

The purpose of this proposed amendment is to relieve 100–1000 kg/mo generators of the additional paperwork of having to prepare and manage multiple copies of the manifest form. The Agency requests public comment on the degree of administrative relief that would be achieved by this amendment and the potential impacts of the "single copy" manifest on existing hazardous waste management practices and State hazardous waste programs.

e. *Proposed Amendments to § 262.23—Use of the Manifest.* The requirements for use of the manifest are being substantially revised under today's proposal for generators of 100–1000 kg/mo. The existing system requires that the generator sign the certification, obtain the written signature of the transporter, retain one copy of the manifest and give the remaining copies to the transporter. Special requirements apply when the waste is being shipped either by rail or water transport.

Since the Agency is proposing to require the use of only a single copy manifest for 100–1000 kg/mo generators, this section will be amended to only require that these generators 1. sign the manifest (§ 262.23(a)(1); 2. obtain the signature of the transporter (§ 262.23(a)(2); and 3. ensure that it accompanies the waste shipment when it leaves the establishment (§ 262.23(b)). The Agency is proposing to modify § 262.23(a)(3) to exempt 100–1000 kg/mo generators from the requirement to retain a copy of the manifest in their files.

Because the Agency does not believe that 100–1000 kg/mo generators utilize transportation by rail or water, the

[14] Of course, a State may be more stringent and require multiple copies of the manifest.

Agency is not proposing to amend the special requirements for rail and water shipments contained in §§ 262.23 (c) and (d).

D. Part 262, Subpart C—Pre-Transport Requirements

This section of 40 CFR Part 262 (§§ 262.30 thru 262.34) includes requirements applicable to generators prior to shipment of waste off-site for treatment, storage, or disposal. The requirements for packaging (§ 262.30), labeling (§ 262.31), marking (§ 262.32), and placarding (§ 262.33) incorporate by reference DOT requirements (contained in 49 CFR Parts 172, 173, 176, and 178) under the Hazardous Materials Transportation Act (HMTA) which must be followed by all generators when shipping hazardous wastes from the point of generation. Congress specifically stated in the HSWA that DOT requirements were not affected by the amendments and, as a result, EPA is not generally proposing to amend these requirements. For the reasons previously discussed, EPA is proposing an amendment to § 262.32 conforming to the proposed § 262.20 amendment which would relieve 100–1000 kg/mo generators from the obligation to mark each container with the Manifest Document Number.

Section 262.34 contains the requirements for generators that accumulate waste on-site prior to shipment off-site. Under § 262.34(a) a generator may accumulate hazardous waste on-site in tanks or containers[15] in any quantity for up to 90 days without the need to have interim status or obtain a storage permit under RCRA (or comply with Part 264 or 265) provided the generator complies with the limited requirements of § 262.34. These requirements specify that: (i) The date upon which the period of accumulation begins is clearly marked on the tank or container; (ii) the tank or container is labeled with the words "Hazardous Waste"; (iii) the generator complies with Subparts C and D of 40 CFR Part 265 (Preparedness and Prevention and Contingency Plan and Emergency Procedures, respectively); and (iv) the generator complies with Subpart I of 40 CFR Part 265 if the waste is placed in containers or with Subpart J of 40 CFR Part 265 if the waste is placed in tanks, and he complies with the personnel training requirements of § 265.16.[16]

Section 3001(d)(6) directs EPA, in developing its regulations for 100–1000 kg/mo generators, to allow them to store hazardous waste on-site without the need for interim status or a RCRA permit for up to 180 days. In addition, EPA is directed to allow these generators to store up to 6000 kg of hazardous waste for a period of 270 days without the need for interim status or a permit if the generator must ship or haul his waste greater than 200 miles. EPA is today proposing to amend § 262.34 to allow for such on-site accumulation in tanks and containers by 100–1000 kg/mo generators for up to 180 days (or 270 days for long-distance transport) without the need to obtain interim status or a RCRA permit, in accordance with section 3001(d)(6) of the HSWA, provided they comply with the requirements of § 262.34.

Although the statutory language does not specifically limit accumulation that is exempt from permitting requirements to tanks and containers for these 100–1000 kg/mo generators, the legislative history accompanying the HSWA indicates that Congress intended this provision as an extension of the existing 90-day accumulator exemption currently applicable to large quantity generators. The legislative history states:

> . . . The bill explicitly modifies the administrative and managerial requirements for those generators prior to the actual disposal or treatment of the wastes. . . . For example, the maximum storage period for smaller generators is extended to 180 days from 90. This means that smaller generators would only be required to dispose of their waste twice a year, but that it be done properly. 221 Cong. Rec. H. 6761, September 8, 1982.

Since Congress based this provision on the existing exemption for 90 day accumulators contained in § 262.34 in order to allow smaller generators to accumulate more economical shipments of hazardous waste, EPA is not proposing to modify the existing limitation of this exemption to storage in tanks and containers.

EPA is proposing to modify certain of the requirements for such on-site accumulation by 100–1000 kg/mo generators in order to simplify the requirements for contingency plans and emergency procedures, and personnel training (contained in Part 265, Subpart D, and § 265.16). These proposed amendments to § 262.34 will be contained in new paragraphs (d), (e), and (f) specifying the particular requirements applicable to on-site accumulation by generators of 100–1000 kg/mo. No modifications are being proposed to the standards for storage in containers and tanks (Part 265, Subparts I and J) or to the requirements for preparedness and prevention contained in Subpart C of Part 265. EPA believes these standards to be appropriate and necessary and not unduly burdensome. As discussed in Part I, Section VI of today's preamble, EPA has not fully evaluated the appropriateness or the burden of applying the proposed secondary containment requirement to these generators.

1. *Time and Quantity Limitations.* As noted above, Congress specifically established time limits for accumulation of waste on-site by 100–1000 kg/mo generators of 180 days if the waste is to be transported less than 200 miles and 270 days if the waste is to be transported greater than 200 miles. While no specific quantity cutoff was established for 180 day accumulation in the legislation, a de facto limitation of 6000 kg exists. (This is due to the fact that a 100–1000 kg/mo generator could produce no more than 6000 kg in a 180 day period without exceeding 1000 kg/mo at least once during that period, and thus become fully regulated under Part 262 instead of under the modified standards being proposed today for 100–1000 kg/mo generators.)

With respect to storage for 270 days in cases where the generator must ship his waste greater than 200 miles, EPA considered establishing specific criteria that would have to be met in order for a generator to store waste for greater than 180 days. Such criteria would have required a generator to demonstrate that there was no facility that would accept his waste within 200 miles. However, the Agency is concerned that there are a number of situations in which shipment to a facility greater than 200 miles from the generation site may be preferable, even though a facility permitted to accept the waste is located less than 200 miles from the generator. For example, the Agency can foresee situations where the closest disposal facility is located within 200 miles, while a recycling facility which can recycle the waste is located just beyond the 200 mile limit. Unless substantial flexibility were built into the rule, the generator would be forced to employ the less desirable, and perhaps more costly, alternative (*i.e.*, disposal). Other factors, such as availability of transportation and disposal charges by commercial

[15] A generator who accumulates waste in surface impoundments or waste piles must comply with the full set of facility standards under Parts 264 and 265 rather than the limited requirements of § 262.34. Surface impoundments and waste piles, because they are unenclosed, tend to pose greater risks to the surrounding environment and are, therefore, subject to more rigorous operating and closure requirements.

[16] The provisions of the recently published "satellite accumulation rule" will apply to those 100–1000 kg/mo generators which accumulate hazardous waste at more than one location at the site of generation (see 49 FR 49568, December 20, 1984).

facilities could also influence which facility would be most appropriate.

EPA has decided not to propose specific criteria for allowing storage on-site for up to 270 days for two reasons. First, the maximum quantity that would be accumulated is no different whether it is on-site for 180 days or 270 days (*i.e.*, 6000 kg) and thus, the Agency sees no difference in risk to human health or the environment. Second, EPA believes that in most cases, market forces will dictate that 100–1000 kg/mo generators send their wastes to the closest facility and that those shipping their waste greater than 200 miles will have good reason to do so. In addition, as discussed below, on-site storage by these generators will be subject to certain § 262.34 requirements which minimize the possibility of releases to the environment. Accordingly, the Agency is not proposing any specific requirements for 100–1000 kg/mo generators to demonstrate that the closest facility is further than 200 miles if they choose to accumulate waste on-site for up to 270 days. The Agency is requesting public comment on the issue of whether additional requirements should apply to such generators storing for greater than 180 days, but less than 270 days.

