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40 CFR Parts 260, 261, 262, et al.

Hazardous Waste Generator Improve; Proposed Rule

## ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 263, 264, 265, 268, 270, 273, and 279

[EPA-HQ-RCRA-2012-0121; FRL 9924-07-OSWER]

RIN 2050-AG70

### Hazardous Waste Generator Improvements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA or the Agency) is proposing to revise the hazardous waste generator regulations under the Resource Conservation and Recovery Act (RCRA) to improve compliance and thereby enhance protection of human health and the environment. Specifically, EPA proposes to revise certain components of the hazardous waste generator regulatory program; address gaps in the regulations; provide greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner; reorganize the hazardous waste generator regulations to make them more user-friendly and thus improve their usability by the regulated community; and make technical corrections and conforming changes to address inadvertent errors, remove obsolete references to programs that no longer exist, and improve the readability of the regulations.

These proposed changes are both a result of EPA's experience in implementing and evaluating the hazardous waste generator program over the last 30 years, as well as a response to concerns and issues identified by the states and regulated community.

**DATES:** Comments must be received on or before November 24, 2015.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-RCRA-2012-0121, to the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and

should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Jim O'Leary, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 308-8827, ([oleary.jim@epa.gov](mailto:oleary.jim@epa.gov)) or Kathy Lett, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 605-0761, ([lett.kathy@epa.gov](mailto:lett.kathy@epa.gov)).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

Entities potentially affected by this action include between 353,000 and 543,000 industrial entities that generate hazardous waste regulated under the RCRA Subtitle C regulations. Of this universe, between 293,000 and 470,000 are conditionally exempt small quantity generators (CESQGs) that will only be affected if they choose to take advantage of two voluntary programs being proposed. Entities potentially affected by this proposed rule include practically every industrial sector, including printing, petroleum refining, chemical manufacturing, plastics and resin manufacturing, pharmaceutical manufacturing, paint and coatings, iron and steelmaking, secondary smelting and refining, metal manufacturing, electroplating, circuit board manufacturing, and automobile manufacturing, among other industries.

As discussed in section XVIII, the Regulatory Impact Analysis (RIA) for this action, available in the docket for this action, estimates the future annualized cost to industry to comply with the proposed requirements is between \$6.2 and \$17.4 million (at a 7% discount rate). The annualized benefits for entities opting to take advantage of two voluntary programs in the proposed rule (*e.g.*, consolidation of CESQG waste by large quantity generators (LQGs) under the same ownership, and generators who change regulatory status episodically) is between \$6.2 and \$12.2 million (at a 7% discount rate) resulting

in a net annualized cost of between \$0.1 million and \$5.2 million.

The proposed Hazardous Waste Generator Improvements Rule is expected to yield a variety of benefits as generators change several of their waste management practices to comply with the proposed regulations. These benefits reflect the rule's focus on enhancing protection of human health and the environment while improving the efficiency of the RCRA hazardous waste generator standards. Ideally, the Agency would prefer to quantify and monetize the rule's total benefits. However, only some categories of benefits are quantifiable. For the majority of benefits, sufficient data are not available to support a detailed quantitative analysis. For example, the added flexibility from allowing a large quantity generator accumulating ignitable or reactive hazardous waste to obtain a waiver from the local fire department for 50-foot property line requirement at 40 CFR 265.176 (provided other safety requirements are met) is difficult to quantify. In addition, quantifying the benefits associated with emergency response due to changes in container labeling would require data on the annual number of emergencies at generator sites, the current risks associated with these incidents, the extent to which more detailed labeling would affect the procedures of emergency responders, and the reduction in risk associated with these changes. Detailed data on these items are not readily available. In this and in similar cases, the benefits are described qualitatively.

###### B. Incorporation by Reference (IBR)

This action is not proposing to add any new IBR material, however, we are proposing to reorganize one of the existing requirements containing IBR material to make the regulation easier for the reader to follow. We are proposing to copy § 265.201(g)(2) to § 262.16(b)(3)(vii)(B). To accommodate this change, we are proposing to update § 260.11(d)(1), which is the IBR reference section for these regulations, by adding a reference to § 262.16. The materials for which we are seeking incorporation by reference are for the NFPA 30 standard, Flammable and Combustible Liquids Code, and are available for inspection at the ANSI Incorporation by Reference (IBR) Portal, <http://ibr.ansi.org>. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. (For ordering information, call toll-free 1-800-344-3555.)

