ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 260, 261, 262, 263, 264, 265, 266 and 273

[FRL–5447–1]

RIN 2050–AD87

Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision C(92)39 Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The rule identifies the wastes, under the Resource Conservation and Recovery Act (RCRA), that are subject to a graduated system (green, amber, red) of procedural and substantive controls when they move across national borders within the OECD for recovery. (EPA may, in the future, identify wastes under other statutes that are subject to the OECD Decision). It seeks to make the transactions fully transparent and to prevent or minimize the possibility of such wastes being abandoned or otherwise illegally handled. These requirements will apply only to U.S. exporters and importers of RCRA hazardous wastes destined for recovery in OECD countries (except for Canada and Mexico; waste shipments to and from these countries will continue to move under the current bilateral agreements and regulations). Those U.S. exporters and importers transacting hazardous waste movements outside the scope of today's rule will remain subject to EPA's current waste export and import regulations at 40 CFR part 262, subparts E and F.

This rule does not increase the scope of wastes subject to U.S. export and import controls; it does, however, modify the procedural controls governing their export and import when shipped for recovery among OECD countries. Today's rule will assist in harmonizing the new OECD requirements, reducing confusion to U.S. importers and exporters and increasing the efficiency of the process.

EFFECTIVE DATE: This rule is effective on July 11, 1996. The OECD Green List of Wastes (revised May 1994), Amber List of Wastes and Red List of Wastes (both revised May 1993) as set forth in Appendix 3, Appendix 4 and Appendix 5, respectively, to the OECD Council Decision C(92)39/FINAL (Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations) were approved by the Director of the Federal Register to be incorporated by reference in today's rule on July 11, 1996.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located at 1235 Jefferson-Davis Highway, First Floor, Arlington, Virginia 22203. The Docket Identification Number is F–94–IEHF–FFFFF. The RIC 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 (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $.15/page. Some supporting materials are available electronically. See the ''Supplementary Information'' section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). In the Washington metropolitan area, call 703–412–9810 or TDD 703–412–3323.

For more detailed information on specific aspects of this rulemaking, contact Ms. Julia Gourley, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7944.

SUPPLEMENTARY INFORMATION:

Internet Access

Selected supporting materials are available on the Internet. Follow these instructions to access the information electronically:

Gopher: gopher.epa.gov
WWW: http://www.epa.gov
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This report can be accessed off the main EPA Gopher menu, in the directory: EPA Offices and Regions/Office of Solid Waste and Emergency Response (OSWER)/Office of Solid Waste (RCRA)/Hazardous Waste-RCRA-Subtitle C/Exports/Imports.

FTP: ftp.epa.gov
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Preamble Outline

Note: The Agency notes that previous, pre-publication versions of this rule may inadvertently have been made available (*e.g.* through the Internet and other on-line means). This rule, published today in the Federal Register, supersedes any and all of these pre-publication versions. This published rule constitutes the Agency's final rule and reflects certain minor technical corrections that were not contained in pre-publication versions.

On March 30, 1992, the Organization for Economic Cooperation and Development (OECD) adopted Council Decision C(92)39 Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations (Decision). The United States, a member of OECD, supported the Decision and has agreed to follow its terms, which, with respect to RCRA wastes, EPA is implementing in today's Final Rule.

I. Authority

Authority to promulgate today's rule is found in sections 2002(a) and 3017(a)(2) and (f) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), and as amended by the Hazardous and Solid Waste Amendments, 42 U.S.C. 6901 *et seq.*

Today's final rule is necessary to ensure implementation of the Organization for Economic Cooperation and Development (OECD) Council Decision C(92)39/FINAL Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations (the Decision). The Decision was supported by the United States and imposes legally binding commitments on the United States pursuant to Articles 5(a) and 6(2) of the OECD Convention, 12 U.S.T. 1728. The Decision and today's rule implementing the Decision also will ensure that the import and export of RCRA hazardous waste destined for recovery, between the United States and those OECD countries that are Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, may proceed even though the United States is not yet a Party to the Basel Convention.[1]

[1] OECD member countries consist of Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. Mexico joined the OECD in June 1994.

The Basel Convention entered into force on May 5, 1992, for the twenty countries that ratified it by that date. Since then, a number of other countries have also ratified. The Convention prohibits trade in Basel-covered wastes between parties and non-parties, unless a bilateral, multilateral, or regional agreement or arrangement exists in accordance with Article 11 of the Convention. The Decision, which entered into force before May 5, 1992, satisfies the requirements of Article 11 of the Basel Convention because it is a pre-existing multilateral agreement compatible with the environmentally sound management of wastes as required by the Convention. Therefore, today's promulgation of Subpart H as part of the RCRA hazardous waste export and import regulations, which is necessary to implement the Decision, will make it possible for persons within the United States to continue exporting and importing Basel-covered RCRA hazardous waste for recovery within the OECD, even if other OECD countries are Parties to the Basel Convention. Additionally, today's rule will facilitate harmonization of U.S. regulations with European Union regulations on waste exports and imports, which went into effect on May 6, 1994. Future legislative and regulatory actions will be needed to more fully implement this Decision.

A. Good Cause Exception to Notice and Comment Requirement

The Decision sets out very specific requirements for shipments of hazardous waste destined for recovery. EPA is implementing language that essentially mirrors the Decision in order to establish certain new requirements that will be enforceable against importers and exporters [EPA is making only minimal, nonsubstantive changes to the OECD language in order to conform today's rule to existing RCRA rules (e.g., substituting the RCRA-defined term ''transporter'' for the term ''carrier'' used in the Decision)]. EPA is promulgating these rules without first providing notice and opportunity to comment. Under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), an agency may forgo notice and comment in promulgating a rule when, according to the APA, the agency for good cause finds (and incorporates the finding and a brief statement of reasons for that finding into the rules issued) that notice and public comment procedures are impracticable, unnecessary, or contrary to the public interest. For the reasons set forth below, EPA believes it has good cause to find that notice and comment would be unnecessary and contrary to the public interest and therefore is not required by the APA.

EPA finds that notice and comment procedures are unnecessary in connection with the promulgation of today's rule because EPA is precluded from modifying the rule in any meaningful way in response to public comment. The requirement to implement this Decision virtually as written derives from the following.

First, the United States has entered into a legally binding commitment with the other OECD countries to implement the Decision virtually as written. Accordingly, today's rulemaking is analogous to a codification of statutory requirements, in which an agency assumes the ministerial, nondiscretionary functions of translating requirements to regulatory form [see *United Technologies Corp.* v. *EPA,* 821 F.2d 714, 720 (D.C. Cir. 1987) (finding that EPA had good cause to omit notice and comment for a rule codifying portions of the 1984 amendments to RCRA); *Metzenbaum* v. *Federal Energy Regulatory Commission,* 675 F.2d 1282, 1291 (D.C. Cir. 1982) (finding orders implementing statutory waiver were nondiscretionary acts required by such waiver and that notice and comment procedures were unnecessary and possibly contrary to the public interest ''given the expense that would have been involved in the futile gesture'')]. Although the Decision is neither a statute nor a court order and imposes no requirements directly on U.S. persons, the U.S. Department of State has determined that the Decision is an international agreement creating binding commitments on the United States under the terms of the OECD Convention. By consenting to the Decision, the United States Government has agreed to promulgate regulations necessary to ensure that the United States can uphold the agreement. Furthermore, EPA has determined that no statutory change to the Resource Conservation and Recovery Act (RCRA) is needed because RCRA currently authorizes EPA to promulgate rules governing imports and exports of hazardous waste, and contains adequate authority to promulgate the requirements of the Decision.

Second, today's rule cannot deviate materially from the Decision because, as a practical matter, other OECD countries may refuse to accept U.S. shipments of waste for recycling that do not conform to the procedures agreed to in the Decision. Such countries also may refuse to allow wastes to be shipped to the U.S. if the U.S. cannot carry out its duties as specified in the Decision. Deviation from the regulatory scheme

articulated in the Decision in response to comments might preclude the U.S. from implementing the Decision and therefore from satisfying its international commitments.

Third, EPA must implement the Decision virtually as written because modifications could defeat the goal of achieving an internationally consistent regime to control the import and export of hazardous and other wastes destined for recovery. EPA believes that parallel implementation of the Decision within the U.S. and other OECD countries is crucial to ensuring that the import and export of wastes destined for recovery proceed in accordance with an internationally integrated regime. Without the uniform implementation of the controls it prescribes, an internationally consistent regime is not possible, and many of the environmental benefits of the Decision (and the Basel Convention) will be lost.

EPA also believes that it has good cause to find that prior notice and an opportunity to comment would not serve the public interest. As noted above, the movement of RCRA hazardous wastes destined for recovery could be halted between the United States and the OECD countries, particularly those that are parties to the Basel Convention, if the United States modified the regulations in response to comment such that the regulations failed to conform to the OECD Decision. EPA believes that the continued movement and recovery of such wastes is environmentally and economically beneficial. The United States, therefore, encourages the environmentally sound recovery of wastes, particularly hazardous wastes, as an alternative to disposal [see, e.g., 42 U.S.C. 6902(a)(6), 6935(a), 6941a; 42 U.S.C. 9621(b)]. EPA believes that the import and export of wastes among OECD countries for purposes of recovery serves the public interest by making waste management facilities in the OECD available to waste generators in the U.S. and other OECD countries, thereby providing additional assurance that wastes amenable to recovery operations will be managed in an environmentally sound manner. The United States' failure to implement the Decision in the form approved by the OECD countries could thwart this objective.

In further support of its finding that the public interest is not well served by the allowance for comment on this rulemaking, EPA also notes that the regulatory burdens of this rule flow from the Decision itself and are not materially affected by the promulgation of today's rule. Because a number of OECD countries to date have fully implemented the Decision, many U.S. importers and exporters of wastes destined for recovery who seek to trade with OECD countries in effect already are subject to the requirements of the Decision through those countries' controls on their imports and exports. For example, these countries may already require, as a condition of authorizing the shipment, that U.S. participants adhere to the Decision's contracting or notice requirements, even though those participants are not yet required to do so under U.S. law. Thus, it is the implementation of the Decision by other OECD countries, rather than the implementation of today's rule, that has the most profound effect on the regulated community. Because today's rule merely formalizes the existing regulatory framework to which the regulated community is already subject, its promulgation without notice and comment does not detrimentally affect those persons [see *National Helium Corp.* v. *Federal Energy Administration*, 569 F.2d 1137, 1146 (Temp. Emer. Ct. App. 1978)]. Indeed, as noted above, today's rule ameliorates the effects of foreign laws on U.S. persons by making it possible for RCRA hazardous waste destined for recovery to move between the U.S. and other OECD countries without being stopped or rejected for failure to conform to the Decision. Finally, where EPA believes the OECD Decision is open to interpretation and affords EPA some flexibility in interpreting and implementing its requirements, EPA remains free to initiate a separate rulemaking process on those issues, following all appropriate notice and comment procedures.

For the reasons set forth above, EPA believes that it has good cause to find that implementation of notice and comment procedures for today's rule would be unnecessary and contrary to the public interest, and therefore is not required under 5 U.S.C. 553(b)(B) to initiate a comment period.

B. Effective Date

Section 3010(b) of RCRA requires EPA to set the effective date for rules promulgated under Subtitle C of RCRA at six months after the date of promulgation unless (1) the regulated community does not need six months to come into compliance; (2) the regulation responds to an emergency; or (3) there is other good cause. EPA believes that the regulated community will not need more than 90 days to become familiar with today's rule and to begin implementing its requirements because the new requirements refer primarily to the notices and consents that are already required under existing law as a condition to the import or export of the wastes destined for recovery. Moreover, EPA believes that the regulated community is capable of, and indeed has an interest in, immediate compliance with the new rule in order to continue to be able to import and export wastes subject to the Decision, since most OECD countries have already revised their regulations to incorporate the Decision's requirements. EPA also believes it has good cause to make this rule effective 90 days from publication, for the reasons set forth above in connection with the APA's public notice requirement. Therefore, EPA concludes that the six month effective date provision of RCRA 3010(b) does not apply.

II. Background

A. History of the OECD and Development of the Council Decision C(92)39/Final

The OECD was chartered to assist member countries in achieving high economic growth, employment, and a rising standard of living while ensuring that human health and the environment are protected. Presently there are 25 member countries of the OECD: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

The OECD was the first international organization to establish a working group to analyze issues relating to transfrontier movements of hazardous waste. In 1974, the OECD Environment Policy Committee, which guides all OECD work involving environmental matters, created the Waste Management Policy Group (WMPG), which includes government officials responsible for controlling waste management in their respective member countries.

In 1981, the WMPG began to prepare guidelines to control transfrontier movements of hazardous waste. Thereafter, because some members (including the United States) enacted legislation controlling transfrontier shipments of hazardous waste, the OECD's primary mission was to work toward harmonization of controls among the member countries.

Much of the OECD's early work, including lists identifying wastes to be covered by an international agreement controlling transfrontier waste movements, was adopted by the United Nations Environment Programme (UNEP) and incorporated into the Basel

Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention). More detailed discussion of the Basel Convention can be found in the Federal Register at 57 FR 20602 (May 13, 1992).

Following completion of the Basel Convention and a 1991 OECD Council Decision on wastes, an Advisory Panel to the OECD's Waste Management Policy Group was chartered in January 1991. Its purpose was to study whether a streamlined set of procedural notice and consent requirements could be agreed upon by member countries for transfrontier movements of waste destined for recovery. The panel developed a graduated control system and lists of covered wastes (green, amber, and red). The proposed system was presented to the WMPG as a draft Decision in November 1991, for submission to the OECD Environment Policy Committee. In December 1991, the Environment Policy Committee returned the draft Decision to the WMPG for further refinement. A month later, the WMPG revised the Decision, and through the Environment Policy Committee, submitted the Decision document to the OECD Council. On March 30, 1992, the Council adopted the Decision, with only Japan abstaining. Japan later adopted and began implementing the Decision in December 1993.

B. Relationship to the Basel Convention

The Basel Convention is an international agreement controlling the transfrontier movement of hazardous and other wastes. While requiring movements between Basel Parties to be managed in an environmentally sound manner, it prohibits movements involving Parties and non-Parties absent a separate bilateral, multilateral, or regional agreement or arrangement that is compatible with the aims and purposes of the Convention (for pre-existing agreements) or that contains provisions that do not derogate from the environmentally sound management required by the Basel Convention (for newly negotiated agreements). Such agreements are recognized under Article 11(2) of the Convention. As a pre-existing arrangement under Article 11(2), the Decision averts potential trade disruptions between members of the OECD that are Parties to the Basel Convention and members that are not.

The U.S. will not become a Party to the Basel Convention until it ratifies the Convention. In order to ratify the Convention, the U.S. must have additional statutory authority to implement its terms. Once the U.S. has the necessary authority, the export and import regulations at 40 CFR 262 Subparts E and F will be modified.

