

# ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, 265, 268, 270, and 273

[FRL-3982-3]

RIN 2050-AD19

## Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking the first steps of an initiative designed to remove unneeded regulatory impediments to the safe and efficient management of hazardous wastes. These actions proposed are part of a long term effort to ensure that hazardous wastes are managed safely, without unnecessary regulation.

EPA is proposing a program under which certain widespread post-user items that are hazardous wastes (e.g., certain batteries and pesticides that are hazardous wastes) would be collected under greatly streamlined requirements, to facilitate separation of these materials from the municipal waste stream and to encourage proper treatment and/or recycling.

**DATES:** Comments on this proposed rule must be submitted on or before April 12, 1993.

**ADDRESSES:** Persons who wish to comment on this notice must provide an original and two copies of their comments, include the docket number (F-93-SCSP-FFFFF), and send them to EPA RCRA Docket (OS-305), U.S. EPA, 401 M Street SW., Washington, DC 20460. The RCRA Docket is located at room M2427, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, the public must make an appointment by calling (202) 260-9327. The public may copy a maximum of 100 pages from any regulatory docket at no cost. Additional copies cost \$0.15 per page.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA/ Superfund Hotline toll free at (800) 424-9346. In the Washington, DC metropolitan area, call (703) 412-9810. For information regarding specific aspects of this notice, contact Charlotte Mooney, Office of Solid Waste (OS-332), U.S. EPA, 401 M Street SW.,

Washington, DC 20460, telephone (202) 260-6926.

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### I. Background

#### A. Changing Awareness of Product Life Cycles

In recent years, there has been a significant shift in public perceptions of waste management issues. Whereas in previous decades the most significant waste management problems were perceived to be associated with industrial and manufacturing processes, there is increasing awareness that many everyday activities may collectively cause significant environmental impacts. These impacts may be more diffuse and less easily traced to a single cause or source than impacts that are clearly the result of a single industrial source or group of industrial sources.

In some cases, public awareness is raised through direct economic impacts on individuals. One example is localized shortages of municipal landfill capacity, which translates directly into higher landfill disposal costs for citizens in those localities. As a result, municipalities are increasingly adopting waste management practices that minimize the quantity of waste that is landfilled. Some municipalities choose municipal waste combustion, which reduces the quantity of waste that must ultimately be landfilled; others rely in some measure on community recycling programs to divert materials from the disposal wastestream. Still others choose a combination of municipal waste combustion and recycling programs.

There is another reason for increasing public awareness, generally at the local government level, of the toxic constituents present in common items in the municipal wastestream. That reason is the large numbers of municipal landfills on the National Priorities List, targeted for cleanup under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, also known as Superfund). The costs associated with CERCLA cleanups are a prime reason local officials are becoming increasingly concerned about toxic constituents present in the municipal wastestream.

Finally, articles in the print media and reports in the electronic media that describe the downstream impacts occurring after a consumer item's use have increased individual citizens' awareness of the link between their use of consumer goods and the presence of toxic constituents in the municipal wastestream. (It is useful to think about the product's "life cycle," i.e., the beginning of its life when it leaves the place of manufacturing, its distribution down through retailers (typically) to the

individual user, then its use phase, and finally the phase when it is present in the waste stream.)

This increased awareness of the possibility of toxic constituents leaching from municipal landfills into soil and groundwater aquifers has focussed attention on the toxic constituents present in everyday items that we dispose of in the municipal waste stream. There have been a wide variety of responses to this emerging issue, at a number of levels. Manufacturers, retailers, state legislatures, local governments, and individual citizens are all taking various actions to try to reduce the loading of toxic constituents in the nation's municipal waste stream.

One approach taken by manufacturers of certain items has been to try to reduce the amounts of toxic constituents present in the items themselves (a "source reduction" or "toxic use reduction" approach). In some cases, this approach is technically and economically feasible. However, while the items with lower toxic constituent content are moving into wide distribution and use, the older items with higher levels of toxic constituents are often still present in the waste stream.

Another approach, taken by municipalities, is to try to keep the wastes out of the regular municipal waste stream by putting on special collection programs, targeting hazardous wastes generated in households or small businesses. These municipalities generally try to recycle the collected material rather than dispose of it, to the extent possible. The remaining hazardous wastes are generally managed as if they were fully regulated hazardous wastes (i.e., sent to a special facility meeting the federal requirements for managing hazardous wastes).

There has also been an emerging trend on the part of state legislatures to enact state laws encouraging or requiring manufacturers and retailers of certain products to become involved during the "wastestream" phase of their products' life cycle. In some states, concerns over metals (such as lead and cadmium) in widely used goods (such as batteries) have resulted in state legislation placing the responsibility for disposal of these goods on the original manufacturers.

For those consumer products that are legally classified as "hazardous wastes" for the part of their life cycle when they are wastes, there is a federal law governing their management as hazardous wastes. This law, the Resource Conservation and Recovery Act (RCRA), regulates hazardous wastes when they are managed by the original producers of the waste ("generators,"

and by those parties handling the wastes throughout the wastestream phase of the product's life cycle. The federal hazardous waste program that is authorized by RCRA's Subtitle C explicitly places the responsibility for initial management of hazardous wastes on the generator of those wastes, and places the responsibility for later management on those parties handling the waste at the later stages.

Thus, when state laws are enacted that shift the responsibility for managing hazardous wastes away from the individuals who generated the wastes, over toward manufacturers, wholesalers, or retailers, there are inherent conflicts between the federal RCRA hazardous waste program and those emerging state laws.<sup>1</sup> EPA has tentatively concluded that RCRA has an existing regulatory structure that may not be appropriate for some hazardous wastes. Today's proposal is an attempt to mesh the relatively recent trends in municipal solid waste (and pesticide waste) management practices with the statutory requirements imposed by RCRA subtitle C.

#### *B. RCRA Subtitle C Hazardous Waste Program*

Under Subtitle C of the Resource Conservation and Recovery Act, on May 19, 1980, EPA promulgated regulations setting forth the framework of the nation's hazardous waste management program (45 FR 33066). These regulations included requirements for hazardous waste generators, transporters, and owners and operators of treatment, storage, and disposal facilities (TSDs). Since 1980, a number of changes and additions have been made to these rules, resulting in the current RCRA subtitle C hazardous waste management regulatory program. The structure of the RCRA hazardous waste program places very similar responsibilities on all hazardous waste generators, regardless of the size or type of the business or organization generating the waste. This point is discussed further below.

In 1980, when promulgating the original set of RCRA hazardous waste management requirements, EPA had not yet listed or identified any wastes as hazardous. With the first listings, and the first characteristics that identified wastes as hazardous, EPA set the scope of the regulations at wastes generated primarily in manufacturing settings (or, to a certain extent, in commercial or

agricultural settings). EPA recognized that the hazardous wastes listed and identified in 1980 were generated by an enormous number of parties in extremely diverse settings.

As described in 45 FR 33102, May 19, 1980, EPA estimated the total number of generators at 760,000, with a small fraction—just over 5 percent—responsible for the overwhelming majority of the hazardous waste. Most of these very large generators were in the manufacturing sector; the rest of the generators, who generated only tiny amounts, by comparison, were scattered across a diverse set of different activities. In the interest of using resources efficiently, and to concentrate on regulating the small number of generators who created the greatest proportion of the hazardous wastestream, EPA used the approach of regulating generators based on the quantities that they generated per month. For most hazardous wastes, the standard was set at 1000 kilograms or more generated per month.

However, in the 1984 amendments to RCRA, Congress directed EPA to lower the standard to 100 kilograms per month. In 1986 EPA promulgated the revised regulations that lowered the generation rate limits for most hazardous wastes to 100 kilograms per month. The result was that numerous hazardous waste generators from commercial, construction, educational, retailing, special trades, agricultural, governmental, and medical settings became regulated to a much greater extent than they had been previously. EPA modified the hazardous waste regulations slightly to accommodate some of the different circumstances these smaller generators encountered,<sup>2</sup> but left the requirements substantially the same.

Although this approach can be viewed as an equitable way to establish responsibility for managing all hazardous wastes, regardless of the amounts generated, in practice it is extremely difficult to implement. EPA and state agencies have conducted (and continue to conduct) extensive outreach and educational programs to try to explain and implement the complex hazardous waste regulatory requirements to this vast regulated community. Until 1986, EPA could target its explanations of the regulatory requirements to specific industry trade associations, and could tailor its explanations to address a number of typical manufacturing situations.

<sup>1</sup> Note that similar conflicts exist with respect to state laws on municipal or county-run "collection programs" that accept hazardous wastes from businesses, or that accept hazardous waste pesticides from farmers.

<sup>2</sup> For example, the requirements for accumulating hazardous waste in tanks, and the requirement to file a biennial report.

However, after 1986, there was a tremendous increase in the variety of settings in which regulated hazardous waste generators were found. There are very significant administrative efforts involved in learning about the specific circumstances of a waste's generation and initial management, in the enormous variety of settings in which hazardous wastes are generated.

EPA has tentatively concluded that it may be inappropriate to attempt to impose the original, 1980 requirements on generators and others who manage certain widely-dispersed hazardous wastes. EPA's experience with implementing the water pollution control program has been that it can be easier to target and control "point sources" with permits and other administrative means, while "non-point" sources can be far more difficult to control with the traditional "command and control" approach to regulating pollutant releases.

One way of looking at the diverse population of hazardous waste generators who generate common waste items is to consider them to be analogous to "non-point" sources of water pollution—except that the "pollutants" they release are contained in the used consumer products. It may be a far more realistic approach to educate users about the "downstream" impacts of their use of a particular product. Users might choose not to use the product, or could (in some cases) alter their use of it in order to reduce or eliminate the waste's generation. However, in some cases consumers do not have those options; structuring the regulatory requirements for maximum understanding and compliance by users is likely to achieve a more desirable result than leaving the regulations as they currently exist. Modifications to the current regulatory requirements, combined with a thoughtful outreach strategy, are likely to be a more effective means of accomplishing this result.

Finally, EPA notes that one of the objectives of RCRA is stated as a national policy regarding the recovery of materials, in preference to land disposal of hazardous wastes (RCRA Section 1003(a)):

The objectives of this Act are to promote the protection of health, [sic] and the environment and to conserve valuable material and energy resources by . . . minimizing the generation of hazardous waste and the land disposal of hazardous waste by encouraging process substitution, materials recovery, properly conducted recycling and reuse, and treatment . . .

Thus, to the extent that the approach suggested in today's proposal would support achieving the policy goals

stated in RCRA, there is a sound basis for advancing the concept of special collection systems.

#### *C. RCRA Implementation Study*

In July 1990, EPA published the results of its RCRA Implementation Study (RIS) entitled "The Nation's Hazardous Waste Management Program at a Crossroads" (EPA Publication Number 20S-0001, available by calling the RCRA/Superfund Hotline listed above in the **FOR FURTHER INFORMATION** section of this Notice). The RIS evaluated the current RCRA program, gathering information from various EPA data bases, surveys, articles, and reports issued by Congress, the General Accounting Office, and the Office of Inspector General. During development of the RIS, input was solicited from environmental groups, industry, Congressional staff, and current and past State, EPA Regional and EPA Headquarters staff.

Much of the input received regarding the current hazardous waste program focused on the definition of solid waste and RCRA's impact on hazardous waste recycling. The modifications being proposed today are, in part, intended to address the concerns raised in the RIS and to respond to the input received from participants. The Agency expects to propose other, significant modifications to the current regulatory framework in the future.

#### *D. Hazardous Waste Recycling Forum Meetings*

As a follow-up to the RIS, the Agency held a series of three forum meetings to focus more specifically on the definition of solid waste, hazardous waste recycling, and changing the RCRA program so that it would better promote hazardous waste recycling while ensuring that human health and the environment are protected. The first meeting was held with representatives of the EPA Regional offices. The second meeting was held with representatives of many State regulatory agencies. The third meeting was held with representatives of various trade associations, industry groups, environmental groups, other Federal agencies, and Congressional staff.

The comments made at these meetings were also considered in developing this proposal. Although many of the comments focused on long-term changes necessary in the overall hazardous waste program, the discussions held at these forums also led to the concepts presented in today's proposal: a change that could be implemented in the short term and that would improve the overall regulation of

environmentally protective hazardous waste recycling.

#### *E. Overview of Special Collection System*

The Agency is proposing a streamlined, reduced regulatory scheme for certain hazardous wastes currently subject to full subtitle C regulation, in an effort to facilitate their collection and proper management. Generators of the wastes addressed in today's proposal would be able to manage the wastes under these reduced requirements in lieu of the full subtitle C requirements.

The waste types that would be subject to this streamlined regulatory scheme are generated in a wide variety of settings, and are often post-consumer items (e.g., certain used batteries that exhibit a characteristic of hazardous waste). Another identifying characteristic of these waste types—disparity in applicability of RCRA subtitle C controls—is a result of the wide variety of types of sources that commonly generate the wastes, ranging from households to small businesses to major industrial operations. The portions of these waste streams generated by regulated hazardous waste generators are fully regulated as hazardous waste; whereas what are believed to be large portions of the same waste streams are generated by exempt households or conditionally exempt small quantity generators, and thus, are not subject to RCRA subtitle C controls.

EPA believes that simplifying and streamlining the requirements associated with collection and handling of the regulated portions of these waste streams will encourage the development of more efficient and effective collection systems. Such collection systems will, in turn, facilitate collection of not only the regulated portion of the waste stream, but also the unregulated portion of the waste stream. The potential for recycling may be enhanced where it becomes economically efficient to do so.

Management standards for these "special collection system" wastes, which are included in today's proposal in new part 273, are proposed for two waste streams: hazardous waste batteries and certain recalled pesticides that are hazardous wastes.

For a number of reasons, these wastes are not readily amenable to full-scale cradle-to-grave regulation (i.e., the regulatory scheme set up under the original 1980 regulations). Today's proposal is designed to channel these wastes into proper recycling and management, without utilizing the full-scale regulatory scheme that, by comparison, may less successfully promote proper management.

Potentially, EPA could include other appropriate hazardous wastes in the final regulation.

The part 273 regulations, as proposed today, provide a conditional exemption from full subtitle C regulation for certain hazardous wastes that are currently fully regulated under subtitle C. The proposed conditions are designed to ensure that management of these wastes is conducted in a manner that is protective of human health and the environment, given the diffuse and diverse population of generators. There are new, special requirements that would apply to generators, transporters, and owners and operators of consolidation points, while owners and operators of treatment, storage, recycling and disposal facilities that receive these wastes would continue under the current requirements.

#### *F. Special Collection System Program Goals*

Hazardous wastes which may be affected by today's proposal (or may be included in the special collection system regulations in the future) are called "universal" wastes in today's notice. We have chosen this name merely as a descriptive term; it has no specific regulatory meaning. However, we believe it is an appropriate phrase to describe the nature of these wastes, which have a number of common characteristics:

- These wastes are frequently generated in a wide variety of settings other than the industrial settings usually associated with hazardous wastes;
- They are generated by a vast community, the size of which poses implementation difficulties for both those who are regulated and the regulatory agencies charged with implementing the hazardous waste program; and
- These wastes may be present in significant volumes in the municipal waste stream.

EPA is today proposing a set of special requirements for universal hazardous wastes, which are designed to accomplish three general goals. The first goal is to encourage resource conservation, while ensuring adequate protection of human health and the environment. The second broad goal is to improve implementation of the current subtitle C hazardous waste regulatory program. Third, by simplifying the requirements and encouraging collection of these hazardous wastes, EPA hopes to provide incentives for individuals and organizations to collect the unregulated portions of these universal waste streams (e.g., from households) and

manage them using the same systems developed for the regulated portion, thereby removing these wastes from the municipal waste stream and minimizing their input of hazardous constituents to municipal landfills, combustors, and composting projects. Each of these goals is discussed below.

#### *1. Encouraging Resource Conservation*

The regulations proposed today are designed to encourage recycling of universal hazardous wastes. One of RCRA's objectives is to "conserve valuable material and energy resources" (RCRA section 1003(a)). Conservation of materials, for example, metals present in some of the universal hazardous wastes, is important not only in RCRA but to the U.S. economy in general. Frequently, it is more efficient to recover materials from wastes, rather than to extract them from raw materials. Regulation of wastes, however, can affect materials recovery rates, since the economics of materials recovery is influenced by costs incurred through complying with regulatory requirements. Setting the regulatory requirements for recyclable hazardous wastes at a level that is still protective of health and the environment, but that would reduce compliance cost and facilitate collection is one of the goals of today's proposal.

The regulations proposed today are designed to encourage appropriate management of hazardous wastes. For example, by relaxing subtitle C collection and transport regulations for these universal wastes, recycling may become more economically feasible, since the collection step is the initial and necessary step in any recycling program. The collection mechanisms established under these standards will enable regulated parties to physically separate these universal wastes from other materials. The potential for recycling may be enhanced where the relaxing of subtitle C regulations reduces the costs associated with managing universal wastes. Thus, for certain wastes, recycling may become economically efficient. Materials recovered from the wastes can be used in place of virgin materials, where it is economically efficient to do so, thereby providing both environmental and economic benefits to society. While a major impetus for this rule is that many states or private firms are requiring or encouraging recycling of some of these wastes, EPA is proposing to facilitate the collection of these wastes for either recycling or treatment and disposal. The Agency is not proposing to mandate recycling nor making a determination on the relative risks of recycling versus treatment and disposal.

These special collection system regulations should eliminate existing impediments to programs that many state and local agencies are currently developing to separate certain wastes from the municipal waste stream. For example, some states have passed legislation requiring battery manufacturers to provide systems for collection of used batteries, which has highlighted concerns about barriers in the current federal regulatory structure to implementation of such arrangements. The part 273 regulations proposed today will eliminate or minimize subtitle C obstacles to implementing these state and local programs, and will serve to supplement collection efforts already underway at the state and local level. In addition, today's proposed regulations will make the development of collection and recycling infrastructures more economically feasible.

#### *2. Improving Implementation of the Hazardous Waste Program*

The second goal of today's proposal is to improve implementation of the hazardous waste program. EPA believes that the regulations proposed today will have significant impacts on waste management practices nationwide.

One way implementation will be improved is by establishing a greatly simplified set of requirements, that will be more easily understood by handlers of these universal hazardous wastes. For example, from an administrative and resource standpoint, it is difficult and impractical for EPA and state regulatory authorities to explain and apply the complex RCRA hazardous waste regulations to the wide variety of people who generate universal hazardous wastes. It is also time consuming and costly for industry and commercial entities to determine what the regulatory requirements are for very small quantities of these universal hazardous wastes. Thus, EPA believes there is a need for hazardous waste management requirements targeted specifically toward this vast regulated community. The requirements must be protective of human health and the environment. The regulations must also be clear and easily understood, so that regulated parties from diverse situations can comply, without expending unreasonable amounts of time and effort to understand the applicable requirements. Today's proposal seeks to respond to these needs.

In some cases, for example, the current regulatory scheme imposes different requirements on hazardous wastes being sent for recycling than on those being sent for disposal.

Enforcement of these regulations is complicated by the fact that a waste handler may claim intent to conduct an activity (for example, recycling) that is exempt from regulation, but it may be difficult for the implementing agency to verify whether the individual's stated intent is the same as the actual management technique ultimately selected. The standards proposed today would regulate universal hazardous wastes uniformly, regardless of whether they are destined for recycling or disposal. For example, a battery that is a hazardous waste would be conditionally exempt from the subtitle C regulations and subject to the special collection system regulations regardless of whether it is being collected for recycling or disposal. In addition, this simplified system will allow EPA and state agencies to focus their resources on ensuring compliance, rather than on explaining the rules.

Finally, the regulations proposed today will greatly simplify the procedures a generator must use to determine his or her monthly hazardous waste generation rate (i.e., to determine whether the generator is a conditionally exempt small quantity generator, a generator of 100–1000 kilograms per month, or a large quantity hazardous waste generator). For example, for a waste such as a hazardous waste battery, the generator must currently count the battery toward the monthly quantity determination in some cases, and not in others. The variables that the generator must now consider are: (1) Whether the battery is being recycled or disposed; (2) if recycled, whether it is being regenerated or reprocessed; (3) if reprocessed, whether it is a lead-acid battery or other type of hazardous waste battery. The regulations proposed today would greatly simplify the generator's monthly quantity determination, since the generator would not be required to count those hazardous wastes managed under the part 273 requirements (regardless of the variables described above) toward the monthly quantity determination.