Finally, today's proposal would apply the existing provisions of § 262.34(b) requiring compliance with Parts 264, 265, and 270 to 100–1000 kg/mo generators that exceed the time limitations in proposed § 262.34(d) and (e). These requirements, as they would apply to 100–1000 kg/mo generators, are contained in proposed § 262.34(f). Also included in § 262.34(f) is a provision currently applicable to 90 day accumulators which provides for a 30 day extension of the allowed storage period at the discretion of the Regional Administrator where he determines that such an extension is appropriate due to temporary, unforeseen, and uncontrollable circumstances. EPA believes that the inclusion of this provision for a 30 day extension of the 180 day or 270 day storage limitation for 100–1000 kg/mo generators is both necessary and appropriate to account for similar unforeseen circumstances.

2. *Standards for On-site Accumulation—§ 262.34.* While Congress specifically required that EPA allow 100–1000 kg/mo generators to store waste on-site for 180 (or 270) days, no reference was made in the legislation regarding what standards, if any, should be applied to that waste while it is being accumulated. (Small quantity generators are currently allowed to store their waste on-site indefinitely, provided they do not exceed 1000 kg. If at any time the 1000 kg accumulation limit is exceeded, a small quantity generator immediately becomes subject to the accumulation time requirements and standards (40 CFR 262.34) applicable to generators of greater than 1000 kg/mo.) However, Congress directed EPA to promulgate standards necessary to ensure protection of human health and the environment from wastes from generators of 100–1000 kg/mo and to consider the impacts on small businesses in establishing those standards. In addition, the legislative history accompanying the HSWA states:

> In providing for on-site storage for up to 180 days, EPA may prescribe design or operating standards as necessary to protect human health and the environment. (House Report at 26)

Under the proposed redefinition of a small quantity generator (Section I.A. of this Part of the preamble), these 100–1000 kg/mo generators would be subject to all of Part 262, including the standards contained in § 262.34. Because of the increased quantities of hazardous waste which 100–1000 kg/mo generators may store on-site (*i.e.*, up to 6000 kg), EPA believes that the regulation of such on-site accumulation by these generators is necessary to protect public health and the environment from potential leaks or spills. However, because of the 6000 kg accumulation "cap" on these generators and the fact that they are generally smaller businesses with lesser administrative and financial capability, EPA is proposing certain modifications to the existing storage standards with respect to the contingency planning and emergency procedure requirements of Subpart D of Part 265 and the personnel training requirements in § 265.16. The § 262.34 standards which the Agency is proposing to apply to 100–1000 kg/mo generators that store hazardous waste on-site for up to 180 (or 270 days) are discussed below.

a. *Standards for Storage in Containers—Part 265, Subpart I.* Section 262.34 requires that in order to accumulate hazardous waste on-site without a permit, the generator must meet certain requirements. If the waste is stored in containers, the generator must comply with Subpart I of Part 265 (§§ 265.170 thru 265.177) which contains the following general requirements applicable to the management of hazardous waste storage containers:

- They must be kept in good condition and any leaking containers replaced (§ 265.171);
- The containers must be compatible with the hazardous waste stored in them (§ 265.172);
- Containers holding hazardous waste must always be closed during storage (except when necessary to add or remove wastes) and must not be handled in a way that would cause them to rupture or leak (§ 265.173);
- Containers must be inspected at least weekly to check for leaks and any signs of corrosion (§ 265.174);
- Containers holding ignitable or reactive wastes must be placed at least 50 feet from the facility's property line (§ 265.176);[17] and
- Incompatible wastes must not be placed in the same container so as to cause fires, leaks, or other discharge of hazardous waste or hazardous waste constituents (§§265.177 and 265.17(b)).

In addition, § 262.34(a)(2) requires that the date upon which each period of storage begins is clearly marked on each container and § 262.34(a)(3) requires that each container be marked with the words "Hazardous Waste".

Since these requirements and the requirements of Subpart I embody common sense "good housekeeping" requirements which are necessary to avoid releases into the environment, EPA has concluded that no modification to these standards should be proposed for 100–1000 kg/mo generators. Consequently, the requirements of Subpart I of Part 265 will be incorporated by reference into proposed § 262.34(c).

b. *Standards for On-site Accumulation in Tanks—Part 265, Subpart J.* As in Subpart I, this subpart contains general standards that must be followed by generators storing hazardous waste in tanks under § 262.34:

- Wastes must not be placed in tanks if they could cause ruptures, leaks, corrosion, or otherwise cause the tank to fail (§ 265.192(b));
- Uncovered tanks must be operated with at least 60 centimeters (2 feet) of freeboard or a secondary containment dike or trench to prevent overfilling spillage (§ 265.192(c));
- Where waste is continuously fed into a tank, the tank must be equipped with a waste feed outoff or bypass system to stop the inflow to the tank (§ 265.192(d)).
- At least once each operating day, a generator must inspect, where present, discharge control equipment (*e.g.*, waste feed cut-off systems and drainage systems), data gathered from monitoring

[17] On June 5, 1984, EPA proposed to use the National Fire Protection Association (NFPA) code as a more flexible "buffer zone" requirement. (See 49 FR 43290.) We are considering comments received and, if adopted, this more flexible requirement would be applied.

equipment (*e.g.*, pressure and temperature gauges), and the level of waste in the tank to assure compliance with the above freeboard requirements (§ 265.194 (a)(1), (a)(2), and (a)(3)).

• At least weekly, a generator must further inspect the construction materials of the tank and the area immediately surrounding the tank to detect corrosion or obvious signs of leakage (§ 265.194 (a)(4) & (a)(5)).

• Special requirements apply to ignitable or reactive waste, and incompatible waste that are more or less analogous to those in Subpart I. (The major difference is in the requirements for ignitable or reactive waste which, when stored in a covered tank, must be in compliance with buffer zone requirements contained in Tables 2–1 through 2–6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code". These requirements are based on the hazardous characteristics of all combustible and flammable liquids and, as such, are applicable to any type and size of tank.)

The requirements of Subpart J are meant not only to protect human health and the environment, but are in the generator's best interest in reducing the likelihood of damages or injuries caused by leaks and spills. The Agency is not proposing to modify these standards for 100–1000 kg/mo generators. The requirements of existing Subpart J of Part 265 would, therefore, be incorporated by reference in proposed § 262.34(d).

As discussed in Part I, Section VI, of today's preamble, the Agency is developing new management standards for tank storage that may require secondary containment for accumulation tanks. These additional tank requirements, if finalized, could impose substantial additional costs on generators of 100–1000 kg/mo who accumulate hazardous waste in tanks, if the amended Subpart J requirements were applied to 100–1000 kg/mo generators. However, as previously discussed, the Agency has not yet completed its evaluation of this issue and is requesting specific public comment on the appropriateness of the secondary containment requirement for 100–1000 kg/mo generators. Accordingly, the Agency is today proposing to apply only those Subpart J requirements currently required under § 262.34.

c. *Standards for Preparedness and Prevention—Part 265, Subpart C.* Under § 262.34(a), generators who accumulate hazardous waste on-site must comply with the requirements of Subpart C of Part 265 which contains requirements for facility preparedness and prevention.

Section 265.31 requires that facilities be maintained and operated to minimize the possibility of fire, explosion, or any unplanned release of hazardous waste or hazardous waste constituents to the environment.

Section 265.32 specifies that facilities must be equipped with certain kinds of equipment (*i.e.*, an internal communications or alarm system, a telephone or other device capable of summoning emergency assistance, and appropriate fire control equipment including fire extinguishers and water at adequate volume and pressure to supply fire control systems) *unless* none of the wastes handled at the facility could require a particular kind of equipment.

Section 265.33 requires that this equipment be tested and maintained, as necessary, to assure its proper functioning.

Section 265.34 requires that all persons involved in hazardous waste handling operations have immediate access to either internal or external alarm or communications equipment, unless such a device is not required under § 265.32.

Section 265.35 requires the owner or operator of the facility to maintain sufficient aisle space to allow the unobstructed movement of personnel and equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

Finally, § 265.37 requires the owner or operator to attempt to make certain arrangements with police, fire departments, State emergency response teams, and hospitals, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations. Further, if State or local authorities decline to enter into such arrangements, the owner or operator must document the refusal.

The Agency is not proposing any amendments to Subpart C for two reasons. First, the requirements all involve common sense principles for preparedness and prevention which hazardous waste handlers can and should address in order to ensure safe handling of hazardous wastes. Second, because the requirements are structured such that specific equipment and procedures are required only on an as needed basis, the existing regulation provides flexibility for hazardous waste generators to tailor their preparedness and prevention activities to the specific kinds of wastes handled at the facility.