Exports and imports among OECD countries of waste destined for recovery will be governed by the procedures set forth in today's regulations and by any future regulatory changes made to implement the Decision (including future changes to the Decision).[2] Exports and imports of RCRA hazardous wastes within the OECD for purposes other than recycling (*e.g.*, disposal or treatment) will continue to be subject to the current RCRA export and import regulations.

C. Summary of Decision

OECD Council Decision C(92)39/FINAL establishes a graduated control system for the transfrontier movement of wastes destined for recovery operations. The Decision reflects recognition by the OECD of the importance of transboundary movement of wastes for recovery, because highly specialized recovery facilities are not found in every country and because OECD generally supports a waste management hierarchy in which recovery is more desirable than final disposal. The goal of the negotiations was to ensure that recovery of materials from wastes could continue internationally, provided the shipments were managed in an environmentally sound and efficient manner.

The OECD has developed draft guidance on environmentally sound recovery practices for particular wastes. In addition, some of the member countries are actively engaged in the development of technical guidelines for environmentally sound management of hazardous and other wastes under the Basel Convention. To date, seven technical guidelines on management of specific waste streams and waste management practices have been adopted by the Basel Parties, along with a framework document outlining the elements to be included in the technical guidelines. They are: hazardous waste from the production and use of organic solvents; waste oils from petroleum origins and sources; wastes comprising or containing PCBs, PCTs, and PBBs; wastes collected from households; specially engineered landfills, incineration on land, and used oil re-refining or other re-uses of previously used oil. The purpose of the technical guidelines is to assist developing countries in becoming self-sufficient in waste management as they industrialize and develop their economies. The Basel Parties have agreed to develop other technical guidelines as resources permit.

The Decision establishes a range of different procedural controls depending on whether a waste appears on the Decision's green, amber, or red list (or no list, in which case hazardous wastes are regulated as red-list wastes). Green-list wastes require no controls beyond those typically imposed in normal international commercial shipments. Amber-list wastes, which are considered hazardous, may be shipped for recovery under one of three arrangements: (1) movement pursuant to a shipment-by-shipment written notification by the export notifier or competent authority of his government to the competent authorities of OECD concerned countries (i.e., exporting, importing and transit), and written or tacit consent from the relevant OECD importing and transit countries; (2) movement pursuant to a general notification and written or tacit consent from the competent authorities of the relevant OECD importing and transit countries; or (3) movement to facilities pre-approved by the importing country to accept that waste type which requires only prior written notification to the competent authorities of the concerned countries. In all cases, amber-list wastes must be accompanied by a tracking document and the waste must be shipped under a legally binding contract, chain of contracts, or equivalent arrangements if the notifier and receiving facility are part of the same legal or corporate entity. Red-list wastes are handled in the same manner as amber-list wastes except that prior *written* consent from the importing and transit countries is always required and no facilities are pre-approved to accept these wastes.

In addition to assigning specific wastes to the green, amber or red lists, the Decision allows for each member country to employ its ''national procedures'' to determine whether a waste is considered hazardous under its laws and regulations, and therefore whether it is subject to amber or red controls. Thus, as discussed in more detail below, a waste that is not hazardous as determined by national procedures will not be subject to amber or red controls regardless of which list it appears on, a green-list waste that is considered hazardous will be subject to amber or red controls, while an unlisted waste considered hazardous as determined by national procedures will be subject to red controls (see § II. C. 2. d.)

[2] For example, today's regulations implementing the OECD Decision will be modified once EPA obtains legislative authority to control the transfrontier movements of household wastes, which appear on the OECD amber list.

1. Waste Lists

a. Green, Amber, and Red Lists. The waste lists (green, amber, and red) are intended to be comprehensive, i.e., any waste subject to transfrontier movement should be identified on one of three lists. Wastes identified on the green list are presumed to be non-hazardous while amber-list and red-list wastes are presumed to be hazardous. However, transfrontier movements of red-list wastes for recovery are presumed by the OECD to pose a greater potential risk than amber-list wastes because of their hazardous properties or because there is less experience in recovery of red wastes as compared to amber wastes. The Decision allows a country to use its national procedures to determine which wastes are hazardous.

b. Unlisted Wastes. Although the green, amber, and red lists of wastes are intended to be comprehensive, it is possible that there are wastes moving internationally for recovery that are not on any list. The WMPG developed the Review Mechanism in accordance with the General Provisions section of the Decision, to evaluate and assign unlisted waste to an appropriate list. The Review Mechanism is administered by an OECD group known as the Working Party. Under the Review Mechanism, the Working Party forwards recommendations to the OECD Council through the WMPG, the Pollution Prevention and Control Group, and the Environment Policy Committee. The Working Party also identifies other implementation issues that should be addressed under the Review Mechanism.

In implementing the Review Mechanism, the Working Party uses the criteria in Annex 2 of the OECD Decision to evaluate wastes and to formulate recommendations regarding their placement on a specific list. The criteria are divided into two major categories: waste properties (e.g., degree of hazard, physical state) and management practices (e.g., handling prior to recovery). The terms of reference for the Review Mechanism require that changes to the waste lists be proposed or supported by at least one member country and circulated to all members at least six weeks prior to convening the Review Mechanism's Working Party.

Persons who export hazardous wastes from the U.S. to OECD countries for recovery are encouraged to identify hazardous wastes which are not currently identified on any list and to provide EPA with waste-specific information responsive to the questions in Annex 2 of the Decision. This information will be evaluated by the Agency prior to submission to the Review Mechanism for consideration. Hence, it is critical that complete information be provided to EPA at least two months (and preferably earlier) prior to scheduled meetings of the Working Party to conduct the Review Mechanism process. Until such time as an unlisted waste is placed on a particular list pursuant to the Review Mechanism, the Decision provides that unlisted wastes considered hazardous under national procedures move under red controls and that unlisted waste considered non-hazardous under national procedures move under green controls.

c. National Procedures. The OECD amber and red waste lists are quite broad, consisting of many generic categories which may include both hazardous and non-hazardous wastes. The Decision therefore allows a country to determine if a waste on an OECD list is hazardous based on its ''national procedures'' or ''national tests.'' During the negotiations of the Decision, the U.S. interpreted national procedures to include both hazardous waste testing and regulatory determinations. For purposes of today's rule, EPA has determined that a waste is hazardous under U.S. ''national procedures'' if the waste meets the following requirements under RCRA: (a) meets the Federal definition of hazardous waste in 40 CFR 261.3; *and* (b) is subject to either the Federal hazardous waste manifesting requirements in 40 CFR 262, or to the universal waste management standards of 40 CFR 273, or to State requirements analogous to Part 273. (As stated earlier, EPA may, in the future, identify wastes under other statutes that are subject to the OECD Decision). [Note: For purposes of brevity and convenience, only the manifest criterion (and not the universal waste criteria) will be mentioned specifically throughout the preamble as to whether EPA considers a waste to be a hazardous waste and therefore subject to today's rule. However, we emphasize that universal wastes (which are considered hazardous wastes but are not subject to manifest requirements) are also subject to today's rule. Further discussion of universal wastes can be found in section IV. B. 6.]. This interpretation is consistent with the Agency's 1986 export notification policy [see 51 FR 28664 (Aug. 8, 1986)], in which the Agency concluded that wastes that are not subject to manifesting domestically do not pose a risk warranting export notification. Further discussion of EPA's interpretation of national procedures as they apply to recyclable waste can be found in section IV. B. 1.

2. Control Procedures

The specific control procedures required for the export or import of wastes for recovery within the OECD depend on whether the relevant exporting, importing and transit countries consider a waste to be subject to green, amber or red controls under their national procedures. Significantly, a particular waste's placement on one of the OECD lists is not determinative of the level of control applicable to the transfrontier shipment of such a waste for recovery. The lists represent an attempt to reach a consensus among the member countries on the level of control applicable to certain types of wastes; they do not supersede a country's authority to apply different levels of control for a particular waste pursuant to its national procedures. Accordingly, although a waste's placement on the OECD green, amber and red waste lists may indicate the applicable level of control in most cases, exporters and importers must determine which level of control applies to a particular shipment of waste under the national procedures of each affected country.

All waste shipments that are subject to today's final rule must be sent to facilities that are allowed under the applicable laws of the importing country to receive and perform recovery operations on the wastes. In addition, the Decision requires that all transfrontier movements of waste within the OECD comply with the provisions of applicable international transport agreements.[3] Any transit of wastes through a non-member country is subject to all applicable international and national laws and regulations.

a. Green-List Wastes. Wastes on the green list that are exported from the U.S. to OECD countries or imported to the U.S. from such countries for recovery are subject to all existing controls normally applied to commercial transactions, but are not subject to any additional controls under the Decision. Such controls may include bills of lading, customs declarations, international insurance, or other controls.

However, if a green-list waste is ''sufficiently contaminated'' (as described below) to meet the criteria for inclusion on the amber or red lists, then

[3] These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADNR (1970), MARPOL Convention (1973/1978), SOLAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985). See Appendix 1 of Council Decision C(92)39/Final in Appendix 3 of today's preamble.

shipment must be managed in accordance with the applicable amber-list or red-list controls. For the purpose of implementing the Decision, EPA is interpreting ''sufficiently contaminated'' to mean a green-list waste that is considered hazardous under U.S. national procedures (i.e., waste or waste mixture meets the Federal definition of hazardous waste in 40 CFR 261.3 and is subject to Federal manifest requirements). Such wastes will be subject to amber-list controls, unless the reason for the contamination is mixture with a red-list waste or with a hazardous waste that is not found on any list. In those cases, the waste will be subject to red-list controls.

As will be discussed further, the Decision acknowledges that certain green-list wastes may be subject to amber-list or red-list controls by certain countries, in accordance with their domestic legislation and the rules of international law.

b. Amber-List Wastes. Shipments of amber-list wastes destined for recovery within the OECD are subject to the amber-list control system. If, however, the waste is sufficiently contaminated with other wastes subject to red controls (i.e., red-list wastes or unlisted hazardous wastes) the waste then becomes subject to the red control regime. In addition, such waste could potentially be subject to other laws and regulations.

Amber controls require that a shipment of amber-list waste move pursuant to a legally binding written contract or chain of contracts (or an equivalent arrangement if the notifier and the receiving facility are part of the same corporate or legal entity). The contract must include a provision for alternate management or re-export of the waste if it cannot be managed as planned and must include financial guarantees for such alternate management if so required by the competent authorities of any concerned country, in accordance with applicable national or international laws. The U.S. does not require any financial guarantees for international waste shipments at this time.

Prior to the proposed export, the notifier must provide written notification to the competent authorities of all concerned countries to allow them the opportunity to deny the shipment. As defined in § 262.81(g) of today's rule, the notifier is the person under the jurisdiction of the exporting country who has, or will have at the time the transfrontier movement commences, possession or other forms of legal control of the wastes and who proposes their transfrontier movement for the ultimate purpose of submitting them to recovery operations (see section III. B. 9.). In certain cases, a general notification will be permissible. The competent authority of the exporting country may elect to perform the notification duties. EPA is the United States' competent authority for OECD purposes. Therefore, under today's rule, the notifier will provide written notification to EPA for exports from the U.S. of RCRA hazardous wastes subject to amber-list controls, and EPA will in turn notify the competent authorities of all concerned OECD countries. The competent authority of the importing country must issue an Acknowledgement of Receipt to the notifier and to the competent authorities of the exporting and transit countries within three working days of receiving the export notice. For the purposes of this rule, ''transit country'' refers only to a transit country that is a member of the OECD and is a Party to the Decision, including Canada [see section III. B. 4. of today's preamble and § 262.81(d)]. The competent authorities of the importing and transit countries have 30 days to consent or object to the shipment. However, if the competent authorities of the importing and transit countries do not notify the notifier in writing within 30 days of issuance of the Acknowledgement of Receipt that the request has been denied or that additional information is required, then tacit consent is deemed to be granted, and the shipment may proceed as specified in the notification.

If a transit country denies consent, the proposed movement must be rerouted and a new notification must be submitted to EPA to forward to the new transit country. The movement may not commence until that OECD country tacitly or expressly consents to the movement.[4]

The competent authority of the importing country may also allow a notifier to submit a general notification for the shipment of amber-list waste when that type of waste is to be sent periodically by the same notifier to the same facility. The notification lasts up to one year and may be renewed. In addition, OECD countries may designate facilities that they have pre-approved for receipt of amber wastes (see section III. C. 1. c.). When the U.S. receives notice from the OECD that specific facilities are pre-approved by the competent authority of a foreign government, EPA will undertake to make that information available to U.S. notifiers. At the present time, there are no U.S. facilities pre-approved for receipt of amber wastes (see section VIII).

Waste shipments must be accompanied by a tracking document. The WMPG developed forms in March 1994 which are *recommended* to be used for notification and tracking purposes.[5] These forms may be used by U.S. notifiers but will not be required until approved by OMB and codified into the regulations. For hazardous wastes exported from or imported to the United States, a uniform hazardous waste manifest also must accompany the waste shipment while it is in the jurisdiction of the U.S. (see section III. D.).

c. Red-List Wastes. The requirements for red-list wastes are similar to the requirements for amber-list wastes with one very important exception: tacit consent is *not* permissible. The red controls include: a written contract, chain of contracts, or equivalent arrangement where the notifier and recovery facility are part of the same legal or corporate entity; written notification to the competent authorities of the concerned countries;[6] prior consent of the importing and transit countries; and a tracking document accompanying the shipment. However, unlike amber-list wastes, red-list wastes cannot be shipped unless all necessary consents are obtained *in writing.* (See section III. C, D, & E for additional information).

It is important to note that, within the U.S., in addition to the OECD requirements, some red-list wastes also may be subject to requirements under other legal authorities, such as regulations promulgated under the Toxic Substances Control Act (e.g., PCB regulatory controls promulgated in 40 CFR Part 760; see section IV. B. 7. for additional information).

d. When Wastes are Not Considered Hazardous by All Concerned Countries. There may be cases in which the concerned countries (i.e., exporting, importing, and transit) disagree over the level of control to be assigned to a waste on the OECD lists.

The Decision provides guidance in section II(4) for cases where the

[4] If the transit country is not an OECD member country, EPA's regulations at Part 262, Subpart E apply. Under those regulations, EPA will provide notice to such country of the proposed waste movement, although under Subpart E consent of the non-OECD transit country is not required. However, EPA would transmit any response from the transit country to the exporter.

[5] A copy of the recommended OECD notification and tracking forms can be found in the docket for this rule.

[6] Note that instead of the notifier, the competent authority of the exporting country may, in accordance with domestic laws, decide to transmit this notification to importing and transit countries.

exporting country, using its national procedures, does not consider a waste on the amber or red OECD lists to be hazardous, while the importing country does. In such cases, the importing country shall assume all obligations assigned to the exporting country in sections IV or V of the Decision, as applicable, particularly with regard to notification requirements. This means that the competent authority of the importing country or the importer would notify the competent authorities of the exporting country, for information purposes, and transit countries, for purposes of obtaining consent, prior to the proposed import. If the exporting country does not consider the waste to be hazardous under its national procedures, then no obligations under the Decision rest on the exporter and the exporting country. For example, if the U.S. does not consider a waste to be hazardous, today's rule imposes no obligations on the U.S. exporter. However, the U.S. exporter may need to provide information to the importer (e.g., consignee, or owner or operator of the recovery facility) so that the importer can supply the competent authorities of the concerned countries with the necessary notification information. This information exchange requirement may be worked out in the contract, chain of contracts, or equivalent arrangement for parties of the same legal or corporate entity, so U.S. waste handlers should anticipate such requests from waste trading partners in other OECD nations. Requests may go as far as requiring the U.S. exporter to notify all competent authorities in the concerned countries for wastes not considered hazardous in the U.S.