### 3. Separation From the Municipal Waste Stream

For various reasons, the Agency believes that many of these universal hazardous wastes are currently being managed in the municipal waste stream. For example, there is a "look alike" problem that limits the ability of municipalities to control the wastes that enter the municipal waste stream. Under the current federal regulatory scheme, the regulation of universal hazardous wastes such as used batteries differs based on the waste's generation

source. Wastes generated by consumers in their homes are not regulated under RCRA subtitle C when discarded, because they are excluded from the definition of hazardous waste under 40 CFR 261.4(b)(1) (known as the "household waste exclusion"). Conversely, the same universal hazardous wastes are subject to RCRA subtitle C regulation when generated by commercial establishments, industries and other non-exempt generators. For example, a used car battery generated at an automobile maintenance shop may be a hazardous waste; if so, it must be managed in accordance with all applicable RCRA requirements. An automobile battery has the same appearance regardless of who generates it. This "look alike" problem causes difficulties for owners and operators of municipal solid waste landfills and combustors who are accepting waste shipments. Because regulation of hazardous wastes is not material-specific, automobile batteries generated by large industrial users (that should be managed at hazardous waste facilities) may be entering municipal solid waste landfills or combustors because they cannot be physically distinguished from batteries generated by households. Further, some generators (known as conditionally exempt small quantity generators) who produce only small amounts of these wastes per month are legally allowed to send such wastes to facilities that are not subject to full Subtitle C requirements. See 40 CFR 261.5.

EPA requests comment on whether there are other reasons why universal hazardous wastes are managed as municipal wastes. Commenters should provide specific examples of instances where they believe hazardous wastes are being managed in the municipal waste stream.

### II. Detailed Discussion of Proposed Special Collection System Regulations

Today's proposal introduces a program which, if promulgated, would significantly reduce the regulatory burden for certain wastes currently subject to full subtitle C requirements. Environmental benefits could arise from implementation of the proposed collection system. These include removal of large quantities of hazardous wastes from the municipal waste stream (and thus from municipal landfills, combustors, and composting projects), and development of an environmentally protective infrastructure for collection of these wastes, such a system being a first and necessary step to encourage increased collection. These benefits will flow, in part, from the increased

voluntary compliance likely to result from significant simplification of the current regulatory program.

Today's proposal includes two specific types of wastes within the special collection system: Hazardous waste batteries and cancelled or suspended and recalled pesticides that are hazardous wastes. The proposal also includes criteria to be used to consider extending the program to additional hazardous wastes in the future, and provides a mechanism to allow interested parties to petition EPA to include other wastes in such a scheme.

The current RCRA subtitle C hazardous waste regulatory structure was developed based on the assumption that most hazardous wastes are generated in an industrial setting. These regulations require generators to notify EPA of their activities, to use manifests when sending shipments off-site to treatment, storage or disposal facilities, and to notify those facilities that their hazardous wastes are restricted from land disposal.

Recent changes in the RCRA regulations have caused dramatic shifts in waste management practices over the past several years. For example, promulgation of the Toxicity Characteristic (see 40 CFR 261.24) has greatly increased the regulated community's awareness of the scope of hazardous waste requirements. In addition, the land disposal restrictions have caused shifts in hazardous waste treatment, recycling and disposal patterns.

Some of the same forces causing changes in waste management practices are also causing EPA to reevaluate some aspects of the existing hazardous waste regulatory program. For example, with implementation of the Toxicity Characteristic it has become clear that many wastes generated in non-industrial settings may be classified as hazardous. In addition, the complexity of the regulations concerning the definition of solid waste, hazardous waste recycling, and land disposal restrictions poses a considerable challenge to EPA and authorized state hazardous waste programs: to effectively communicate the regulatory requirements to the diverse parties who generate hazardous wastes. The application of the current hazardous waste regulatory scheme to commercial, agricultural, and community activity waste<sup>3</sup> generators may not be the most

<sup>3</sup> These general descriptors are taken from the definition of solid waste in RCRA § 1004(27). EPA interprets the term "community activities" in the statutory definition to include educational institutions, federal, state and local government operations, etc.

appropriate way to protect human health and the environment. For hazardous wastes generated by such generators, EPA believes that a different and less burdensome regulatory scheme, that continues to ensure protection of human health and the environment, is appropriate. Today's proposal sets forth elements of such a regulatory scheme.

In today's notice, EPA will use the term "universal hazardous wastes" to refer to the broad category of wastes that may be candidates for proposed part 273 regulations. EPA will use the term "special collection system hazardous wastes" to refer to those wastes that are determined to be eligible for part 273 regulation.

#### A. Overview of Proposed Regulations

The requirements proposed today would offer a conditional exemption from the current subtitle C hazardous waste requirements for specific universal wastes. Compliance with the reduced set of part 273 requirements would be an option that waste handlers may voluntarily choose. However, operating under the part 273 requirements would not be compulsory. If universal waste handlers wish, they may instead continue to manage their hazardous wastes under the full subtitle C regulations set forth in 40 CFR parts 262 through 270.<sup>4</sup> If they do elect to follow the reduced part 273 requirements, they would be subject to a number of conditions proposed today that are designed to provide adequate protection of human health and the environment.

EPA notes that parties claiming that they meet the terms of the special collection system conditional exemption bear the burden of proving that they are eligible for that exemption. See 40 CFR 261.2(f). Since the requirements currently in effect for many of these special collection system wastes are more strict than the requirements proposed today, parties claiming the benefits of an exception to the current regulatory scheme have the burden of proof to show that they meet the terms of the exception. Since parties claiming the exception have the knowledge of the facts supporting their claims, it is appropriate for them to bear the burden of proof of showing that they meet the terms of the exception. For example, the proposal would require a

generator to send his or her waste to one of several specified kinds of facilities.

The proposal does not include provisions requiring generators to use a manifest, which normally would accompany a hazardous waste shipment. Instead, the generator could simply keep a record of where the shipment was sent. For further discussion of this point, see 50 FR 642, January 4, 1985.

In today's proposal, generators, transporters, and owners or operators of "consolidation points" (places where smaller quantities of the hazardous waste are collected and held temporarily before being moved on to another consolidation point or to a permitted or interim status hazardous waste facility) are subject to a number of similar conditions. Facilities which ultimately recycle, treat, or dispose of the waste remain subject to the full hazardous waste regulatory program (i.e., the current subtitle C requirements).

Today's proposal includes a number of provisions that would apply to generators, transporters, and consolidation points. First, some packaging and physical condition requirements would be imposed on handlers to ensure that these wastes are not released to the environment as they pass through the special collection system. Second, there would be limitations placed on the types of locations to which these wastes may be forwarded by each participant in the collection system, and some shipments would be accompanied by a hazardous waste manifest. Third, storage time limits and treatment/dilution and disposal prohibitions would be imposed to ensure that substantive requirements associated with the land disposal restrictions program are met. Fourth, persons who export these wastes would comply with requirements for notification and consent from the receiving country. Fifth, when generators and consolidation points store certain quantities of special collection system hazardous wastes at one time, they would notify EPA of their activities (required by existing regulations as well), to ensure that regulatory agencies are able to provide proper oversight of their activities. Sixth, persons who manage hazardous wastes under the reduced scheme proposed today would be required to take immediate response action if releases of hazardous waste to the environment occur.

Destination facilities (generally, the permitted or interim status hazardous waste facility receiving the consolidated shipment) are required to comply with

the full subtitle C regulations applicable to their operations.

#### B. Scope

Before discussing the proposed regulatory requirements in more detail, it is important to describe three broad issues that will be relevant to those wishing to comment on today's proposal. The direction that EPA chooses to take on these "scope" issues will affect both the implementation of any final part 273 regulations, and the changes in waste management practices that are likely to result should these regulations be finalized. EPA believes it is important for commenters to understand the broad implications of the regulations proposed today. For example, the program proposed today may be expanded in the future to cover a number of other wastes; thus, we are setting up general rules to define the program's scope. Readers of today's notice should consider and comment on whether the general direction being proposed for the program's scope is appropriate, and also on whether there are other wastes that deserve consideration for inclusion in part 273. A final point that commenters should understand is the impact of today's requirements on management of household wastes; these impacts are described briefly in section II.B.4. below.

There are three basic "scope" questions that EPA has identified in developing today's proposal. These questions are:

- (1) Whether to limit the part 273 regulations' coverage, based on potential resource recovery or energy recovery from the hazardous waste (i.e., will it be recycled or merely disposed);
- (2) Which hazardous wastes to include in the part 273 regulations, and the criteria EPA will use to select them; and
- (3) Whether to include hazardous wastes generated by conditionally exempt small quantity generators (CESQGs) in the proposed part 273 special collection system rules.

Each of these questions is discussed below, along with the approach EPA has selected for proposal, and EPA's reasons for that selection.

#### 1. Recycling Versus Recycling or Disposal

A fundamental question for the universal hazardous wastes regulated under the special collection system (part 273) regulations is whether to limit the scope of the regulations based on whether the wastes will be recycled or disposed. EPA believes that there are three potential options: (1) Limiting the

<sup>4</sup> Generally, these requirements include limited standards for accumulation by generators (without permits); manifests to track shipments from the waste's origin to its final disposal; permits or self-implementing "interim status" standards for treatment, storage, or disposal facilities; reports on hazardous wastes managed; and notifications of applicable restrictions on land disposal.



scope of the part 273 regulations to hazardous wastes being recycled only, (2) not limiting the scope of the regulations (i.e., applying the regulations to wastes destined either for recycling or disposal), or (3) applying the regulations uniformly to generators and transporters, while limiting the part 273 consolidation point requirements to those consolidation points managing universal wastes destined for recycling only. These options present different implementation and policy concerns, and are discussed more fully below. For the reasons discussed below, today's proposal adopts the position that the part 273 special collection system regulations should be applicable to wastes that are collected for either recycling or disposal (Option 2).

**Option 1: Recycling only.** Under the first option, the part 273 regulations would only be available for universal hazardous wastes that are being recycled (and not available for wastes sent for disposal). This approach would require that the initial generator determine whether the waste will be recycled or disposed, in order to know whether the part 273 regulations apply to the generator's management of the waste.

EPA considered this approach as a means to achieve one of the objectives of RCRA: "to conserve valuable material and energy resources \* \* \* by encouraging \* \* \* properly conducted recycling and reuse" [see RCRA section 1003(a)(6)]. If the part 273 regulations were limited to those universal hazardous wastes that will be recycled (while universal hazardous wastes that are to be disposed are subject to the usual subtitle C controls), waste managers may shift wastes towards recycling under the part 273 requirements (and away from disposal under the usual subtitle C controls). In addition, EPA believes that separation of these wastes from the industrial and/or municipal waste stream increases the likelihood that they will be recycled. Thus, a program that facilitates collection may increase the recycling rates for these wastes.

There are several potentially serious drawbacks to this approach, however. First, in order for managers of universal wastes to determine whether they would be subject to the part 273 regulations or the full hazardous waste management regulations (40 CFR parts 262 through 270), they would be required to know the final disposition of the wastes (i.e., recycling or disposal). Due to the volatility of many recycling markets, however, this determination may be cumbersome or impossible to make (particularly for persons

participating in the early stages of the collection system).

Second, larger quantities of hazardous wastes collected for recycling (i.e., an increase of the supply of available secondary materials) may cause some recycling markets to become overwhelmed with available input materials. The increased supply to the recycling market may exceed the available recycling capacity, and may result in an overaccumulation of the waste (at least temporarily). The increased supply of secondary materials could also cause a depression in the price of the yet-to-be-recycled secondary materials; under certain market conditions the generator may have to pay the recycler to accept the waste. If the cost of recycling is greater than the cost of disposal, the waste probably will not be recycled. The waste may be either disposed or overaccumulated (and, potentially, as a result of overaccumulation, pose a threat to human health and the environment).

Third, implementing such a system would be complicated by the need for implementing agencies to identify the intent of generators or owners/operators of consolidation points regarding future waste management (i.e., recycling or disposal) in order to determine which regulations apply to that individual. Finally, limiting the scope of these rules to wastes that are recycled only may stifle innovation. Innovators with new treatment and disposal technologies which are equally protective of human health and the environment as recycling technologies would not have the option to manage the waste under the part 273 requirements. These distinctions, which are not based on the actual risks of the recycling or treatment/disposal processes used, may thus create artificial barriers to safe treatment of the waste.

**Option 2: Recycling or disposal.** Under the second option, the regulations in part 273 would be available for universal hazardous wastes, regardless of whether they are recycled or disposed. Thus, waste generators need not be concerned with the waste's ultimate disposition (i.e., whether the final waste handler will decide to recycle or dispose of the waste) since the same requirements would apply in either case.

There are two advantages to this approach. First, universal hazardous wastes that will be disposed rather than recycled<sup>5</sup> are likely to be directed away from subtitle D facilities (where they

currently may be managed) toward subtitle C facilities that provide more environmentally protective controls.

Second, this approach does not introduce a significant complication for implementing agencies: having to distinguish between universal hazardous wastes that are intended for recycling and those intended for disposal, and having to verify a waste handler's intent (i.e., recycling versus disposal).

**Option 3: Hybrid of Options 1 and 2.** A third option would be to make the part 273 reduced requirements available for generators and transporters, but to condition availability of the part 273 requirements for consolidation points on whether the universal wastes are recycled. Under this approach, all generators and initial transporters would be subject to the reduced requirements of part 273, whether their wastes are to be recycled or disposed. Consolidation points that send the universal wastes on for recycling would comply with part 273 requirements in lieu of a permit, while those consolidation points sending the wastes on for disposal would comply with parts 264, 265, and 270, including the requirement to obtain a permit for hazardous waste storage.

By reducing the requirements for wastes that are recycled relative to the requirements for wastes that are disposed, this approach may provide significant incentives for recycling. In addition, generators would not be required to determine whether the wastes will be recycled or disposed. However, under this approach, owners and operators of consolidation points would need to know whether the wastes will be recycled or disposed in order to determine which requirements apply. This determination may be very difficult to make, given the nature of different actors in these markets. In addition, this hybrid approach poses implementation concerns similar to those described under Option 1. Specifically, the consolidation point owner/operators' intent regarding final waste management options must be identified while the waste is still in the collection system. Finally, reducing the requirements for recycled wastes relative to those that apply for disposed wastes increases incentives for sham recycling.

EPA is proposing option two (recycling and disposal) in today's notice, for several reasons.<sup>6</sup> First, the

<sup>5</sup> For example, in cases where recycling technologies have not been developed, or recycling is not economically feasible.

<sup>6</sup> It should be noted that under the land disposal restrictions program, recycling may be required for some universal wastes. For example: (1) Effective August 8, 1990, thermal recovery of metals in

part 273 regulations will be much easier to implement if no distinctions are made between universal hazardous wastes that are recycled and universal wastes that are disposed. Second, the regulated community, particularly generators, should find the part 273 regulations less complex in that the waste's final disposition would not affect the management requirements applicable during the collection phase. Third, Options 1 and 3, which would provide reduced requirements for recycled wastes relative to disposed wastes, also would increase incentives for sham recycling. Option 2 minimizes the incentives for sham recycling to occur. Fourth, the simplified special collection system regulatory approach should decrease the quantities of these hazardous wastes that are managed in subtitle D municipal waste landfills, combustors, and composting projects and therefore, regardless of whether these wastes are recycled or disposed, environmental benefits may be gained.

EPA requests comment on the possible adoption of Option 2, which applies the special collection system regulations to wastes that are either recycled or disposed. EPA also requests comment on the advantages and disadvantages of all three options, and on any additional options commenters identify. Commenters should provide specific examples of how they believe the requirements would or would not be as environmentally protective as the current subtitle G requirements, as well as information on the likelihood that the streamlined requirements will affect the development of recycling markets.

## 2. Types of Wastes Subject to Special Collection System Regulations

EPA recognizes that there may be a number of hazardous wastes for which special collection system regulations may be appropriate. EPA will use the criteria discussed below to identify hazardous wastes that are appropriately regulated under the part 273 requirements. The Agency developed the criteria proposed today to identify the general nature of hazardous wastes that are amenable to special collection systems.

In today's proposal, EPA is only providing specific regulatory language in part 273 for hazardous waste batteries

and for suspended or canceled and recalled pesticides that are hazardous wastes. However, there are a number of other hazardous wastes for which these special requirements may be appropriate (for example, automobile antifreeze, or paint application wastes, or used commercial items containing mercury such as thermostats and thermometers).<sup>7</sup> Thus, EPA is proposing a set of criteria for evaluating potential candidate wastes for inclusion in the scope of the part 273 regulations. These proposed criteria are intended to aid commenters who wish to recommend additional wastes for similar consideration; EPA may use commenters' suggestions to include additional hazardous wastes (besides hazardous waste batteries and suspended or canceled and recalled pesticides) in the final rule. If the part 273 regulations are promulgated, the public would be able to petition the Agency to amend the part 273 regulations to include additional wastes that meet the final criteria.

A related issue is that the technical problems posed in managing different types of universal hazardous wastes may vary (e.g., liquids pose different storage problems than solids, while batteries contain heavy metals and/or substances that present different hazards, such as reactivity or corrosivity). Therefore, it is possible that EPA will promulgate different requirements for different types of universal hazardous wastes, but impose similar administrative requirements for tracking the movement of the wastes. When suggesting additional wastes for regulation under part 273, commenters should also note any specific management standards that they believe are necessary to protect human health and the environment.

As noted above, there are several waste types (in addition to batteries and pesticides) that the Agency believes may be appropriately regulated under the part 273 special collection system regulations. In particular, additional discussion is warranted for motor vehicle antifreeze, and used mercury-containing thermostats.

Used antifreeze is generated when radiator coolant is drained and flushed from automobiles and other vehicles. The Agency has limited data, available in the docket for this notice, indicating that some used antifreeze may exhibit the characteristic of toxicity due to the presence of lead, tetrachloroethylene, and/or benzene. The Agency believes

that used antifreeze is generally managed by disposal in municipal sewer systems, although private and municipal programs have begun recycling used antifreeze. This material then may be a good candidate for regulation under part 273. In developing special collection system regulations for used antifreeze, EPA could develop technical standards tailored for antifreeze-water mixtures, such as tank and container storage requirements, and possibly tracking and recordkeeping requirements. The Agency requests comment on whether used automobile antifreeze fits the criteria for regulation under part 273 that are proposed in today's notice (discussed below), and on specific management requirements that would be appropriate.

Additional wastes for which regulation under part 273 may be appropriate are paint residues,<sup>8</sup> used thermometers, and used thermostats. These wastes are believed to be major contributors of mercury to the municipal waste stream.<sup>9</sup> The Agency is particularly interested in whether used mercury-containing thermostats could potentially be managed under a part 273-type special collection system.

The ambient temperature in homes, businesses, warehouses and other buildings is controlled using a thermostat that is part of the building's heating, ventilation, and cooling system. A thermostat usually consists of a metal structure that contains a crush-resistant vial of liquid mercury. Thermostats are specifically designed both to hold the mercury vial steady within the unit, and to prevent it from breaking. Based on experimental data, EPA estimates that each thermostat contains 2.82 grams of mercury.<sup>10</sup> A thermostat is usually disposed of when it ceases to operate properly and is replaced, when it is replaced with an upgraded thermostat (such as the programmable electronic type), or when the building in which the thermostat is located is torn down or demolished. The average life of a thermostat is estimated to be twenty years.<sup>11</sup>

Due to the mercury content, it is likely that used thermostats will exhibit the characteristic of toxicity, and thus will be regulated hazardous waste when

<sup>8</sup> Mercury has not been used in paints since 1991 and thus the mercury contribution from paint residues is projected to decrease rapidly in the future. Note, however, that these estimates do not include interior and exterior surface paints.