The Agency considered proposing a set of more specific but less numerous requirements for 100–1000 kg/mo generators that store waste on-site in accordance with § 262.34 in order to alleviate the potential uncertainty which many establishments may have over which preparedness and prevention procedures would be appropriate for the types of wastes handled at their facility. The Agency is interested in public comment on this issue. Specifically, are the existing Subpart C requirements the least burdensome while being sufficiently protective of human health and the environment? Would uncertainty as to the appropriate equipment or procedures result in less protection than a few explicit requirements (*i.e.*, a requirement to request an inspection by the fire department and requirements to have on-site a telephone or other communications device, spill control materials, and an appropriate number and type of fire extinguishers to be determined by the fire department) even though these requirements may be more burdensome than necessary for some types of waste or generating establishments?

d. *Standards for Contingency Plans and Emergency Procedures—Part 265, Subpart D, and Personnel Training Requirements—§ 265.16.* Under § 262.34(a), generators who accumulate waste on-site must comply with certain requirements from Part 265, Subpart D pertaining to contingency plans and emergency procedures and personnel training requirements contained in § 265.16.

These requirements are intended to ensure that personnel are adequately prepared to manage hazardous waste and to respond to any emergencies that are likely to arise. EPA considered applying these same requirements to 100–1000 kg/mo generators since, for the most part, the requirements embody common sense principles that are necessary and appropriate for facilities managing hazardous waste. However, we are concerned that in some cases these requirements may be unnecessarily burdensome (*e.g.* requiring formal classroom training and written, detailed contingency plans) and costly (about $1000 per facility) and may have unnecessarily severe impacts on many small businesses. We have concluded, therefore that a much simpler set of requirements for generators of 100–1000 kg/mo would be adequately protective of human health and the environment and the least burdensome to small businesses.

The requirements in proposed § 262.34 (c)(3) capture the essence of Subpart D of Part 265 and § 265.16 but they are administratively simplified (*i.e.* tailored

to smaller businesses) and are more specific and so depend less on the preparation of written plans. EPA is proposing and seeking public comment on the following requirements.

- At all times, an "emergency coordinator" (E.C.), *i.e.*, someone familiar with these requirements, must be on-site (or on call). The coordinator may also designate someone to act in his place.
- The generator must post certain information next to the telephone, including: the name and telephone number of the E.C.; location of fire extinguishers and spill control material; and the phone number of the fire department;
- The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures;
- The generator (or the E.C.) would have to respond to any emergencies that arise. In the case where an emergency was serious enough to warrant a visit by the fire department or when the generator (or E.C.) has knowledge of a spill of hazardous waste that could reach surface water or otherwise threaten human health or the environment, the generator would have to notify the National Response Center and file a report with the EPA Regional Administrator as provided by proposed § 262.34(c)(3)(E).

EPA believes these requirements are adequate to protect public health and the environment from fires, leaks, spills, or other releases from generators of 100–1000 kg/mo who are accumulating waste on-site prior to shipment off-site. Comments are requested on the proposal and alternative means of ensuring proper contingency planning, emergency response, and personnel training.

E. Proposed Amendments to Part 262, Subpart D—Recordkeeping and Reporting

Subpart D of Part 262 contains recordkeeping and reporting requirements applicable to generators of hazardous waste. In Section II.C. of this part of today's preamble, EPA proposed modifications to the manifest system that would be applicable to generators of 100–1000 kg/mo in order to relieve them of some of the administrative burden associated with hazardous waste management because of the small business nature of many of these generators and the lesser quantities of waste involved. EPA is today proposing to eliminate for 100–1000 kg/mo generators the recordkeeping requirements pertaining to the manifest (§ 262.40(a)) as well as the biennial and exception reporting requirements contained in this Subpart (§§ 262.40(b), 262.41, and 262.42). However, the Agency is not proposing to eliminate or modify the requirements of § 262.40 (c) and (d) and § 262.43.

EPA's rationale for proposing to exempt generators of 100–1000 kg/mo from most of the recordkeeping and reporting requirements contained in Part 262 is consistent with the Agency's rationale for reducing the manifest requirements. Under today's proposed rulemaking, a significant legal obligation will be imposed on these generators to notify EPA of their hazardous waste activity, to accumulate waste in accordance with the storage requirements discussed in the previous section, to manifest their waste when shipping it off-site, and to ensure that the waste is managed at approved Subtitle C facilities. The absence of recordkeeping or reporting in no way relieves these generators of these significant legal obligations. In addition, EPA still requires these records to be kept by the treatment, storage, or disposal facility. (See Section IV. of this Part of the Preamble.) Therefore, enforcement of the regulations may still be accomplished through inspection of these records.

EPA is today proposing a new § 262.44 to specify the recordkeeping and reporting requirements that would be applicable to 100–1000 kg/mo generators. The specific requirements which EPA is proposing to retain or eliminate for generators of 100–1000 kg/mo are discussed below.

1. *Recordkeeping—§ 262.40.* Section 262.40(a) requires the generator to retain a copy of each manifest for a period of three years. Since today's proposal would eliminate the requirement that multiple copies of the manifest be used for wastes from 100–1000 kg/mo generators, EPA is today proposing to eliminate this retention requirement.

Section 262.40(b) requires the generator to retain a copy of each Biennial Report and Exception Report for three years. The Agency is proposing to eliminate both the Biennial Report and Exception Reports for 100–1000 kg/mo generators. (See E.2. and E.3. of this Section, below.) Consequently, EPA is proposing to eliminate the recordkeeping requirements for these reports.

Section 262.40(c) requires each generator to keep records of any test results, waste analyses, or other determinations made in accordance with § 262.11 for at least three years. Since the Agency believes that the waste determination provisions of § 262.11 are crucial to the hazardous waste program, the Agency sees no reason to eliminate the requirement to keep such records for generators of 100–1000 kg/mo and is not, therefore, proposing any modification to this requirement.

Section 262.40(d) automatically extends the period of recordkeeping during the course of any unresolved enforcement action or at the request of the Administrator. This requirement would be retained under today's proposal but would apply only to § 262.40(c) reports.

2. *Biennial Report—§ 262.41.* A generator who ships his hazardous waste off-site is required to submit a biennial report to the Regional Administrator by March 1 of each even numbered year covering the generator's activities during the preceding odd numbered calendar year.

The report is to provide information on the types and quantities of wastes generated and the facility(s) to which the waste was shipped for treatment, storage, or disposal. The report is generally compiled from the manifests retained by generators during the reporting year. While the biennial report was originally intended to serve primarily as a summary of manifests from both generators and facilities that could be used as an enforcement tool through comparisons between generator and facility reports, its primary function is as a data collection device.

Under the existing system of State authorization, EPA's biennial report requirement applies only to those States that have not received interim authorization to operate any portion of the hazardous waste regulatory program. Consequently, EPA receives reports directly from handlers located in approximately a dozen States. The remaining hazardous waste generators in the balance of the States report directly to the State agency according to a reporting system established by that State.

In order to obtain nationwide data on hazardous waste generation and treatment, storage, and disposal, EPA requires each State agency to submit a Biennial State Program Report to EPA summarizing the data from their own reporting system. This summary data is then aggregated to provide a profile of the regulated community and estimates of the quantities of waste generated and managed.

EPA is today proposing to exempt generators of 100–1000 kg/mo from the requirement to complete a biennial report for several reasons. First, the total quantity of waste generated by these small quantity generators is

approximately 0.3 percent of all of the hazardous waste generated nationally while the number of generators who would have to complete the biennial report would exceed 100,000. In compiling the data from the 1983 biennial reports, EPA has found that the extent of error in State summary reports exceeds the total quantity of hazardous waste represented by all small quantity generator waste. While a degree of error of one-half of one percent is not uncommon or unacceptable for developing estimates of waste generation nationally, the value of the data from the reports of 100–1000 kg/mo generators would not significantly add to the accuracy of the biennial report data. In fact, EPA believes that the value of these reports would be far outweighed by the burden to these generators of preparing and filing such a report.

Second, requiring biennial reports from generators of 100–1000 kg/mo in the unauthorized States alone would far outweigh the Agency's administrative ability to make use of the reports.

Third, if today's proposal concerning the "single copy" manifest and the exemption from most recordkeeping requirements becomes final, these generators would not be required to have the information necessary to complete the report since these generators do not need to retain a copy of the manifest. The manifest provides most of the information necessary to complete the Biennial Report.

Finally, information concerning the number of generators and the quantities of waste generated will still be available from the biennial reports required to be filed by treatment, storage, and disposal facilities. These facilities should file biennial reports because such facilities would be required under today's proposal to retain the single copy of the manifest accompanying shipments (or other record of a shipment) from 100–1000 kg/mo generators.