In cases where only the exporting country considers the amber- or red-list waste to be hazardous, the country's competent authority or exporter would notify and seek consent of the importing and transit countries prior to shipment in accordance with the appropriate amber-list or red-list controls. Although these countries do not consider the waste to be hazardous using their national procedures, the consent of the importing and transit countries is still necessary under the laws of the exporting country. The importer and exporter would also be required to comply with any contractual requirements imposed by the exporting country.

The Decision also recognizes in section II(6) the right of OECD countries to require amber-list or red-list controls for wastes identified on the green list, in accordance with domestic legislation and international law, for the purpose of protecting human health and the environment. OECD countries are required to inform the Secretariat of such controls. For example, Austria has stated that it subjects some green-list wastes and all amber-list wastes to red-list controls, while Sweden subjects some green-list wastes to amber- or red-list controls. Under today's rule, the U.S. requires any green-list wastes that are hazardous under RCRA and subject to manifesting requirements to move under amber controls. In these cases, the wastes are subject to the country's controls only while they are in that country's jurisdiction. Of course, the exporter or importer may, as a contractual matter, have to comply with amber- or red-list control requirements before the waste enters the jurisdiction of the country that considers the waste to be hazardous.

The Decision does not address cases where the exporting and importing countries consider a waste to be non-hazardous under their national procedures but the transit nation does consider it hazardous. In such situations, the Agency views the transit nation taking on similar responsibilities as the importing nation in situations when an importing nation is the only country to consider a particular waste hazardous (discussed above). That is, the transit country shall assume the obligations of the exporting and importing countries. In practice, this may mean that waste handlers in transit nations may need to request information from U.S. waste exporters through contractual arrangements in order to seek and obtain consent from the competent authorities of the transit countries.

e. Availability of Waste Lists. The current waste lists are available in the RCRA docket under the number listed above. The regulated community is encouraged to periodically check the docket for the latest lists.

III. Specific OECD Requirements and Relationship to RCRA

A. Differences Between the OECD Decision and Today's Rule

Today's regulations implementing the Decision are applicable only to hazardous wastes destined for recovery that (1) are hazardous under RCRA *and* subject to manifesting requirements, and (2) are sent to or received from an OECD country other than Canada and Mexico. All exports and imports of hazardous waste to or from a non-OECD country, to Canada or Mexico (see § VI), or to OECD countries that are not Basel Parties for the purpose of treatment (other than recovery) or final disposal must be in compliance with current regulations discussed immediately below.

Current RCRA regulations differ from the terms of the Decision being implemented today. A summary of differences between the two are shown in Table 1 for comparative purposes only and should not be used as a substitute for today's regulations.

EPA's current export regulations are codified in 40 CFR 262, Subpart E. The requirements include: notification to EPA at least 60 days prior to export so that EPA can notify the importing and transit countries, prior written consent by the importing country, a copy of the EPA Acknowledgement of Consent attached to the manifest accompanying each shipment, and movement of the shipment in conformance with the terms of such consent. The requirements in Part 262 also include special manifest provisions, exception reporting, annual reporting, and recordkeeping. Special transporter requirements are in 40 CFR 263.

40 CFR part 262, Subpart F, requires that U.S. hazardous waste importers comply with the requirements for generators (40 CFR 262) and specifies that the importer must indicate the name and address of the foreign generator on the manifest. In addition, 40 CFR 264.12 and 265.12 require any U.S. hazardous waste management facility subject to Parts 264 or 265 that arranges for the receipt of hazardous waste from a foreign source to provide a one-time notification to EPA at least 4 weeks prior to receiving the waste. EPA also reminds importers that they must comply with the land disposal restrictions once the wastes enter the United States (see 40 CFR Part 268).

TABLE 1.—SUMMARY OF RELATIONSHIP BETWEEN CURRENT RCRA EXPORT/IMPORT REGULATIONS AND REGULATIONS IMPLEMENTING THE OECD DECISION

Issue	Current RCRA regulation (40 CFR 262.50–262.60)	Today's regulations implementing OECD decision (40 CFR 262.80–262.89)
General:		
Applicability	Governs all imports and exports of RCRA hazardous waste subject to Federal manifesting requirements in 40 CFR Part 262 regardless of final disposition.	Scope of wastes covered same as current regulations. However, new Subpart H applies only to waste imports and exports for recovery between U.S. and OECD countries, excluding Canada and Mexico.[1] For purposes of this rule, procedural controls apply to amber-list, red-list, and unlisted wastes that are RCRA hazardous and manifested. Green-list wastes are exempt unless hazardous under U.S. national procedures.
Imports:		
Notification	One-time advance notice per waste stream per foreign source required for treatment, storage, or disposal (TSD) facilities regulated under Part 264/265.	Current requirement for TSDs for one notification maintained. In addition, EPA will receive notice from foreign exporter or competent authority of his country, per the Decision.
Approval to import.	None required[2]	For import to occur, EPA must give tacit or written consent for amber-list wastes and written consent for red-list wastes. Written consent and objections must be sent to notifier and competent authorities of concerned countries.
Tracking	A uniform hazardous waste manifest is required from the time the shipment enters the U.S. until it reaches the designated facility.	Same as current regulations, plus additional OECD tracking information required. Tracking document must stay with the shipment until received by recovery facility. Recovery facilities under Parts 264/265 must return signed copy to notifier and competent authorities of concerned countries.
Financial assurance for alternate management.	None required	None required under U.S. law for U.S. entities. If foreign exporter's government requires such assurance, foreign notifier may require U.S. importer to have financial assurance as a condition of their contract.
Contracts	None required	A legally binding contract, chain of contracts, or equivalent arrangement between parties owned by the same corporate entity, specifying each responsible party handling shipments of amber-list or red-list wastes and the responsible party in case alternate management, re-exportation or re-importation is necessary because arrangements for the shipment or recovery operation cannot be carried out as foreseen. Additional provisions apply to recognized traders as defined in § 262.81(i).
Exports:		
Notification	Notification to EPA at least 60 days prior to initial shipment is required; notice then transmitted to importing and transit countries. Notice may cover multiple shipments for up to 12 months.	Same as current regulations with additional information requirements, except that notification to EPA must occur at least 45 days prior to initial shipment; may use OECD-recommended notification form; EPA will notify competent authorities of importing and transit countries.
Approval of export by competent authority of importing country.	The importing country must consent to the export. EPA notifies exporter by sending Acknowledgement of Consent or objection.	For amber-list wastes, consent presumed 30 days from the date the competent authority of the importing country acknowledges receipt of notification unless a denial or request for additional information is received; no consent from importing country needed if waste is destined for pre-approved recovery facility, although prior notification is required. For red-list wastes, written consent is necessary to export.
Approval of export by competent authority of transit country.	None required. As a practical matter, however, since EPA transmits any response received from the transit country, EPA expects that the exporter would reroute shipment if the transit country objects.	For amber-list wastes, consent is presumed 30 days from the date the competent authority of the transit country acknowledges receipt of notification unless a denial or request for additional information is received. For red-list wastes, written approval is necessary to export. No consent is required from transit countries that are not OECD members. As a practical matter, however, EPA expects that the exporter would reroute shipment if the transit country objects.
Tracking	Uniform hazardous waste manifest must accompany the shipment while in the U.S and a copy must be left with Customs; EPA Acknowledgement of Consent also must be attached. Exporter must receive written confirmation of delivery to foreign consignee.	Substantively same as current regulations, plus additional OECD tracking information required. OECD-recommended notification and tracking document or other paper supplying the required information may be used until OECD form approved by OMB and incorporated into the regulations. Tracking document must stay with the shipment until received by recovery facility. Recovery facility must return signed copy to export notifier and competent authorities of concerned countries.
Financial assurance for alternate management.	None required	None required under U.S. law for U.S. entities. If foreign importing or transit countries require such assurance, U.S. exporters may be required to have financial assurance as a condition of their contract or face having proposed shipments denied.
Recordkeeping	Copies of manifests, notifications of intent to export, EPA Acknowledgments of Consent, exception reports, and annual reports must be maintained for at least 3 years.	The same as current requirements except that written consent from competent authorities of concerned countries is maintained in lieu of EPA Acknowledgement of Consent.

TABLE 1.—SUMMARY OF RELATIONSHIP BETWEEN CURRENT RCRA EXPORT/IMPORT REGULATIONS AND REGULATIONS IMPLEMENTING THE OECD DECISION—Continued

Issue	Current RCRA regulation (40 CFR 262.50–262.60)	Today's regulations implementing OECD decision (40 CFR 262.80–262.89)
Reporting	Exporters must prepare and submit an annual report and exception reports to EPA.	Same as current requirements.
Contract	None required	A legally binding written contract, chain of contracts, or equivalent arrangement between parties of the same legal or corporate entity specifying the name of each responsible person handling shipments of amber-list or red-list wastes and the responsible party in case alternate management, re-exportation or re-importation is necessary because arrangements for the shipment or recovery operation cannot be carried out as foreseen. Additional provisions apply to recognized traders as defined in § 262.81(i).

[1] Imports from and exports to Canada and Mexico are governed under the U.S./Canada bilateral agreement, the U.S./Mexico bilateral agreement, and EPA's current regulations. These regulations include 40 CFR 262 Subparts E and F, 40 CFR 264.12(a), and 265.12(a) in lieu of today's regulations.

[2] For imports from Canada, the U.S./Canadian bilateral agreement requires notice and allows for tacit consent if no response is lodged 30 days after the notice is received. For imports from Mexico, the U.S./Mexico bilateral agreement requires notice, but does not allow for tacit consent.

B. Definitions

Many of the following definitions in the Decision are being codified in today's rule. In some cases, the OECD definitions are somewhat different than the current RCRA definitions. Where they are, the differences are discussed. The definitions codified at 40 CFR 260.10 (e.g., Transporter, etc.). continue to apply to all terms not defined in today's rule.

1. Competent Authorities

Competent Authorities means the regulatory authorities of concerned countries having jurisdiction over transfrontier movements of wastes destined for recovery operations.

The competent authority will be the agency or similar entity that has authority over environmental or hazardous waste issues in the receiving country. A list of the contacts for competent authorities of OECD countries is provided in the docket for this rule. The competent authority of the United States is the U.S. Environmental Protection Agency. All notices and required information must be sent to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. The words ''Attention: OECD Export Notification'' should be displayed prominently on the envelope.

2. Concerned Countries

Concerned Countries means the exporting and importing OECD countries and any OECD countries of transit.

The OECD countries subject to this Decision are: Australia, Austria, Belgium, Canada,[7] Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States.[8]

3. Consignee

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

Currently there is a definition of ''consignee'' at 40 CFR 262.51, which means the ultimate treatment, storage, or disposal facility in the receiving country to which the hazardous waste will be sent. The OECD's definition, however, refers to the first person to take physical or legal custody of the waste. This is broader than the Agency's definition in 40 CFR 262.51, but imposes no new obligations on importers. A consignee could be a recognized trader, transporter, storage facility operator, or recovery facility operator. The OECD definition for consignee will be codified today for exports/imports of hazardous wastes destined for recovery among OECD countries to replace the current definition found at 40 CFR 262.51.

4. Country of Transit

Country of Transit means any OECD country other than the exporting or importing country across which a transfrontier movement of wastes is planned or takes place.

The Agency interprets this definition to mean the same as *transit country*, which is currently codified at 40 CFR 262.51 except that, for purposes of this Decision, it is limited to OECD countries as defined at 40 CFR 262.58(a).

It also should be noted that the United States made a declaration that a state is a transit state or ''country of transit'' within the meaning of the Decision only if wastes are moved, or are planned to be moved, through its inland waterways, inland waters, or land territory. Thus, in the United States' view, the movement of waste subject to Subpart H through an OECD country's territorial sea but not through its inland waterways, inland waters, or land territory would not make that country a transit country for the purposes of today's rule.

5. Exporting Country

Exporting Country means any OECD country from which a transfrontier movement of wastes is planned or has commenced.

6. Generator

Generator means a person whose activities create wastes.

It is the Agency's interpretation that the current RCRA regulatory definition of generator found at 40 CFR 260.10 is consistent with the OECD definition. The RCRA definition states that a ''generator'' means any person, by site, whose act or process produces hazardous waste identified or listed in 40 CFR part 261 or whose act first causes a hazardous waste to become subject to regulation. This is particularly relevant with respect to section II(8) of the Decision, which provides that a person who mixes two or more wastes,

[7] Although Canada is subject to the Decision, movements of waste between the U.S. and Canada that otherwise would be governed by the Decision will continue to be controlled by the U.S./Canada bilateral agreement and EPA's current regulations.

[8] Mexico joined the OECD in June 1994. Movements of waste between the U.S. and Mexico will continue to be controlled by the U.S./Mexico bilateral agreement and EPA's current regulations, until such time as the U.S. and Mexico agree to switch to procedures under the OECD Decision.

or otherwise changes the physical or chemical characteristics of the waste, thereby creating a new hazardous waste becomes the generator. Such persons henceforth assume responsibility for compliance with the generator duties under RCRA and applicable notifier provisions in today's rule.

7. Importing Country

Importing Country means any OECD country to which a transfrontier movement of wastes is planned or takes place for the purpose of submitting the wastes to recovery operations therein.

8. International Waste Identification Code

International Waste Identification Code (''IWIC'') is the classification system specified and described in OECD Council Decision C(88)90(Final) of 27 May 1988.

Determining the International Waste Identification Code for a particular waste requires the completion of a specified formula with information provided in each of 6 Tables. Use of the IWIC is not required by the Decision, and as a practical matter, the IWIC has not been used by all OECD countries; therefore, the definition is *not* being codified today.

9. Notifier

Notifier is the person under the jurisdiction of the exporting country who has, or will have at the time the planned transfrontier movement commences, possession or other forms of legal control of the wastes and who proposes their transfrontier movement for the ultimate purpose of submitting them to recovery operations.

When the U.S. is the exporting country, *notifier* means a person domiciled in the U.S. The Agency recognizes that in different situations recovery facilities, consignees, recognized traders, or generators can act as notifiers. If a person is a notifier, he is also a primary exporter under 40 CFR 262.51.

10. OECD Area

OECD Area means all land or marine areas under the national jurisdiction of any OECD country. As used in these regulations, the term OECD countries means OECD areas.

11. Person

Person means any natural or legal person whether public or private.