## II. Statutory Authority

These regulations are proposed under the authority of sections 2002, 3001, 3002, 3003, 3004, 3007, and 3010 of the Solid Waste Disposal Act of 1965, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6921, 6922, 6923, and 6924. This statute is commonly referred to as "RCRA."

## III. What is the intent of this proposal?

EPA is proposing to revise the hazardous waste generator regulations under RCRA to improve compliance by the regulated community and support the efficient implementation of the hazardous waste generator regulations by EPA and the states and, thereby enhance protection of human health and the environment. Specifically, EPA proposes to (1) revise certain components of the hazardous waste generator regulatory program, primarily at 40 CFR 261.5 and 40 CFR part 262; (2) address identified gaps in the regulations; (3) provide greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner; (4) reorganize the hazardous waste generator regulations to make them more user-friendly and thus improve their usability by the regulated community; and (5) make technical corrections and conforming changes to address inadvertent errors, remove obsolete programs, and improve the readability of the regulations.

These proposed changes are a result of EPA's experience in implementing and evaluating the hazardous waste generator program over the last 30 years, as well as a response to concerns and issues identified by the states and regulated community.

The hazardous waste generator regulatory program was originally promulgated in 1980. Over the course of the last 30 plus years, the Agency, through experience with implementing the program, and in various meetings, correspondence, and discussions with the states and the regulated community, has become aware of ambiguities, inconsistencies, gaps, and a lack of flexibility in the regulations, which, if revised, could result in a program that is more effective in protecting human health and the environment. Many of these problems were identified in a 2004 program evaluation of the hazardous waste generator program conducted by EPA.<sup>1</sup> In 2013, a separate

EPA program evaluation addressing hazardous waste determinations also identified a number of problems related to generators being able to make a proper hazardous waste determination.<sup>2</sup> Several of the proposed provisions are also responsive to the 2014 Notice of Data Availability that EPA issued on the retail sector asking for comment on hazardous waste management practices in that sector and on challenges they face in complying with RCRA (79 FR 8926, February 14, 2014).

Many of the changes in this proposal are revisions to existing rules designed to improve generator compliance without any increase in burden. For example, the Agency has inconsistently addressed the situation where a generator generates both acute and non-acute hazardous waste in a calendar month. This inconsistency has resulted in uncertainty for the generator regarding what generator category, and thus which regulatory provisions, would apply during that calendar month. This proposal addresses the problem. The Agency is also proposing to replace the phrase "conditionally exempt small quantity generator" (CESQG) with the phrase "very small quantity generator" (VSQG) so as to be consistent with the other two generator categories—large quantity generators (LQGs) and small quantity generators (SQGs).

Another area of the program that needs revision is the closure regulations for hazardous waste generators under § 262.34(a)(1). The regulations do not expressly specify whether closure provisions apply to generators accumulating hazardous waste in containment buildings only or also to hazardous waste accumulated in containers, tanks and on drip pads. This notice proposes to revise the closure provisions to address these and other concerns.

The Agency is also proposing changes to improve flexibility for generators of hazardous wastes. One example is the proposal to enhance flexibility by allowing conditionally exempt small quantity generators (CESQGs) to send hazardous waste to an LQG that is under the control of the same person, provided certain conditions are met. Numerous situations exist in industry, government, and academia where an organization with satellite locations that qualify as CESQGs could take advantage of this provision in order to consolidate and

manage the hazardous waste in an environmentally sound manner. In addition, this proposal addresses the concern that some generators, such as generators located in urban environments, may find it difficult to meet the independent requirement that containers holding ignitable or reactive waste must be placed 15 meters (50 feet) from the site's property line. To build in flexibility, while maintaining protection of human health and the environment, we are proposing to allow generators to apply for a waiver from this requirement from their local fire department or emergency response organization, and if approved, maintain documentation of that agreement.

The Agency is also proposing to reorganize the hazardous waste generator regulations to make them more user-friendly for various stakeholders. For example, the current CESQG regulations are found at § 261.5, while the regulations for SQGs and LQGs are found in 40 CFR part 262. For convenience and ease of use, the Agency is proposing to move all the generator regulations into 40 CFR part 262. As a result of this reorganization, EPA is proposing to make a number of conforming changes to other parts of the regulations that cite particular sections of the part 262 regulations.

Lastly, the Agency is proposing to make several technical corrections that address inadvertent errors in the regulations, obsolete programs, and outdated citations.