3. *Exception Reporting—§ 262.42.* EPA is also proposing to exempt 100–1000 kg/mo generators from the requirement to file reports in cases where they do not receive copies of the manifest signed by the designated facility since a copy of the manifest signed by the designated facility would not be required to be returned to the generator under today's proposed rule.

4. *Additional Reporting—§ 262.43.* This section reserves the right of the Administrator to require additional reports from generators as he deems necessary. Since the Agency may require additional information about wastes from 100–1000 kg/mo generators at some future time, EPA is not proposing an exemption from this requirement for these generators.

F. Request for Comments on Part 262 Standards

In considering amendments to Part 262 for generators of 100–1000 kg/mo, the Agency initially felt that a straightforward lowering of the small quantity generator exclusion to 100 kg would be the least confusing and most protective approach, particularly in light of the statutory deadline to propose and promulgate regulations for these generators by March 31, 1986.

However, in light of Congressional and Agency concerns about the impacts of full regulation on the number of small businesses that would be affected, EPA decided to propose the modifications to Part 262 embodied in today's proposal. These amendments would eliminate some of the administrative burden on these newly regulated establishments while retaining the legal obligations necessary to ensure protection of human health and the environment.

The Agency is not fully convinced, however, that the administrative relief being offered—while warranted based on the quantities of waste involved and the small business nature of these small generators—is substantial enough to offset the potential confusion which may result among the newly regulated community as to the requirements which apply, as well as the loss of the tracking function of the manifest as an enforcement tool.

Consequently, EPA is requesting specific public comment on the approach contained in today's proposal for regulating 100–1000 kg/mo generators and is particularly interested in comments from both the public and the regulated community on the following issues:

1. To what extent are the existing requirements for a hazardous waste generator to complete a multi-part manifest, retain a copy of his records, and file manifest exception and biennial reports particularly burdensome and unnecesssary for generators of 100–1000 kg/mo?

2. Are the savings (*i.e.*, reduced costs and administrative burden) of the single copy manifest and reduced recordkeeping and reporting requirements significant enough to offset the confusion which different requirements may cause?

3. Will a separate set of manifest requirements for 100–1000 kg/mo generators seriously hamper implementation of the existing manifest system for larger generators, or seriously weaken the States' regulatory program that is intended to protect human health and the environment from the mismanagement of hazardous waste?

III. Standards for Transporters of Hazardous Waste—Part 263

A. Proposed Amendments

The existing standards for transporters of hazardous waste are contained in 40 CFR Part 263 and are applicable to any form of hazardous waste transportation that requires the use of a hazardous waste manifest (§ 263.10(a)). These standards pertain to compliance with the manifest system, recordkeeping, and actions to be taken in response to spills or discharges of hazardous waste. Taken in conjunction with U.S. Department of Transportation (DOT) requirements under the Hazardous Materials Transportation Act (HMTA) regarding labeling, marking, packaging and placarding (incorporated in 40 CFR Part 262, Subpart C), such standards are deemed by the Agency to be those necessary to protect human health and the environment during the transportation of hazardous waste.

In directing EPA to develop new standards for generators of 100–1000 kg/mo, section 3001(d)(7)(of RCRA, as amended, specifically states that "nothing in this subsection shall be construed to affect or impair the validity of regulations pursuant to the Hazardous Materials Transportation Act." Consequently, EPA is not proposing any substantive amendments to applicable DOT requirements or to Part 263. However, a number of minor amendments would be necessary to bring the transporter standards into conformance with today's proposed amendments for 100–1000 kg/mo generators.

Under today's proposal, 100–1000 kg/mo generators would be required to fully complete a copy of the Uniform Hazardous Waste Manifest—including the names and EPA identification numbers of the transporter and designated facility—and ensure that the manifest accompanies each shipment of hazardous waste off-site for storage, treatment, or disposal.

However, generators of 100–1000 kg/mo would not be required to provide multiple copies to the transporters or disposal facility or to receive back or retain signed copies from the transporters or disposal facilities. (See proposed § 262.23) Consequently, transporters designated to receive hazardous waste shipments from these generators would receive only a single copy of the manifest accompanying the

waste shipment. Thus, the transporter would be unable to keep a copy of the manifest for himself and return a signed copy to the generator before leaving the generator's property (§ 263.20(b)). Similarly, the requirement that subsequent transporters and the designated facility receive copies of the manifest would be impossible under today's proposed regulatory scheme (§ 263.20(d)(2) and (d)(3)). These sections are proposed to be amended accordingly.

However, to ensure that the transporter and recipient facility are aware of the hazardous nature of the waste being transported, as well as acknowledge receipt of the hazardous waste, the Agency is not proposing to amend those provisions requiring that the transporter (as well as the receiving facility) sign the manifest provided by the generator and that the manifest accompany the hazardous waste. The single copy of the manifest that must be provided by the 100–1000 kg/mo generators will, therefore, serve as a label and as a form of notification to the transporter of the hazardous nature of the waste.

Finally, the Agency is proposing to add a new § 263.20(h) to specify certain recordkeeping requirements for transporters (who are also reclaimers) accepting unmanifested hazardous waste from generators utilizing the § 262.20 exemption for wastes reclaimed under contractual agreements.

B. Transportation Issues

Under today's proposal, hazardous waste from 100–1000 kg/mo generators must be managed at facilities with interim status or a permit under RCRA and such generators may only offer their waste to hazardous waste transporters who have obtained a U.S. EPA Identification Number (See earlier discussion of § 262.12 and 262.20 in today's preamble). Transportation costs often account for a substantial portion of hazardous waste management costs and today's proposal is likely to result in a net increase in hazardous waste transportation by 100–1000 kg/mo generators (*i.e.*, some 100–1000 kg/mo generators who now manage waste on-site will likely shift to off-site management under today's proposed application of full regulation under Parts 264 and 265 to these generators [See Section IV. of this Part]). EPA is concerned about a number of transportation issues relevant to shipments of hazardous waste from generators of 100–1000 kg/mo. In particular, we are concerned about the availability of transportation services for this group of generators, the cost impacts of transportation of relatively small quantities of hazardous waste of small businesses and, finally, whether today's proposal will cause any substantial increase in risks from hazardous waste transportation.

In passing the HSWA, it is clear that Congress was also concerned about the availability of transportation services and the administrative burden of compliance for generators of small quantities of hazardous waste. EPA was directed in section 221(e) to study the issues related to transportation of small quantity generator wastes and, in particular, to explore the feasibility of licensing transporters to assume many of the responsibilities of the generator with respect to the manifest. In addition, Congress directed EPA to allow generators of 100–1000 kg/mo to accumulate waste on-site for up to 180 (or 270) days without the need to obtain a RCRA permit in order to allow these generators to accumulate more economical shipments of hazardous waste (section 3001(d)(6)).

The Agency is conducting a study that identifies and discusses the feasibility of alternatives for the transportation of hazardous waste produced by generators of 100–1000 kg/mo. Based on preliminary results from that study, EPA has concluded that the existing system already allows for flexibility in the transportation of hazardous waste from generators of 100–1000 kg/mo by allowing self-transportation of hazardous waste to Subtitle C facilities for these generators (provided they comply with Part 263) and by allowing transporters to assume many of the responsibilities of the generator with respect to the manifest.

1. *"Self-Transportation" of Hazardous Waste.* Self-transportation of hazardous waste to an approved hazardous waste management facility has never been precluded under 40 CFR Part 262, provided the generator has a U.S. EPA Identification Number and complies with the applicable portions of DOT and EPA transportation requirements (40 CFR Part 263). While the Federal Motor Carrier Act (MCA) establishes financial responsibility and liability requirements for transporters of hazardous materials (which would impose substantial costs on transporters) there are two specific exemptions contained in that Act designed to facilitate transportation of small quantities of hazardous materials. First, the MCA exempts from financial insurance and liability requirements any "for hire" vehicle with a Gross Vehicle Weight Rating (GVWR) of less than 10,000 pounds (*e.g.*, a van or pick-up truck). (See 49 CFR 387.3(c)). Second, the Act provides an exemption from these requirements for the transportation of non-bulk (*i.e.*, containment systems with less than 3500 gallon capacity) hazardous materials, substances, or wastes, in intrastate commerce (except for large quantity radioactive materials). See 49 CFR 387.3(c).

Transportation of hazardous materials is also regulated by the States. Generators of 100–1000 kg/mo should contact their State transportation agency to determine under what circumstances self-transportation of small amounts of hazardous waste may be permitted in their State.

2. *Transporter Assumption of Generator Responsibilities.* Under RCRA, a hazardous waste transporter may already assume certain of the manifesting responsibilities for hazardous waste generators. With the exception of the generator certification and signature, a generator may contractually delegate specific tasks to the transporter; however, the generator remains liable under RCRA for the satisfactory performance of those tasks. The Agency is aware that many transporters are presently providing such services to both small and large hazardous waste generators, and no regulatory amendments are being proposed that would preclude such arrangements.