The Agency interprets this definition to be consistent with the definition of ''person'' currently found at 40 CFR 260.10, which states that a Person means an individual, trust, firm, joint stock company, Federal Agency, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

12. Recognized Trader

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

Under the Decision and today's rule, recognized traders who take physical or other forms of control (e.g., legal) of the waste may act as notifiers, consignees or recovery facilities with all associated responsibilities. As provided in § 262.86 of today's rule, a recognized trader who takes physical custody of a waste and conducts recovery operations (including storage prior to recovery) is acting as the owner or operator of a recovery facility and must be so authorized in accordance with all applicable Federal, State, and local license or permit requirements. There also may be cases where recognized traders act as brokers for transfrontier movements of wastes that are not considered hazardous under U.S. national procedures, but which are considered hazardous by another OECD country. To conduct business in that OECD country, the broker would need to comply with the provisions of the Decision as implemented by the OECD country. The broker's responsibilities would most likely be addressed in his contract with his foreign business associates. Recognized traders should anticipate requests regarding contract information in such cases.

13. Recovery Facility

Recovery Facility means an entity which, under applicable domestic law, is operating or is authorized to operate in the importing country to receive wastes and to perform recovery operations on them.

Any facility in the United States that is legally allowed to operate, to receive wastes, and to perform recovery operations and that conforms with any applicable regulations may meet this definition. This includes recovery facilities that are not required to obtain a RCRA permit. Manifested hazardous waste shipments must, however, be shipped to a RCRA designated facility (authorized under 40 CFR Parts 264, 265, or 266 to accept manifested hazardous waste). It is important to note that such facilities are not relieved of any regulatory requirements associated with discharges to air and/or water that may apply under the Clean Air Act or the Clean Water Act.

14. Recovery Operations

Recovery Operations means activities leading to resource recovery, recycling, reclamation, direct re-use or alternative uses as listed in Table 2B of the Annex of OECD Council Decision C(88)90(Final) of 27 May 1988.

The Agency considers ''recovery operations'' to be consistent with the 40 CFR 261.1 and 261.2 definitions for recycling and reclamation. Note, however, that under 40 CFR 261.2, certain wastes that are directly re-used and off-specification products that are reclaimed are not solid wastes; thus, they are not subject to either current RCRA regulations or the OECD requirements implemented today.

15. Transfrontier Movement

Transfrontier Movement means any shipment of wastes destined for recovery operations from an area under the national jurisdiction of one OECD country to an area under the national jurisdiction of another OECD country.

The Agency is interpreting the phrase ''area of national jurisdiction'' in the United States to mean the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Note: The United States made a declaration that under international law, notification or authorization of coastal states is not required for passage through territorial seas and exclusive economic zones (EEZs).

16. Wastes

OECD defines *wastes* in the OECD Decision on transfrontier movements of hazardous waste C(88)90(Final) dated May 27, 1988, as materials other than radioactive materials intended for disposal. ''Disposal'' is defined in Table 2 of the same document to include typical disposal and recovery operations. The list of recovery operations are included in § 262.81(k) of today's rule. In this rule, EPA interprets *wastes* to include materials defined as solid and hazardous wastes in 40 CFR 261.2 and 261.3 and is therefore *not* codifying the OECD waste definition. Materials outside the scope of EPA's definition of solid waste are *not* subject to today's regulations. (As previously noted, EPA may, in the future, identify wastes under other statutes that are subject to the OECD Decision).

C. Notification and Consent for Exports

Notification of potential exports of hazardous waste destined for recovery operations is a key component of the OECD requirements to ensure that wastes are not moved if there is any objection from any of the concerned countries. The notification and consent requirement allows for the concerned countries (i.e., exporting, importing and transit) to determine whether the hazardous waste can be handled safely based on the requirements of their waste management system and of the systems and qualifications of the particular facility that is designated to receive the waste.

As discussed previously in today's preamble, only those hazardous wastes subject to the Federal requirements for manifesting under 40 CFR Part 262 are subject to the RCRA export/import requirements set forth in today's rule. Notifiers subject to these rules must follow the relevant amber-list or red-list control procedures, as discussed below and codified in §§ 262.82 through 262.86 of today's regulations.

1. Provisions Applicable to Amber-List and Red-List Wastes

Under the amber-list control system, there are two options for notification and consent for shipments of amber-list wastes. The first option requires written notification with tacit or written consent. The second option, a facility pre-approval system, requires written notification and is discussed in § III. C. 1. c. of today's preamble. Certain contractual obligations also apply to notifiers, recovery facilities and all other parties to the waste movement. In addition, under the red-list control system, facility pre-approval is not allowed for shipments of any red-list wastes. Finally, although the notification requirements for red-list wastes are the same as those applicable to amber-list wastes, tacit consent is not permissible for red-list wastes.

a. Notice and Consent for Specific Shipments. According to the Decision, the notifier must provide written notification of intent to export to the competent authorities of the concerned countries (i.e., exporting, importing and transit) prior to shipment.[9] The Agency today is requiring such notices to be submitted to EPA 45 days prior to the commencement date of the proposed shipment of waste for recovery within the OECD.[10] EPA considers this period of 45 days as appropriate in order to allow time for EPA to review and process the notification documents, the Acknowledgement of Receipt to be sent by the importing country (as required by the Decision), and the 30-day tacit or written consent period (required by the Decision). In addition, EPA considers this period of 45 days rather than 60 days prior notice set forth in current U.S. regulations, as appropriate for today's rule, because within the OECD context notifications and consents are often faxed and disseminated in a much more expedient manner than in other contexts. EPA, in lieu of the U.S. notifier, will forward the export notices to the importing and transit countries.

The export notification must contain the information specified in Appendix 2 of the Decision. Much of this information is already required for U.S. exports.

The OECD notification information includes:

(1) Serial number or other accepted identifier on the notification form;

(2) Notifier name, address, and telephone and telefax numbers;

(3) Importing recovery facility name, address, telephone and telefax numbers, and technologies employed;

(4) Consignee name, address, and telephone and telefax numbers if the person is different than the owner or operator of the recovery facility;

(5) Intended transporters and/or their agents;

(6) Country of export and relevant competent authority (the U.S. Environmental Protection Agency);

(7) Countries of transit and relevant competent authorities;

(8) Country of import and relevant competent authority;

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

(10) Date foreseen for commencement of transfrontier movement;

(11) If required by any concerned country, certification that any applicable insurance or other financial guarantee is or shall be in force covering the transfrontier movement

(Note: The U.S. does not currently require such financial assurance);

(12) Designation of waste type(s) from the appropriate list (amber or red), and the wastes' description(s), probable total quantity of each, and an accepted uniform classification code (such as RCRA waste codes and UN numbers and OECD waste list codes)[11] for each;

(13) Certification that a written contract or chain of contracts or equivalent arrangement between or among all parties to the transfrontier movement, as required by § 262.85, are in place and are legally enforceable in all concerned countries; and

(14) Certification that the information is complete and correct to the best of his/her knowledge.

In accordance with the existing Part 262 export regulations, EPA will continue to require the notifier to identify facility EPA ID numbers, if applicable, and information on the points of entry to and departure from all foreign countries.

In July 1994, the OECD/WMPG finalized two forms: one to be used for export notification and the other to accompany the shipment for tracking purposes. The OECD/WMPG recommends, but does not require, using the forms. EPA also recommends using the forms, but cannot require their use until they are approved by OMB, and until EPA promulgates such requirement. Before these events occur, EPA believes that OECD countries, exporters and importers need to gain experience with using the forms to determine if any modifications are needed; thus, EPA recommends the forms be used immediately. Notification forms are to be submitted to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460, with ''Attention: OECD Export Notification'' prominently displayed on the envelope. If the notification is complete, EPA will forward a copy to the competent authorities of the importing country and any transit country. The importing country must acknowledge receipt of the notification within three working days. The Acknowledgement of Receipt will be sent by the competent authority of the importing country simultaneously to EPA, to the notifier, and to the competent authority of any transit country. EPA will accept a telephone facsimile of such acknowledgements.

During the 30-day period after the Acknowledgement of Receipt is sent to EPA and the notifier, the competent authority of the importing country as well as any transit country may object to the proposed movement of wastes. Objections by any of the concerned

[9] Note that the competent authority of the exporting country may, in accordance with domestic laws, decide to transmit this notification to importing and transit countries.

[10] Note that current U.S. regulations require 60 days prior notice. See 40 CFR 262.50–262.60.

[11] EPA requires UN numbers and RCRA waste codes in addition to the OECD waste list codes to be included per § 262.83(e)(11) of today's rule.

countries must be provided in writing to EPA, to the notifier, and to the competent authorities of other concerned countries within the 30-day period. The OECD-recommended notification form was designed to be used for Acknowledgement of Receipt, consent, and objection purposes.

In the case of amber-list wastes, if no objections to the waste movement are submitted within the 30-day period, tacit (or implied) consent is granted and the movement of wastes may begin. Tacit consent expires one calendar year after the close of the 30-day period. If a shipment for which tacit consent has been given does not take place within that time, a new notification must be submitted and a new consent obtained. Competent authorities of concerned countries may also choose to provide written consent to the notifier and concerned countries in less than 30 days. In this event, the waste shipment may begin immediately after the last consent is received from all of the competent authorities. In the case of red-list wastes, the export of such waste may not occur until the importing and all transit countries provide written consent. Written consent expires within one calendar year, unless otherwise specified.

b. General Notification. In cases where similar wastes (e.g., those having similar physical and chemical characteristics, the same UN classification, and same RCRA waste codes) are to be sent periodically to the same recovery facility by the same notifier, the competent authorities of concerned countries may elect to accept one notification for these wastes for a period of up to one year. The notifier must indicate on the form that the notification is general. Such acceptance may be renewed for additional periods of up to one year each. A concerned country may revoke its acceptance at any time by official notice to the notifier and to the competent authorities of all other concerned countries.

c. Pre-approval for Recovery Facilities Managing Amber-List Wastes. The competent authority of an importing country with jurisdiction over specific recovery facilities may decide that it will routinely consent to the shipments of certain amber-list waste types to specific recovery facilities. An importing country wishing to employ this process must inform the OECD Secretariat of the recovery facility name and address, technologies employed, waste types to which the pre-approval applies, the time period covered, and any subsequent revocations.

No specific consent is required from the importing country when waste is to be sent to a facility pre-approved to accept that waste. However, the notifier planning to ship waste to a pre-approved recovery facility must notify the Agency pursuant to § 262.83(e) prior to shipment. Therefore, the notifier must submit a notification to the Agency at least 10 days in advance of the shipment to allow time for EPA to verify that the proposed recovery facility has received pre-approval, that the pre-approval is still valid, and that the export notice meets any conditions set by the importing country. For example, the importing country may need to stop the shipment in the event that the pre-approved facility needs to shut down operations temporarily for maintenance or repair. Moreover, the competent authorities of all concerned countries may restrict or prohibit such waste shipments in accordance with applicable domestic laws. In addition, pre-approval designations may be limited to a specific time period and may be revoked at any time. Shipments may commence after the notification has been received by competent authorities of all concerned countries, unless the notifier has received information indicating that the competent authority of one or more concerned countries objects to the shipment. The general notification procedures discussed above may be used for multiple shipments of the same waste type to pre-approved facilities. In addition, the regulations pertaining to tracking documents and contracts apply. As discussed in § III. F. 3. of today's preamble, EPA has not yet decided whether or how to pre-approve U.S. recovery facilities for the purpose of granting prior consent. The issue will be addressed in a future rulemaking.

Facilities that intend to receive shipments of red-list wastes are not eligible for pre-approval. Rather, each shipment of red-list waste must proceed pursuant to a specific or general notification for which written consent was received.

d. Return or Re-Export of Shipments. If the shipment of amber-list or red-list waste cannot be managed in the importing country as planned and if alternate management is unavailable or unacceptable in the importing country, the party designated in the contract as assuming responsibility for adequate management of the waste in such cases may decide to return the waste to the notifier or to export the waste to a third OECD country where a suitable facility can manage it. Any such re-export must comply with the requirements of § 262.82(c) of today's regulations. Competent authorities of all concerned countries (importing, transit, exporting), in addition to the competent authority of the initial exporting country, must be notified. Each competent authority has up to 30 days to object to the re-export. The 30-day period begins when the competent authority of both the initial exporting country and the new importing country issue Acknowledgements of Receipt of the notification. The re-export may commence once the competent authorities of all concerned countries have consented (i.e., tacit or written for amber-list wastes, written for red-list wastes). Re-export to a third country outside the OECD is fully subject to the notification and consent requirements outlined above with respect to the initial exporting country and any OECD transit country, as well as to the domestic laws of the original importing country and to any applicable international agreements or arrangements to which the (original) importing OECD country is a Party, including (if appropriate) EPA's current regulations.

The provisions for return or re-export of red-list wastes are the same as for amber-list wastes except that written consent must be obtained from all concerned countries (i.e. tacit consent is not permissible for red-list wastes).

U.S. persons are not required to comply with the re-export provisions of today's regulations with respect to amber- or red-list wastes that are not considered hazardous under U.S. law. If the waste is considered hazardous in the other concerned OECD countries, however, U.S. exporters of such wastes may find it expedient (or necessary) to comply with return or re-export requirements of those countries in order to continue trade with them. These requirements may be addressed under the terms of their contracts with their trading partners.

2. Unlisted Wastes

If waste not appearing on the green, amber, or red lists is a RCRA hazardous waste as defined in 40 CFR 261.3 and is subject to the Federal manifesting requirements under Part 262, the waste is subject to the notification and consent requirements established for red-list wastes (i.e., prior written consent is required). However, if a waste does not appear on any of the OECD lists and is not a RCRA hazardous waste subject to manifesting requirements, the waste may be handled as a green waste; thus no prior notification to EPA is required. Notifiers should note, however, that the importing and transit countries may require notification and consent controls for such wastes if they are considered hazardous in their respective countries and if such controls are

required by the domestic law of those countries. In such cases, the foreign importer may ask U.S. notifiers to assume contractual obligations requiring compliance with such provisions.

D. Tracking Documents

The Decision requires that a tracking document must accompany each transfrontier shipment of amber-list or red-list waste until it reaches its final destination (the designated recovery facility). The purpose of the tracking document is to provide pertinent information concerning the shipment to any interested entity while the waste is en route.

All hazardous wastes subject to today's rule (whether amber, red, or unlisted, and whether constituting a U.S. import or export) must be accompanied by a tracking document that contains all the information in § 262.84 of today's regulations. This includes all the information required under § 262.83(e), plus the following information:

(a) Date shipment commenced;

(b) If not same as the notifier, name, address, and telephone and telefax numbers of primary exporter (i.e., shipper);

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

(d) Means and mode of transport, including types of packaging;

(e) Any special precautions to be taken by transporters;

(f) Certification by notifier that no objection has been lodged by the competent authorities of all concerned countries. The notifier must sign the certification; and

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

As discussed earlier, the OECD has developed a form for tracking purposes, in conjunction with the OECD notification form, which is recommended for use by the OECD. The OECD developed the notification and tracking forms for use by OECD countries implementing the Decision, the European Union to implement its waste regulations, and non-OECD countries for implementing the Basel Convention. After gaining experience in using the notification and tracking forms, the OECD may need to modify them. The Agency anticipates requiring their use in a future rulemaking.