<sup>9</sup> Characterization of Products Containing Mercury in Municipal Solid Waste in the United States, 1970 to 2000; U.S. EPA; OSW # EPA530-R-92-013; NTIS # PB92-162589; April 1992.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

certain types of industrial furnaces is required for cadmium-containing hazardous waste batteries; (2) effective May 8, 1992, lead recovery in secondary smelters is required for lead-acid batteries; and (3) effective May 8, 1992, recovery of mercury by retorting or roasting in a thermal processing unit is required for high-mercury, inorganic wastes (§ 268.35(a), § 268.35(c), and Tables 1 and 2 of § 268.42).

<sup>7</sup> In separate rulemakings, EPA has addressed used oil [57 FR 21524, May 20, 1992; and 57 FR 41566, September 10, 1992].



disposed of by businesses or other commercial entities. In the context of recent interest in removing mercury from the municipal waste stream, the Agency has received information that one thermostat manufacturer is currently developing a reverse distribution, or manufacturer "take back" system to collect used mercury-containing thermostats and to recover and reuse the mercury in the production of new thermostats. In addition, at least one state has specifically banned the disposal of mercury containing thermostats in the municipal waste stream and is working to implement a collection system for these items. Other states are also moving to reduce the mercury level in municipal waste through removal of mercury containing items.

Used thermostats appear to be a good candidate waste for the special collection system approach to regulations for waste collection. It is believed that although some thermostats are replaced by homeowners doing their own maintenance work, many are replaced by heating, ventilation, and cooling system repair services. This concentration of waste generation with a limited universe of people may offer an opportunity for achieving a relatively high return rate, with a minimum of effort, by allowing program implementers to direct education and outreach efforts to service companies and trade associations.

EPA could develop a special collection system under part 279 for used mercury-containing thermostats similar to those proposed today for hazardous waste batteries (discussed in detail below). Such a system could utilize the same recordkeeping and tracking procedures proposed today for hazardous waste batteries. Generators and consolidation points storing large quantities of thermostats could be required to notify and obtain EPA Identification Numbers. The quantity cut-off for such notification could be based on the size of a typical, final consolidated shipment to a recovery or disposal facility, thus requiring notification only of those storing the largest quantities of these items. Manifests could also be required for shipment from the last consolidation point to the final destination facility.

Persons could be limited to sending thermostats to other participants within the special collection system (consolidation points and destination facilities). Storage could be limited to one year, or to some other time period if more appropriate to allow collection of sufficient quantities of thermostats for proper management. Management

requirements could include management in containers, a prohibition on removing the mercury containing vial from the thermostats, a prohibition on breaking the vials, and requirements for response to releases. As with batteries, requirements for the destination facility (treatment, recycling, or disposal facility) would remain the same as under the current subtitle C system.

The Agency requests comment on whether used mercury containing thermostats fit the criteria proposed today for regulation under part 273 (discussed below). The Agency also requests comment on whether the special collection system requirements discussed above would be appropriate for these wastes, and on any additional requirements necessary to ensure that thermostats are collected in a manner that is protective of human health and the environment. The Agency specifically requests comment on the quantity of thermostats in storage that should trigger a requirement that generators and consolidation points notify EPA and obtain an EPA Identification Number.

EPA is not including fluorescent light bulbs in today's rule. EPA is examining whether these light bulbs pose a risk when managed in landfills. EPA requests information on the risk of these wastes in landfills or municipal waste combustors. EPA also requests information on the risks of current or developing mercury recovery technology.

EPA is proposing two sets of criteria to evaluate whether other candidate wastes are appropriately included in the scheme advanced today for hazardous waste batteries and recalled pesticides. The two sets of criteria will be used to evaluate both the extent of the problem posed by a particular type of waste, and the suitability of the special collection program for contributing to improved management of the particular waste and to the realization of EPA's policy goals discussed above. For the convenience of the reader, both sets of criteria are listed below in summary form. A more detailed discussion of each of these points follows.

To determine the extent of the problem, EPA proposes to evaluate the following:

1. Whether the waste, as generated by a wide variety of generators, is hazardous under the subtitle C regulations;
2. The presence and amount of the waste in commercial, agricultural, or community activity waste streams;
3. Whether the waste is generated by a large number of sources;
4. Characteristics of generation sites;

5. Potential risk posed by the presence of the waste in the municipal solid waste stream; and

6. Other relevant information.

To determine suitability of the part 273 regulations as a method to improve management of the particular waste, EPA proposes to evaluate:

1. Whether the waste presents a relatively low level of risk during storage and transport;
2. Characteristics of the system that would be used to collect the waste;
3. Whether special collection system regulations would facilitate removing the waste from the municipal waste stream;
4. Whether the implementation of the hazardous waste program would be improved by special collection system regulations; and
5. Other relevant factors.

The first set of factors, found in proposed § 273.2(a), is a set of information requirements that the petitioner must provide when petitioning for wastes to be considered for regulation under part 273. To be eligible for regulation under part 273, the petitioner must demonstrate that the hazardous waste presents a problem to human health and the environment due to its presence in the municipal waste stream or due to other, widespread management practices. The Agency is proposing the following information items, to determine the extent of the problem and the appropriateness of regulating the hazardous waste under part 273.

First, since EPA has only limited resources to undertake special rulemakings of this type, EPA would generally focus such efforts on universal hazardous wastes that are listed hazardous wastes or exhibit a characteristic of hazardous waste. Some wastes (e.g., used automobile antifreeze) may exhibit a hazardous waste characteristic in certain cases. Therefore, petitioners should supply the Agency with any available data pertaining to whether or how often the wastes are hazardous. In addition, petitioners should also submit any available quality assurance and quality control documentation of the sampling procedures and test methods used.

Second, we would expect that the hazardous waste would be present in the municipal waste stream (for example, in commercial, agricultural, or community activity waste streams) in significant amounts. This criterion would serve to identify those wastes that typically or often are part of the municipal waste stream, as opposed to those that are exclusively or primarily industrial wastes. One of the Agency's three major goals for providing a conditional exemption for universal hazardous wastes and establishing the

part 273 regulations is to encourage separation of these wastes from the municipal waste stream. Thus, the Agency may limit its consideration of candidate waste streams to those universal hazardous wastes that are found in significant amounts in the municipal waste stream.

Third, EPA envisions that wastes regulated under the special collection system requirements would be generated by a large number of generators nationwide. A large number of generators, coupled with infrequent generation, results in an extremely large administrative burden on EPA and the states that implement the RCRA hazardous waste program. For example, keeping track of the identity and location of generators, and the amounts and types of hazardous wastes that they generate (as is currently required under the subtitle C program), may not be appropriate for universal hazardous wastes; therefore, such wastes may be attractive candidates for the proposed part 273 regulations. Also, EPA's experience in implementing the subtitle C program has shown that many in the regulated community are not aware of the specific requirements that apply to them, and therefore may not be complying with all applicable hazardous waste management requirements. Information on the number of generators and the quantity of universal hazardous wastes that they generate is necessary for EPA to determine whether the hazardous waste is generated by the types of individuals or organizations that the part 273 regulations are designed to address. Therefore, petitioners should submit this kind of information to the Agency when petitioning for additional hazardous wastes to be considered under part 273.

Fourth, EPA will also consider the characteristics of generation sites. Wastes generated in isolated locations where: (1) No other hazardous wastes are generated, (2) the universal hazardous waste is the only waste generated, (3) the waste is generated only sporadically, and/or (4) small quantities are generated per month, will be more favorably considered for regulation under part 273. In addition, wastes that are frequently generated by small businesses would be likely candidates for special collection system regulations.

Fifth, and closely related to the amount of the waste present in the municipal waste stream, is the risk posed by that waste's presence in the municipal waste stream. RCRA's primary objective, stated in section 1003, is protection of human health and

the environment. When the risks posed by a hazardous waste are relatively high, even if the waste is generated in relatively small quantities, the total risk posed by the waste may be of special concern. Therefore, universal hazardous wastes that pose significant risks to human health and the environment, particularly in the municipal landfill and/or municipal combustor settings, will be considered for regulation under part 273. The Agency is particularly concerned about universal hazardous wastes that may pose significant risk potential; EPA is interested in focusing its resources on ensuring proper management of wastes that pose significant risks.

Finally, there may be other factors that are relevant, due to special characteristics of the universal hazardous waste and practices used to manage the waste. EPA would consider such other relevant information that is included in a petition.

The second set of criteria, proposed in § 273.2(b), will be used to evaluate petitions to determine if part 273 regulations would satisfactorily address the problem presented by the hazardous waste. EPA will determine whether regulations can be developed under part 273 for a particular waste that would achieve the Agency's goals for the special collection system regulatory program. The criteria that EPA proposes to use are discussed below.

First, EPA will consider wastes for inclusion in part 273 that pose a relatively low level of risk, or that are relatively easily contained and managed, during storage and transport. In general, EPA expects that special collection system regulations will be most appropriate for hazardous wastes that are or can be managed securely in containers. Many of the requirements proposed today for special collection system wastes are less stringent than the current subtitle C storage and transport requirements (e.g., consolidation points are not required to have permits for storage,<sup>12</sup> and there are no manifesting requirements for certain shipments). Therefore, the Agency is proposing to restrict the applicability of the part 273 requirements to carefully defined and managed wastes, where the regulations can be tailored to minimize risks to human health and the environment during storage and transport.

Second, EPA will consider the characteristics of the systems for collecting the wastes. If, for some wastes, the collection systems ensure

close stewardship of the hazardous waste (as in a recall scenario), the wastes would be better candidates for a special collection system exemption than other wastes that are not managed as carefully. EPA may give preference to such carefully-managed wastes when evaluating whether to develop part 273 requirements for additional hazardous wastes.

To give such preference, one approach EPA is considering is to allow those hazardous wastes which are (or would be) managed in a "reverse distribution system" supervised by the original product manufacturers to be exempt under the proposed part 273 regulations. In the event the manufacturers, and possibly others in a product's distribution chain, desire to become involved in the "waste" part of their products' life cycle, information that those parties submit in support of a petition would be useful in determining the degree of stewardship that the special collection system hazardous wastes would be subject to.

This approach could work for either unused products returned from end-users and/or retailers, or for used products returned from end-users. For example, some manufacturers already encourage the return of their products that have gone beyond their "shelf life," and may have credit or refund arrangements with their customers to encourage the return of unsold products. Such credit or refund systems could be a significant incentive for the return of products that happen to be hazardous wastes, and thus it may be appropriate for EPA to consider for special collection system regulation those hazardous wastes that are likely to be returned to their original manufacturers. EPA believes that harnessing market forces in this way makes good sense from both an economic and an environmental standpoint. As discussed above, EPA has also received information indicating that manufacturers interested in product stewardship for other used products, such as mercury containing thermostats, may be developing similar reverse distribution systems to retrieve these items from users for recycling or proper disposal.

Third, EPA would consider whether the waste management practices currently in use (documented by the petitioner under § 273.2(a)) would be improved by implementing special collection system regulations for the waste. In other words, EPA would consider whether special collection system regulations can be designed to alter current waste management practices, and to facilitate the wastes'

<sup>12</sup> And thus, the corrective action requirements of RCRA sections 3004 (u) and (v) and 3008(h) generally would not apply.

removal from the municipal waste stream.

Fourth, EPA would consider whether viable recycling technologies are available for a petitioner's waste, or are likely to be developed, and whether the part 273 regulations could be used to facilitate recycling. EPA would still consider a petitioner's request even if no recycling technology exists for a particular waste and no technology is under development. The weight of evidence of the other criteria may be sufficient for EPA to determine that part 273 regulations are appropriate for the petitioner's waste. Therefore, it is not imperative that a petitioner demonstrate that increased recycling would result from regulation of the waste under part 273. However, if the petitioner is able to demonstrate that environmentally protective recycling may occur, EPA would consider that result in determining whether to develop part 273 regulations for the petitioner's waste.

Fifth, EPA will use data provided by the petitioner documenting problems posed by the waste's management, to determine whether the part 273 requirements could be tailored to improve implementation of the hazardous waste regulatory program. For example, EPA believes there may be substantial confusion in the regulated community regarding the applicable hazardous waste requirements for waste battery management. (See the letters in the docket for today's proposal in "Letters on Battery Management.") Today's proposal is designed to alleviate this confusion by setting up special requirements that are specific to hazardous waste batteries. The data provided by the petitioner would be used by EPA to determine whether part 273 requirements would change waste management practices and improve implementation of the hazardous waste program.

Sixth, EPA may consider other factors that are appropriate.

Finally, EPA will also take into consideration, as a way to set priorities among the many various waste streams that may be suggested for this program, the quantity and quality of the data submitted by the petitioner and available to support a petitioner's request. If a petitioner's request is complete and supporting data are adequate, EPA is likely to evaluate the request and determine whether to propose a regulatory amendment sooner than if a request has only minimal information.

Petitioners need not provide evidence on all of the factors and criteria discussed above. Rather, depending on

the characteristics of the particular waste described in the petition, EPA would evaluate the candidate waste for each criterion as appropriate given the type and quality of the data submitted. However, EPA will consider the weight of evidence for all applicable criteria regarding whether the regulations are appropriate for the universal hazardous waste and whether the special collection system regulations will accomplish the desired results EPA has identified for the proposed part 273 regulations.

EPA requests comment on the appropriateness of the criteria listed above for selecting additional hazardous wastes to be regulated under part 273, and whether there are any other criteria that should be considered. Most importantly, EPA emphasizes that each additional waste considered for regulation under the part 273 special collection system regulations will be evaluated against each of the criteria to determine whether such regulation would further the Agency's waste management goals as discussed above. EPA plans to focus its attention on this kind of program, but of course only wastes that the Agency believes can successfully be managed under such a system would be included under part 273, based on the strength of the case rather than on the amount or quantity of information submitted.

As a final point on which hazardous wastes would be covered under today's proposal, EPA notes that we chose not to include in the part 273 requirements lead-acid batteries that are being reclaimed. Lead-acid batteries being reclaimed are already subject to special requirements under part 266, subpart G. Under those regulations, facilities that store lead acid batteries that are to be reclaimed need not obtain a permit for that storage (as long as they do not reclaim the batteries themselves). By leaving the part 266, subpart G requirements in place, no new requirements would be imposed on these lead acid battery "consolidation points." The proposed part 273 requirements would be more stringent than the current part 266, subpart G requirements (e.g., notification to EPA would be required if more than 20,000 kilograms of batteries were stored), and less stringent in some ways (e.g., no land disposal restrictions notification is required under proposed part 273, while it is required under the current regulations). EPA requests comment on whether lead acid batteries that are reclaimed should be regulated under part 273, rather than under part 266, subpart G.

### 3. Conditionally Exempt Small Quantity Generator Waste

Conditionally exempt small quantity generators (CESQGs) generate less than 100 kg of non-acute hazardous waste per month (or, less than one kilogram per month of acute hazardous wastes). These CESQGs pose some challenging issues with respect to the scope and implementation of today's proposed rule. These issues stem from the fact that CESQG waste is the same as other hazardous waste (i.e., it looks the same and it poses similar risks) but is regulated differently based solely on the quantity generated by an individual generator; in fact, wastes generated from these sources may be legitimately disposed as part of the municipal waste stream under current regulations (see § 261.5).

Today's proposed regulations would not require CESQGs who generate universal hazardous wastes to manage these wastes under the part 273 special collection system regulations, but would allow CESQGs to manage their wastes under the special collection system if they choose to do so (see proposed changes to § 261.5 (f) and (g)). At this time, EPA is not proposing to require that CESQG universal hazardous wastes be managed under part 273 because the Agency believes that the existing CESQG requirements and the proposed part 273 requirements provide a similar level of environmental protection, and thus individual CESQGs should have the option of managing their waste under either system.

The Agency is also concerned that the proposed part 273 regulations might impose a greater regulatory burden on the large universe of CESQGs than the current regulations. Specifically, under the CESQG regulations, CESQGs must only: (1) identify their hazardous wastes, (2) determine the quantity of hazardous waste generated, (3) limit on-site storage of hazardous wastes to 1,000 kg or less, and (4) take their wastes only to certain treatment, storage, or disposal facilities<sup>13</sup> (see § 261.5).

<sup>13</sup> CESQGS must either treat or dispose of their hazardous wastes in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the U.S., is: (1) Permitted to manage hazardous waste under part 270 of the federal hazardous waste regulations; (2) granted interim status to manage hazardous waste under parts 265 and 270 of the federal hazardous waste regulations; (3) authorized to manage hazardous waste by a state with a hazardous waste management program approved under part 271 of the federal hazardous waste regulations; (4) permitted, licensed, or registered by a state to manage municipal or industrial solid waste; or (5) a facility which beneficially uses or reuses, or legitimately recycles or reclaims its waste or treats its waste prior to beneficial reuse, or legitimate recycling or reclamation.

In comparison, under the generator requirements of part 273 (which are discussed in detail in section II.C.2), there would be certain requirements for the condition of special collection system wastes; storage of wastes would be limited to one year; specific actions would be required in response to releases;<sup>14</sup> and exports of universal wastes are subject to export notification. The Agency notes, however, that one of the current CESQG requirements may actually be more stringent than the analogous requirement imposed under part 273. Specifically, CESQGs may, at a minimum, send their waste to a facility (other than a recycling facility) that is permitted, licensed, or registered by the state to manage municipal or industrial wastes, while special collection system generators may, at a minimum, send their waste to a storage facility that meets the requirements of a consolidation point (see section II.C.4. of this notice). Although there are different requirements proposed for consolidation points (for example notification and recordkeeping), these storage facilities would not be required to obtain permits, licenses, or registration from states (although under state law states may require such authorization to manage these wastes). EPA requests comment on whether the burden posed by the Part 273 regulations would increase CESQGs' regulatory requirements.

In addition, the Agency solicits comment on whether, at some future time, management of CESQGs' universal hazardous wastes under the part 273 special collection system regulations should be required. EPA currently has no information on the proportion of these universal hazardous wastes that are generated by conditionally exempt generators (versus generators of more than 100 kilograms of hazardous waste per month). However, the Agency believes that CESQGs may account for a relatively large proportion of the generating universe and/or account for a large portion of the total quantity of universal hazardous wastes that are currently being managed in the municipal waste stream. EPA requests comment on what proportion of the wastes for which special regulations are proposed today are generated by CESQGs. Specific information on the generation rates of hazardous waste batteries and suspended/canceled and recalled pesticides would be most useful.

One reason EPA would consider regulating CESQG universal hazardous waste under the special collection system requirements is that, by regulating all universal hazardous wastes uniformly, and without regard to the monthly quantities of hazardous wastes generated, implementation and CESQG decision making would be simplified with a minimal (if any) increase in the regulatory burden imposed on this large universe of generators. If universal hazardous wastes generated by CESQGs were regulated under the special collection system regulations, confusion regarding which regulations apply to CESQGs (the conditional exemption of § 261.5, or the special collection system regulations of part 273) might be reduced. (This confusion is likely to result from the fact that the wastes look the same regardless of who generates them.) Therefore, the Agency will consider regulating universal hazardous wastes generated by CESQGs under part 273 based upon comment received in response to this notice. The Agency specifically requests comment on whether it would be simpler to require that all universal waste (other than household waste) be managed under the part 273 regulations regardless of whether it is generated by a CESQG or fully regulated generator. EPA currently does not plan to promulgate a final rule bringing CESQG waste under part 273 without first publishing a supplemental notice on the subject.

Under today's proposal, managers of hazardous waste batteries and returned pesticides that are generated by CESQGs have the option of managing those wastes under the part 273 requirements. If the universal wastes from CESQGs are commingled with universal wastes from larger hazardous waste generators, and the commingled waste is a hazardous waste under 40 CFR 261.3 (i.e., is listed or exhibits a characteristic), the commingled wastes must be managed under either the part 273 requirements or the full hazardous waste regulations (parts 260 through 272). In today's notice EPA is restating this result in the part 273 regulatory text to clarify the regulations' applicability for those parties managing these wastes generated by both CESQGs and larger hazardous waste generators.