C. Request for Comments

EPA is interested in comments from hazardous waste transporters on all aspects of today's proposed amendments applicable to 100–1000 kg/mo generators. We are particularly interested in comments with respect to the utility for transporters of the single copy manifest requirement proposed today (*i.e.* will hazardous waste transporters accept only a single copy manifest when transporting wastes from generators of 100–1000 kg/mo?).

IV. Standards for Facilities—Parts 264 and 265

A. Requirements Applicable to Generators of 100–1000 kg/mo that Manage Hazardous Waste On-site

The requirements for facilities that treat, store, or dispose of hazardous waste are contained in Parts 264 and 265 of the hazardous waste regulations. The Part 265 standards are applicable to facilities under interim status, a condition which allows a facility to continue operating until it receives a full RCRA permit. (See HSWA section

3005(e)).[18] The Part 264 standards establish the minimum standards to be incorporated in a full RCRA permit by EPA or a State with an EPA authorized hazardous waste program.

Under existing § 261.5(b), generators of 100–1000 kg/mo that treat, store, or dispose of hazardous waste on-site are exempt from the facility requirements of Parts 264 and 265, provided the facility is at least approved by a State to manage municipal or industrial (non-hazardous) solid waste. (§ 261.5(h)) 19 Under today's proposed redefinition of a small quantity generator (Section I.A. of this Part of the preamble), 100–1000 kg/mo generators would no longer be covered by the § 261.5 exemption; instead, these generators would be subject to regulation under Parts 262, 263, 264, 265, 270 and 124 of the hazardous waste regulations, to the extent those regulations are applicable. As discussed above, EPA is proposing certain modifications to the Part 262 standards to relieve 100–1000 kg/mo generators from some of the administrative and paperwork requirements of that part. In addition, EPA is proposing certain modifications to the Part 265 facility requirements applicable to those generators who accumulate hazardous waste on-site for no more than 180 (or 270) days, in accordance with § 262.34. The Agency, however, is not proposing any modifications to Parts 264 and 265 that would be applicable to generators of 100–1000 kg/mo who do not qualify for the 180 day (or 270 day) exemption.

Data from EPA's small quantity generator survey indicate that less than 15 percent of generators of 100–1000 kg/mo do not qualify for the 180 day (or 270 day) exemption and would, therefore, be subject to full regulation under Parts 264 and 265.

The Agency has concluded that this relatively small percentage of generators of 100–1000 kg/mo should be subject to full Part 264 and 265 requirements. Under today's proposal, the Part 264 and 265 requirements. Under today's proposal, the Part 264 and 265 requirements would apply to those 100–1000 kg/mo generators of hazardous waste that store their waste in tanks or containers for very long time periods (*i.e.*, longer than 180 or 270 days), engage in waste treatment (*e.g.*, on-site incineration), or manage their waste in surface impoundments, waste piles, landfills or land treatment facilities. Under each of these management scenarios, the potential for release of hazardous waste to the environment is significant or the quantity of waste present, over time, becomes significant.

The Agency requests public comment on the application to 100–1000 kg/mo generators of uniform Parts 264 and 265 requirements versus special (*i.e.*, tailored) Parts 264 and 265 requirements. The Agency is specifically interested in comment on the following situations or circumstances that might warrant lesser standards which would be less burdensome than existing Part 264 and 265 requirements, but which would be protective of human health and the environment:

(1) The need for secondary containment for tanks used for long-term storage (*i.e.*, greater than 180–270 days) or treatment of hazardous waste;

(2) Allowance of accumulation in tanks and containers for longer than 180 or 270 days, without the need for interim status or a permit, in situations where the distance to the nearest Subtitle C facility is great or the availability of a hazardous waste transporter is limited;

(3) The treatment of small volumes of hazardous waste in tanks.

(4) Specific waste types and their handling practices which deserve special consideration because of their low potential for harm to human health and the environment.

Commenters should provide the human health and environmental protection rationale for suggested tailored requirements.

B. Off-site Facilities that Manage Wastes From 100–1000 kg/mo Generators

Parts 264 and 265 of the hazardous waste regulations contain blanket exemptions from the requirements of those Parts for state approved municipal or industrial waste facilities that manage wastes *only* from small quantity generators excluded from regulation under § 261.5. (§§ 264.1(g)(1) and 265.1(c)(5)). Under today's proposed redefinition of small quantity generator (discussed in Part II, Section I.A. of this preamble), generators of 100–1000 kg/mo would no longer be conditionally exempt from regulation under § 261.5. Thus, the exemption for facilities that manage wastes only from these generators would no longer apply and facilities managing wastes from 100–1000 kg/mo generators would be subject to regulation under Part 264 or 265.

EPA is not proposing a new exemption for these facilities since we have concluded that hazardous waste from 100–1000 kg/mo generators, upon arrival at an off-site facility for treatment, storage or disposal, loses any distinction related to the point of origin (*i.e.*, the types and quantities of hazardous waste managed at such facilities are very similar to facilities managing wastes from larger quantity generators.) However, EPA invites comments on the need for, and appropriateness of, uniform versus tailored Parts 264 and 265 requirements for application to facilities which treat, store, or dispose of hazardous waste solely from 100–1000 kg/mo generators. Comments should address the human health and environmental protection bases for suggested tailored requirements.

Off-site interim status facilities managing wastes from both fully regulated large quantity generators and generators of 100–1000 kg/mo may, of course, be required to modify their Part A permit applications under § 270.72 to account for wastes from 100–1000 kg/mo generators if those wastes are currently being managed as exempt pursuant to § 261.5 and are not currently identified on the Part A application. The Agency also intends to propose a modification to § 270.41 to allow the Agency to initiate the modification of a permit without first receiving a request from the permittee if amended standards are promulgated which affect the basis of the permit. As discussed previously, as a result of today's proposed rules, RCRA permitted facilities handling wastes from both large generators and generators of 100–1000 kg/mo would need to modify their permits to reflect these wastes from 100–1000 kg/mo generators if the amendment to § 270.41 is proposed and finalized.

C. Delayed Effective Date

While the Agency is today proposing that the full set of Part 264 and 265 standards be applied to generators of 100–1000 kg/mo that manage waste on-site (with the exception of accumulation or storage exempted under § 262.34), EPA is proposing to delay the effective date of the Part 264 and 265 standards for these facilities.

Today's proposal provides an additional six months before these on-site management standards become effective, beyond the six month effective date of the remainder of the regulatory

[18] Previously, interim status was only available to facilities that were in existence on November 19, 1980, the date the bulk of the hazardous waste regulatory program went into effect. However, section 3005(e)(1)(A)(ii) of RCRA, as amended by HSWA, expressly provides that facilities that are in existence on the effective date of statutory or regulatory amendments that subject them to the requirement to obtain a RCRA permit may also qualify for interim status. (See Section IV.D. of this Part of the preamble).

[19] These requirements also apply to generators of less than 100 kg/mo of hazardous waste (or 1 kg/mo of acutely hazardous waste). These generators, however, are not affected by today's proposal.

requirements included in today's proposal, for two reasons. First, the Agency anticipates that most 100–1000 kg/mo generators who are currently engaged in on-site management activities that would be subject to these requirements will shift their waste management activities to either conditionally exempt on-site practices or to off-site management practices, or both. The regulatory impact analysis performed for this rulemaking indicates that these generators may be unwilling or unable to economically bear the cost of eventual full permitting and the cost, for "land disposal facilities", of groundwater monitoring and the possibility of corrective action in cases of groundwater contamination. The delayed effective date will allow these generators to shift their management practices to either exempt on-site activities or to off-site management.

Second, the delayed effective date for the part 265 requirements will also allow the small percentage of 100–1000 kg/mo generators likely to continue managing their waste on-site in accordance with full Parts 264 and 265 requirements in time to come into compliance with those requirements.

Therefore, the Agency is proposing that the requirements of Parts 264 and 265 applicable to 100–1000 kg/mo generators that manage waste on-site take effect one year from the date of publication of these regulations in the **Federal Register**.