Until the OECD tracking form is codified into the RCRA regulations, exporters and importers may either use the OECD tracking form itself, or may supply all the information required in § 262.84 on a separate sheet of paper. In the latter case, all information should be typed or printed and should be numbered to correspond to § 262.84 requirements. As a practical matter, most U.S. exporters and importers will be using the OECD-recommended forms if the OECD countries with which they are trading require their use.

1. Routing of Tracking Document

As with the Uniform Hazardous Waste Manifest, EPA will not require the tracking document (or information on separate paper) to accompany the waste when moving by rail or bulk shipment by water. The regulated community should continue to follow the manifest procedures for routing the forms in 40 CFR 262.11 Subpart B.

Within 3 working days of its receipt of the hazardous wastes subject to amber-list or red-list controls, the owner or operator of the recovery facility must send signed copies of the tracking document to the export notifier, to EPA's Office of Enforcement and Compliance Assurance, and to the competent authorities of the importing and transit countries. The original tracking document must be retained by the recovery facility for at least 3 years. These requirements are codified in §§ 264.12, 265.12, 264.71 and 265.71 of today's rule.

Where U.S. recovery facilities are receiving wastes from other OECD countries that are considered hazardous in that country but not in the U.S., today's regulations do not apply for the U.S. recovery facility. However, contractual provisions imposed on the foreign exporter for the shipment to the U.S. recovery facility may result in certain obligations for the facility, such as returning a signed tracking document to the notifier and to competent authorities of concerned countries. While the U.S. government does not have the authority to enforce the requirements of other countries for wastes that are not hazardous in the U.S., the U.S. may provide cooperative assistance to other OECD countries in their efforts to enforce their own laws, including sharing information and investigative support, pursuant to domestic and international law.[12] The owner or operator of the U.S. recovery facility should be aware that the exporting country is unlikely to consent to the shipment (or future similar shipments) absent performance of these duties.

[12] For example, the Hague Evidence Convention, to which the U.S. and several OECD countries belong, establishes procedures for assistance in evidence-gathering which may be used to support cooperation in civil enforcement.

E. Contracts

Under today's rule, transfrontier movement of hazardous wastes subject to amber-list or red-list controls may occur only under the terms of a valid written contract, chain of contracts, or under equivalent arrangements between facilities controlled by the same legal entity. Therefore, the export notifier and the owner or operator of the authorized recovery facility must enter into such contracts or arrangements. In addition, all persons involved in such contracts or arrangements must have appropriate legal status to assume the required contractual obligations.

For the purposes of this rule, a valid contract is one that complies with the requirements of § 262.85 of today's rule. Among other things, the contracts or equivalent arrangements must identify the generator of each type of waste being shipped, all persons who will have physical custody or legal control of the waste, and the designated recovery facility. In addition, the contracts or equivalent arrangements must identify the party who will assume responsibility for the waste if alternate management of the waste is necessary. In addition, such contracts or arrangements must identify the person responsible for obtaining consent for export of the waste to a third country, if the need should arise. Contracts or equivalent arrangements must also contain provisions requiring each contracting party to comply with all applicable requirements of today's regulation. Thus, contracts provide a mechanism to ensure that all parties involved in the transfrontier movement of waste destined for recovery operations are cognizant of and assume appropriate responsibilities for the controls placed on the waste shipment.

If required by the concerned countries, the contract, chain of contracts, or equivalent arrangement must also include provisions for financial guarantees to provide for alternate recycling, disposal, or other means of sound management should the need arise. Currently, the U.S. does not impose such a financial requirement. Competent authorities of exporting and importing countries may, under domestic law, also require the notifier to provide copies of contracts or portions thereof. Under today's rulemaking, EPA is not requiring routine submission of contracts to EPA. The Agency could, however, request such information on a case-by-case basis, if necessary to process export/import notices or for enforcement purposes. Upon request, such information shall be held as confidential to the extent allowed under

domestic law. Information for which a claim of confidentiality has been asserted will be managed in accordance with the provisions in 40 CFR Part 2 and 40 CFR 260.2 (as amended today), which allows information submitted by export notifiers in their notification of intent to export to be released to the U.S. Department of State and appropriate authorities of receiving countries regardless of claims of confidentiality.

As discussed earlier, there may be cases where U.S. parties are engaged in transfrontier movements of waste that are not considered hazardous under U.S. national procedures but that are considered hazardous by another OECD country. In order for such waste movements to proceed, U.S. parties would need to comply with the provisions of the Decision as implemented by the other OECD country. It is likely that the OECD country will rely on the contract in these situations to define the responsibilities of all parties engaged in the transfrontier movement. Thus, U.S. waste exporters, importers, and recognized traders should anticipate requests from their foreign counterparts to address these responsibilities in a contract. OECD countries are also free under the Decision to require contract elements beyond those specified in the Decision and today's rule. Such elements may include: [13]

—Delineation of when and where responsibilities shift for alternative waste management if disposition cannot be carried out as described in the Notification of Intent to Export;
—Certification of compliance with tracking document requirements, particularly the obligation of the U.S. receiving facility under § 262.84(e) to return signed tracking documents to the foreign notifier and competent authorities of the concerned countries;
—Description of the specific financial guarantee mechanism if one is required by any concerned country;
—Certification that all U.S. waste handlers in the contract are authorized under U.S. law to carry out their transporter or waste recovery functions;
—Provision requiring each contracting party to comply with all applicable laws of the concerned countries;
—Identification of parties responsible for language translations of export notifications or tracking document; and
—Procedures for modifying the contract, particularly to reflect future modifications to the Decision.

[13] This list is intended to be illustrative only; U.S. parties may find foreign business associates requesting additional elements in their contracts in accordance with the domestic laws and regulations of other OECD countries.

F. Importers

1. Definition

There is no definition of ''importer'' in the Decision, the RCRA regulations, or the RCRA statute. However, persons importing hazardous waste have various responsibilities and duties under EPA's current regulations and today's rule, including the contract provisions of § 262.85. Transfrontier movements of amber-list or red-list wastes must occur under the terms of a valid written contract, or chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). That contract or equivalent arrangement must specify responsibilities of each entity handling the waste starting with the notifier and ending with the owner or operator of the recovery facility. In addition, hazardous waste importers must comply with all applicable requirements for generators and transporters pertaining to manifesting in 40 CFR Parts 262 and 263 as well as the facility import notification requirements in 40 CFR 264.12 and 265.12 if the facility is subject to Parts 264 or 265. Also, hazardous waste importers in the U.S. must comply with U.S. Customs' rules, provisions under the Toxic Substances Control Act concerning the import of chemical substances (see § IV. B. 6. and VII of today's preamble), and any other applicable legal requirements.

Any U.S. entity that meets the definition of ''consignee'' in today's rule (i.e., the first person to whom possession or other form of legal control of the waste is assigned once received in the importing country), such as transporters, recognized traders, storage facility operators, or recovery facility operators, may be acting as an importer of hazardous wastes and therefore may be subject not only to the requirements of Subpart H but also to current regulations applicable to importers, in 40 CFR Part 262, subpart F.

2. Requirements

a. Notification of Receipt. In order to implement the Decision, today's regulations at § 262.84(d) require that the owner or operator of the U.S. recovery facility send a signed copy of the tracking document to the notifier and to the competent authorities of the concerned countries, including EPA, within three working days of receipt of a waste subject to amber-list or red-list controls. The tracking document must contain the signatures of all parties that had custody of the waste (see § III. D. discussion on tracking documents).

It is important to note that once a hazardous waste enters the U.S., that waste and its management are subject not only to the OECD procedures for transfrontier movements implemented in today's final rule, but also to all other applicable U.S. regulations. Hence, RCRA hazardous wastes subject to today's rules must be managed in accordance with any applicable generator, transporter, and facility requirements (e.g., packaging and labelling, return of manifest to the generator, manifest discrepancy, and storage facility requirements) for hazardous waste recyclables specified in 40 CFR 261.6 and part 266, in addition to the Part 268 standards and requirements under other statutes (e.g., TSCA). When EPA (as the competent authority) receives a notification of potential export from a foreign exporter, the Agency will review the proposed import notice to determine if the waste is destined for a recovery facility that is: (1) authorized to manage the specified waste in accordance with the facility's RCRA permit or interim status requirements; or (2) allowed to receive the waste under U.S. laws and regulations but is not required to have a RCRA permit.

b. Pre-Approval of U.S. Recovery Facilities. The Decision allows importing countries to pre-approve specific recovery facilities for receiving shipments of certain amber-list wastes (see § III. C. 1. c. of today's preamble). EPA has not yet determined whether or how it will pre-approve U.S. recovery facilities but has reserved § 262.88 of today's regulations for this purpose.

EPA currently exempts many waste recycling (e.g., reclamation, recovery, regeneration) units from RCRA permitting standards for the actual recycling of the materials. However, storage of hazardous wastes prior to recycling does trigger RCRA requirements, which may include a permit requirement. There are also special circumstances where EPA either totally or partially exempts certain recycling facilities from RCRA regulation (see § IV of today's preamble). In such cases, EPA waste management officials may lack sufficient information regarding a recycling facility's design and operation, and thus may be unable to adequately assess the suitability of a particular recovery operation to be pre-approved to receive certain amber-listed wastes. The Agency, therefore, will defer consideration of the issue of pre-approval for U.S. recovery facilities until a later date (see § VIII of today's preamble).

G. Reporting and Recordkeeping

The only new recordkeeping requirements imposed in today's rule pertain to recovery facilities, which are now required to send signed copies of the tracking document to the competent authorities of the concerned countries and to retain copies for three years. In addition to these new requirements, EPA recodifies in Subpart H for OECD purposes the current recordkeeping and reporting requirements at 40 CFR 262.51 that are applicable to primary exporters. Recordkeeping and reporting requirements for shipments of recyclable wastes to and from OECD countries are in § 262.87 and apply to individuals, including notifiers and recognized traders, that meet the definition of primary exporter at 40 CFR 262.51.

Annual reports on exports of hazardous waste to OECD countries for recovery must continue to be filed with the Administrator no later than March 1 of each year. As discussed in the August 8, 1986 Final Rule on exports (51 FR 28664), there may be more than one party acting as primary exporter (i.e., persons that are required to originate manifests under Part 262 and any intermediaries arranging for the export). For the purpose of today's rule, EPA expects one party (e.g., notifier or recognized trader acting as notifier) to submit the notification, keep the required records, and submit the required annual report, etc. Parties to transfrontier shipments should decide among themselves which U.S. party should fulfill these duties. Enforcement actions can, however, be taken against all waste handlers (e.g., notifiers, recognized traders, consignees, recovery facilities) associated with the transfrontier movement of wastes for recovery within the OECD.

If an individual is already required under 40 CFR 262.56 to file an annual report for other hazardous waste exports, he need only file one annual report. EPA is requiring, however, that information on OECD exports covered under this Subpart be contained in a separate section of the annual report since the U.S. must provide this information annually to the OECD.

Under § 262.87, annual reports must accurately summarize the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous calendar year. In addition, the report must include the facility's EPA identification number, and name and address of the filer; the calendar year covered; the name and address of each final recovery facility; by each final recovery facility, a description of the waste exported, name and address of each transporter used, the total amount of hazardous waste shipped during the year, and the number of shipments during the year; a description of the waste minimization efforts and results during the year;[14] and a certification statement attesting to the accuracy of the information in the report and an acknowledgement of the potential penalties for filing false information. The annual report must also contain the designations of the waste type(s) from the OECD waste lists, the applicable waste code from the OECD lists incorporated by reference in § 262.89 of today's rule, and the U.S. Department of Transportation hazard class. Annual reports must be sent to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

EPA also is recodifying in § 262.87 the requirement in § 262.55 that persons who meet the definition of primary exporters (e.g., notifiers or recognized traders acting as notifiers) must file exception reports, under certain circumstances. For the purpose of OECD exports, the written confirmation of delivery consists of the signed copy of the tracking form sent by the owner or operator of the recovery facility to the notifier as required in the parties' contract pursuant to § 262.85(f).

The Agency is requiring individuals who meet the definition of primary exporters at 40 CFR 262.51 to continue to maintain specified records for at least three years, consistent with current practice and RCRA export recordkeeping requirements. These records include, where applicable, a copy of each annual report from the three previous years, a copy of each written consent obtained from competent authorities of concerned countries (in lieu of EPA Acknowledgement of Consent), and a copy of each confirmation of delivery by the recovery facility (i.e., tracking document). If there is an unresolved enforcement action pending or if requested by the Administrator, the record retention period may be extended.

[14] Waste minimization information is required in even numbered years only. No waste minimization information is required under this section if (1) less than 1,000 kg of waste was exported in each month of the calendar year pursuant to this subpart; or (2) the information was already submitted as part of a biennial report under 40 CFR 262.41.

IV. OECD Waste Lists and Relationship to RCRA

A. Relationship of OECD Wastes and RCRA Hazardous Wastes

The full text of the Decision containing the waste lists is included in the official record for today's rule, and the green, amber, and red waste lists are incorporated by reference in § 262.89 of today's regulations. EPA has developed a table that provides a general guideline of possible RCRA wastes and waste codes that may correspond to the amber and red listings, which is available in the docket for today's rule. Because the OECD waste category descriptions for the amber and red lists are broad and may include both RCRA hazardous waste and waste that is not hazardous under RCRA, EPA is unable to predetermine applicable RCRA waste codes in the absence of information on the physical and chemical characteristics of the particular wastes involved.

B. Status of Specific RCRA Hazardous Wastes

1. Definitions of Wastes Subject to National Procedures

The Decision establishes varying controls depending on whether a waste is considered hazardous by the country of export or import, based on the country's ''national procedures.'' For purposes of today's rule, EPA considers that a waste is hazardous under U.S. national procedures if the waste meets the following RCRA requirements: (1) Meets the Federal definition of hazardous waste in 40 CFR 261.3; and (2) is subject to either the Federal manifest procedures of 40 CFR part 262, or to the universal waste management standards of 40 CFR part 273, or to State requirements analogous to Part 273. (As previously noted, EPA may, in the future, identify wastes under other statutes that are subject to the OECD Decision). Under the RCRA regulations, however, certain wastes do not meet the Federal hazardous waste definition when they are recycled, or are not subject to the Federal manifesting requirements, or are not subject to Federal or State universal waste management standards. Such wastes are exempt from today's rules. [Please see discussion on universal wastes in section IV. B. 6. below.]

Such exempt wastes would, however, remain subject to the controls normally applied to international commercial transactions, just as green-list wastes are subject to these controls (e.g., bill of lading, international insurance, etc.). However, the exporter of U.S. exempt

wastes may still be required by her/his contract with the foreign consignee to comply with notification, consent, and contractual requirements imposed by other concerned countries as a condition of exporting the waste if one or more of those concerned countries considers the waste hazardous. OECD countries are acting within the terms of the Decision if they impose such obligations for wastes they consider hazardous, and will likely reject any shipment which does not comply with these requirements. Thus, if a person is considering exporting recyclable waste to an OECD country, that person should determine the status of the waste in question (under the national procedures of the importing and transit countries) well in advance of the proposed shipment date so that no unnecessary delays are encountered.