#### 4. Excluded Household Hazardous Waste

Hazardous wastes generated by households are currently excluded from the definition of hazardous waste (40 CFR 261.4(b)(1)). Therefore, universal hazardous wastes generated by individual citizens at their households

are not subject to the proposed part 273 regulations, provided an establishment managing the household-generated universal hazardous wastes collects and stores them separately from other regulated hazardous wastes. However, EPA believes that by proposing today's simplified special collection system regulations, a person or establishment collecting universal hazardous wastes generated by households may be encouraged to manage all of these wastes in accordance with the proposed part 273 regulations (and thus avoid the need to manage household wastes separately from other regulated universal wastes in order to retain their exempt status).

Currently, persons or municipalities operating household hazardous waste collection programs must meet certain requirements if they also collect hazardous wastes from CESQGs (see 40 CFR 261.5(f)(3) and (g)(3)). Under the proposed part 273 regulations, operators of these programs would be able to manage household-generated universal hazardous wastes, CESQG-generated universal hazardous wastes, and special collection system hazardous wastes generated by fully regulated generators under the part 273 regulations. Operators of these programs would fall within the definition of a consolidation point. For example, if a municipality collects hazardous waste batteries from businesses as well as private citizens, the operators of the municipal collection program could elect to manage all of the batteries under the part 273 requirements, and therefore, need not limit their acceptance of batteries to those generated by CESQGs. Such provisions should greatly simplify requirements for household hazardous waste collection programs at the local and municipal levels of government.

#### C. Proposed Waste Management Requirements

##### 1. Applicability of Part 273 Regulations

Today's proposed regulations would regulate a limited set of hazardous wastes, referred to as universal hazardous wastes, that pose different waste management issues than those posed by other hazardous wastes. EPA will determine the applicability of the part 273 requirements by the use of defined selection criteria, which are described in section II.B above. In addition to the specific types of wastes proposed today, individuals may petition the Agency to regulate other wastes under part 273 special collection system requirements in lieu of otherwise applicable subtitle C requirements. In the event that EPA

<sup>14</sup> Although CESQGs are in effect required to take similar actions to avoid on-site disposal of released material which would require, at a minimum, a state license, permit, or registration under § 261.5.

determines that additional hazardous wastes merit special collection system regulations, EPA would develop regulations for those wastes under part 273.

Today's proposal includes specific regulatory language for two of these universal hazardous wastes: Batteries and suspended or canceled and recalled pesticides that are hazardous wastes.

*a. Subpart B—Batteries that are hazardous wastes.* Today's proposal sets forth standards for the management of hazardous waste batteries in subpart B of part 273. Under this Subpart, regulation of the universe of hazardous waste batteries would be simplified and made more consistent.

As used in today's proposal, the term "battery" refers to a device designed to generate electric currents, that is comprised of positive and negative electrodes made of electrically conductive materials, and that may contain a medium that separates the electrodes. The term includes both "wet" and "dry" batteries (i.e., those that contain a liquid electrolyte and those from which the liquid electrolyte has been removed, or those which contain a solid or gelled electrolyte). Batteries are generally described by identification of the metals used in the electrode (and sometimes by the type of electrolyte). For example, lead-acid batteries are cells that contain lead electrodes and an acidic electrolyte, and nickel-cadmium batteries are cells that contain electrodes made of nickel and cadmium.

EPA requests comment on this definition of "battery." Commenters should state whether the definition is clear and will be understood by those in the regulated community, and whether the regulation should distinguish between "wet" and "dry" batteries. In addition, there may be other devices, such as electric current generators, which could meet the definition of "battery" proposed today. EPA does not intend to cover any electrical devices besides those included in the common understanding of "battery." Commenters should provide specific wording that would limit the regulation's coverage to those electrical devices commonly understood to be "batteries," or state whether a separate regulatory definition is even needed.

The proposed part 273 regulations are applicable to all types of hazardous waste batteries except lead acid batteries, as discussed above. No distinctions are made based on the battery's size or the composition of the electrode or electrolyte materials. This result is intended to greatly simplify hazardous waste battery management,

since there currently are a number of exemptions that may apply, and determining the regulatory status of a given battery can be a complex procedure.

First, waste batteries are hazardous if they exhibit one or more of the four hazardous waste characteristics identified in 40 CFR part 261, subpart C. Sometimes, batteries may exhibit one or more of the four characteristics, while in other cases they may not. EPA believes that batteries that do exhibit a characteristic of hazardous waste generally exhibit the characteristic of corrosivity (40 CFR 261.22), the characteristic of reactivity (40 CFR 261.23), or the Toxicity Characteristic (40 CFR 261.24). The Agency believes that lead-acid, nickel-cadmium, mercury, silver, and alkaline batteries may, at least in some instances, exhibit the Toxicity Characteristic. Lithium batteries may also exhibit the characteristic of reactivity. Batteries may also exhibit the characteristic of corrosivity if they contain corrosive electrolyte (see the discussion at 48 FR 14498, April 4, 1983).

Currently, all generators of waste batteries (even conditionally exempt small quantity generators) must determine whether these batteries exhibit any of the hazardous waste characteristics and manage any that do exhibit characteristics in accordance with the subtitle C hazardous waste regulations. The Agency believes, however, that waste battery management programs that may develop under the reduced requirements of the special collection system regulations proposed today may be so simplified that generators may choose to manage all of their waste batteries under such a system. In effect, a generator complying with the part 273 requirements would be managing all batteries as hazardous waste and thus could choose not to make a case-by-case determination for each battery. In contrast, a generator who chooses to manage batteries as nonhazardous waste would have to have a basis to conclude that they are not hazardous.<sup>15</sup>

EPA currently does not have information on the percentage of the battery types discussed above that exhibit hazardous waste characteristics, or on other types of batteries that may exhibit hazardous waste characteristics.

<sup>15</sup> Unused or off-specification batteries that are reclaimed are not solid wastes; thus, they are not hazardous wastes, and are not subject either to the part 273 requirements or the full hazardous waste regulations (§ 261.2(c)(3), and 50 FR 14216, April 11, 1985). Most persons, however, could simply comply with part 273 without making any solid or hazardous waste determinations.

The Agency may conduct a sampling and analysis project to obtain more information on the types and quantities of waste batteries that exhibit characteristics. EPA welcomes comments and data on what types of batteries are hazardous wastes and therefore, may be regulated under part 273.

Second, the part 273 regulations will apply to hazardous waste batteries of all sizes, ranging from button to small cylinder to industrial size. Again, the approach where all sizes of batteries are regulated under one regulatory scheme should greatly simplify waste battery management practices. EPA requests comments on this approach as well.

*b. Subpart C—Suspended and/or canceled pesticides that are recalled.* Subpart C of today's proposed rule creates a regulatory framework under RCRA for management of pesticides that are recalled. Specifically, it would establish requirements for pesticides that are suspended or canceled under section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and recalled, and that are collected for recycling or disposal.

To understand the basis for inclusion of recalled pesticides, it is important that readers of today's proposal understand the relationship between the authorities of RCRA subtitle C and FIFRA, also administered by EPA. Briefly stated, FIFRA regulates pesticides from initial distribution by producers to ultimate disposal; RCRA regulates hazardous wastes of all types, including pesticide wastes, from cradle to grave. The nexus of these two statutes is the point at which a pesticide under FIFRA becomes a hazardous waste under RCRA. At that point, both FIFRA and RCRA requirements may apply to the pesticide waste.

Prior to 1988, the overlapping authority of FIFRA and RCRA created few problems. The characteristics of pesticide use are such that pesticide wastes are ordinarily generated in small quantities by a large number of individual users such as farmers or householders, persons who are exempt or for whom special RCRA provisions have been created. Moreover, prior to 1988 EPA had no direct authority under FIFRA to regulate the storage, disposal or other disposition of a pesticide. (Indirectly, EPA could regulate through its labelling authority.) Recommended procedures for pesticide storage and disposal are contained in 40 CFR part 165. Thus, if a pesticide product became a hazardous waste, it was (and is) regulated primarily under the authority of RCRA.



Although any pesticide when discarded becomes a waste (which may be hazardous), the suspension or cancellation of a pesticide by the Agency can generate large volumes of pesticide wastes. FIFRA section 6 allows the Agency to remove pesticide products from the marketplace for adverse health or environmental effects. Under that section, EPA may suspend or cancel the registration of the product (the registration is a license permitting marketing). Suspension is an immediate cessation of sale, distribution and use and is undertaken concurrently with cancellation, a lengthier administrative process generally resulting in a permanent removal of the product from the market. Cancellation may also take place without prior suspension. However, FIFRA section 19 contains specific authorities to address pesticides that are suspended and then canceled.

In 1988, amendments to FIFRA section 19 greatly expanded EPA's authority over the storage, transportation and disposal of pesticides, including requirements addressed expressly to suspended and canceled pesticides. Under that section, EPA is authorized to require, among other things, the recall of suspended and canceled pesticides. In situations where a section 19 recall is not authorized (because the pesticide has not been both suspended and canceled), the Agency may engage in a recall of a pesticide that has been suspended or canceled, or a product that is in violation of FIFRA because of product or labeling deficiencies. These latter recalls, requested or negotiated by the Agency, may have all the characteristics of a mandatory recall under FIFRA section 19, including recordkeeping and reporting, a high level of stewardship for the recalled pesticide, and requirements for proper storage and disposition. The special collection system rules proposed today would cover both types of recalls—those of suspended and canceled pesticides authorized by FIFRA section 19, and those undertaken by agreement between the Agency and a registrant for other reasons. It should be noted, however, that if the pesticide holder elects to participate in a recall, and the person conducting the recall has not yet made a decision to discard the pesticides that are subject to the recall, the pesticides are not solid wastes.

The Agency will shortly propose regulations under FIFRA governing suspended and canceled pesticides, including requirements for a recall program. Under those regulations, the Agency would establish requirements for voluntary and mandatory recall

programs, including responsibilities of registrants, others in the distribution chain, and holders of suspended and canceled pesticides.

Today's RCRA proposal will be coordinated with the upcoming FIFRA recall regulations, with the goal of reducing inconsistencies and potentially overlapping requirements for suspended and/or canceled hazardous waste pesticides.

As used in today's proposed rule, references to pesticides that are "canceled" and/or "suspended" have the same meaning that is used in FIFRA. To meet the applicability criteria of part 273, the pesticides must be: (a) Part of a voluntary or mandatory recall under FIFRA section 19(b); or (b) owned by a registrant responsible for conducting a recall under FIFRA and part of a voluntary or mandatory recall under FIFRA section 19(b); or (c) part of a registrant-conducted recall of a canceled or suspended pesticide.

EPA wishes to clarify here that the existing regulatory exemption for farmers disposing of waste pesticides from their own use on their own farms would remain unaffected by the regulations proposed today. Under this exemption (40 CFR 262.70), farmers disposing of waste pesticides that are hazardous wastes are not required to comply with parts 262 through 268 or 270, provided they triple rinse each emptied pesticide container in accordance with § 261.7(b)(3) and dispose of the pesticide residues on their own farms in a manner consistent with the disposal instructions on the pesticide label. The requirements proposed today do not supersede this exemption.

## 2. Generator Requirements

In developing the part 273 regulations applicable to generators, the Agency considered a number of control options. Although the regulatory language proposed today includes only a limited number of specific provisions for generators of special collection system wastes, other options considered for regulation of generators are also discussed below. The general requirements proposed today for generators are analogous to those proposed for transporters and consolidation points. The following discussion refers to the generator requirements; however, the issues are similar for transporters and consolidation points. The Agency requests comment on the appropriateness and protectiveness of all the options discussed for generators and also for transporters and consolidation points.

Today's proposal includes a number of provisions that would be imposed directly on generators of hazardous waste batteries or recalled pesticides. Each of these provisions is discussed below.

*a. Waste generation.* Since the number of generators is so large, and the variety of activities the generators are involved in is so wide, EPA believes it is essential to explain in one place how a battery or recalled pesticide becomes a waste, and how to determine whether it is a hazardous waste. The "when is it a waste" concept, for batteries and pesticides, is explained below, and is also defined in the regulations that apply to each of these waste types.

As with any hazardous waste, the generator of these special collection system hazardous wastes is the person, by site, whose act or process first causes the material to become a solid waste (and thus, a hazardous waste) subject to RCRA regulation (see the definition of generator at 40 CFR 260.10).

The generator regulations proposed today include specific language clarifying when each item or material becomes a solid waste. This language is crafted to identify the point at which a particular material becomes a waste, but not to amend or revise that determination as it is currently set forth in 40 CFR 261.2. For batteries, a used battery generally becomes a solid waste when a generator permanently removes it from service (for example, by removing it from the appliance or equipment in which it has been used).<sup>16</sup> An unused battery becomes a solid waste when the generator decides to throw it away (for example, by disposing of the battery on the land or incinerating it). Unused batteries (which, under the regulations, are considered commercial chemical products) which are reclaimed are not solid wastes under § 261.2(c)(3). See also 50 FR 14216, April 11, 1985. Waste batteries are hazardous wastes if they exhibit any of the four characteristics of hazardous waste set forth in 40 CFR part 261, subpart C (ignitability, reactivity, corrosivity, or toxicity).

For suspended or canceled and recalled pesticides, the point at which the recalled pesticide becomes a waste depends on when a decision to discard it<sup>17</sup> is made. This decision might be

<sup>16</sup> In the case of appliances with built-in batteries that cannot be separated or removed from the appliance itself, the generator must determine the regulatory status of the entire appliance.

<sup>17</sup> However, if the unused pesticide is to be reclaimed, or used in a manner consistent with its normal use, under 40 CFR 261.2(c)(3) or 261.2(c)(1)(ii), respectively, it is not defined as a

Continued

made by either the pesticide holder or the pesticide's registrant, and in a recall situation determining "when is it a waste" can be somewhat complex.

A pesticide holder who has decided not to participate in a recall, but who wants to dispose of the pesticides in another manner, is the generator because the holder has decided to discard them. If the pesticide holder elects to participate in a recall in which the person conducting the recall has already decided to discard the collected pesticides, the point the holder decides to participate in that recall (and, for FIFRA section 19(b) recalls, notifies the registrant of his decision) is the point at which the pesticides become wastes. At that point, the pesticide holder becomes the generator.

However, if the pesticide holder elects to participate in a recall, and the person conducting the recall has not yet made a decision to discard the pesticides that are subject to the recall, the pesticides are not solid wastes.

Finally, if the pesticide holder elects to participate in a recall at a point where the person conducting the recall has not yet decided what to do with the collected pesticides, and later on, the person conducting the recall decides to dispose of them, the pesticides become wastes at that later point. If they are still in the holder's possession at that point, the holder is the generator (although the person conducting the recall could be viewed as a co-generator, who shares potential RCRA liability). If they have already been collected or are at some point in the collection chain, whoever is in possession of them at the point the decision to discard is made is the generator, along with the party who makes the decision.

Further, it should be noted that unused waste pesticides are hazardous wastes if they exhibit one or more of the hazardous waste characteristics set forth in 40 CFR part 261, subpart C, or if they are listed in 40 CFR part 261, subpart D.

**b. Condition of wastes.** Today's proposal includes packaging and physical condition requirements that recalled pesticides must meet to qualify for the conditional exemption of part 273. (However, hazardous wastes that do not meet these physical condition requirements may still be managed under the parts 260 through 272 full hazardous waste management requirements that currently apply.)

solid waste. Under 40 CFR 261.3(a), materials that are not solid wastes are not hazardous wastes. Thus, unused pesticides that are reclaimed or used in a manner consistent with normal use are not hazardous wastes, and would not be subject to part 273 or any of the RCRA hazardous waste regulations.

There are no analogous packaging or physical condition requirements included in the proposal for batteries.

The same requirements for physical condition of pesticides are imposed on generators, transporters, and consolidation points; however, they are discussed in detail in the preamble only in this discussion of the generator requirements.

To limit the potential health and environmental hazards associated with recalled pesticides, the Agency is proposing that generators may manage under the part 273 regulations only suspended or canceled and recalled pesticides that are either: (1) Packaged in their original packaging, which may be either a portable container or a stationary tank, that is closed and not leaking; (2) packaged in their original packaging and overpacked in a larger container that is closed and non-leaking; (3) contained in a tank that meets the hazardous waste tank requirements; or (4) contained in a transport vehicle or vessel.

EPA is today proposing this range of containment options in order to allow flexibility in choice of packaging and tank storage. However, there is a significant issue associated with the pesticide containment provisions. The stationary tanks that were used to hold the pesticide when it came down the distribution chain as a product may not be available to hold the pesticide once it is a hazardous waste and is being recalled. When the pesticide is being distributed for sale, there are significant incentives to contain the pesticide carefully and use only tanks that are structurally sound and not leaking. Once the pesticide becomes a hazardous waste, however, the same incentives no longer exist. In a recall situation, the hazardous waste pesticides that are consolidated at dealers' and distributors' locations may need to be placed in tanks (although they could also be stored in portable containers such as 55-gallon drums, or in transport vehicles or vessels). The dealers' or distributors' tanks may already be filled with other pesticides, that are not subject to the recall, and there may be few available tanks in which to store the recalled pesticide. EPA is concerned that the available tanks may not be structurally sound, may not be compatible with the chemical composition of the recalled pesticide, or for other reasons would not be

appropriate to use for storing the hazardous waste pesticide for a period of up to one year. EPA believes that storage in tanks that were used to contain that same pesticide when it was being distributed for sale would be

adequate. (This option is found in the proposed regulations at § 273.21(b)(1)(i).) As noted above, the generator also has other storage options available, and thus EPA believes the proposed requirement in its entirety is practical. EPA requests comment specifically on this provision, and on whether there are other options that would also be environmentally protective. In addition, EPA requests comment on whether the second packaging option (packaged in original packaging and overpacked in a larger container) should be expanded to include any repackaging technique. In other words, should the regulations allow recalled pesticide handlers to repackage hazardous waste pesticides from original packaging into other, different containers (physically transferring the pesticide from its original packaging into a different container)? Would allowing this practice create potential pesticide spillage problems?

**c. Storage.** Another set of provisions proposed today for generators involves storage of special collection system wastes and is derived from the land disposal restrictions of RCRA section 3004. EPA is proposing that managers handling these wastes under the special collection system regulations comply with all of the substantive land disposal restrictions requirements, but not the administrative requirements of § 268.7 (notification and recordkeeping).<sup>18</sup> The current land disposal restrictions requirements are discussed below in section II.C.7. of this preamble, entitled land disposal restrictions.

The Agency has determined that the RCRA section 3004(j) prohibition on storage of land disposal restricted wastes must be included in the generator requirements (and also in the requirements for transporters and owners/operators of consolidation points). This requirement for generators is proposed as an explicit storage time limit (up to one year). For the special collection system regulations, EPA chose to simplify the existing regulatory language at 40 CFR 268.50 to accomplish the same result as the § 268.50 requirement (allowing the accumulation of hazardous wastes only for the purposes of facilitating proper recovery, treatment or disposal). The simplified language assumes that the generator's sole reason for storing the

<sup>18</sup> The reduced requirements of part 273 would be available only to hazardous waste handlers who comply with the part 273 requirements; if not in compliance with the part 273 requirements, the handler must manage the hazardous waste in accordance with the full parts 260-272 requirements.

special collection system hazardous wastes, for up to one year, is to accumulate the quantities necessary for proper recovery, treatment or disposal. However, EPA is not reopening the public comment period for the general question of the land disposal restrictions storage prohibition. EPA is only requesting comment on the specific question of how to address the statutory land ban storage prohibition for special collection system wastes.

In order to enforce the one-year storage limit, today's proposal includes a performance standard which would require generators to demonstrate that their special collection system wastes have not been stored for more than one year from the date they became wastes. Generators could use several options to make this demonstration. For example, EPA believes that generators of small quantities of batteries or a limited number of containers full of recalled pesticide, may choose to simply mark each waste item with the date it became a waste. However, for generators of larger quantities, a marking system may be impractical. Instead, such generators may choose to designate specific areas for storage of their special collection system hazardous wastes that became wastes at various times. The proposed regulation would also allow the use of an inventory system to achieve the same result. Are there other techniques that generators could use to demonstrate that their special collection system wastes have been stored for less than one year? EPA is interested in commenters' views on these or other specific techniques that would enable generators of these waste items to demonstrate that they are storing the wastes for less than one year.