D. Obtaining Interim Status

Under Section 3005(e)(1) of the HSWA, generators of 100–1000 kg/mo that manage hazardous waste on-site are newly subject to the requirement to obtain a permit as a result of the HSWA and may continue to manage these wastes without a full RCRA permit after the effective date of these regulations (*i.e.*, one year after the date of publication in the **Federal Register**), provided that they qualify for interim status by meeting the requirements described below. Off-site facilities that manage wastes *only* from 100–1000 kg/mo generators may continue to manage those wastes without a full RCRA permit after the effective date of the Part 262 regulations (*i.e.*, six months from date of publication in the **Federal Register**), provided that they qualify for interim status by meeting the following requirements:

1. The facility (*i.e.*, the generator's waste management operation or the off-site facility) was in existence on the effective date of these regulations; and

2. The facility has applied for a permit in accordance with Section 270.10(e)(1).

EPA is proposing a conforming amendment to § 270.10(e)(1) by adding a new subsection (iii) to provide that 100–1000 kg/mo generators managing waste on-site and newly subject to permitting requirements must file Part A of the permit application within one year after the publication of the final regulations. This proposed amendment would conform to the proposed delay of the effective date for these generator's facilities discussed in Section IV.C.

E. Conforming Amendments

EPA is proposing certain modifications to the manifest provisions of existing Parts 264 and 265 to bring them into conformance with the modifications to the proposed amendments to Part 262 applicable to 100–1000 kg/mo generators. These amendments would affect only those off-site facilities that manage wastes from 100–1000 kg/mo generators.

Under today's proposal, 100–1000 kg/mo generators would not be required to provide multiple copies of the Uniform Hazardous Waste Manifest to the transporter, or receive back from the designated facility a signed copy of the manifest.

For these reasons, today's proposal would exempt recipient facilities of hazardous waste from 100–1000 kg/mo generators from the following existing requirements: (1) The requirement to give the transporter a copy of the signed manifest (§ 264.71(a)(3) and § 265.71(a)(3)); and (2) the requirement to return a copy of the signed manifest to the generator (§ 264.71(a)(4) and § 265.71(a)(4)).

F. Request for Comments on Parts 264 and 265 Standards

While the Agency is today proposing that the full set of existing Parts 264 and 265 requirements be imposed upon generators of 100–1000 kg/mo that manage their waste on-site (except for conditionally exempt on-site storage), specific comment is invited on alternatives to this proposed regulatory approach.

Part III—Economic, Environmental and Regulatory Impacts

I. Impact on Authorized States

A. Applicability in Authorized States

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce their own hazardous waste programs pursuant to Subtitle C (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 3013 and 7003 of RCRA, although authorized States have primary enforcement responsibility.

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

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

B. Effect on State Authorizations

Today's announcement proposes HSWA standards pursuant to section 3001(d) of RCRA, as amended, that would be effective and administered by EPA in all States. If promulgated, EPA will implement the standards in authorized States until such time as they revise their programs to adopt these rules and the revisions are approved by EPA.

A State would be able to apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State adoption of these regulations under section 3006(b) are described in 40 CFR 271.21 (49 FR 21678, May 22, 1984). Similar procedures should be followed for section 3006(g)(2).

Applying § 271.21(e)(2), States that have final authorization would have to revise their programs within one year from the date of promulgation of EPA's regulations if regulatory changes are all that are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be

extended in exceptional cases (40 CFR 271.21(e)(3)).

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

Several States with authorized RCRA programs also have regulations covering small quantity generators. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. For that and other reasons, such States' small quantity generator regulations are not part of the approved State programs. As a result, the standards ultimately promulgated under section 3001(d) will apply in all States, including those with existing small quantity generator standards, until program revisions are submitted to, and approved by, EPA. In the meantime, States with existing small quantity generator standards will continue to administer and enforce them as a matter of State law. However, the regulated community must also comply with any more stringent requirement in today's rule. To the extent that State and Federal requirements are inconsistent, the more stringent requirements must be complied with. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication and disruption.

II. Executive Order 12291—Regulatory Impact

Executive Order 12291 (46 FR 13193, February 9, 1981) requires that a regulatory agency determine whether a new regulation will be "major" and if so, that a Regulatory Impact Analysis be conducted. A major rule is defined as a regulation which is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator has determined that today's proposal is not a major rule, with total estimated costs to the regulated community of approximately $58 million per year,[20] and no significant adverse economic effects. These conclusions are based on an economic analysis of today's proposal. This analysis involved first developing cost estimates both of current waste management practices used by 100–1000 kg/mo generators and of practices required by today's proposed. Some of these estimates were firm-specific and other were waste stream-specific. These costs were used along with estimates of the changes in waste management practices likely to result from today's proposal to estimate the aggregate compliance costs associated with each of the top ten wastes generated by 100–1000 kg/mo generators. Total aggregate compliance costs were then estimated by summing across the ten waste streams and adjusting the total to account for other waste streams managed by 100–1000 kg/mo generators.

In order to analyze the potential impact of the compliance costs on affected plants, the Agency used a model plant approach involving 289 model 100–1000 kg/mo generator plants. These models differ in terms of the types and quantities of wastes generated and in their financial characteristics.

Three size categories of models were used: establishments with 1–9 employees, those with 10–49 employees, and those with 50 employees or more. Using data from the small quantity generator survey, a dominant waste type and annual waste load were assigned to each model plant. Financial characteristics for the model plants were developed using financial data bases.

Compliance costs were estimated for each model plant and these were compared to financial characteristic of the models to identify models that potentially would be significantly affected by the compliance costs. Any models so identified were analyzed in more detail to determine if they would close as a result of the compliance costs.

A. Estimates of Per Firm Cost

1. *Proposed Part 262 Generator Standards.* The estimated incremental compliance costs attributable to the proposed Part 262 requirements can be divided into an initial, one-time, cost of $2,180 per firm, and an annual recurring cost of $188 per firm. These costs would be incurred by all 100–1000 kg/mo generators that would be subject to the requirements of today's proposal with two exceptions—generators disposing of their wastes by sending them to POTW's and generators that have their waste reclaimed under certain contractual agreements. Generators sending wastes to POTW's would incur no Part 262 related costs as a result of the proposed regulation. Generators using reclamation agreements would incur a cost of $1,694 initially and no annual costs.

These cost estimates were developed by calculating the labor and material resources necessary to be in compliance with the proposed Part 262 requirements. The majority of the estimated costs for generators who store wastes on-site involve labor charges for the personnel required to bring the establishment's waste management practices into compliance. Included in these labor cost estimates is the time necessary for generators to become aware of and understand their responsibilities under the proposed regulations through education programs and information provided by EPA and trade associations. Only a fraction of the aggregate or facility cost to the generator is attributable to the purchasing of equipment or facility upgrading in order to comply with today's proposal.

2. *Transportation Costs.* Under today's proposal, generators of 100–1000 kg/mo would be required to either contract with an authorized hazardous waste transporter or haul the hazardous waste to a hazardous waste management facility that has a permit from the Agency or an authorized State, or is in interim status. Incremental transport costs depend on current generator practices, the distance which wastes are transported, the quantity of wastes transported, and the number of times wastes are loaded and transported each year.

In many cases, there will be no incremental transportation costs due to the small quantity generator regulations because current waste management practices involve waste transportation. Where this is not the case, average incremental costs that would be imposed on 100–1000 kg/mo generators for the transportation of their hazardous waste are estimated to be between $258 per year (for generators that ship 600 kg of waste a short distance twice yearly) and $1,874 per year (for generators that ship 6000 kg of waste a longer distance twice yearly).

3. *Treatment, Storage and Disposal Costs*—a. *On-Site Accumulation.* Under today's proposal, generators of 100–1000 kg/mo would be allowed to store hazardous waste on-site without a

[20] The proposed Subpart J amendments for tanks (see 50 FR 26444) would impose aggregate additional costs estimated at $11 million per year if applied to 100–1000 kg/mo generators who would be fully regulated as storage facilities under Parts 264 and 265.

permit or interim status for up to 180 days, or for up to 270 days if the waste is to be shipped over 200 miles.

Generator of 100–1000 kg/mo who store hazardous waste on-site, within the 180 day (or 270 day) period specified under the provisions of the storage exemption, would have to comply with Part 265, Subpart C (Preparedness and Prevention), a reduced set of requirements in Subpart D (Contingency Plan and Emergency Procedures), and limited requirements for personnel training (Section 265.16 of Subpart B). The incremental compliance costs for facilities that choose this management option are divided into an initial start-up cost of $1,447, and an annual cost of $53.