## IV. What is the scope of this proposal?

EPA is proposing to revise the hazardous waste generator regulations, primarily at 40 CFR 261.5 and throughout 40 CFR part 262. The Agency is also proposing some changes to parts 260, 263, 264, 265, 268, 270, 273, and 279 mostly for the purposes of maintaining consistency with the proposed changes in part 262.

The preamble discussion of these proposed changes is organized by where the existing regulations currently appear in the Code of Federal Regulations (CFR). The preamble to this proposed rule first addresses changes to the substance of the existing generator provisions, as well as a number of related changes (sections VI through XII). These proposed revisions are discussed using existing regulatory citations to make the discussion easier to understand by those already familiar with the hazardous waste generator regulations. In the cases where the Agency is proposing to revise a regulation and is also proposing to move it as part of the reorganization, the new citation for the provision in the

<sup>1</sup> Summary of Hazardous Waste Generator Regulatory Program Evaluation, November 2004.

See also public comments in Docket ID No. EPA-HQ-RCRA-2003-0014.

<sup>2</sup> Hazardous Waste Determination Program Evaluation, IEC, April 2013. <http://www.epa.gov/evaluate/pdf/waste/haz-waste-determination.pdf>.

proposed regulatory text is provided at the end of that section of preamble discussion.

Following those sections, a discussion of the proposed reorganization of the hazardous waste generator regulations is presented (section XIII), including where the existing regulatory sections would be located in the proposed reorganization. As part of this discussion, we have provided a crosswalk table that compares where a particular regulatory section is currently in the regulations and where it would appear under the proposed reorganization.

Finally, a number of technical corrections are discussed (section XIV).

#### *A. Proposed Revisions to 40 CFR Part 260—Hazardous Waste Management System: General*

EPA is proposing to revise the definition of “small quantity generator” and add definitions for the other two generator categories as well as a definition for “central accumulation area” in § 260.10. In addition, we propose to change the name of the “conditionally exempt small quantity generator” category to “very small quantity generator” or VSQG.<sup>3</sup> These proposed changes are discussed in section VI of this preamble.

#### *B. Proposed Revisions to 40 CFR Part 261—Identification and Listing of Hazardous Waste*

EPA is proposing four changes to the regulations currently in 40 CFR part 261. First, EPA is proposing to add a new provision that would explain what generator category would apply to a generator that generates both acute and non-acute hazardous waste in the same calendar month. Second, the Agency is proposing to revise the regulations at §§ 261.5(h) and (i) and 261.3 that address the mixing of a non-hazardous waste with a hazardous waste. Third, to make waste management more efficient in some cases and improve environmental protection, the Agency is proposing to amend § 261.5(f)(3) and (g)(3) to allow CESQGs to send their hazardous waste to LQGs that are operated under control of the same person. Under this proposal, a CESQG that wants to take advantage of this provision would need to comply with the proposed requirements. Finally, the Agency is proposing to amend § 261.6(c)

to require biennial reporting for owners or operators of facilities that recycle but do not store hazardous waste before the recycling.

These proposed changes are discussed in section VII of this preamble.

#### *C. Proposed Revisions to 40 CFR Part 262—Standards Applicable to Generators of Hazardous Waste*

EPA is proposing a number of changes to the regulations for generators of hazardous waste at 40 CFR part 262 to improve the understanding of the RCRA generator regulations in order to encourage increased compliance by the regulated community. These proposed changes include the following:

- Revising the scope and applicability section to distinguish between independent requirements and conditions for exemption for generators of hazardous waste.
- Revising the regulations for making hazardous waste determinations;
- Requiring re-notification by SQGs and LQGs;
- Revising the regulations for labeling and marking of containers, tanks, drip pads, and containment buildings when accumulating hazardous wastes;
- Revising the closure provisions for LQGs;
- Updating the preparedness, prevention, planning and emergency procedures provisions for SQGs and LQGs;
- Revising the provisions for satellite accumulation areas (SAA) for SQGs and LQGs;
- Revising the SQG regulations for accumulating hazardous waste on drip pads;
- Deleting obsolete regulations that refer to the Performance Track program;
- Revising the biennial reporting provisions for LQGs;
- Adding a provision that hazardous waste generators are prohibited from disposing liquid hazardous waste in landfills.

These proposed changes to the generator regulations in part 262 are discussed in section VIII of this preamble.