2. Exemptions From the Definition of Solid Waste

Current RCRA regulations subject recyclable materials to controls under Subtitle C of RCRA if they meet the definition of solid waste [15] and are identified or listed as hazardous. The determination of whether a recyclable material is a solid waste, and potentially a hazardous waste, depends on the secondary material and the recycling activity [see 50 *FR* 614 (Jan. 4, 1985) and 40 CFR 261.2 for further discussion and requirements].

There is a relatively narrow set of (large volume) hazardous secondary materials that, when recycled, are not defined as solid wastes (e.g., off-specification commercial chemicals that are reclaimed). Therefore, these materials are also not hazardous wastes when recycled, and are therefore not subject to RCRA export/import requirements. Potential notifiers of transfrontier movements of such materials should keep in mind they bear the burden of demonstrating that such materials are exempt from the definition of solid waste under 40 CFR 261.2 [see 40 CFR 261.2(f)]. Notifiers must therefore maintain documentation that can substantiate their claims, consistent with the regulations at 40 CFR 261.2(f).

[15] Under Subtitle C of RCRA, EPA authority is limited to the regulation of ''hazardous waste.'' However, to be regulated as a hazardous waste, a material must first be a ''solid waste.'' Section 1004(27) of RCRA defines solid waste to include *any garbage, refuse, sludge and other discarded material* [see RCRA § 1004(8)]. A central element of this definition is that wastes are ''discarded.'' EPA retains considerable discretion to define whether materials being recycled can be considered to be ''discarded'' [see *American Mining Congress* v. *EPA*, 907 F.2d 1179, 1185–87 (D.C. Cir. 1990); and *American Petroleum Institute* v. *EPA*, 906 F.2d 729 at 740–42 (D.C. Cir. 1990)].

3. Applicability to Hazardous Waste Subject to Special Recycling Standards

EPA's regulatory definition of ''hazardous waste'' includes solid wastes that are listed as hazardous waste or that exhibit a characteristic of ignitability, corrosivity, reactivity, or toxicity. However, there is a very small number of ''hazardous wastes'' that EPA, for various reasons, has conditionally exempted in part from domestic regulation. Because certain of these wastes are also not subject to Federal hazardous waste manifest controls, including but not limited to Federal manifest controls, EPA does not consider these wastes to be hazardous under U.S. national procedures; therefore, these wastes are not subject to the requirements set forth today. Such recyclable wastes are discussed briefly below. In order to determine whether a particular waste in fact qualifies for special recycling consideration, interested persons will need to consult the appropriate RCRA regulations.

a. Scrap Metal. EPA has determined that scrap metal is exempt from regulation as a hazardous waste under Subtitle C when recycled [see 40 CFR 261.6(a)(3)(iii); 50 FR 624 Jan. 4, 1985]. Because scrap metal is also exempt from Federal manifest requirements, it is not considered hazardous under U.S. national procedures. Additionally, scrap metal is on the OECD green list as a non-hazardous waste.

b. Lead-Acid Batteries. Persons who generate, transport, or collect whole spent lead-acid batteries for reclamation are not subject to the Federal manifest requirements. Since spent lead-acid batteries being reclaimed are exempt from Federal manifest requirements, they are not considered hazardous under U.S. national procedures [see 40 CFR 266.80, 261.6(a)(2)(iv)]. Thus, persons exporting whole spent lead-acid batteries for reclamation are not subject to today's export/import requirements. However, they may be required to notify the importing country of their intention to export lead-acid batteries, pursuant to contracts they execute with foreign consignees, because lead-acid batteries are found on the amber list and are considered to be hazardous under the national procedures of many OECD countries. Additional requirements may also apply per contracts with foreign consignees.

4. Wastes Excluded Under 40 CFR 261.4

Many wastes listed in 40 CFR 261.4 are excluded from some or all hazardous waste controls. Because some of these wastes are not defined as solid waste [see 40 CFR 261.4(a)], they cannot be defined as hazardous waste in accordance with Subtitle C of RCRA. Additionally, some of the wastes are specifically excluded from the definition of hazardous waste [see 40 CFR 261.4(b)], and therefore, are not subject to the requirements of Subtitle C. Because these wastes are not defined as hazardous and are not subject to the Federal manifesting procedures, among other procedures, they are not covered under the RCRA export/import requirements set forth today. These exempt wastes may, however, be subject to controls imposed by other OECD countries. EPA expects to bring additional solid wastes that are currently excluded from the definition of hazardous waste under export and import controls in the future.

Below are examples of wastes that are currently identified at 40 CFR 261.4(a) as excluded from the definition of solid waste. Persons interested in determining whether a particular waste is excluded from the definition of solid waste will need to consult 40 CFR 261.4(a) directly.

—Domestic sewage and any mixture of domestic sewage and other waste that passes through a sewer system to a publicly owned treatment works for treatment;
—Industrial point source wastewater discharges subject to § 402 of the Clean Water Act;
—Irrigation return flows; and
—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended.
—Materials subjected to in-situ mining techniques that are not removed from the ground as part of the extraction process;
—Pulping liquors reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless they are accumulated speculatively;
—Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively;
—Secondary materials that are reclaimed and returned for reuse to the original production process where they were generated provided, *inter alia*, that the process is a closed-loop system, only tank storage is involved, and there is no combustion used;
—Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and
—Coke and coal tar from the iron and steel industry that contain or are produced from decanter tank tar sludge (K087) when coke and coal tar are used as a fuel.

The solid wastes that are excluded under 40 CFR 261.4(b) from the definition of hazardous waste include the following wastes listed below. Persons interested in determining whether a particular waste is excluded from the definition of hazardous waste will need to consult 40 CFR 261.4(b) directly.

—Household waste; [16]
—Agricultural crop wastes and manures returned to soil as fertilizer;
—Mining overburden returned to the mine site;
—Fly ash waste, bottom ash waste, and flue gas emission control waste, generated primarily from the combustion of coal or other fossil fuels except as provided in 40 CFR 266.12;
—Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy;
—Certain waste streams that exhibit the characteristic of hazardous waste only for chromium and that were generated by a process using nearly exclusively trivalent chromium in a non-oxidizing process such as certain leather tanning wastes, and wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process;
—Certain solid wastes from the extraction, beneficiation, and processing of ores and minerals except as provided in 40 CFR 266.12;
—Cement kiln dust except as provided in 40 CFR 266.12;
—Under certain circumstances, solid waste that consists of discarded wood products that fail the toxicity characteristic test solely for arsenic and are not hazardous for any other reason;
—Petroleum-contaminated media resulting from an underground storage tank undergoing corrective action;
—Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment destined for reclamation;
—Samples of solid waste, water, soil, or air, which are collected for the sole purpose of testing to determine their characteristics or composition; and
—Certain samples collected for the purposes of conducting treatability testing and analysis.

5. Hazardous Waste Exempted Under 40 CFR 261.5

Under 40 CFR 261.5, hazardous wastes generated by conditionally exempt small quantity generators (CESQGs) (*i.e.*, generators of no more than 100 kilograms per calendar month) are exempt from Subtitle C requirements, including manifesting, provided such generators comply with the requirements in 40 CFR 261.5. Thus, hazardous waste generated by a CESQG or collected from CESQGs is not subject to today's rule. These exempt wastes may, however, be subject to controls imposed by other OECD countries, if those countries consider the wastes to be hazardous.

6. Applicability to Universal Wastes

Today's rule applies to universal wastes as defined in 40 CFR 273 or by State requirements analogous to Part 273. Universal wastes are defined as hazardous wastes, but are subject to streamlined management requirements for collection, accumulation and transportation. For instance, universal wastes are not subject to Federal manifesting requirements. Universal wastes exported to non-OECD countries are, however, subject to certain existing export regulations found in 40 CFR part 262 Subpart E. Today's rule amends the export sections of 40 CFR part 273 to clarify that universal wastes exported to designated OECD countries for purposes of recovery are not subject to 40 CFR 273.20, 273.40, 273.56, but are instead subject to 40 CFR part 262, Subpart H of today's rule. Furthermore, today's rule amends the import section of 40 CFR part 273 to clarify that universal wastes imported from designated OECD countries for purposes of recovery are subject to 40 CFR 273.70 in addition to 40 CFR part 262, Subpart H of today's rule.

7. Non-RCRA Wastes and Other Regulatory Regimes

There are other wastes on the OECD lists that may or may not be regulated under RCRA in the U.S., but that are controlled under other statutes. Such wastes may include PCBs, asbestos, and some chlorinated dioxins and chlorinated furans.[17] Because these materials themselves are not hazardous wastes as defined by RCRA, in most cases, they are not subject to today's requirements (although other OECD countries may subject them to controls). If, however, PCBs, asbestos, chlorinated dioxins, or chlorinated furans are constituents in a waste or waste mixture that is a RCRA listed or characteristic hazardous waste that is subject to Federal manifest requirements under RCRA, these wastes are subject to all applicable export and import requirements under RCRA, including today's regulations. (As previously noted, EPA may, in the future, identify wastes under other statutes that are subject to the OECD Decision).

The Toxic Substances Control Act (TSCA) generally addresses the regulation of materials containing PCBs [see 15 U.S.C. § 6(e)(2)(A)]. EPA proposed a rule on December 6, 1994 (59 FR 62788) which addressed imports and exports of PCBs. EPA plans to promulgate final rules in the near future.

Potential exporters of these wastes may consider contacting the government of the specific OECD country for clarification as to requirements associated with a particular waste type before planning the waste shipment because other countries also may have restrictions on the import or export of such wastes.

C. OECD Waste Lists Incorporated by Reference

The OECD Green List of Wastes (revised May 1994), Amber List of Wastes and Red List of Wastes (both revised May 1993) as set forth in Appendix 3, Appendix 4 and Appendix 5, respectively, to the OECD Council Decision C(92)39/FINAL (Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations) were approved by the Director of the Federal Register to be incorporated by reference in today's rule on July 11, 1996. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the Federal Register. The materials are available for inspection at: the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC; the U.S. Environmental Protection Agency, 401 M Street, SW, Room M2616, Washington, DC; the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France; and, on the Internet (see instructions for accessing these materials in electronic format in the **SUPPLEMENTARY INFORMATION** section of the preamble to today's rule).

[16] Note that household waste and ash from incineration of household waste appear on the amber list and may, therefore, be subject to OECD procedures outside of the United States. Household waste will be subject to export controls once EPA obtains new statutory authority for exports and imports of waste. In addition, the U.S. Supreme Court has ruled that ash from the incineration of municipal solid waste that exhibits a characteristic of hazardous waste must be managed as hazardous waste. Such characteristically hazardous MSW ash will be subject to Amber controls when exported.

[17] Some dioxin wastes are included in listed RCRA hazardous waste from non-specific sources, hazardous waste numbers F020, F021, F022, F023, F026, and F027 [see 40 CFR 261.31(a)].

V. Applicability in Authorized States

In the same way that existing RCRA export requirements of 40 CFR 262 Subpart E are administered exclusively by EPA and not by States, States may not receive authorization from EPA to control exports of hazardous waste subject to Subpart H. This is because the exercise of foreign relations and international commerce powers is reserved to the Federal government under the Constitution. In the Agency's view, foreign policy interests and exporter interests in expeditious processing are better served by EPA's retention of these functions. In addition, concentrating these responsibilities within EPA will provide the U.S Department of State with a single contact point regarding the transfrontier waste program and will better allow for uniformity and expeditious transmission of information between the United States and foreign countries.

States do, however, play a key role in providing EPA with information on whether U.S. facilities designated to receive hazardous waste imports are authorized to manage specific wastes and in ensuring facility compliance with all applicable environmental laws and regulations. Additionally, EPA may authorize States to receive facility import notifications required under 40 CFR 264.12(a) and 265.12(a).

For the purposes of the transfrontier movement of wastes under current RCRA requirements (and by extension, under today's rule), only those wastes identified or listed under the Federal program that are subject to Federal manifesting requirements are subject to the U.S. requirements for exporting and importing. Thus, hazardous wastes identified or listed by a State under State law that are not included in the Federal hazardous waste universe (*i.e.*, where the State program is broader in scope than the federal hazardous waste program) will not be subject to today's export and import regulations.

VI. Relationship to U.S. Bilateral Agreements

The U.S. has existing bilateral agreements that address transboundary movements of hazardous waste between the U.S. and Mexico and between the U.S. and Canada. Mexico became an OECD member in June 1994. Today's rule implementing the provisions of the Decision will not apply to imports or exports of hazardous waste between the U.S. and Mexico; the provisions of the bilateral agreement with Mexico continue to apply as well as EPA's current export and import regulations, such as those in 40 CFR 262, Subparts E and F, and 40 CFR 264.12(a) and 265.12(a).

Canada is a member of the OECD and has adopted the Decision. Shipments of hazardous waste to and from Canada, both for the purposes of recycling and final disposal, will continue to be subject to the provisions of the U.S./Canada bilateral agreement and to EPA's current import and export regulations. After the Agency has more experience with implementing today's rule for transfrontier shipments between the U.S. and other OECD countries, EPA may revisit this Decision. If so, EPA will publish a notice in the Federal Register and allow the regulated community adequate time to comply with any new requirements imposed.

VII. Relationship to Other Programs

Under Section 13 of the Toxic Substances Control Act (TSCA), importers of ''chemical substances and mixtures'' must certify compliance with TSCA at the point of entry into the United States (see 40 CFR 707.20). Some chemical substances or mixtures as defined by TSCA also can be hazardous wastes as defined by RCRA. Therefore, if a hazardous waste as defined by RCRA meets the definition of a chemical substance or mixture under TSCA, importers [18] must certify compliance with TSCA in accordance with 40 CFR 707.20. This TSCA compliance certification provision requires all importers of chemical substances and mixtures to certify that their shipments are in compliance with all applicable rules or orders under TSCA [see 40 CFR 707.20(b)(2)(i)]. Compliance with TSCA may require, among other things, that the substances are not banned from importation, that they are listed in the TSCA Inventory of chemical substances, and that the substances are not being imported for a ''significant new use'' without first providing notice to EPA at least 90 days prior to the import. If the shipment (including a hazardous waste) contains no material covered by TSCA (*e.g.*, pesticides), then the importer must certify that the substances in the shipment are not subject to TSCA [see 40 CFR 707.20(b)(2)(ii)].

U.S. Customs' regulations for importing require that the importer of record or a Customs broker be responsible for filing entry documentation.[19] The importer of record may be a foreign entity, provided that, in the state or territory where the port of entry is located, there is a resident who is authorized to accept service of process against such foreign entity. Such resident must file a bond having a resident corporation surety to secure payment of any increased or additional duties that may be found due.