Generators that store hazardous waste on-site within the 180 day (or 270 day) period may also incur costs related to storage container (Subpart I) and storage tank (Subpart J) requirements. The incremental costs for these requirements depend on a number of factors, including the current practices of the generator, the generator's storage capacity, and the composition of the hazardous waste being stored. The range of incremental costs, as a result, is fairly large. For container storage, initial incremental costs range from practically zero to $2,323, and annual costs range from $404 to $4,454. The corresponding incremental cost estimates for the existing rules for tanks are from $155 to $4,647 for initial costs, and $770 for annual costs.

b. *Treatment and Disposal.* After analyzing the cost of on-site treatment and disposal for 100–1000 kg/mo generators relative to off-site costs, the Agency has determined that in nearly all cases, the least expensive hazardous waste management alternatives available to these generators involve off-site activities. The small quantities of waste generated by these establishments simply do not permit them to operate expensive on-site management facilities on an economically efficient basis. The costs of off-site commercial treatment and disposal upon which this conclusion is based are derived from a composite of various existing sources of data on commercial waste management prices. They range from $150 to $250 per metric ton (for secure landfills) to $200 to $1200 per metric ton (for either treatment or incineration), depending on the characteristics of the wastes.

B. Estimates of Nationwide Incremental Cost Burden on Generators of 100—1000 kg/mo

The aggregate costs for today's proposal were developed by comparing the costs of current (baseline) hazardous waste management practices with hazardous waste management practices which would comply with the proposal. The Agency has determined, based on this analysis, that the annual incremental compliance cost for this proposal would be approximately $58 million.[21]

On a per metric ton basis, the average incremental compliance cost over all wastes is about $206. Because of differences in baseline practices, and, hence, the cost of compliance, the incremental costs vary substantially across different wastes. In fact, the baseline method of waste management by small quantity generators is adequate to comply with the regulations in many cases. Others will have to change waste management practices in order to comply. Much of the $58 million in compliance costs is focused on a few types of wastes (spent solvents, dry cleaning filtration residues, acids, and alkalies, and ignitable wastes) that constitute a large proportion of the wastes generated by small quantity generators.

C. Estimates of the Economic Impacts of Today's Proposed Rule

An analysis of the effects of compliance costs on the sales and profitability of the model plants indicates that in over 80 percent of plants the incremental costs are less than 10 percent of profits. A few of the plants, particularly in service industries, show incremental costs of greater than 10 percent of profits. Of the 50 model plants most affected by the proposal, 41 show incremental compliance costs of greater than 10 percent. Fifty-four of these are in service industries, compared with 23 percent of all model plants. Seventy-four percent of the models most affected by the proposal have annual revenues of less than $500,000. Some of these establishments are low profit or non-profit by design, such as public or private golf courses, hospitals, and other public institutions.

Only six plants have incremental compliance costs which exceed 1 percent of sales and 25 percent of profits. For each of these model plants, a more detailed evaluation was conducted to determine whether these plants would be likely to close under this proposal. This evaluation employed a discounted net present value analysis of cash flows, including compliance costs. This analysis indicated that plant closings as a result of the proposal would be unlikely.

[21] Ibid.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), requires the Agency to evaluate the impacts of regulations on small businesses, small organizations and small governmental jurisdictions. The Regulatory Impact Analysis for today's proposal includes such an evaluation. The Administrator has determined that this proposal will not have a significant impact on small firms.

The key steps in preparing this analysis are as follows:

- Identify the universe of "small entities" affected by the rule;
- Determine if a "substantial number" of small entities will be affected by the rule; and
- Evaluate if the rule will have "significant" impacts on these "small entities."

Today's proposed regulations are expected to primarily affect small firms. Therefore, the Regulatory Flexibility Act requirement concerning effects on small businesses is addressed to a large extent by the overall economic analysis being performed in conjunction with the proposal.

Throughout the development of today's proposal, the Agency's goal has been promulgation of requirements that would be the least burdensome to small businesses and also meet the Congressional mandate of protecting human health and the environment. In our effort to design regulations that would meet this goal, we have worked closely with small business organizations, trade associations, State and local governments, EPA's Office of Small and Disadvantaged Business Utilization, and the Federal Small Business Administration to assess the needs and capabilities of small businesses. EPA believes that this proposal is a balanced approach to regulating hazardous waste from these generators while considering their small business nature.

In analyzing the effects of today's proposal on small firms, it is necessary to first determine if a substantial number of small entities are affected within those industries impacted by the rule. To make this determination, it is assumed that the potential affected population of small entities are within the over 200 4-digit SIC industries targeted by the Abt Survey. Basically, these industries are grouped into the following general industrial sectors:

- Agricultural Services;
- Construction;
- Manufacturing;
- Transportation;
- Wholesale Trade;

- Retail Trade;
- Services.

For purposes of this analysis, "small entities" were defined as firms comprised of fewer than 50 employees for all of the sectors except manufacturing (<100 employees). In many cases these classifications are approximations because the Small Business Administration establishes size standards in terms of sales levels, and the size standards vary within sectors. For example, most small entity size standards for manufacturing industries range between 500 and 1000 employees.

In estimating the percentage of small firms affected by the proposed regulations within the impacted industries, firms whose primary waste is used lead acid batteries intended for recycling were excluded (this accounts for 60 percent of the total waste). (See Part II, Section I.E.1.) It was also assumed that the regulated community will be those producing between 100 and 1000 kg/month of hazardous waste.

The results of this analysis indicates that less than 10 percent of small entities within the impacted industries will be affected by the proposed regulations. Most small businesses will not be affected by these regulations because they: (1) Do not generate hazardous waste, (2) generate less than 100 kg/mo, or (3) generate over 1000 kg/mo and are already subject to hazardous waste regulations.

Even though only a relatively small percentage of potentially affected small businesses will probably be affected, the more important issue to analyze is whether or not a large number of those which are affected will be severely impacted. Three commonly accepted tests were used to measure whether or not businesses would be severely impacted:

(1) Annual compliance costs will increase the relevant production costs for small entities by more than five percent;

(2) Capital costs of compliance will represent a significant portion of the capital available to small entities,

(3) The costs of the regulation will likely result in closure of small entities.

To analyze the significance of compliance costs on small businesses, data were developed for 25 different types and sizes of model plants representing those most likely to be severely impacted by the proposed regulations. The compliance costs used for this analysis reflect the following regulatory options and disposal assumptions:

- Off-site disposal in secured (Subtitle C) landfill;
- Storage without permit of up to 6,000 kg of waste for up to 180 days assuming transportation of less than 200 miles;
- Storage and disposal in covered metal containers (drums);
- Reduced manifest and storage requirements and the elimination of the requirement for a biennial report. The generator would be required to complete virtually all items on the manifest (including an EPA identification number), but only one copy of the manifest would be produced and there would be no recordkeeping or exception reporting requirements;
- Generators taking advantage of the storage exemption would be subject to some good-housekeeping requirements (*e.g.*, maintenance of containers and tanks) but would not be required to develop written contingency plans and also would not be required to provide formal employee training as long as appropriate emergency procedures are established and employees are made aware of these procedures as well as proper handling methods for hazardous wastes.

In general, these regulations will not cause significant impacts on small firms. None of the model plants established for this analysis show cost increases of more than five percent as a direct result of compliance costs. The proposed regulations require no significant capital outlays and thus should not affect capital requirements or availability. Even the most severely impacted model plants would not close under the assumptions of this exercise and would continue to operate at a profit.

In summary, it appears that the impact on small firms will not cause a significant number of hardships. There will be isolated cases, involving on-site management or transportation over long distances, where compliance costs for some individual firms may be severe. In the case of on-site management, however, the Agency believes that most 100–1000 kg/mo generators will switch to off-site practices rather than face the high costs of obtaining interim status or a permit. Furthermore, approximately 70 percent of these generators are in metropolitan areas, and would thus be able to reduce transportation costs by allowing transporters to consolidate shipments by picking up waste from more than one generator at a time.

IV. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs at OMB, marked "Attention: Desk Officer for EPA". The Agency will respond to any OMB or public comments on the information collection requirements prior to promulgation of the final rule regarding 100-1000 kg/mo generators.

V. List of Subjects

40 CFR Part 261

Environmental Protection Agency, Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 262

Environmental Protection Agency, Hazardous materials, Labeling, Packaging and containers, Reporting requirements, Waste treatment and disposal.

40 CFR Part 263

Environmental Protection Agency, Hazardous materials transportation, Waste treatment and disposal.

40 CFR Part 264

Environmental Protection Agency, Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 265

Environmental Protection Agency, Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

40 CFR Part 270

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

40 CFR Part 271

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

Dated: July 25, 1985.

Lee M. Thomas,

Administrator.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

2. In § 261.5, paragraph (h) is removed and existing paragraphs (i) and (j) are redesignated as (h) and (i). Paragraphs (a), (b), and (c), and the introductory text of paragraph (e), are revised to read as follows:

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

(a) A generator is a small quantity generator in a calendar month if he generates no more than 100 kilograms of hazardous waste in that month.

(b) Except for those wastes identified in paragraphs (e), (f) and (g) of this section, a small quantity generator's hazardous wastes are not subject to regulation under Parts 262 through 265 and Parts 270 and 124 of this chapter, and the notification requirements of Section 3010 of RCRA, provided the generator complies with the requirements of paragraphs (f) and (g) of this section.