#### *D. Proposed Addition to 40 CFR Part 262 for Generators That Temporarily Change Generator Category as a Result of an Episodic Event*

To provide greater program flexibility, EPA is proposing to allow a CESQG or an SQG to maintain its existing generator category in the event of either a planned or unplanned episodic event in which the CESQG or SQG generates a quantity of hazardous waste in a calendar month that would otherwise bump the CESQG or SQG into a more

stringent generator regulatory category (e.g., CESQG to either an SQG or an LQG, or alternatively an SQG to an LQG), provided certain conditions are met. Because these events would be temporary and episodic in nature, the generator would only be allowed to take advantage of this provision once every calendar year. Generators may also petition EPA or the authorized state to request permission to initiate a second episodic event during a calendar year.

This proposed addition to the regulations is discussed in section IX of this preamble.

#### *E. Proposed Revisions to 40 CFR Part 263—Standards Applicable to Transporters of Hazardous Waste*

To improve environmental protection, EPA is proposing to revise the marking and labeling standards for transporters to be consistent with the proposed marking and labeling standards for containers for SQGs, LQGs, and satellite accumulation areas elsewhere in this proposal.

These proposed changes are discussed in section X of this preamble.

#### *F. Proposed Revisions to 40 CFR Parts 264 and 265—Standards for Owners and Operators of Hazardous Waste TSDFs and Interim Status Standards for Owners and Operators of Hazardous Waste TSDFs*

The Agency is proposing modifications to the biennial reporting provisions in 40 CFR parts 264 and 265 to specifically include facilities receiving hazardous wastes without a permit, such as reclaimers that do not store incoming materials and reclaimers operating under a variance. EPA is also proposing to modify the special conditions for ignitable and reactive wastes at § 265.176 to allow LQGs to apply for a waiver from their local fire departments if they are unable to meet the condition that hazardous waste be stored at least 15 meters (50 feet) from the site's boundary.

These proposed changes are discussed in section XI of this preamble.

#### *G. Proposed Revisions to 40 CFR Part 268—Land Disposal Restrictions*

EPA is proposing to revise the marking and labeling requirements at § 268.50 to be consistent with the proposed marking and labeling standards for containers at SQGs, LQGs, and satellite accumulation areas elsewhere in this proposal. These proposed changes are discussed in section XII of this preamble.

<sup>3</sup> Despite this proposed change, in the preamble, EPA will continue refer to this category as CESQGs to make it easier to follow the other changes to the generator being proposed. We will use the term “VSQG” when directly quoting proposed regulatory text. This change is discussed fully in section VI of this preamble.

#### H. Proposed Reorganization of Hazardous Waste Generator Regulations

In addition to the proposed program changes outlined in this notice, EPA is proposing to reorganize the regulations for hazardous waste generators to consolidate most of the generator regulations into 40 CFR part 262 and reduce cross-referencing where possible. EPA believes this reorganization will assist CESQGs, SQGs, and LQGs in understanding their regulatory responsibilities.

The reorganization is discussed after completion of the other proposed changes in this proposal so that readers can more easily compare the existing regulatory framework with this proposal.

The reorganization is discussed in section XIII of this preamble.

#### I. Technical Corrections and Conforming Changes to 40 CFR Parts 260 Through 265, 270, 273, and 279

The Agency is proposing a number of technical corrections and conforming changes to correct existing errors in the hazardous waste generator regulations, as well as in other areas of the hazardous waste regulations, such as typographical mistakes, incorrect or outdated citations, and omissions of text. In addition, EPA is proposing technical changes to address the impacts of reorganizing the hazardous waste regulations.

These changes are discussed in section XIV of this preamble.

#### J. Request for Comment on Use of Electronic Tools To Streamline Hazardous Waste Reporting and Recordkeeping Requirements

As part of this proposed rule, the Agency is also exploring the feasibility of using electronic tools to streamline the hazardous waste recordkeeping and reporting requirements. EPA requests comment on the usefulness of such tools to help the regulated community comply with the recordkeeping and reporting requirements in the RCRA hazardous waste regulations.

This request for comment is discussed in section XV of this preamble.