VIII. Future Rulemaking

This Decision is a negotiated international agreement that provides nations with some limited flexibility to implement the Decision within their unique domestic waste management schemes. As such, certain definitions and procedures in the Decision are less explicit than current RCRA regulations. It may be appropriate in the future to revise today's regulations to address additional elements of the Decision. Some of the elements of the Decision that the Agency may address in future regulations include:

—Notification and tracking documents. The OECD/WMPG developed recommended, standardized notification and tracking documents for shipments of amber-list and red-list wastes. Once the notification and tracking documents have been in use, they may need to be modified according to experience by the member countries. When use of the forms becomes mandatory by the OECD, the Agency will amend its regulations to require their use.

—Pre-approval of recovery facilities. The Decision allows importing countries to pre-approve recovery facilities. The Agency has not yet decided whether to pre-approve recovery facilities and, if so, whether only RCRA permitted or interim status recovery facilities should qualify for pre-approval or whether pre-approval criteria can feasibly be established for recovery facilities currently exempt from RCRA permit or technical standards. The Agency has already received a proposal for such criteria from the International Precious Metals Institute (IPMI). IPMI's proposal is included in the public docket for today's rule.

—Recognized traders. Consistent with the Decision, today's regulations set forth certain responsibilities for

[18] Under TSCA, an importer is considered the ''manufacturer.'' The term ''manufacture'' is defined in § 3(7) of the act as: ''* * * to import into the Customs territory of the United States (as defined in general headnote 2 of the Tariff Schedules of the United States) * * *.''

[19] Under Federal regulations (19 CFR 111), a Customs broker is an individual, a partnership, or an association or corporation who is licensed under Part 111 to transact customs business on behalf of others (19 CFR 111.1). Among other requirements, an individual seeking a broker's license must be a U.S. citizen (19 CFR 111.11(a)). For a partnership, association, or corporation to act as a Customs broker, at least one member or officer must be a licensed Customs broker, which requires U.S. citizenship [19 CFR 111.11(b) and (c)].

recognized traders of hazardous wastes destined for recovery within the OECD. The Agency will be further assessing the relationship of recognized traders, as defined in today's regulations, to waste brokers and whether additional regulations are needed to clarify the scope of coverage and associated responsibilities.

As the Agency gains experience implementing today's regulations, it may identify additional issues requiring further regulatory action.

IX. Regulatory Impact Analysis

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review. This rule raises no novel legal or policy issues. It simply implements the Decision which the U.S. has already supported. The rule promulgates regulatory language that differs from the language of the Decision in only a minimal, nonsubstantive manner, in order to conform this rule to existing RCRA rules. The rule's scope is not broader than that of the Decision. The only costs of this rule are those associated with the additional notification and tracking costs. Analysis in the ICR (Information Collection Request) shows that the annual burden for U.S. exporters and importers will total less than $225,000. This rule will not cause any inconsistencies or interfere with other Agencies' actions, nor materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

While EPA recognizes that some companies may experience economic dislocation if there are significant delays in processing notifications and consents, the Agency believes that judicious planning on the part of these companies could eliminate or lessen the impact of such delays, if any. Moreover, the Agency again emphasizes that the Decision imposed these new notification and consent requirements. EPA is merely codifying those requirements in this rule.

B. Regulatory Flexibility Act

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

Since the enactment of RCRA Section 3017 and the 1986 regulations at 40 CFR part 262, subpart E, generators subject to the manifesting requirements for exports of hazardous waste have been required to comply with notification and consent requirements as a condition of exporting such wastes. Generators who generate less than 100 kgs/mo (conditionally exempt small quantity generators) were not required to comply with these requirements because they are not subject to the manifesting requirements. Conditionally exempt small quantity generators are not subject to any of the requirements of today's rule; thus, the universe of regulated individuals is not changing.

EPA does not believe this rule will increase burdens for any small entities that are not already exempt as small quantity generators. Today's rule is not expected to have a significant economic impact on a substantial number of small entities and does not require a Regulatory Flexibility Analysis. Therefore, pursuant to 5 U.S.C. 601(b), I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

1. Display of OMB Control Numbers

EPA is amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. This amendment updates the table to accurately display those information requirements contained in this final rule. This display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the *Paperwork Reduction Act* (44 USC 3501 *et seq.*) and OMB's implementing regulations at 5 CFR 1320.

EPA finds that there is ''good cause'' under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary. For the same reasons, EPA also finds that there is good cause under 5 U.S.C. 553(d)(3).

2. Burden Statement

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and have been assigned control number 2050–0143.

This collection of information has an estimated reporting burden averaging from 5.74 hours per year per exporter to 2.99 hours per year per importer. This includes time for reviewing regulations/instructions, searching existing data sources, gathering and maintaining the data needed, 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 (2136); U.S. Environmental Protection Agency; 401 M Street, S.W.; 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.''

List of Subjects

40 CFR Part 9

Environmental protection, Information collection, OMB approval, Paperwork reduction.

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous waste.

40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping.

40 CFR Part 262

Exports, Hazardous waste, Imports, Incorporation by reference, International agreements, Labeling, Manifest,

Packaging and containers, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 263

Export, Hazardous waste, Hazardous waste transportation, Import, Manifesting, Tracking documents.

40 CFR Part 264

Hazardous waste, Imports, Manifest, Recordkeeping, Recycling.

40 CFR Part 265

Hazardous waste, Imports, Manifest, Recordkeeping requirements, Recycling.

40 CFR Part 266

Precious metals, Recycling.

40 CFR Part 273

Hazardous waste, Recycling, Universal waste.

Dated: November 29, 1995.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, title 40, chapter 1, subchapter I of the Code of Federal Regulations, is amended as set forth below.

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. In Part 9:

a. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

b. Section 9.1 is amended by adding a new entry and heading in numerical order to the table to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
Public Information:	
Part 2, subpart B	2050–0143
* * * * *	

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

2. In part 260:

a. The authority citation continues to read as follows:

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

b. Section 260.2(b) is revised to read as follows:

§ 260.2 Availability of information; confidentiality of information.

* * * * *

(b) Any person who submits information to EPA in accordance with parts 260 through 266 and 268 of this chapter may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in § 2.203(b) of this chapter. Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in part 2, subpart B, of this chapter except that information required by § 262.53(a) and § 262.83 that is submitted in a notification of intent to export a hazardous waste will be provided to the U.S. Department of State and the appropriate authorities in the transit and receiving or importing countries regardless of any claims of confidentiality. However, if no such claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to the person submitting it.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. In 40 CFR part 261:

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

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

b. Section 261.6 is amended by adding paragraph (a)(5) to read as follows:

§ 261.6 Requirements for recyclable materials.

(a) * * *

(5) Hazardous waste that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD) (as defined in § 262.58(a)(1)) for purpose of recovery is subject to the requirements of 40 CFR part 262, subpart H, if it is subject to either the Federal manifesting requirements of 40 CFR Part 262, to the universal waste management standards of 40 CFR Part 273, or to State requirements analogous to 40 CFR Part 273.

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

4. The authority citation for part 262 is revised to read as follows:

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

5. Section 262.10 is amended by redesignating paragraphs (d), (e), (f), and (g) as (e), (f), (g), and (h) respectively and adding a new paragraph (d) to read as follows:

§ 262.10 Purpose, scope, and applicability.

* * * * *

(d) Any person who exports or imports hazardous waste subject to the Federal manifesting requirements of part 262, or subject to the universal waste management standards of 40 CFR Part 273, or subject to State requirements analogous to 40 CFR Part 273, to or from the countries listed in § 262.58(a)(1) for recovery must comply with subpart H of this part.

* * * * *

6. Section 262.53(b) is revised to read as follows:

§ 262.53 Notification of intent to export.

* * * * *

(b) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), Environmental Protection Agency, Ariel Rios Bldg., 12th St. and Pennsylvania Ave., NW., Washington, DC. In both cases, the following shall be prominently displayed on the front of the envelope: ''Attention: Notification of Intent to Export.''

* * * * *

7. Section 262.56(b) is revised to read as follows:

§ 262.56 Annual reports.

* * * * *

(b) Annual reports submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Hand-delivered reports should be sent to: Office of Enforcement and Compliance Assurance, Office of

Compliance, Enforcement Planning, Targeting, and Data Division (2222A), Environmental Protection Agency, Ariel Rios Bldg., 12th St. and Pennsylvania Ave., NW., Washington, DC.

8. Section 262.58 is amended by adding text to read as follows:

§ 262.58 International agreements.

(a) Any person who exports or imports hazardous waste subject to Federal manifest requirements of Part 262, or subject to the universal waste management standards of 40 CFR Part 273, or subject to State requirements analogous to 40 CFR Part 273, to or from designated member countries of the Organization for Economic Cooperation and Development (OECD) as defined in paragraph (a)(1) of this section for purposes of recovery is subject to Subpart H of this part. The requirements of Subparts E and F do not apply.

(1) For the purposes of this Subpart, the designated OECD countries consist of Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States.

(2) For the purposes of this Subpart, Canada and Mexico are considered OECD member countries only for the purpose of transit.

(b) Any person who exports hazardous waste to or imports hazardous waste from: a designated OECD member country for purposes other than recovery (*e.g.*, incineration, disposal), Mexico (for any purpose), or Canada (for any purpose) remains subject to the requirements of subparts E and F of this part.

9. Part 262 is amended by adding subpart H consisting of §§ 262.80 through 262.89 to read as follows:

Subpart H—Transfrontier Shipments of Hazardous Waste for Recovery within the OECD

Sec.

Subpart H—Transfrontier Shipments of Hazardous Waste for Recovery within the OECD

§ 262.80 Applicability.

(a) The requirements of this subpart apply to imports and exports of wastes that are considered hazardous under U.S. national procedures and are destined for recovery operations in the countries listed in § 262.58(a)(1). A waste is considered hazardous under U.S. national procedures if it meets the Federal definition of hazardous waste in 40 CFR 261.3 and it is subject to either the Federal manifesting requirements at 40 CFR Part 262, Subpart B, to the universal waste management standards of 40 CFR Part 273, or to State requirements analogous to 40 CFR Part 273.

(b) Any person (notifier, consignee, or recovery facility operator) who mixes two or more wastes (including hazardous and non-hazardous wastes) or otherwise subjects two or more wastes (including hazardous and non-hazardous wastes) to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under RCRA and any notifier duties, if applicable, under this subpart.

§ 262.81 Definitions.

The following definitions apply to this subpart.

(a) *Competent authorities* means the regulatory authorities of concerned countries having jurisdiction over transfrontier movements of wastes destined for recovery operations.

(b) *Concerned countries* means the exporting and importing OECD member countries and any OECD member countries of transit.

(c) *Consignee* means the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the importing country.

(d) *Country of transit* means any designated OECD country in § 262.58(a)(1) and (a)(2) other than the exporting or importing country across which a transfrontier movement of wastes is planned or takes place.

(e) *Exporting country* means any designated OECD member country in § 262.58(a)(1) from which a transfrontier movement of wastes is planned or has commenced.

(f) *Importing country* means any designated OECD country in § 262.58(a)(1) to which a transfrontier movement of wastes is planned or takes place for the purpose of submitting the wastes to recovery operations therein.

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

(h) *OECD area* means all land or marine areas under the national jurisdiction of any designated OECD member country in § 262.58. When the regulations refer to shipments to or from an OECD country, this means OECD area.

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

(j) *Recovery facility* means an entity which, under applicable domestic law, is operating or is authorized to operate in the importing country to receive wastes and to perform recovery operations on them.

(k) *Recovery operations* means activities leading to resource recovery, recycling, reclamation, direct re-use or alternative uses as listed in Table 2.B of the Annex of OECD Council Decision C(88)90(Final) of 27 May 1988, (available from the Environmental Protection Agency, RCRA Information Center (RIC), 1235 Jefferson-Davis Highway, first floor, Arlington, VA 22203 (Docket # F–94–IEHF-FFFFF) and the Organisation for Economic Co-operation and Development, Environment Direcorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France) which include:

R1 Use as a fuel (other than in direct incineration) or other means to generate energy
R2 Solvent reclamation/regeneration
R3 Recycling/reclamation of organic substances which are not used as solvents
R4 Recycling/reclamation of metals and metal compounds
R5 Recycling/reclamation of other inorganic materials
R6 Regeneration of acids or bases
R7 Recovery of components used for pollution control
R8 Recovery of components from catalysts
R9 Used oil re-refining or other reuses of previously used oil

R10 Land treatment resulting in benefit to agriculture or ecological improvement
R11 Uses of residual materials obtained from any of the operations numbered R1–R10
R12 Exchange of wastes for submission to any of the operations numbered R1–R11
R13 Accumulation of material intended for any operation in Table 2.B

(l) *Transfrontier movement* means any shipment of wastes destined for recovery operations from an area under the national jurisdiction of one OECD member country to an area under the national jurisdiction of another OECD member country.

§ 262.82 General conditions.

(a) *Scope.* The level of control for exports and imports of waste is indicated by assignment of the waste to a green, amber, or red list and by U.S. national procedures as defined in § 262.80(a). The green, amber, and red lists are incorporated by reference in § 262.89 (e).

(1) Wastes on the green list are subject to existing controls normally applied to commercial transactions, except as provided below:

(i) Green-list wastes that are considered hazardous under U.S. national procedures are subject to amber-list controls.

(ii) Green-list waste that are sufficiently contaminated or mixed with amber-list wastes, such that the waste or waste mixture is considered hazardous under U.S. national procedures, are subject to amber-list controls.

(iii) Green-list wastes that are sufficiently contaminated or mixed with other wastes subject to red-list controls such that the waste or waste mixture is considered hazardous under U.S. national procedures must be handled in accordance with the red-list controls.

(2) Wastes on the amber list that are considered hazardous under U.S. national procedures as defined in § 262.80(a) are subject to the amber-list controls of this Subpart.

(i) If amber-list wastes are sufficiently contaminated or mixed with other wastes subject to red-list controls such that the waste or waste mixture is considered hazardous under U.S. national procedures, the wastes must be handled in accordance with the red-list controls.

(ii) [Reserved].

(3) Wastes on the red list that are considered hazardous under U.S. national procedures as defined in § 262.80(a) are subject to the red-list controls of this subpart.

Note to paragraph (a)(3): Some wastes on the amber or red lists are not listed or otherwise identified as hazardous under RCRA (*e.g.*, polychlorinated biphenyls) and therefore are not subject to the amber- or red-list controls of this subpart. Regardless of the status of the waste under RCRA, however, other Federal environmental statutes (e.g., the Toxic Substances Control Act) may restrict certain waste imports or exports. Such restrictions continue to apply without regard to this Subpart.

(4) Wastes not yet assigned to a list are eligible for transfrontier movements, as follows:

(i) If such wastes are considered hazardous under U.S. national procedures as defined in § 262.80(a), these wastes are subject to the red-list controls; or

(ii) If such wastes are not considered hazardous under U.S. national procedures as defined in § 262.80(a), such wastes may move as though they appeared on the green list.