**d. Notification.** EPA is proposing to require generators storing more than 20,000 kilograms of hazardous waste batteries at any time to notify EPA of their waste activities. This notification would consist of a letter to the EPA Regional Administrator, identifying the generator's facility.<sup>19</sup> EPA would then assign an EPA Identification Number to the generator.

Currently, generators of more than 100 kilograms of hazardous wastes per month are required to obtain an EPA Identification Number (a twelve-digit number that EPA or state agencies assign to hazardous waste handlers). Generally, generators and other hazardous waste handlers obtain the identification number by submitting a form which includes basic information

about the facility and waste management activities. Thus, the notification requirement proposed today is similar to the existing requirement, but would apply to an extremely small fraction of the generators who are currently required to notify and obtain an EPA Identification Number.

EPA believes that, since there would be no cradle-to-grave tracking system for special collection system wastes under the proposal, notification is necessary to identify only those parties managing very large quantities of hazardous waste batteries. Without some form of notification, state agencies and/or EPA would have no knowledge of the identities and locations of facilities storing these large quantities of these wastes, and thus would not be able to inspect these facilities to ensure compliance. Through such inspections, facilities that are managing wastes improperly can be required to come into compliance to prevent incidents of environmental damage.

However, the population of generators of hazardous waste batteries is quite large; thus, for administrative reasons, EPA believes that it is necessary to limit the notification requirement to only those generators managing significant amounts of these wastes. To accomplish this, the proposal would require generators storing more than 20,000 kilograms of hazardous waste batteries to notify. EPA believes that generators of smaller quantities will send their wastes to a nearby location, through routine pickups, in order to consolidate many generators' wastes in quantities sufficient to allow economical shipments to more distant treatment, recycling or disposal sites. It is likely that only the largest generators will accumulate enough wastes on-site in order to make long-distance shipments economical. The 20,000 kilogram quantity proposed today for batteries (which is slightly more than 44,000 pounds) roughly corresponds to the weight of a typical fully loaded highway transport vehicle. This limit is designed to require notification from generators who would be accumulating extremely large quantities of hazardous waste batteries for long-distance transport.

EPA expects that the vast majority of the battery generator population will be in the commercial, agricultural, governmental, service, medical, and/or educational sectors of society. For administrative reasons, it is somewhat impractical to attempt to catalog all of the hazardous waste generators present throughout the country by requiring them to notify EPA or state agencies, and then assigning them Identification Numbers to keep track of their activities

in databases. EPA requests comments on this approach and on any other approaches that may be appropriate.

Generators of hazardous waste pesticides would not be required to notify, under today's proposal, because EPA expects that the larger generators who are commercial applicators or distributors would already be notifying EPA and state agencies under the FIFRA section 6(g) policy (see the proposed policy at 56 FR 13042, March 28, 1991, discussed further in this preamble in section II.C.4).

Would different quantity limits for hazardous waste batteries be appropriate? For example, if EPA set the notification quantity limit at a level that would be slightly above the quantity held in a typical transport vehicle, then it is possible that no parties managing the special collection system batteries would ever notify EPA (except for the destination facilities that receive the wastes for treatment, recycling or disposal, who are already required to notify). On the other hand, if EPA sets the notification quantity limit significantly less than the quantity held in a typical transport vehicle, then a very large number of parties would be required to notify. EPA requests comments on the notification quantity limits being proposed today, and on the proposed approach not to require special collection system pesticide waste generators to notify.

**e. Prohibitions.** Generators would be prohibited from diluting or disposing of special collection system hazardous wastes on-site. Under the current land disposal restrictions regulations at 40 CFR part 268, dilution to meet the land disposal restrictions treatment standards is prohibited under § 268.3(a). See 55 FR 22656-57 (June 1, 1990). The prohibition in today's proposal is the mechanism to continue the existing dilution prohibition under the current land disposal restrictions regulations, and to continue the existing statutory prohibition on placing hazardous wastes on the land without treatment.

In addition, treatment of the wastes would be prohibited (except that treatment that is necessary to respond to releases, or treatment of battery electrolyte that is allowed under the current hazardous waste generator requirements). These requirements are designed to ensure that only storage, transportation, and consolidation are conducted at the locations in the special collection system that are subject to reduced requirements, and also ensures that generators (and similarly, transporters and consolidation points) do not manage these special collection system wastes in a way that would be

<sup>19</sup> Alternately, the generator could complete EPA Form 8700-12, "Notification of Regulated Waste Activity," by checking the box indicating that he or she is a hazardous waste generator.

out of compliance with the substantive requirements of the land disposal restrictions.

Generators are further prohibited from sending or taking special collection system wastes to any place other than a consolidation point (for storage and consolidation) or to a destination facility (for storage, treatment, recycling, or disposal). (These terms are defined in proposed § 273.3.) As discussed below in section II.C.4, under part 273, consolidation points would be subject to requirements similar to the part 273 generator requirements, and destination facilities are interim status or permitted treatment, storage, recycling, or disposal facilities, or recycling facilities that do not store the wastes prior to recycling.<sup>20</sup> The Agency is not proposing a tracking system to ensure delivery to such facilities because the recordkeeping burden of such tracking systems might discourage participation in part 273 collection programs. However, each party would have to keep appropriate documentation, such as business records, to show that they are staying within the terms of part 273.

This prohibition is imposed on all entities in the special collection system, including generators, transporters, and consolidation points. As each entity is only allowed to send the wastes to another entity within the system (who is similarly limited to sending the wastes to an entity within the system), this prohibition would ensure that the hazardous wastes are entered into the special collection system by the generator, and then continue through the system and eventually reach a treatment, storage, disposal or recycling facility that is subject to the full hazardous waste regulations, including the land disposal restrictions. Generators may transport the hazardous waste themselves (in which case they would also be subject to the part 273 transporter regulations proposed today), or may contract to have someone else transport the wastes.

The Agency requests comment on the protectiveness and practicality of the prohibitions described above.

**f. Waste management.** Today's proposal contains certain specific provisions for hazardous waste battery management, and general release response and employee training requirements that are common for

generators of all special collection system hazardous wastes.

For hazardous waste batteries, instead of specific packaging requirements, or requirements that the batteries be in a specific physical condition (e.g., intact and not leaking), EPA is proposing a requirement that generators and other handlers manage the batteries in a way that minimizes releases of any battery components. Outdoor storage of batteries with plastic casings can allow the sun's ultraviolet radiation to cause deterioration of the casings, with the potential for a release of the battery's components. Thus, a general performance standard requiring management practices to minimize releases of battery components should prevent poor management practices that could lead to significant environmental damages.

For all of the special collection system wastes, there is a need for personnel training to make a generator's employees aware of potential safety hazards posed by the wastes. EPA is proposing a requirement for basic training on potential safety hazards posed by the special collection system wastes. This proposed requirement is adapted from the current small quantity generator personnel training requirements (at 40 CFR 262.34(d)(5)), and is a reduction of current requirements for large quantity generators (40 CFR 265.16, cross-referenced at 40 CFR 262.34(a)(4)). The Agency requests comment on whether these requirements should be further reduced or eliminated.

In addition, EPA is proposing a release response requirement for generators and other handlers. For example, in the event of a release of electrolyte at a waste battery generator's facility, the generator would be required to immediately contain all released wastes and appropriately manage the released waste and any contaminated environmental media or other materials resulting from the release. The generator would be considered the generator of any hazardous wastes produced during response activities and would be required to comply with 40 CFR part 262 for management of these wastes. These requirements proposed today are already imposed on generators of more than 100 kilograms of hazardous waste per month (see 40 CFR 262.34, which references part 265 subparts C and D). The above training and release response requirements are proposed in lieu of the otherwise applicable training and emergency preparedness and prevention requirements (40 CFR 265.16 and subparts C and D of part 265) because, given the circumstances where only

universal wastes are handled, the Agency believes that this general performance standard is sufficient to protect human health and the environment.

It should also be noted that under 40 CFR 264.1(g)(8), 265.1(c)(11), and 270.1(c)(3) (see 48 FR 2509, January 19, 1983), a person conducting an immediate response to a release is not required to obtain a permit under 40 CFR part 270. However, any continued storage, treatment, or disposal of released materials and cleanup materials would not be exempted from the full subtitle C hazardous waste management regulations. The release response requirements proposed today would be consistent with the current regulations (40 CFR 264.56(g) and 265.56(g)).

EPA also notes that certain reporting requirements under CERCLA, codified in the regulations at 40 CFR 302.6, apply to releases of hazardous substances, including wastes that exhibit a hazardous waste characteristic. Reporting is required for releases of more than a "reportable quantity." 40 CFR 302.4 and 302.6 identify reportable quantities for hazardous substances. For example, the reportable quantity for a waste exhibiting the toxicity characteristic due to the presence of cadmium is one pound. Persons managing wastes under the special collection system continue to be subject to these CERCLA reporting requirements.

**g. Exports.** The final requirement for generators (which is also imposed on transporters and owner/operators of consolidation points) is compliance with the export notification and consent requirements mandated by RCRA section 3017. EPA expects that, typically, generators are unlikely to generate large enough quantities of special collection system hazardous wastes that they will be exporting the wastes themselves. However, in the event they do wish to export their special collection system hazardous wastes, they must comply with the export notification and consent procedures of 40 CFR part 262 subpart E (although they would not need to use a manifest for the shipment). These generators (except for generators of lead-acid batteries, and generators of used batteries being sent for regeneration, discussed below) are already currently regulated under the part 262, subpart E requirements (which do require use of a manifest with the shipment).

In cases where the registrant decides to export a suspended or canceled and recalled pesticide to a foreign country for use as a pesticide, the RCRA export

<sup>20</sup> Hazardous waste recycling facilities (other than those facilities that burn hazardous wastes for energy recovery) are currently only required to obtain a subtitle C permit if they store the hazardous wastes prior to recycling them. A permit is required for the storage units but not for the recycling activity.

regulations do not apply because the pesticide would not be a solid or hazardous waste. (Unused commercial chemical products that are used in a manner constituting disposal are not solid wastes under CFR 261.2(c)(1)(ii) if land application is their ordinary manner of use.) Instead, in such situations the requirements of FIFRA section 17(a) apply to the registrant. These requirements include providing a notice to the foreign purchaser that the product is not registered for use in the United States and cannot be sold in the United States. The foreign purchaser must sign a purchaser acknowledgement statement indicating that it is aware of that fact. A copy of the acknowledgement statement is to be submitted to EPA and thereafter is transmitted to an appropriate official of the importing country. The product to be exported must also be packaged according to the specifications of the foreign purchaser.

The Agency requests comment on the application of export requirements to generators of special collection system wastes.

*h. Other generator requirements under consideration.* Other options that the Agency is considering for regulating generators (and, similarly, transporters and owners/operators of consolidation points) are discussed below. The Agency points out that although the limited regulations proposed today may be appropriate for the specific types of wastes discussed here (hazardous waste batteries and recalled pesticides), different regulatory options may be appropriate for other types of wastes. The Agency requests comment on the specific regulations proposed for batteries and returned pesticides, as well as on requirements that would be suitable for additional wastes that commenters believe are appropriately regulated under part 273.

Under today's proposed regulations, generators of special collection system hazardous wastes are not subject to any recordkeeping requirements for knowing their wastes' destination. This is a significant reduction of the current recordkeeping burden placed on these generators. For instance, generators of all batteries that are hazardous wastes (except lead-acid batteries being reclaimed and used batteries sent for regeneration) are currently subject to the uniform hazardous waste manifest requirements. These generators would no longer be required to comply with the hazardous waste manifesting requirements if they are in compliance with the part 273 regulations. EPA is proposing this reduction in paperwork to encourage participation in part 273

collection programs. As collection programs are established and expanded, participation may come to include parties currently managing their waste in the municipal waste stream. Thus, the overall effect of the reduced requirements may lead to larger numbers of generators sending their waste into protective systems.

The Agency is aware that without some form of tracking system, generators have no assurance that shipments of special collection system wastes reach their intended destination. EPA is aware that generators may be concerned about potential Superfund<sup>21</sup> liability for shipments that do not reach their intended destination and instead are improperly managed. As an alternative to today's proposed approach, the Agency requests comment on the need for a tracking system or recordkeeping requirements for generators, and on the form any tracking systems should take.

Finally, EPA is considering a phased approach to imposing technical storage requirements, tailored to address the specific potential environmental problems that could be caused by special collection system wastes. After reviewing the current subtitle C technical storage requirements, and comparing those requirements to the specific hazards that may be posed by the practice of accumulating large quantities of special collection system wastes in one place, EPA is concerned that some of the current subtitle C requirements may be inappropriate for the specific problems posed by certain universal wastes. For example, the current subtitle C requirements require that containers holding hazardous wastes be closed except when adding or removing waste (see 40 CFR 265.173). However, for hazardous waste batteries that evolve hydrogen gas, a generator who chooses to store his or her used batteries in an enclosed container may in fact increase the potential for a fire or explosion.

Thus, EPA is not proposing technical storage standards today, but instead intends to wait until after promulgation of the final special collection system rules in order to allow collection systems to develop, and in order for waste handlers to develop common-sense, practical management techniques that would minimize potential safety and environmental hazards. At that point, EPA would review the need for imposing technical storage requirements, and, if requirements are necessary, would propose and then

promulgate them. Since many universal wastes are not currently managed together in large amounts (and instead are dispersed throughout the municipal waste stream, or are managed in other ways, such as in public sewer systems), it is difficult to predict what specific technical management requirements would be necessary. EPA is considering awarding a grant to one of the first RCRA-authorized state agencies that adopt the final special collection system rules, in order for that agency to encourage the development of state-wide special collection systems, obtain practical implementation experience, and then make recommendations to EPA about the need for specific technical requirements for the various special collection system wastes. (In addition, it may be possible for the state to recommend modifications to the special collection system administrative requirements.)

As another specific example of how sudden changes to current waste management practices could potentially cause problems in managing universal hazardous wastes, consider the situation with lead-acid battery storage at collection points not reclaiming the batteries. (Although we are not today proposing any additional requirements for lead-acid battery storage, this example is useful because it illustrates the potential problems with imposing new technical requirements for specific wastes.) Lead-acid batteries are a source of hydrogen, a highly flammable gas that evolves as a result of the chemical reactions occurring during use of the battery. Current RCRA requirements do not specify any storage standards for facilities collecting used lead-acid batteries for reclamation (provided the batteries are not reclaimed at the storage facility). Typically, the used batteries may be stored outside, where any hydrogen present can easily dissipate. However, bills have been introduced in the U.S. Congress that would require lead-acid battery retailers to accept lead-acid batteries back from consumers. In a crowded urban area, there may be no available space for outdoor battery storage; as a result, the lead-acid batteries returned from consumers would be stored indoors, where the evolved hydrogen gas could accumulate in an enclosed, unventilated area, and present a significant fire hazard. Although there do not appear to be significant problems occurring under the current system, a radical change in used lead-acid battery management techniques could create potential safety hazards that are not present under the current system.

<sup>21</sup> Also known as the Comprehensive Emergency Response, Compensation and Liability Act.



The Agency requests comment on the phased approach for implementing technical storage standards discussed above, and also on whether there should be additional requirements included in the final part 273 rules for storage of particular special collection system wastes that pose special hazards.

### 3. Transporter Requirements

Today's proposed regulations for transporters of special collection system wastes include five provisions that are generally the same as five of the provisions proposed for generators of special collection system wastes (these include requirements for condition of wastes, storage, prohibitions, waste management, and exports). Each of these requirements is discussed in detail in the generator section above, as are other options considered by the Agency for regulation of these wastes. The Agency requests comment on the application of these provisions to transporters, and on the same issues and options that are discussed in the generator section.

The proposed requirements concerning condition of wastes are similar to those proposed for generators. There are no specific requirements proposed for the condition of batteries. However, pesticides would be required to be contained in original packaging, overpacks, or in transport vehicles or vessels.

The storage limitation for transporters is somewhat different than that imposed on generators. Transporters who hold the hazardous wastes temporarily during the course of transport may hold the wastes at a loading dock, parking area or other location (transfer facility) for no longer than ten days. The ten-day limit on temporary storage during the course of transport is analogous to the current ten-day limit imposed on hazardous waste shipments under the full part 263 hazardous waste transportation regulations (see 40 CFR 263.12) and under the land disposal restrictions regulations (see 40 CFR 268.50(a)(3)). Transporters who store wastes in the course of transport for longer than ten days would be regulated as consolidation points.

EPA requests comment on whether another time limit is appropriate, but notes that the consolidation point (discussed below) can act much like a transfer facility for shipment stops that last longer than ten days.

The prohibitions and waste management requirements proposed today are also the same as those proposed for generators. Transporters would be prohibited from diluting or disposing of special collection system

wastes, in order to meet the substantive land disposal restrictions requirements. They would also be required to transport the wastes only to a consolidation point or destination facility. Treatment would be allowed only if it occurs in response to a release. In the event of a release of a special collection system hazardous waste, the transporter would be required to manage the waste under all requirements that currently apply. In addition, transporters of hazardous waste batteries would be required to minimize releases of battery components.

The provisions described above would apply to shipments between a special collection system waste generator and a consolidation point, between a generator and a destination facility, and between one consolidation point and another consolidation point. However, for shipments from a consolidation point to a destination facility, EPA is proposing today to have transporters comply with the full part 263 requirements, including use of the manifest. EPA believes it is necessary to know who these transporters are, and for them to use a uniform hazardous waste manifest that shows the party originating the shipment. The quantities involved in these shipments (from the "last" consolidation point to the destination facility) are likely to be fairly large, necessitating more strict controls on the shipment's movement.

To better illustrate the proposed manifest requirements, here are four examples:

- *From Generator to Consolidation Point A, to Consolidation Point B, to Destination Facility C.* The shipment from the generator to Consolidation Point A is not manifested; likewise, the shipment from Consolidation Point A to Consolidation Point B is not manifested. The shipment from Consolidation Point B to Destination Facility C is manifested.

- *From Generator to Destination Facility D.* This shipment is not manifested.

- *From Generator to Destination Facility E, to Destination Facility F.* The shipment from the generator to Destination Facility E is not manifested; the shipment from Destination Facility E to Destination Facility F is manifested.

- *From Generator to Consolidation Point G, to Destination Facility H, to Destination Facility I.* The shipment from the generator to Consolidation Point G is not manifested. The shipment from Consolidation Point G to Destination Facility H is manifested, as is the shipment from Destination Facility H to Destination Facility I.

These examples illustrate that, for generators, manifesting is not required. Consolidation points shipping to one another would also not need to manifest the shipment. However, those consolidation points shipping to a destination facility would need to manifest, as would destination facilities shipping to each other.<sup>22</sup>

If transporters were involved in shipments of special collection system hazardous wastes being exported from the United States, today's proposal would specify that a transporter who knows that a shipment does not conform to the EPA Acknowledgement of Consent could not accept the shipment for export. However, in the event the receiving country had consented to the shipment, the transporter would be required to carry the EPA Acknowledgement of Consent with the shipment, and deliver the shipment to the facility designated by the person initiating the shipment.

EPA requests comments on the adequacy of the proposed transporter requirements, and on whether other requirements are necessary to prevent mismanagement of special collection system hazardous wastes. EPA also requests comment on the options discussed in section II.C.2., generator requirements.

The reader should note that the reduced requirements described above for transporters in the part 273 regulations would apply to shipments between the original generator of the special collection system hazardous waste and the consolidation point or destination facility. The part 273 transporter requirements would also apply to shipments between consolidation points. However, a special collection system hazardous waste shipment from a consolidation point to a destination facility, or from one destination facility to another destination facility, would remain subject to the full part 263 transporter regulations. In addition, shipments from one destination facility to another would be fully regulated; for example, the land disposal restrictions notifications would be required for all movements once the special collection system hazardous waste reaches a destination facility. (In other words, shipments from the "last" consolidation point on are manifested. Once a shipment has reached a destination facility, it is fully regulated; i.e., not only would hazardous waste manifest requirements be in place, but also the

<sup>22</sup> It would not be possible for a destination facility to ship to any facility other than another destination facility.

part 268 land disposal restrictions requirements (see 40 CFR 264.71(c) and 265.71(c), and proposed § 268.1(e)(4)).