(c) Hazardous waste that is recycled and that is excluded from regulation under §§ 261.6(a)(2) (iii) and (v), (a)(3), or 266.36 or hazardous waste that is exempt from regulation under 40 CFR 261.4(c) and (d) and 262.34 and Parts 263, 264, and 265 and the subsequent permitting requirements is not included in the quantity determinations of this section and is not subject to any of the requirements of this section. Hazardous waste that is subject to the requirements of § 261.6(b) and (c) and Subparts C, D, and F of Part 266 is included in the quantity determination of this section and is subject to the requirements of this section.

* * * * *

(e) If a small quantity generator generates acutely hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acutely hazardous waste are subject to full regulation under Parts 262 throughout 265 and Parts 270 and 124 of this chapter, and the notification requirements of Section 3010 of RCRA. Those wastes are not subject to the requirements applicable to the hazardous wastes produced by generators generating greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

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

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

4. Section 262.20 is amended by revising paragraph (a) and adding new paragraph (e) to read as follows:

§ 262.20 General requirements.

(a) A generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal must prepare a Manifest (OMB control number 2050–0039) of EPA form 8700–22, and, if necessary, EPA Form 8700–22A, according to the instructions included in the Appendix to Part 262, except that a generator producing greater than 100 kg but less than 1000 kg in a calendar month need not include a manifest document number under item 1.

* * * * *

(e) The requirements of this Subpart do not apply to hazardous waste produced by generators of greater than 100 kg but less than 1000 kg in a calendar month where:

(1) The waste is reclaimed under a contractural agreement pursuant to which:

(i) Either the person generating the material, or the reclaimer, retains ownership of the material at all times;

(ii) The type of waste and frequency of reclamation shipments are specified in the agreement;

(iii) The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator is owned and operated by the reclaimer of the waste; and

(2) The generator maintains a copy of the agreement in his files for a period of at least three years.

5. Section 262.22 is revised to read as follows:

§ 262.22 Number of Copies.

(a) With the exception of a manifest from a generator generating greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month, the manifest consists of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the designated facility with one copy each for their records and another copy to be returned to the generator.

(b) The manifest for a generator generating greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month consists of only a single copy which must accompany hazardous waste during transportation to the designated facility.

6. In § 262.23, paragraphs (a)(3) and (b) are revised to read as follows:

§ 262.23 Use of the manifest.

(a) * * *

(3) Retain one copy, in accordance with § 262.40(a) except for a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month, who is excluded from the requirements of § 262.40(a).

(b) The generator must give the transporter the remaining copies of the manifest. A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month must give the transporter the single copy of the manifest which is to accompany the waste to the designated facility.

* * * * *

7. Section 262.32 is amended by adding paragraph (c).

§ 262.32 Marking.

* * * * *

(c) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month is exempt from the requirement of paragraph (b) of this section to include the Manifest Document Number on each container prepared for off-site shipment.

8. Section 262.34 is amended by adding new paragraphs (d), (e) and (f).

§ 262.34 Accumulation time.

* * * * *

(d) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

(1) The quantity of waste accumulated on-site never exceeds 6000 kilograms;

(2) The generator complies with the requirements of paragraphs (a)(1), (a)(2) and (a)(3) of this section and the requirements of Subpart C of Part 265; and

(3) The generator complies with the following requirements:

(i) At all times there must be at least one employee either on the premises or on call (*i.e.*, available to respond to an emergency by reaching the facility

within a short period of time) with the responsibility for coordinating all emergency response measures specified in paragraph (d)(3)(iv) of this section. This employee is the emergency coordinator.

(ii) The generator must post the following information next to the telephone:

(A) The name and telephone number of the emergency coordinator;

(B) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(C) The telephone number of the fire department, unless the facility has a direct alarm.

(iii) The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures;

(iv) The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows:

(A) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(B) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;

(C) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water, the generator must immediately notify the National Response Center (using their 24-hour toll free number 800/424–8802). The report must include the following information:

(*1*) The name, address, and U.S. EPA Identification Number of the generator;

(*2*) Date, time, and type of incident (*e.g.*, spill or fire);

(*3*) Quantity and type of hazardous waste involved in the incident;

(*4*) Extent of injuries, if any; and

(*5*) Estimated quantity and disposition of recovered materials, if any.

(e) A generator who generates greater han 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more for off-site treatment, storage or disposal may accumulate hazardous waste on-site for 270 days or less without a permit or without having interim status provided that he complies with the requirements of paragraph (d) of this section.

(f) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of 40 CFR Parts 264 and 265 and the permit requirements of 40 CFR Part 270 unless he has been granted an extension to the 180-day (or 270-day if applicable) period. Such extension may be granted by EPA if hazardous wastes must remain on-site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis.

9. In Subpart D of Part 262, add the following new § 262.44:

§ 262.44 Special Requirements for Generators of between 100 and 1000 kg/mo.

A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month is exempt from the requirements of this subpart, except for the recordkeeping requirements in paragraphs (c) and (d) in § 262.40 and the requirements of § 262.43.

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

10. The authority citation for Part 263 continues to read as follows:

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

11. In § 263.20, paragraphs (b), (d)(2) and (d)(3) are revised, and paragraph (h) is added to read as follows:

§ 263.20 The manifest system.

* * * * *

(b) Before transporting the hazardous waste, the transporter must sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. Except for waste received from a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month, the transporter must return a signed copy of the manifest to the generator before leaving the generator's property.

* * * * *

(d) * * *

(2) Retain one copy of the manifest in accordance with § 263.22, except for a manifest received from a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month; and

(3) Give the remaining copies of the manifest, or the single copy of the manifest that accompanies waste shipped by a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month, to the accepting transporter or designated facility.

* * * * *

(h) A transporter transporting hazardous waste from a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month need not comply with the requirements of this section or those of § 263.22 provided that:

(1) The waste is being transported pursuant to a reclamation agreement as provided for in § 262.20(e);

(2) The transporter records, on a log or shipping paper, the following information for each shipment:

(i) The name, address, and EPA Identification Number of the generator of the waste;

(ii) The quantity of waste accepted;

(iii) All DOT required shipping information;

(iv) The date the waste is accepted; and

(3) The transporter carries this record when transporting waste to the reclamation facility.

12. In § 263.22, paragraph (a) is revised to read as follows:

§ 63.22 Recordkeeping.

(a) Except for a manifest received from a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month, a transporter of hazardous waste must keep a copy of the manifest signed by the generator, himself, and the next designated transporter or the owner or operator of the designated facility for a period of three years from the date the hazardous waste was accepted by the initial transporter.

* * * * *

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

13. The authority citation for Part 264 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and

Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6925).

14. In § 264.71, paragraphs (a)(3) and (a)(4) are revised to read as follows:

§ 264.71 Use of manifest system.

(a) * * *

(3) Immediately give the transporter at least one copy of the signed manifest, unless the manifest is received from a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month;

(4) Within 30 days after the delivery, send a copy of the manifest to the generator, unless the manifest is received from a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month; and

* * * * *

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

15. The authority citation for Part 265 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, 3005, and 3015 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935).

16. In § 265.71, paragraphs (a)(3) and (a)(4) are revised to read as follows:

§ 265.71 Use of manifest.

(a) * * *

(3) Immediately give the transporter at least one copy of the signed manifest, unless the manifest is received from a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

(4) Within 30 days after the delivery, send a copy of the manifest to the generator, unless the manifest is received from a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

17. The authority citation for Part 270 continues to read as follows:

Authority: Secs. 1006, 2002, 3005, 3007, 3019, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6925, 6927, 6939, and 6974).

§ 270.1 [Amended]

18. Section 270.1 is amended by revising paragraph (c)(2)(i) to read as follows:

* * * * *

(c) * * *

(2) * * *

(i) Generators who accumulate hazardous waste on-site for less than the time periods provided in 40 CFR 262.34.

* * * * *

19. Section 270.10 is amended by adding paragraph (e)(1)(iii) to read as follows:

§ 270.10 General application requirements.

(e) * * *

(1) * * *

(iii) For generators generating greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calender month and treats, stores, or disposes of these wastes on-site, by ———— (one year after the date of publication of the final regulations).

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

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

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

§ 271.1 [Amended]

21. § 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

Table 1.—Regulations Implementing the Hazardous and Solid Waste Amendments of 1984

Date	Title of regulation	Federal Register reference
*	* * * * *	
Aug. 1, 1985.....	Proposed Regulations for Generators of 100–1000 kg/mo of Hazardous Waste.	50 FR [insert Federal Register page number]

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