(b) *General conditions applicable to transfrontier movements of hazardous waste.*

(1) The waste must be destined for recovery operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the importing country;

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

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

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

(c) *Provisions relating to re-export for recovery to a third country.*

(1) Re-export of wastes subject to the amber-list control system from the U.S., as the importing country, to a third country listed in § 262.58(a)(1) may occur only after a notifier in the U.S. provides notification to and obtains consent of the competent authorities in the third country, the original exporting country, and new transit countries. The notification must comply with the notice and consent procedures in § 262.83 for all concerned countries and the original exporting country. The competent authorities of the original exporting country as well as the competent authorities of all other concerned countries have 30 days to object to the proposed movement.

(i) The 30-day period begins once the competent authorities of both the initial exporting country and new importing country issue Acknowledgements of Receipt of the notification.

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

(2) Re-export of waste subject to the red-list control system from the original importing country to a third country listed in § 262.58(a)(1) may occur only following notification of the competent authorities of the third country, the original exporting country, and new transit countries by a notifier in the original importing country in accordance with § 262.83. The transfrontier movement may not proceed until receipt by the original importing country of written consent from the competent authorities of the third country, the original exporting country, and new transit countries.

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

§ 262.83 Notification and consent.

(a) *Applicability.* Consent must be obtained from the competent authorities of the relevant OECD importing and transit countries prior to exporting hazardous waste destined for recovery operations subject to this Subpart. Hazardous wastes subject to amber-list controls are subject to the requirements of paragraph (b) of this section; hazardous wastes subject to red-list controls are subject to the requirements of paragraph (c) of this section; and wastes not identified on any list are subject to the requirements of paragraph (d) of this section.

(b) *Amber-list wastes.* The export from the U.S. of hazardous wastes as described in § 262.80(a) that appear on the amber list is prohibited unless the notification and consent requirements of paragraph (b)(1) or paragraph (b)(2) of this section are met.

(1) Transactions requiring specific consent:

(i) *Notification.* At least 45 days prior to commencement of the transfrontier

movement, the notifier must provide written notification in English of the proposed transfrontier movement to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, with the words ''Attention: OECD Export Notification'' prominently displayed on the envelope. This notification must include all of the information identified in paragraph (e) of this section. In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, and the same RCRA waste codes are to be sent periodically to the same recovery facility by the same notifier, the notifier may submit one notification of intent to export these wastes in multiple shipments during a period of up to one year.

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

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

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

(i) The notifier must provide EPA the information identified in paragraph (e) of this section in English, at least 10 days in advance of commencing shipment to a pre-approved facility. The notification should indicate that the recovery facility is pre-approved, and may apply to a single specific shipment or to multiple shipments as described in paragraph (b)(1)(i) of this section. This information must be sent to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, with the words ''OECD Export Notification—Pre-approved Facility'' prominently displayed on the envelope.

(ii) Shipments may commence after the notification required in paragraph (b)(1)(i) of this section has been received by the competent authorities of all concerned countries, unless the notifier has received information indicating that the competent authorities of one or more concerned countries objects to the shipment.

(c) *Red-list wastes.* The export from the U.S. of hazardous wastes as described in § 262.80(a) that appear on the red list is prohibited unless notice is given pursuant to paragraph (b)(1)(i) of this section and the notifier receives *written* consent from the importing country and any transit countries prior to commencement of the transfrontier movement.

(d) *Unlisted wastes.* Wastes not assigned to the green, amber, or red list that are considered hazardous under U.S. national procedures as defined in § 262.80(a) are subject to the notification and consent requirements established for red-list wastes in accordance with paragraph (c) of this section. Unlisted wastes that are not considered hazardous under U.S. national procedures as defined in § 262.80(a) are not subject to amber or red controls when exported or imported.

(e) *Notification information.* Notifications submitted under this section must include:

(1) Serial number or other accepted identifier of the notification form;

(2) Notifier name and EPA identification number (if applicable), address, and telephone and telefax numbers;

(3) Importing recovery facility name, address, telephone and telefax numbers, and technologies employed;

(4) Consignee name (if not the owner or operator of the recovery facility) address, and telephone and telefax numbers; whether the consignee will engage in waste exchange or storage prior to delivering the waste to the final recovery facility and identification of recovery operations to be employed at the final recovery facility;

(5) Intended transporters and/or their agents;

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

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

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

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

(10) Date foreseen for commencement of transfrontier movement;

(11) Designation of waste type(s) from the appropriate list (amber or red and waste list code), descriptions of each waste type, estimated total quantity of each, RCRA waste code, and United Nations number for each waste type; and

(12) Certification/Declaration signed by the notifier that states:

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

Name: _____

Signature: _____

Date: _____

Note to paragraph (e)(12): The U.S. does not currently require financial assurance; however, U.S. exporters may be asked by other governments to provide and certify to such assurance as a condition of obtaining consent to a proposed movement.

§ 262.84 Tracking document.

(a) All U.S. parties subject to the contract provisions of § 262.85 must ensure that a tracking document meeting the conditions of § 262.84(b) accompanies each transfrontier shipment of wastes subject to amber-list or red-list controls from the initiation of the shipment until it reaches the final recovery facility, including cases in which the waste is stored and/or exchanged by the consignee prior to shipment to the final recovery facility, except as provided in §§ 262.84(a)(1) and (2).

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

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

(b) The tracking document must include all information required under § 262.83 (for notification), and the following:

(1) Date shipment commenced.

(2) Name (if not notifier), address, and telephone and telefax numbers of primary exporter.

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

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

(5) Any special precautions to be taken by transporters.

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

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

1. All necessary consents have been received; OR

2. The shipment is directed at a recovery facility within the OECD area and no objection has been received from any of the concerned countries within the 30 day tacit consent period; OR

3. The shipment is directed at a recovery facility pre-authorized for that type of waste within the OECD area; such an authorization has not been revoked, and no objection has been received from any of the concerned countries.

(delete sentences that are not applicable)

Name: _____

Signature: _____

Date: _____

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

(c) Notifiers also must comply with the special manifest requirements of 40 CFR 262.54(a), (b), (c), (e), and (i) and consignees must comply with the import requirements of 40 CFR part 262, subpart F.

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

(e) Within 3 working days of the receipt of imports subject to this Subpart, the owner or operator of the U.S. recovery facility must send signed copies of the tracking document to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and to the competent authorities of the exporting and transit countries.

§ 262.85 Contracts.

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

(b) Contracts or equivalent arrangements must specify the name and EPA ID number, where available, of:

(1) The generator of each type of waste;

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

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

(4) The recovery facility.

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

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

(2) The person specified in the contract will assume responsibility for the adequate management of the wastes in compliance with applicable laws and regulations including, if necessary, arranging their return to the original country of export.

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

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

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

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

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

Note to paragraph (g): Although the U.S. does not require routine submission of contracts at this time, OECD Council Decision C(92)39/FINAL allows members to impose such requirements. When other OECD countries require submission of partial or complete copies of the contract as a condition to granting consent to proposed movements, EPA will request the required information; absent submission of such information, some OECD countries may deny consent for the proposed movement.

§ 262.86 Provisions relating to recognized traders.

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

(b) A recognized trader acting as a notifier or consignee for transfrontier shipments of waste must comply with all the requirements of this Subpart associated with being a notifier or consignee.

§ 262.87 Reporting and recordkeeping.

(a) *Annual reports.* For all waste movements subject to this Subpart, persons (*e.g.*, notifiers, recognized traders) who meet the definition of

primary exporter in § 262.51 shall file an annual report with the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. (If the primary exporter is required to file an annual report for waste exports that are not covered under this Subpart, he may include all export information in one report provided the following information on exports of waste destined for recovery within the designated OECD member countries is contained in a separate section). Such reports shall include the following:

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

(2) The calendar year covered by the report;

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

(4) By final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from 40 CFR part 261, subpart C or D), designation of waste type(s) from OECD waste list and applicable waste code from the OECD lists, DOT hazard class, the name and U.S. EPA identification number (where applicable) for each transporter used, the total amount of hazardous waste shipped pursuant to this Subpart, and number of shipments pursuant to each notification;

(5) In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100kg but less than 1000kg in a calendar month, and except for hazardous waste for which information was already provided pursuant to § 262.41:

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

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

(6) A certification signed by the person acting as primary exporter that states:

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

(b) *Exception reports.* Any person who meets the definition of primary exporter in § 262.51 must file an exception report in lieu of the requirements of § 262.42 with the Administrator if any of the following occurs:

(1) He has not received a copy of the tracking documentation signed by the transporter stating point of departure of the waste from the United States, within forty-five (45) days from the date it was accepted by the initial transporter;

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

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

(c) *Recordkeeping.* (1) Persons who meet the definition of primary exporter in § 262.51 shall keep the following records:

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

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

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

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

§ 262.88 Pre-approval for U.S. Recovery Facilities (Reserved).

§ 262.89 OECD Waste Lists.

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

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

(2) Is subject to either the Federal RCRA manifesting requirements at 40 CFR part 262, subpart B, to the universal waste management standards of 40 CFR part 273, or to State requirements analogous to 40 CFR part 273.

(b) If a waste is hazardous under paragraph (a) of this section and it appears on the amber or red list, it is subject to amber- or red-list requirements respectively;

(c) If a waste is hazardous under paragraph (a) of this section and it does not appear on either amber or red lists, it is subject to red-list requirements.

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

(e) The OECD Green List of Wastes (revised May 1994), Amber List of Wastes and Red List of Wastes (both revised May 1993) as set forth in Appendix 3, Appendix 4 and Appendix 5, respectively, to the OECD Council Decision C(92)39/FINAL (Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations) are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 on July 11, 1996. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the Federal Register. The materials are available for inspection at: the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC; the U.S. Environmental Protection Agency, RCRA Information Center (RIC), 1235 Jefferson-Davis Highway, first floor, Arlington, VA 22203 (Docket # F–94–IEHF–FFFFF) and may be obtained from the Organisation for Economic Co-operation and Development, Environment Direcorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France.

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

10. The authority citation for part 263 is revised to read as follows:

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

11. Section 263.10 is amended by adding paragraph (d) to read as follows:

§ 263.10 Scope.

* * * * *

(d) A transporter of hazardous waste subject to the Federal manifesting requirements of 40 CFR part 262, or subject to the waste management standards of 40 CFR part 273, or subject

to State requirements analogous to 40 CFR part 273, that is being imported from or exported to any of the countries listed in 40 CFR 262.58(a)(1) for purposes of recovery is subject to this Subpart and to all other relevant requirements of subpart H of 40 CFR part 262, including, but not limited to, 40 CFR 262.84 for tracking documents.

12. Section 263.20(a) is revised to read as follows:

§ 263.20 The manifest system.

(a) A transporter may not accept hazardous waste from a generator unless it is accompanied by a manifest signed in accordance with the provisions of 40 CFR 262.20. In the case of exports other than those subject to subpart H of 40 CFR part 262, a transporter may not accept such waste from a primary exporter or other person if he knows the shipment does not conform to the EPA Acknowledgement of Consent; and unless, in addition to a manifest signed in accordance with the provisions of 40 CFR 262.20, such waste is also accompanied by an EPA Acknowledgement of Consent which, except for shipment by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)). For exports of hazardous waste subject to the requirements of subpart H of 40 CFR part 262, a transporter may not accept hazardous waste without a tracking document that includes all information required by 40 CFR 262.84.

* * * * *

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

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

Authority: 42 U.S.C. 6905, 6912(a) 6924, and 6925, 13b. Section 264.12 is amended by redesignating paragraph (a) as paragraph (a)(1) and by adding a paragraph (a)(2) to read as follows:

§ 264.12 Required notices.

(a) * * *

(2) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H must provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the competent authorities of all other concerned countries within three working days of receipt of the shipment. The original of the signed tracking document must be maintained at the facility for at least three years.

* * * * *

14. Section 264.71 is amended by adding paragraph (d) after the comment to read as follows:

§ 264.71 Use of manifest system.

* * * * *

(d) Within three working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of the facility must provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and to competent authorities of all other concerned countries. The original copy of the tracking document must be maintained at the facility for at least three years from the date of signature.

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

15. The authority citation for part 265 is revised to read as follows:

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

16. Section 265.12 is amended by redesignating paragraph (a) as paragraph (a)(1) and by adding paragraph (a)(2) to read as follows:

§ 265.12 Required notices.

(a) * * *

(2) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H must provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 and to the competent authorities of all other concerned countries within three working days of receipt of the shipment. The original of the signed tracking document must be maintained at the facility for at least three years.

* * * * *

17. Section 265.71 is amended by adding paragraph (d) after the comment to read as follows:

§ 265.71 Use of the manifest system.

* * * * *

(d) Within three working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of facility must provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and to competent authorities of all other concerned countries. The original copy of the tracking document must be maintained at the facility for at least three years from the date of signature.

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

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

Authority: 42 U.S.C 1006, 2002(a), 3004, 3014, 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6934, and 6937.

19. Section 266.70 is amended by adding paragraph (b)(3) and by adding the word ''and'' at the end of paragraph (b)(2) to read as follows:

§ 266.70 Applicability and requirements.

* * * * *

(b) * * *

(3) For precious metals exported to or imported from designated OECD member countries for recovery, subpart H of part 262 and § 265.12(a)(2) of this chapter. For precious metals exported to or imported from non-OECD countries for recovery, subparts E and F of 40 CFR part 262.

* * * * *

PART 273—STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

20a. The authority citation for part 273 continues to read as follows:

Authority: 42 U.S.C. 6922, 6923, 6924, 6925, 6930, and 6937. 20b. The introductory text for § 273.20 is revised to read as follows:

§ 273.20 Exports.

A small quantity handler of universal waste who sends universal waste to a foreign destination other than to those OECD countries specified in 40 CFR 262.58(a)(1) (in which case the handler is subject to the requirements of 40 CFR part 262, subpart H) must:

* * * * *

21. The introductory text for § 273.40 is revised to read as follows:

§ 273.40 Exports.

A large quantity handler of universal waste who sends universal waste to a foreign destination other than to those OECD countries specified in 40 CFR 262.58(a)(1) (in which case the handler is subject to the requirements of 40 CFR part 262, subpart H) must:

* * * * *

22. The introductory text for § 273.56 is revised to read as follows:

§ 273.56 Exports.

A universal waste transporter transporting a shipment of universal waste to a foreign destination other than to those OECD countries specified in 40 CFR 262.58(a)(1) (in which case the transporter is subject to the requirements of 40 CFR part 262, subpart H) 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:

* * * * *

23. Section 273.70 is amended by revising the introductory text and by adding a new paragraph (d) to read as follows:

§ 273.70 Imports.

Persons managing universal waste that is imported from a foreign country into the United States are subject to the applicable requirements of this part, immediately after the waste enters the United States, as indicated in paragraphs (a) through (c) of this section:

* * * * *

(d) Persons managing universal waste that is imported from an OECD country as specified in 40 CFR 262.58(a)(1) are subject to paragraphs (a) through (c) of this section, in addition to the requirements of 40 CFR part 262, subpart H.

[FR Doc. 96–8087 Filed 4–11–96; 8:45 am]

BILLING CODE 6560–50–P