It should also be noted that transporters must comply with all applicable Department of Transportation regulations governing the transport of these materials. Since the shipments from the original generator to a consolidation point or a destination facility, or between consolidation points, would not require a manifest, the U.S. Department of Transportation's (DOT) hazardous materials regulations may or may not apply to the shipment. EPA requests comment on whether any supplemental RCRA requirements might be necessary when DOT rules do not apply.

#### 4. Consolidation Point Requirements

Today's proposed regulations for owners or operators of consolidation points managing special collection system wastes include provisions that are generally the same as those proposed for generators of special collection system wastes (condition of wastes, storage, prohibitions, waste management, notification, and exports). Each of these requirements is summarized below and discussed in detail in the generator requirements section above (section II.C.2.). In addition, shipments from a consolidation point to a destination facility must be manifested. Thus, consolidation points shipping to destination facilities would also need to notify EPA and receive an EPA Identification Number.

The Agency requests comment on the application of these provisions to consolidation points, and on the issues and options that are discussed in the generator requirements section.

*a. Specific requirements for consolidation points.* Today's proposal includes a number of provisions that are applicable to owners and operators of consolidation points managing special collection system wastes, and that are similar to the requirements proposed for generators of those wastes.

First, the proposed provision concerning condition of wastes is the same as that proposed for generators and transporters; hazardous waste pesticides must meet certain packaging requirements. There are no specific requirements for the condition of hazardous waste batteries.

Second, EPA is proposing that consolidation points that manage special collection system hazardous wastes may store these wastes for only one year. As with generators, EPA is proposing this requirement to meet the land disposal restrictions storage

prohibition. A number of options (described in section II.C.2 above) would be available to the consolidation point owner or operator in order to demonstrate compliance with the one-year storage prohibition. EPA requests comment on the options in the proposed rule language or other options that might be used. EPA is not reopening the comment period on the general land disposal restrictions storage prohibition, but is asking for public comment on how to implement the statutory prohibition for special collection system wastes managed at consolidation points.

Third, EPA is proposing to require that owner/operators of consolidation points storing more than 20,000 kg of hazardous waste batteries notify EPA of their waste management activities. As with the special collection system generators of waste batteries, the notification would consist of only a letter to the EPA Regional Administrator, identifying the consolidation point owner or operator's facility and basic information about the special collection system wastes being managed there. EPA would then issue an EPA Identification Number to the consolidation point. In addition, those consolidation points that do not meet this quantity limit but do want to ship directly to a destination facility would be required to notify EPA and receive an Identification Number, which they would use when initiating a uniform hazardous waste manifest.

All off-site facilities storing hazardous waste batteries<sup>23</sup> are currently required to notify EPA and receive an EPA identification number. Thus, the notification requirement proposed today sets forth only a modified version of an existing requirement for off-site facilities storing large quantities of these wastes; the proposed quantity limit would mean that only a small fraction of the storage facilities currently required to notify would need to notify EPA. Under today's proposal, off-site facilities storing less than 20,000 kilograms of waste batteries (which are currently required to notify), would not be required to notify, unless they were shipping directly to a destination facility.

Although today's proposal would generally require notifications only from those consolidation points storing very large quantities of special collection system batteries, EPA nonetheless believes that this notification requirement is essential to identify parties storing large quantities of waste batteries, in order to ensure their

compliance with the regulatory requirements proposed today. In addition, as the quantity of these wastes managed at any one location increases, the potential for releases may also increase, as may public concern about management practices.

In addition, EPA is proposing to place the notification requirement on any consolidation point which is the "last" consolidation point in the chain leading from the original generator to the treatment, storage, recycling or disposal facility (destination facility). Under this approach, EPA and state agencies would be able to locate these "last" consolidators, regardless of the quantities managed, and thus would be in a better position to monitor the facilities' compliance with the special collection system requirements. EPA hopes to prevent possible environmental problems with this approach.

This proposed notification requirement would apply only to consolidation points handling hazardous waste batteries and not to consolidation points handling only hazardous waste pesticides that are suspended and/or canceled and recalled. The Agency believes that requirements for identifying recall participants and recordkeeping that are authorized by FIFRA section 19(b) provide sufficient information concerning the identity and location of persons managing these pesticides. In addition, FIFRA section 6(g) requires notice to EPA and appropriate state and local officials of the location, quantities, and possession of pesticides that are suspended or canceled under FIFRA section 6. The notice is required of persons who distribute or sell canceled or suspended pesticides; thus, dealers and distributors who are acting as consolidation points in a recall typically will already have notified EPA (and state and local officials) of their possession of the pesticides. See the proposed policy published at 56 FR 13042, March 28, 1991, that clarifies the responsibilities of persons required to submit information under FIFRA section 6(g), establishes the procedures to be followed in order to comply with FIFRA section 6(g), and clarifies when FIFRA section 6(g) information must be submitted.

EPA requests comment on the proposed notification requirements for owners and operators of consolidation points, on the proposed 20,000 kilogram limit for applying the notification requirements, and on any other approaches that may be applicable.

Fifth, the prohibitions proposed for consolidation points are the same as

<sup>23</sup> Except for lead-acid batteries and used batteries sent for regeneration.

those proposed for generators and transporters. The owner or operator of the consolidation point would be prohibited from diluting or disposing of the special collection system wastes on-site, to comply with the land disposal restrictions dilution prohibition and to meet the statutory ban on land disposal. The consolidation point owner or operator may only treat the wastes in response to a release, or to manage battery electrolyte. Facility owners or operators who wish to conduct other kinds of treatment would be able to do so as a destination facility, discussed below. The consolidation point owner/operator would also be prohibited from sending the special collection system wastes to any place other than another consolidation point or a destination facility.

Sixth, the proposed provisions for waste management are the same as those proposed for generators and transporters. Owners/operators of consolidation points are required to immediately contain releases of special collection system wastes and to appropriately provide for treatment, storage, and/or disposal of released wastes, and contaminated media or other materials resulting from the release. As with other handlers of these special collection system wastes, the owner or operator of a consolidation point is not required to obtain a permit under 40 CFR part 270 (40 CFR 270.1(c)(3)) for immediate response activities. Hazardous waste batteries would be required to be managed in a way that would minimize releases of battery components. The consolidation point employees would have to be trained to know about the basic precautions necessary for safe waste handling and emergency procedures. The reader should note that today's proposed requirement is a very significant reduction from the current personnel training requirements, found at 40 CFR 264.16 and 265.16, but EPA believes it is adequate to allow safe consolidation point operations.

Finally, the owner or operator of the consolidation point must comply with the export notification and consent procedures of §§ 262.53, 262.56(a) (1)-(4), and (6), 262.56(b), and 262.57 for special collection system hazardous waste exports. (A consolidation point is more likely to be exporting than an original generator, since EPA expects larger quantities to be accumulated at consolidation points.) A consolidation point shipping to a destination facility is required to use a uniform hazardous waste manifest; for exports to destination facilities in other countries, the consolidation point would also use

a hazardous waste manifest. Thus, the Acknowledgment of Consent, along with the manifest, would accompany the shipment.

Note that if the registrant for a suspended or canceled and recalled pesticide decides to export the pesticide to a foreign country for use as a pesticide, then the RCRA export regulations generally would not apply because the pesticide is not a solid waste (see 40 CFR 261.2(c)(1)(ii)). Instead, in such situations the requirements of FIFRA section 17(a) apply.

*b. Other consolidation point requirements under consideration.* In addition to the requirements proposed today, EPA solicits comment on whether there are any other requirements needed for special collection system hazardous waste management at consolidation points. EPA considered limiting the applicability of the part 273 regulations to situations where the special collection system hazardous wastes are contained in their original containers (or casings), or containment systems in which they were stored when they were products, and are not leaking, as one approach to ensuring containment. However, EPA recognizes that these limitations may not always be practical, and therefore could limit participation in part 273 programs. There may be other appropriate requirements that could achieve the same degree of protectiveness. In a later proposal, once the special collection system regulations have been implemented for a period of time, EPA would consider the need for specific technical management standards.

In addition, in developing this proposal, the Agency considered the appropriate party or parties on whom to place the burden of compliance with administrative requirements such as the use of the manifest, and notifying receiving facilities of land disposal restrictions. EPA has chosen to structure the regulation so that manifest requirements are only imposed on the final consolidation points, and on destination facilities. The land ban notifications would be imposed only on destination facilities. The Agency believes that the objectives of RCRA stated in section 1003 (protection of human health and the environment, and conservation of valuable material and energy resources) are fully met through this waste management scheme. The Agency requests comment on whether all consolidation points should be subject to manifesting and land disposal restrictions notification requirements, or whether, as proposed today, the final

consolidation points should use manifests or other tracking mechanisms and/or the "full" subtitle C requirements should be applied only to the destination facility.

#### 5. Destination Facility Requirements

The regulations proposed today for destination facilities merely retain the current parts 264, 265, and 270 and § 261.6(c)(2) requirements applicable to treatment, storage, disposal, or recycling facilities managing hazardous wastes. The special collection system regulations refer to the full subtitle C hazardous waste regulations that are currently applicable for permitted or interim status hazardous waste treatment, storage, recycling, and disposal (TSD) facilities, or for recycling facilities that do not store prior to recycling. Under these requirements, owners/operators of destination facilities managing special collection system hazardous wastes are subject to all applicable requirements of parts 264 and 265, which include notification requirements, general facility standards (e.g., contingency plans, personnel training, closure, corrective action, and financial assurance), and unit-specific management standards (e.g., subpart I for containers, and subpart J for tanks). Destination facilities (other than recycling facilities that do not store before recycling) are also required to obtain a RCRA permit or operate under interim status. In addition, the owner or operator of the destination facility must comply with all applicable land disposal restrictions as specified in 40 CFR part 268.

The export provision proposed for destination facilities specifies that exports initiated by the destination facility (e.g., a permitted storage facility that warehouses large quantities of batteries) are subject to the export notification and consent procedures. Since the destination facility is required to initiate a uniform hazardous waste manifest for the shipment from the facility, and the quantities managed in the export shipment are likely to be large, EPA believes it is appropriate to require the facility owner or operator to comply with the current requirements for primary exporters, specified in part 262, subpart E. EPA requests comments on this approach.

#### 6. Exports

The hazardous wastes that are proposed to be regulated under part 273 are hazardous wastes that currently are subject to manifest and export requirements. Because the wastes in question may pose hazards if not properly managed, EPA has determined

that the hazardous wastes subject to special collection system requirements should remain subject to the requirements mandated by RCRA section 3017. Under this section of RCRA, the export of hazardous waste from the U.S. is prohibited unless certain conditions are met. The conditions include advance notification to the receiving country and prior consent of the receiving country before the shipment can occur.

The reduced requirements proposed today for tracking of waste shipments under part 273 apply to many of the domestic shipments of special collection system hazardous wastes. When these wastes are exported outside the United States, the primary exporter must comply with all applicable export requirements in part 262, subpart E. If a manifest would be required for the domestic shipment, it is required for an export shipment as well.

Thus, in today's proposal, any person (including the original generator, a broker, a transporter, a consolidation point, and any treatment, storage, disposal, or recycling facility) exporting hazardous wastes that are regulated under the proposed part 273 regulations, who is a primary exporter,<sup>24</sup> must comply with the applicable hazardous waste export requirements of 40 CFR part 262, subpart E. However, the specific requirements may vary, depending on the person who is initiating the export. For example, a generator who is exporting hazardous waste batteries or suspended or canceled and recalled pesticides which are hazardous wastes must comply with 40 CFR 262.53 (notification of intent to export), 262.56(a) (1)-(4), (6), and (b) (annual reports), and § 262.57 (recordkeeping); consolidation points must also comply with these requirements if they are shipping to a consolidation point in another country. However, if a consolidation point owner or operator is shipping to a destination facility in another country (or a facility that would be a destination facility if it was located in the U.S.), a manifest would be required for the shipment. Similarly, destination facilities must comply with 40 CFR 264.71(c) (initiating a manifest for the shipment) and part 262. Transporters may not accept shipments for export if they know that the shipment is not being sent in

conformance with the hazardous waste export provisions.

While EPA is interested in encouraging collection systems, this is based on the premise that the waste will ultimately be managed at an appropriate facility. The export notification requirements help ensure that this is the case when wastes are shipped to foreign facilities, and EPA is aware of no information indicating an exemption from export notification would be appropriate for these wastes.

#### 7. Land Disposal Restrictions

Pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA), all hazardous wastes listed or identified in accordance with RCRA section 3001 are prohibited, on specified timetables, from land disposal. The regulations for the Land Disposal Restrictions (LDR) program in 40 CFR part 268 apply to "persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities,"<sup>25</sup> unless they are specifically excluded from regulation in Parts 261 or 268.

Accordingly, generators, transporters, owners/operators of consolidation points, and owners/operators of treatment, storage, and disposal facilities (and facilities who do not store prior to recycling) managing special collection hazardous wastes under part 273 are currently subject to the full land disposal restrictions program. However, EPA believes that application of the full land disposal restrictions program to special collection system hazardous wastes at all steps in the collection sequence could result in overly burdensome regulation. This regulation could discourage generators, transporters, and consolidation points from entering the collection system, thereby discouraging both recycling and removal of the waste from the municipal waste stream, and ultimately leading to unsafe land disposal, contravening the ultimate aim of the land disposal restrictions provisions. To resolve this problem, the Agency is proposing to require that managers of special collection system hazardous wastes comply with all of the substantive land disposal restrictions requirements, but not the administrative requirements. These substantive requirements include: (1) A prohibition on storing prohibited wastes directly on the land (land disposal); (2) a requirement to treat

wastes to meet treatment standards prior to land disposal; (3) a prohibition on dilution; and (4) a prohibition on waste storage except for purposes of accumulating quantities sufficient for proper recovery, treatment or disposal.

The prohibition on dilution is imposed on generators, transporters, and consolidation points throughout the proposed part 273 regulations, so that those handlers are not avoiding the land disposal restrictions by diluting their wastes. Destination facilities are subject to all of the part 268 land disposal restrictions regulations, including the dilution prohibition in 40 CFR 268.3.

The prohibition on storing wastes directly on the land (which is a form of land disposal; see RCRA section 3004(k)) is implemented by requiring that these wastes be managed in order to minimize releases, and through a prohibition on disposal. The requirement that pesticides remain in the original container or tank by definition precludes the possibility of storage directly on the land. At the destination facility, these wastes may be removed from the original containers (or the battery casing may be breached). These destination facilities, however, are subject to all of the part 268 land disposal restrictions regulations, including prohibitions on storage on the land.

The requirement that wastes are treated to meet treatment standards prior to disposal is implemented through two mechanisms. First, the part 273 regulations require that the final destination of special collection system hazardous wastes is a facility that is an interim status or permitted treatment, storage, recycling, or disposal facility, or a facility that recycles but does not store prior to recycling. This is imposed through the requirements that generators, transporters, and consolidation facilities must send the waste only to consolidation points or destination facilities. The final destination facility is subject to all of the part 268 land disposal restrictions regulations, including the requirement to treat these wastes to meet treatment standards prior to land disposal.

Finally, the statutory prohibition on waste storage except for purposes of accumulating quantities sufficient for proper recovery, treatment or disposal<sup>26</sup> would be imposed through a one-year time limit on storage at generator sites and consolidation points. This statutory requirement is imposed in the current regulations at 40 CFR 268.50. EPA is not today reopening the issue of the one-year storage prohibition for comment;

<sup>24</sup> A "primary exporter" is defined in 40 CFR 262.51 as the person required to originate a manifest for a shipment of hazardous waste to a designated facility in a receiving country, and any intermediary arranging for the export.

<sup>25</sup> The land disposal restrictions requirements do not yet apply to wastes that exhibit the toxicity characteristic (TC) in 40 CFR 261.24, unless the waste would have exhibited the Extraction Procedure (EP) Toxicity Characteristic (the characteristic that preceded the current TC).

<sup>26</sup> See RCRA section 3004(j).

EPA is merely requesting specific comments on the statutory storage prohibition and how to interpret it for special collection system hazardous wastes.

For the special collection system hazardous wastes, EPA is proposing to simplify the existing "burden-of-proof" regulatory language of 40 CFR 268.50; however, the one-year storage prohibition proposed today would accomplish the same result as existing § 268.50. The simplified language assumes that the generator's sole reason for storing the special collection system hazardous wastes, for up to one year, is to accumulate the quantities necessary for proper recovery, treatment or disposal. Storage beyond one year would be prohibited. EPA believes that this assumption is a reasonable one, since the generators are generators of more than 100 kilograms of hazardous waste per month; however, the special collection system wastes will in many instances comprise an extremely small fraction of their total hazardous waste stream. (For example, a generator who generates 500 kilograms per month of spent solvents, and one 10-kilogram nickel-cadmium battery per month, would need to collect enough batteries to make a shipment to a recycler feasible.) EPA requests comment on this proposed approach.

EPA is proposing, however, not to impose the administrative requirements of the land disposal restrictions program on generators, transporters, or consolidation points managing these special collection system hazardous wastes. The Agency believes that land disposal restriction notifications are not necessary because the requirements described above ensure that the substantive requirements are met, without each party specifically notifying subsequent waste managers of the restrictions. Consequently, the Agency is proposing to add a provision to § 268.1 excluding special collection system hazardous wastes from the administrative provisions of part 268 when they are being managed by generators, transporters, and consolidation points. The final treatment, storage, recycling, or disposal facility (or facility that recycles without prior storage) continues to be subject to all applicable part 268 requirements.

The Agency requests comment on whether the requirements described above ensure that special collection system hazardous wastes will be managed in compliance with the substantive requirements of the land disposal restrictions program. EPA also requests comment on alternative mechanisms that would achieve the

same goal. Further, comment is requested on whether any or all parties of the special collection system should be subject to the full part 268 land disposal restrictions regulations.

#### 8. Release Response

Under the proposed part 273 regulations, generators, transporters, and consolidation points must respond to releases immediately by containing releases and appropriately managing any contaminated soil, etc. resulting from the release. Permitted treatment, storage, disposal and recycling facilities would be subject to full facility-wide corrective action, as would any other permitted facility. The Agency is concerned about the need for corrective action at consolidation points, where potentially large amounts of hazardous wastes may be stored for periods extending up to one year. However, the Agency has the authority under the imminent hazard provisions of RCRA section 7003 to require the owner or operator of a facility (or consolidation point) to take immediate action in response to an on-site release of hazardous waste. EPA requests comment on the need for limited corrective action requirements (for example, corrective action that is limited to special collection system waste storage units) or the need for full subtitle C corrective action at consolidation points.

#### 9. Related Regulatory Changes

Today's proposed regulatory text includes a number of minor changes to other parts of the current hazardous waste regulations that are necessary to integrate part 273 into the regulatory structure. These changes include conforming changes to 40 CFR 260.10, 260.20, 261.5(c), 261.5 (f) and (g), 262.11, 264.1(g), 265.1(c), 268.1(f), and 270.1(c), and the addition of §§ 260.34 and 261.9.

The changes made to 40 CFR 260.10 are the addition of regulatory definitions for the terms "battery," "consolidation point," and "destination facility." Sections 260.20, 262.11, 264.1, 265.1, 268.1, and 270.1 contain minor conforming changes. Section 260.34 is added to specify procedures for handling petitions for additional special collection system wastes, and § 261.9 is added to direct the regulated community to part 273 for certain wastes.

The changes made to 40 CFR 261.5(c), the provision governing generator counting of hazardous wastes (i.e., counting to determine whether the generator is a conditionally exempt small quantity generator, small quantity

generator, or fully regulated generator), are made for three reasons. First, the revised text indicates that generators are not required to include wastes managed in compliance with part 273 in the quantity calculations used to determine their generator status. Second, the revision is crafted to accomplish the same results as the existing regulation (i.e., wastes that are not counted under the current regulations continue not to be counted, and wastes that are counted under the current regulations would continue to be counted). Third, the revision is intended to simplify the existing language so that it is clear which wastes are to be counted and which are not.

The options for conditionally exempt small quantity hazardous waste generators to manage their wastes are proposed to be revised to include special collection system handlers. See 40 CFR 261.5 (f)(3) and (g)(3). Today's proposal would allow conditionally exempt generators to manage their special collection system hazardous wastes at facilities that are regulated under part 273. This proposed change is expected to significantly simplify the regulatory requirements for managing certain common consumer items frequently collected in municipal programs that accept hazardous wastes from small businesses.

Finally, the Agency requests comment on whether any change should be made to 40 CFR 261.6(a)(3)(ii). This provision excludes from the hazardous waste regulations used batteries that are returned to a battery manufacturer for regeneration (e.g., replacement of electrolyte or rewiring).<sup>27</sup> As a result, generators of used batteries who are sending them off-site for regeneration need not obtain an EPA Identification Number (if the only hazardous wastes they generate are the used batteries) and need not fill out a manifest for the shipment. Similarly, transporters carrying the used batteries are not regulated under RCRA, and the regeneration facility's storage of the used batteries is not regulated under RCRA. EPA is concerned that having two special requirements for batteries (i.e., the proposed part 273 requirements and the regeneration exemption at 40 CFR 261.6(a)(3)(ii)) is potentially confusing to regulated parties and implementing agencies. One of the major findings of the RCRA Implementation Study (mentioned

<sup>27</sup> On the other hand, batteries that are recycled in other ways (e.g., remelting to recover metal content) currently are either fully regulated or are partially exempt under another exemption at 40 CFR part 268, subpart G (depending on the battery's composition).



earlier) is that the recycling rules or exemptions are complex and should be consolidated.

EPA has identified three approaches to regulating the subset of used batteries that are sent for regeneration. First, EPA could leave the current exemption as is; second, EPA could regulate only the collection of used batteries being sent for regeneration under today's proposed part 273 requirements, while the regeneration facilities could remain unregulated; and third, collection of the batteries could be regulated under the part 273 requirements and a RCRA subtitle C permit could be required for storage at the regeneration facility prior to regeneration. Each of these approaches, and their advantages and disadvantages, is discussed below.

In today's proposed regulatory text, the Agency has not made any changes to the current 40 CFR 261.6(a)(3)(ii) exclusion. The exclusion for batteries that are regenerated was originally promulgated because the Agency believed that regeneration activities do not pose a threat to human health and the environment, since the battery casing remains intact. If this exclusion is retained, these batteries will continue to be exempt from all hazardous waste regulation, including the part 273 special collection system regulations. A drawback to this approach is that handlers of used batteries may have difficulty determining whether the batteries will be regenerated or otherwise recycled/disposed, and thus whether they are regulated or exempt. Generators (and subsequent handlers) may not know whether the batteries are regenerable (and exempt), or are impaired such that they can not be regenerated (and are regulated). This uncertainty about the batteries' ultimate fate may cause handlers to improperly manage regulated hazardous waste batteries (unregenerable batteries) as if they were exempt.

Under the second approach, used batteries that are hazardous wastes would be regulated in the same way throughout the collection phase, regardless of whether the batteries are being regenerated, recycled in a manner other than regeneration, or disposed. At the same time, EPA could retain the regulatory exclusion for regeneration facilities. Thus, used batteries stored at a regeneration facility prior to regeneration would be unregulated (as under the current requirements). A variation on this approach would be to require the regeneration facilities to comply with the proposed part 273 consolidation point requirements for storage prior to regeneration.

The most significant advantage of this second approach is that the generator's initial determination of the applicable regulations would remain greatly simplified. The generator would not be required to determine whether the battery was to be regenerated rather than otherwise recycled/disposed of; in all cases the battery would be subject to the same limited part 273 requirements. In addition, since EPA continues to believe that there are minimal risks posed by regeneration activities, little or no change would be made to the regulations currently applicable to regeneration facilities. However, EPA requests comment on the quantity and types of batteries that are regenerated, the number of facilities conducting battery regeneration, and on the health or environmental risks posed by storage of the used batteries prior to regeneration.

The third approach would be simply to regulate these batteries under the part 273 special collection regulations proposed today for other batteries. This approach has the same advantage of the second approach, in that handlers of the used batteries during the collection phase would be regulated alike, regardless of the batteries' intended recycling technique. However, regeneration facilities would be subject to the full subtitle C hazardous waste regulations, including the requirement to obtain a permit (or interim status) for storage of batteries prior to regeneration.

In today's proposal, the Agency has not proposed to make any changes to the current exemption, to avoid unnecessarily disrupting the regeneration of used batteries. This option was selected because the Agency currently does not have sufficient data to evaluate the effects of such a change on the regulated community. The Agency, however, requests comment on the approaches discussed above for regulating batteries that are regenerated.

### III. State Authority

#### A. Applicability of Rules in Authorized States

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

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization

administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could no longer issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authorities within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the Federal requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization for the new requirements or prohibitions. While States must still adopt more stringent or broader in scope provisions as State law to retain final authorization, HSWA provisions apply in authorized States in the interim.

The amendments proposed today do not implement HSWA. When promulgated, these amendments, therefore, will become effective immediately only in those States without interim or final authorization, not in authorized States. The effect of the rule changes on State authorization is discussed next.

#### B. Effect on State Authorization

The amendments to the hazardous waste regulations being proposed today are not being promulgated pursuant to HSWA and thus are only immediately effective in States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State laws.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modifications to EPA for approval. However, it should be noted that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs (see 40 CFR 271.1(k)).

The modifications to the regulatory framework that are proposed today are less stringent than the current regulations. An authorized state could, however, choose to adopt the less stringent requirements proposed today, if those less stringent requirements are promulgated as final federal regulations and if the state wished to adopt them.

Although today's proposal would be less stringent than current RCRA subtitle C regulations, EPA believes that this new approach will contribute to more efficient and effective State programs. The need for simplified hazardous waste regulations was expressed by many State participants in the meetings described in section I.D of this notice. For these reasons, as well as the other reasons discussed throughout the preamble, EPA strongly encourages States to adopt the special collection system regulations if they are promulgated in the future.

#### IV. Executive Order No. 12291—Regulatory Impacts

Under Executive Order No. 12291, EPA must determine whether a regulation is "major" and thus subject to the requirement to prepare a regulatory impact analysis. A rule is major if it will:

1. Have an annual effect on the economy of \$100 million or more;
2. Significantly increase costs or prices to industry; or
3. Diminish the ability of the U.S.-based companies to compete in domestic or export markets.

The Administrator has determined that today's proposed amendments do not constitute a major rule because the amendments do not propose to significantly increase the regulatory burden such that there will be a significant effect on the economy. This proposed rule has been submitted to the Office of Management and Budget (OMB) for review under E.O. 12291.

EPA will analyze the costs of the current regulatory requirements for generators and collection facilities and of the requirements being proposed today. EPA will also analyze whether there are significant reduced environmental benefits from the modifications being proposed. It is EPA's current intent to complete this analysis and notice it for comment prior to promulgating a final rule.

#### V. Paperwork Reduction Act

The information collection requirements in today's proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An

Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1597.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch, U.S. Environmental Protection Agency, 401 M Street, SW. (PM-223Y); Washington, DC 20460 or by calling (202) 260-2740.

The public reporting burden for this collection of information is estimated to average 4 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223Y, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

#### VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis for all proposed rules unless the administrator certifies that the rule will not have a significant impact on a substantial number of small entities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 601(b), that this rule will not have a significant impact on a substantial number of small entities.

#### List of Subjects

##### 40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous materials, Recycling, Reporting and recordkeeping, Waste treatment or disposal.

##### 40 CFR Part 261

Hazardous materials, Recycling, Waste treatment and disposal.

##### 40 CFR Part 262

Administrative practice and procedure, Hazardous materials, Reporting and recordkeeping.

##### 40 CFR Parts 264 and 265

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

##### 40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

##### 40 CFR Part 270

Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Waste treatment and disposal.

##### 40 CFR Part 273

Hazardous materials, Packaging and containers.

Dated: January 20, 1993.

William K. Reilly,  
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 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

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

**Authority:** 42 U.S.C. 6905, 6912(a), 6921-6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

#### Subpart B—Definitions

2. Section 260.10 is amended by revising the introductory text and adding, in alphabetical order, definitions for "battery," "consolidation point," and "destination facility" to read as follows:

##### § 260.10 Definitions.

When used in parts 260 through 266, 268, and 270 through 273 of this chapter, the following terms have the meanings given below:

\* \* \* \* \*

**Battery** means a device designed to generate electric currents, comprised of positive and negative electrodes made of electrically conductive materials, and that may contain a separating medium. A battery may or may not contain a conductive medium or electrolyte.

\* \* \* \* \*

**Consolidation point** means the area, including all contiguous property, used for storing wastes subject to 40 CFR part 273 requirements after receipt from generators or other consolidation points and prior to transport to another consolidation point or to a destination facility.

\* \* \* \* \*

**Destination facility** means a hazardous waste treatment, storage, recycling, or disposal facility which: (1) Has received a permit (or interim status) in accordance with the requirements of parts 270 and 124 of this chapter; (2) Has received a permit (or interim status)

from a state authorized in accordance with part 271 of this chapter; or (3) Is a recycler regulated under 40 CFR 261.6(c)(2).

\* \* \*

### Subpart C—Rulemaking Petitions

3. Section 260.20 paragraph (a) is revised to read as follows:

#### § 260.20 General.

(a) Any person may petition the Administrator to modify or revoke any provision in parts 260 through 266, 268 and 273 of this chapter. This section sets forth general requirements which apply to all such petitions. Section 260.21 sets forth additional requirements for petitions to add a testing or analytical method to part 261, 264 or 265. Sections 260.22 and 260.23 set forth additional requirements for petitions to exclude a waste or waste-derived material at a particular facility from § 261.3 of this chapter or the lists of hazardous wastes in subpart D of part 261.

\* \* \*

4. Section 260.34 is added to read as follows:

#### § 260.34 Petitions to amend part 273 to include additional hazardous wastes.

(a) Any person seeking to include additional hazardous wastes in the regulations under part 273 of this chapter may petition for a regulatory amendment under this section and 40 CFR 260.20.

(b) The petitioner must demonstrate to the satisfaction of the Administrator that the hazardous waste for which the petitioner is seeking a regulatory amendment merits the development of regulations under part 273. The petition must address all of the factors listed in 40 CFR 273.2(a) and the criteria listed in 40 CFR 273.2(b).

(c) The Administrator may request additional information needed to evaluate the merits of the petition.

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

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

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

#### Subpart A—General

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

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

\* \* \*

(c) When making the quantity determinations of this part and 40 CFR part 262, the generator must include all hazardous waste that it generates, except hazardous waste that meets one or more of the following conditions:

(1) Is exempt from regulation under 40 CFR 261.4 (c) through (f), 261.6(a)(3), 261.7(a)(1), or 261.8;

(2) Is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in 40 CFR 260.10;

(3) Is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under 40 CFR 261.6(c)(2);

(4) Is used oil managed under the requirements of 40 CFR 261.6(a)(2)(iii) and 40 CFR part 266 subpart E; or

(5) Is managed under the requirements of 40 CFR 261.9 and 40 CFR part 273, or under the requirements of 40 CFR part 266, subpart G.

\* \* \*

(f) \* \* \*

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

(i) Permitted under part 270 of this chapter;

(ii) In interim status under parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under part 271 of this chapter;

(iv) Permitted, licensed, or registered by a State to manage municipal or industrial solid waste;

(v) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(vi) For special collection system wastes managed under part 273 of this chapter, a consolidation point or destination facility subject to the requirements of part 273 of this chapter.

(g) \* \* \*

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

(i) Permitted under part 270 of this chapter;

(ii) In interim status under parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under part 271 of this chapter;

(iv) Permitted, licensed, or registered by a State to manage municipal or industrial solid waste;

(v) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(vi) For special collection system wastes managed under part 273 of this chapter, a consolidation point or destination facility subject to the requirements of part 273 of this chapter.

\* \* \*

7. Section 261.9 is added to read as follows:

#### § 261.9 Requirements for special collection system wastes.

When managed by generators, transporters, and owners or operators of consolidation points (as defined in 40 CFR 260.10) in compliance with the special collection system requirements of part 273 of this chapter, the wastes listed below are exempt from regulation under parts 262 through 270 of this Chapter:

(a) Batteries that are hazardous wastes; and

(b) Suspended and/or canceled hazardous waste pesticides that are recalled.

### PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

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

Authority: 42 U.S.C. 6906, 6912(a), 6922, 6923, 6924, 6925, 6937 and 6938.

#### Subpart A—General

9. Section 262.11 is amended by revising paragraph (d) to read as follows:

#### § 262.11 Hazardous waste determination.

\* \* \*

(d) If the waste is determined to be hazardous, the generator must refer to parts 264, 265, 266, 268, and 273 of this chapter for possible exclusions or restrictions pertaining to management of the specific waste.

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

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

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

**Subpart A—General**

11. Section 264.1 is amended by adding a new paragraph (g)(11) as follows:

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

\* \* \* \* \*

(g) \* \* \*

(11) Wastes listed below, when managed by generators, transporters, and owners or operators of consolidation points (as defined in 40 CFR 260.10) in compliance with the special collection system requirements of part 273 of this Chapter:

(i) Batteries that are hazardous wastes; and

(ii) Suspended and/or canceled hazardous waste pesticides that are recalled.

\* \* \* \* \*

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

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

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6935 and 6936.

**Subpart A—General**

13. Section 265.1 is amended by adding a new paragraph (c)(14) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(14) Wastes listed below, when managed by generators, transporters, and owners or operators of consolidation points (as defined in 40 CFR 260.10) in compliance with the special collection system requirements of part 273 of this Chapter:

(i) Batteries that are hazardous wastes; and

(ii) Suspended and/or canceled hazardous waste pesticides that are recalled.

\* \* \* \* \*

**PART 268—LAND DISPOSAL RESTRICTIONS**

14. The authority citation for part 268 continues to read as follows:

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

**Subpart A—General**

15. Section 268.1 is amended by adding paragraph (f) to read as follows:

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

\* \* \* \* \*

(f) Generators, transporters, and owners and operators of consolidation points are exempt from 40 CFR 268.7 and 268.50 for the hazardous wastes listed below provided they manage the wastes in compliance with 40 CFR part 273:

(1) Batteries that are hazardous wastes; and

(2) Suspended and/or canceled hazardous waste pesticides that are recalled.

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

16. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

**Subpart A—General Information**

17. Section 270.1 is amended by adding a new paragraph (c)(2)(viii) to read as follows:

**§ 270.1 Purpose and scope of these regulations.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(viii) Generators, transporters, and owners and operators of consolidation points managing the hazardous wastes listed below provided they manage the wastes in compliance with 40 CFR part 273:

(A) Batteries that are hazardous wastes;

(B) Suspended and/or canceled hazardous waste pesticides that are recalled.

\* \* \* \* \*

18. Title 40 of the Code of Federal Regulations is amended by adding part 273 to read as follows:

**PART 273—STANDARDS FOR SPECIAL COLLECTION SYSTEM WASTES**

**Subpart A—General**

Sec.

273.1 Applicability and scope.

Sec.

273.2 Criteria.

273.3 Definitions.

**Subpart B—Batteries That Are Hazardous Wastes**

273.10 Applicability.

273.11 Generator requirements.

273.12 Transporter requirements.

273.13 Consolidation point requirements.

273.14 Destination facility requirements.

273.15 Export requirements.

**Subpart C—Suspended and/or Canceled Pesticides That Are Recalled**

273.20 Applicability.

273.21 Generator requirements.

273.22 Transporter requirements.

273.23 Consolidation point requirements.

273.24 Destination facility requirements.

273.25 Export requirements.

Authority: 42 U.S.C. 6922, 6923, 6924, 6925, 6930, and 6937.

**Subpart A—General**

**§ 273.1 Applicability and scope.**

(a) This part sets forth requirements for managing the following:

(1) Batteries that are hazardous wastes; and

(2) Pesticides that are hazardous wastes and that meet the applicability criteria of 40 CFR 273.20(a).

(b) The regulations in this part are a conditional exemption from full regulation under parts 260 through 272 of this chapter. Hazardous wastes listed in paragraph (a) of this section that are not managed in compliance with the requirements of this part must be managed according to the hazardous waste regulations in 40 CFR parts 260 through 272 of this chapter.

**§ 273.2 Criteria.**

Any person seeking to add hazardous wastes to this part may petition for a regulatory amendment under this section and 40 CFR 260.20 and 260.34. To be successful, the petitioner must demonstrate that regulation under this part is appropriate and that the part 273 requirements will improve waste management practices. To do so, the petitioner must submit adequate information to support the factors listed in paragraphs (a) and (b) of this section.

(a) *Demonstration that special collection system regulations are appropriate.* (1) The waste is listed in subpart D of part 261 of this chapter, or (if not listed) the proportion of the waste stream that exhibits one or more of the characteristics identified in subpart C of part 261 of this chapter;

(2) The hazardous waste is present in significant amounts in the municipal waste stream (e.g., commercial, agricultural, or community activity waste streams);

- (3) The number of generators, on a national basis, is greater than 1,000;
- (4) Typical generation sites include:
  - (i) Isolated locations where no other hazardous wastes are generated;
  - (ii) Locations where the hazardous waste is typically the only hazardous waste generated;
  - (iii) Locations where the hazardous waste is generated only sporadically or infrequently; or
  - (iv) Locations where there are small quantities generated per month;
- (5) The risk posed by management of the hazardous waste in the municipal waste stream (i.e., in municipal combustors or landfills) is relatively high; and/or
- (6) Other appropriate information.

(b) *Demonstration that Special Collection System Regulations Improve Waste Management Practices.* (1) The risk posed by the hazardous waste during storage and transport is relatively low, and special collection system regulations can be developed that are protective of human health and the environment;

(2) Systems to be used for collection of the waste (including packaging, marking, and labeling practices) would ensure close stewardship of the waste;

(3) A special collection system would facilitate removal of the waste from the municipal waste stream;

(4) If viable recycling technologies are available for the hazardous waste, a special collection system would facilitate recycling;

(5) A special collection system would improve implementation of the hazardous waste regulatory program; and/or

(6) Such other factors as may be appropriate.

### § 273.3 Definitions.

For the purposes of this part:

(a) *Battery* means a device designed to generate electric currents, comprised of positive and negative electrodes made of electrically conductive materials, and that may contain a separating medium. A battery may or may not contain a conductive medium or electrolyte.

(b) *Consolidation point* means the area, including all contiguous property, used for storing wastes subject to 40 CFR part 273 requirements after receipt from generators or other consolidation points and prior to transport to another consolidation point or to a destination facility.

(c) *Destination facility* means a hazardous waste treatment, storage, recycling, or disposal facility which: (1) Has received a permit (or interim status) in accordance with the requirements of parts 270 and 124 of this chapter, (2)

Has received a permit (or interim status) from a state authorized in accordance with part 271 of this chapter, or (3) Is a recycler regulated under 40 CFR 261.6(c)(2). If a waste is destined to a facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste.

(d) *FIFRA* means the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136–136y).

(e) *Generator* means any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.

(f) *Transfer facility* means any transportation related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(g) *Transporter* means a person engaged in the off-site transportation of hazardous waste by air, rail, highway, or water.

### Subpart B—Batteries That Are Hazardous Wastes

#### § 273.10 Applicability.

(a) *Covered wastes.* (1) This subpart sets forth standards for managing hazardous waste batteries, except for spent lead-acid batteries that are sent for reclamation and that are managed under 40 CFR part 266, subpart G.

(2) Hazardous waste batteries that are not managed in compliance with the requirements of this part, or spent lead-acid batteries that are not managed in compliance with 40 CFR part 266, subpart G, are subject to the hazardous waste regulations in 40 CFR parts 260 through 272 of this chapter.

(b) *Household and Conditionally Exempt Small Quantity Generator Waste Batteries.* (1) Persons managing the wastes listed below may, at their option, manage them under the requirements of this subpart without changing the wastes' exempt status:

(i) Household hazardous waste batteries that are exempt under 40 CFR 261.4(b)(1); and/or

(ii) Conditionally exempt small quantity generator hazardous waste batteries that are exempt under 40 CFR 261.5.

(2) Persons who commingle household hazardous waste batteries and/or conditionally exempt small quantity generator hazardous waste batteries together with hazardous waste

batteries regulated under this subpart must manage the commingled batteries under the requirements of this subpart.

#### § 273.11 Generator requirements.

(a) *Generation of hazardous waste batteries.*

(1) The date a used battery becomes a waste is the date the generator permanently takes it out of service.

(2) The date an unused battery becomes a waste is the date the generator decides to throw it away.

(3) A waste battery is a hazardous waste if it exhibits one or more of the characteristics identified in 40 CFR part 261, subpart C.

(b) *Storage.* (1) A generator may store a hazardous waste battery for no longer than one year from the date the battery became a waste.

(2) A generator who stores hazardous waste batteries must be able to demonstrate that batteries are not stored for more than one year from the date they became wastes. A generator may make this demonstration by:

(i) Placing the batteries in a container and marking or labeling the container with the earliest date that any battery in the container became a waste;

(ii) Marking or labeling an individual battery with the date that it became a waste;

(iii) Maintaining an inventory system that identifies the date any battery in storage became a waste;

(iv) Maintaining an inventory system that identifies the earliest date that any battery in a group of batteries became a waste;

(v) Placing the batteries in a specific storage area and identifying the earliest date that any battery in the storage area became a waste; or

(vi) Any other method approved in advance by the Regional Administrator or the State Director.

(c) *Notification.* (1) A generator who stores more than 20,000 kilograms of hazardous waste batteries at any time must send written notification of hazardous waste battery storage to the Regional Administrator, and receive an EPA Identification Number, before exceeding the 20,000 kilogram quantity limit.

(2) This notification must include:

(i) The generator's name and mailing address;

(ii) The name and business telephone number of the person at the generator's site who should be contacted regarding the battery storage activity;

(iii) The address or physical location of the battery storage activity;

(iv) A statement indicating that the generator stores more than 20,000 kilograms of hazardous waste batteries.



(d) *Prohibitions.* A generator of hazardous waste batteries is:

(1) Prohibited from diluting or disposing of them;

(2) Prohibited from treating them, except by removing electrolyte or responding to releases as provided in paragraphs (e)(1) and (e)(3) of this section; and

(3) Prohibited from sending or taking the hazardous waste batteries to a place other than a consolidation point, destination facility, or foreign destination.

(e) *Battery Management.* (1) A generator who removes electrolyte from hazardous waste batteries must determine whether the electrolyte exhibits a characteristic of hazardous waste identified in 40 CFR part 261, subpart C. If the electrolyte exhibits a characteristic of hazardous waste, the generator must manage it under all applicable requirements of 40 CFR parts 260 through 272.

(2) A generator must manage hazardous waste batteries in a way that minimizes releases of any battery components, including electrolyte.

(3)(i) A generator must immediately contain all releases of electrolyte or other residues from hazardous waste batteries.

(ii) A generator must determine whether any materials resulting from the release are hazardous wastes, and if so, the generator must manage them in accordance with all applicable requirements of 40 CFR parts 260 through 272.

(4) A generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.

#### §273.12 Transporter requirements.

(a) *Shipments from a generator to a consolidation point, from a generator to a destination facility, or from one consolidation point to another consolidation point.* (1) A transporter of hazardous waste batteries may only store them at a transfer facility for ten days or less:

(2) A transporter of hazardous waste batteries is:

(i) Prohibited from diluting or disposing of them;

(ii) Prohibited from treating them, except by responding to releases as provided in paragraph (a)(3)(ii) of this section;

(iii) Prohibited from removing the electrolyte from them; and

(iv) Prohibited from transporting them to a place other than a consolidation point, destination facility, or foreign destination.

(3)(i) A transporter must manage hazardous waste batteries in a way that minimizes releases of any battery components, including electrolyte.

(ii)(A) A transporter must immediately contain all releases of electrolyte or other residues from hazardous waste batteries.

(B) A transporter must determine whether any materials resulting from the release are hazardous wastes, and if so, the transporter must manage them in accordance with all applicable requirements of 40 CFR parts 260 through 272.

(b) *Shipments from a consolidation point to a destination facility.* A transporter who transports shipments from a consolidation point to a destination facility must comply with 40 CFR part 263.

#### §273.13 Consolidation point requirements.

(a) *Storage.* (1) The owner or operator of a consolidation point may store a hazardous waste battery for no longer than one year from the date that the owner or operator receives it.

(2) The owner or operator of a consolidation point who stores hazardous waste batteries must be able to demonstrate that batteries are not stored for more than one year from the date they were received. The owner or operator may make this demonstration by:

(i) Placing the batteries in a container and marking or labeling the container with the earliest date that any battery in the container was received;

(ii) Marking or labeling an individual battery with the date that it was received;

(iii) Maintaining an inventory system that identifies the date any battery in storage was received;

(iv) Maintaining an inventory system that identifies the earliest date that any battery in a group of batteries was received;

(v) Placing the batteries in a specific storage area and identifying the earliest date that any battery in the storage area was received; or

(vi) Any other method approved in advance by the Regional Administrator or the State Director.

(b) *Prohibitions.* The owner or operator of a consolidation point managing hazardous waste batteries is:

(1) Prohibited from diluting or disposing of them;

(2) Prohibited from treating them, except by removing electrolyte or responding to releases as provided in paragraphs (c)(1) and (c)(3) of this section; and

(3) Prohibited from sending or taking the hazardous waste batteries to a place

other than another consolidation point, destination facility, or foreign destination.

(c) *Battery Management.* (1) The owner or operator of a consolidation point who removes electrolyte from hazardous waste batteries must determine whether the electrolyte exhibits a characteristic of hazardous waste identified in 40 CFR part 261, subpart C. If the electrolyte exhibits a characteristic of hazardous waste, the consolidation point owner/operator must manage it under all applicable requirements of 40 CFR parts 260 through 272.

(2) The owner or operator of a consolidation point must manage hazardous waste batteries in a way that minimizes releases of any battery components, including electrolyte.

(3)(i) The owner or operator of a consolidation point must immediately contain all releases of electrolyte or other residues from hazardous waste batteries.

(ii) The consolidation point owner/operator must determine whether any materials resulting from the release are hazardous wastes, and if so, the owner/operator must manage them in accordance with all applicable requirements of 40 CFR parts 260 through 272.

(4) The consolidation point owner or operator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.

(d) *Notification.* (1)(i) A consolidation point owner or operator who stores more than 20,000 kilograms of hazardous waste batteries at any time must submit written notification to the Regional Administrator, and receive an EPA Identification Number, before exceeding the 20,000 kilogram limit.

(ii) This notification must include:

(A) The owner's or operator's name and mailing address;

(B) The name and business telephone number of the person who should be contacted regarding the battery storage activity;

(C) The address or physical location of the battery storage activity;

(D) A statement indicating that the owner or operator expects to store more than 20,000 kilograms of hazardous waste batteries.

(2)(i) A consolidation point owner or operator who sends a shipment of hazardous waste batteries directly from the consolidation point to a destination facility, who is not required to notify under paragraph (d)(1) of this section, must submit written notification to the

Regional Administrator, and receive an EPA Identification Number, before initiating the shipment.

(ii) This notification must include:

(A) The owner's or operator's name and mailing address;

(B) A statement that the owner or operator intends to ship hazardous waste batteries to a destination facility;

(C) The name and business telephone number of the person who should be contacted regarding the battery storage activity; and

(D) The address or physical location of the battery storage activity.

(e) *Uniform Hazardous Waste Manifests.* The owner or operator of a consolidation point who sends a shipment of hazardous waste batteries directly to a destination facility must comply with subpart B of 40 CFR part 262 and 40 CFR 262.30 through 262.33, 262.40(a), 262.40(d), and 262.42 of this chapter when initiating a shipment.

#### § 273.14 Destination facility requirements.

(a) Owners or operators of destination facilities that recycle, treat, store, or dispose of hazardous waste batteries must comply with all applicable requirements of parts 264, 265, 266, 268, 270, and 124 of this chapter, and the notification requirement under Section 3010 of RCRA.

(b) Owners and operators of destination facilities that recycle hazardous waste batteries without storing them before they are recycled must comply with 40 CFR 261.6(c)(2).

#### § 273.15 Export requirements.

(a) A generator who sends hazardous waste batteries to a foreign destination, without first sending them to a consolidation point or destination facility, must:

(1) Comply with the requirements applicable to a primary exporter in 40 CFR 262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57;

(2) Export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in subpart E of part 262 of this chapter; and

(3) Provide a copy of the EPA Acknowledgement of Consent for the shipment to the transporter transporting the shipment for export.

(b) A transporter transporting a shipment of hazardous waste batteries to a foreign destination may not accept a shipment if the transporter knows the shipment does not conform to the EPA Acknowledgement of Consent. In addition the transporter must ensure that:

(1) A copy of the EPA

Acknowledgement of Consent accompanies the shipment; and

(2) The shipment is delivered to the facility designated by the person initiating the shipment.

(c) An owner or operator of a consolidation point who sends hazardous waste batteries to a foreign destination, without first sending them to another consolidation point or destination facility, must:

(1) Comply with the requirements applicable to a primary exporter in 40 CFR 262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57;

(2) Export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in subpart E of part 262 of this chapter; and

(3) Provide a copy of the EPA Acknowledgement of Consent for the shipment to the transporter transporting the shipment for export.

(d) A destination facility sending hazardous waste batteries to a foreign destination must also comply with the generator requirements of part 262 of this chapter, and with 40 CFR 264.71(c) or 265.71(c) pertaining to initiating the manifest.

#### Subpart C—Suspended and/or Canceled Pesticides That are Recalled

##### § 273.20 Applicability.

(a) *Covered Wastes.* (1) This subpart sets forth standards for managing hazardous waste pesticides meeting the following conditions:

(i) The hazardous waste pesticides are stocks of a suspended and canceled pesticide, other than those owned by a registrant, that are part of a voluntary or mandatory recall under FIFRA Section 19(b); or

(ii) The hazardous waste pesticides are stocks of a suspended and canceled pesticide owned by a registrant responsible for conducting a recall under FIFRA section 19(b); or

(iii) The hazardous waste pesticides are part of a recall conducted voluntarily by a registrant of a pesticide that has been suspended or canceled under FIFRA section 6.

(2) Hazardous waste pesticides that are not managed in compliance with the requirements of this part must be managed under the hazardous waste regulations in 40 CFR parts 260 through 272 of this chapter.

(3) Hazardous waste pesticides managed by farmers in compliance with 40 CFR 262.70 are not subject to the requirements of this part. 40 CFR 262.70 addresses only pesticides disposed of on

the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with 40 CFR 261.7(b)(3).

(b) *Household and Conditionally Exempt Small Quantity Generator Waste Pesticides.* (1) Persons managing the wastes listed below may, at their option, manage them under the requirements of this subpart without changing the wastes' exempt status:

(i) Household hazardous waste pesticides that are exempt under 40 CFR 261.4(b)(1); and/or

(ii) Conditionally exempt small quantity generator hazardous waste pesticides that are exempt under 40 CFR 261.5.

(2) Persons who commingle household hazardous waste pesticides and/or conditionally exempt small quantity generator hazardous waste pesticides together with hazardous waste pesticides regulated under this subpart must manage the commingled pesticides under the requirements of this subpart.

##### § 273.21 Generator requirements.

(a) *Generation of hazardous waste pesticides.* (1) A pesticide becomes a waste:

(i) On the date the generator decides to participate in a recall, if the person conducting the recall has already decided to dispose of the pesticide or burn the pesticide for energy recovery; or

(ii)(A) On the date the person conducting a FIFRA Section 19 recall decides to dispose of the pesticide or burn the pesticide for energy recovery, if the generator has already notified the recaller that he will participate in the recall; or

(B) On the date the person conducting a recall of a pesticide suspended or canceled under FIFRA section 6 decides to dispose of the pesticide or burn the pesticide for energy recovery, if the generator has already decided to participate in the recall.

(2) If the person conducting the recall has not yet made a decision on a management option, the pesticide is not yet defined as a "solid waste" under RCRA; thus, the pesticide is not yet a hazardous waste and is not subject to hazardous waste requirements. In addition, if the person conducting the recall selects a management option that, under 40 CFR 261.2, does not cause the pesticide to be a solid waste (i.e., the selected option is use or reuse—other than burning for energy recovery or use constituting disposal—or reclamation), the pesticide is not a hazardous waste and is not subject to hazardous waste

requirements. Although pesticides that are not solid wastes are not hazardous wastes and thus are not subject to the hazardous waste regulations, they remain subject to the requirements of FIFRA.

(3) A waste pesticide is a hazardous waste if it is listed in 40 CFR part 261, subpart D or if it exhibits one or more of the characteristics identified in 40 CFR part 261, subpart C.

(b) *Condition of pesticides.* A generator of hazardous waste pesticides may manage them under this subpart only if they are contained in one or more of the following:

(1) Packaging materials (either containers or tanks) that are:

(i) Original materials used to contain the pesticide when it was being distributed or sold; and

(ii) Kept closed and not leaking.

(2) Packaging materials that are original packaging that has been overpacked in a larger, non-leaking closed container.

(3) Tanks that meet the requirements of 40 CFR part 265 subpart J, except for 40 CFR 265.197(c), 265.200, and 265.201.

(4) Non-leaking transport vehicles or vessels.

(c) *Storage.* (1) A generator may store hazardous waste pesticides for no longer than one year from the date the pesticides became wastes.

(2) A generator who stores hazardous waste pesticides must be able to demonstrate that the pesticides are not stored for more than one year from the date they became a waste. A generator may make this demonstration by:

(i) Marking or labeling the container or tank in which the pesticide is stored with the date the pesticide became a waste;

(ii) Maintaining an inventory system that identifies the date the pesticides in storage became wastes;

(iii) Placing the pesticides in a specific storage area and identifying the earliest date that any pesticide in the storage area became a waste; or

(iv) Any other method approved in advance by the Regional Administrator or the State Director.

(d) *Prohibitions.* A generator of hazardous waste pesticides is:

(1) Prohibited from diluting or disposing of them except under 40 CFR 262.70;

(2) Prohibited from treating them, except by responding to releases as provided in paragraph (e) of this section; and

(3) Prohibited from sending or taking the pesticides to a place other than a foreign destination, or a consolidation point or destination facility designated by the person conducting the recall.

(e) *Pesticide Management.* (1) A generator must immediately contain all releases of hazardous waste pesticides.

(2) A generator must determine whether any materials resulting from the release are hazardous wastes, and if so, the generator must manage them in accordance with all applicable requirements of 40 CFR parts 260 through 272.

(3) A generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.

#### § 273.22 Transporter requirements.

(a) *Condition of pesticides.* A transporter of hazardous waste pesticides must contain them in one or more of the following:

(1) Packaging materials (either containers or tanks) that are:

(i) Original materials used to contain the pesticide when it was being distributed or sold; and

(ii) Kept closed and not leaking.

(2) Packaging materials that are original packaging that has been overpacked in a larger, non-leaking, closed container.

(3) Non-leaking transport vehicles or vessels.

(b) *Storage.* A transporter of hazardous waste pesticides may only store them at a transfer facility for ten days or less.

(c) *Prohibitions.* A transporter of hazardous waste pesticides is:

(1) Prohibited from diluting or disposing of them;

(2) Prohibited from treating them, except by responding to releases as provided in paragraph (d) of this section; and

(3) Prohibited from transporting them to a place other than a foreign destination, or a consolidation point or destination facility designated by the person conducting the recall.

(d) *Pesticide Management.* (1) A transporter must immediately contain all releases of hazardous waste pesticides.

(2) A transporter must determine whether any materials resulting from the release are hazardous wastes, and if so, the transporter must manage them in accordance with all applicable requirements of 40 CFR parts 260 through 272.

#### § 273.23 Consolidation point requirements.

(a) *Condition of pesticides.* The owner or operator of a consolidation point managing hazardous waste pesticides must contain them in one or more of the following:

(1) Packaging materials (either containers or tanks) that are:

(i) Original materials used to contain the pesticide when it was being distributed or sold; and

(ii) Kept closed and not leaking.

(2) Packaging materials that are original packaging that has been overpacked in a larger, non-leaking closed container.

(3) Tanks that meet the requirements of 40 CFR part 265 subpart J, except for 40 CFR 265.197(c), 265.200, and 265.201.

(4) Non-leaking transport vehicles or vessels.

(b) *Storage.* (1) The owner or operator of a consolidation point may store hazardous waste pesticides for no longer than one year from the date the owner or operator receives them.

(2) The owner or operator of a consolidation point who stores hazardous waste pesticides must be able to demonstrate that the pesticides are not stored for more than one year from the date they were received. The owner or operator may make this demonstration by:

(i) Marking or labeling the containers or tanks in which the pesticides are stored with the date the pesticides were received;

(ii) Maintaining an inventory system that identifies the date the pesticides in storage were received;

(iii) Placing the pesticides in a specific storage area and identifying the earliest date that any of the pesticides in the storage area were received; or

(iv) Any other method approved in advance by the Regional Administrator or the State Director.

(c) *Prohibitions.* The owner or operator of a consolidation point managing hazardous waste pesticides is:

(1) Prohibited from diluting or disposing of them;

(2) Prohibited from treating them, except by responding to releases as provided in paragraph (d) of this section; and

(3) Prohibited from sending or taking them to a place other than a foreign destination, or a consolidation point or destination facility designated by the person conducting the recall.

(d) *Pesticide Management.* (1) The owner or operator of the consolidation point must immediately contain all releases of hazardous waste pesticides.

(2) The consolidation point owner/operator must determine whether any materials resulting from the release are hazardous wastes, and if so, the owner/operator must manage them in accordance with all applicable requirements of 40 CFR parts 260 through 272.

(3) The consolidation point owner or operator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.

**§ 273.24 Destination facility requirements.**

(a) Owners or operators of destination facilities that recycle, treat, store, or dispose of hazardous waste pesticides must comply with all applicable requirements of parts 264, 265, 266, 268, 270, and 124 of this chapter, and the notification requirement under Section 3010 of RCRA.

(b) Owners and operators of destination facilities that recycle hazardous waste pesticides without storing them before they are recycled must comply with 40 CFR 261.6(c)(2).

**§ 273.25 Export requirements.**

(a) A generator who sends hazardous waste pesticides to a foreign destination, without first sending them to a consolidation point or destination facility, must:

(1) Comply with the requirements applicable to a primary exporter in 40 CFR 262.53, 262.56(a) (1) through (4), (6), and (b) and 262.57;

(2) Export such materials only upon consent of the receiving country and in conformance with the EPA

Acknowledgement of Consent as defined in 40 CFR part 262 subpart E; and

(3) Provide a copy of the EPA Acknowledgement of Consent for the shipment to the transporter transporting the shipment for export.

(b) A transporter transporting hazardous waste pesticides to a foreign destination may not accept a shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent. In addition, the transporter must ensure that:

(1) A copy of the EPA Acknowledgment of Consent accompanies the shipment; and

(2) The shipment is delivered to the facility designated by the person initiating the shipment.

(c) An owner or operator of a consolidation point who sends hazardous waste pesticides to a foreign destination, without first sending them to another consolidation point or to a destination facility, must:

(1) Comply with the requirements applicable to a primary exporter in 40

CFR 262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57;

(2) Export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in 40 CFR part 262 subpart E; and

(3) Provide a copy of the EPA Acknowledgement of Consent for the shipment to the transporter transporting the shipment for export.

(d) A destination facility sending hazardous waste pesticides to a foreign destination must also comply with the generator requirements of part 262 of this chapter, and with 40 CFR 264.71(c) or 265.71(c) pertaining to initiating the manifest.

(e) Recalled pesticides that are exported to a foreign destination for use or reuse are not hazardous waste pesticides and are subject to the applicable export requirements of FIFRA.

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