### V. Background

#### A. History of the Hazardous Waste Generator Program

As originally promulgated in 1980, the basic regulatory framework for hazardous waste generators consisted of two categories: Small quantity generators (SQGs) and large quantity generators (LQGs). Since then, there have been three major changes. First, as a result of the Hazardous and Solid

Waste Amendments (HSWA) of 1984, a rule was promulgated that created a third generator category by splitting the SQG category in two and creating conditionally exempt small quantity generators (CESQGs). (51 FR 10146, March 24, 1986).<sup>4</sup>

Second, also as a result of HSWA, the Land Disposal Restriction (LDRs) regulations required hazardous waste generators to ensure that their hazardous waste either met a specified treatment standard or performance standard, or, if not, was treated to specified concentrations or performance standards prior to land disposal.<sup>5</sup>

Third, the Agency modified the Uniform Hazardous Waste Manifest regulations and associated manifest document used to track hazardous waste from a generator's site to its ultimate disposition (70 FR 10776, March 4, 2005; 70 FR 35034, June 16, 2005). The revisions to the Uniform Hazardous Waste Manifest standardized the content and appearance of the manifest form, made the forms available from a greater number of sources, and adopted new procedures for tracking certain types of hazardous waste shipments with the manifest. Otherwise, the changes that have occurred to the hazardous waste generator regulatory program have been, for the most part, relatively minor.

#### B. The Current Hazardous Waste Generator Regulations

##### 1. Determining Generator Category

The hazardous waste generator regulatory program is structured around the quantity of hazardous waste a person (or generator) generates in a calendar month (by site). The quantity of hazardous waste generated determines a generator's category for the month, which in turn determines what requirements are applicable to the generator (including determining how the generator can qualify for an exemption from other regulations, such as having to get a storage permit).

The three generator categories—LQG, SQG, and CESQG—are based on the quantities of acute and non-acute hazardous waste generated by the generator.

For non-acute hazardous waste, the thresholds are as follows:

—LQGs generate 1,000 kilograms or greater of hazardous waste in a calendar month.

—SQGs generate greater than 100 kilograms but less than 1,000 kilograms

of hazardous waste in a calendar month; and

—CESQGs generate no more than 100 kilograms of hazardous wastes in a calendar month.

For acute hazardous waste, the regulations at 40 CFR 261.5(e) state that if a generator generates acute hazardous waste in a calendar month in quantities greater than a total of one kilogram of acute hazardous waste listed in § 261.31 or 261.33(e) or a total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a spill of any acute hazardous waste listed in § 261.31 or 261.33(e), then all quantities of that acute hazardous waste are subject to the full set of LQG requirements.<sup>6</sup>

In order to determine what requirements are applicable, a generator must first identify all the hazardous waste it generates subject to regulation using the four-step process below:

1. Determine whether the material is a solid waste subject to RCRA regulations at § 261.2;

2. If the material is a solid waste, then determine whether the solid waste is specifically excluded from regulation by examining the exclusions at § 261.4(a) and (b);

3. If not excluded, then determine whether the solid waste is a hazardous waste at § 262.11; and

4. If the material is a hazardous waste, then determine whether it is exempt from being counted towards its generator category by reviewing the exemptions at § 261.5(c) and (d).

Once that is completed, the generator must count the amount of regulated hazardous waste generated during the calendar month to determine its generator category.

Once a generator determines its generator category for the month, it then must manage the hazardous waste it generates and accumulates in a manner that complies with specified requirements, including requirements that qualify the generator for an exemption from having to obtain a permit.<sup>7</sup> Therefore, determining a generator's category is essential to

<sup>6</sup> One of the technical corrections EPA is proposing with this rulemaking is to replace the word "waste" in this definition with the word "water." This would return the definition to what it read before it was changed, we believe accidentally, in 1985. See section XIV of this preamble for a discussion of the proposed technical corrections.

<sup>7</sup> Note that the exemptions provided by the regulations are not just for a permit exemption. The exemption is also from RCRA section 3004(a)(1)–(6) regulations; *i.e.*, the regulations in 262 and 264, 267, etc.

<sup>4</sup> Known as the Small Quantity Generator rule.

<sup>5</sup> Land Disposal Restrictions, <http://www.epa.gov/osw/hazard/tsd/ldr/index.htm>.

determining the part 262 requirements a generator must comply with.

## 2. Types of Generator Standards: Requirements and Conditions

When RCRA was enacted in 1976, the law did not explicitly address whether a permit would be required for generators accumulating hazardous wastes. However, it was clear in the legislative history of RCRA that Congress did not want to interfere with commerce and impose permitting requirements on every generator who accumulated hazardous wastes. Therefore, Congress deferred to EPA in how it would reconcile this issue. When EPA developed the regulations applicable to generators, it established two types of requirements for them: (1) Independent requirements that would apply to generators regardless of whether or not they choose to obtain an exemption from the permit requirement and from other applicable requirements (“independent requirements”); and (2) requirements to meet in order to achieve the specific purpose of obtaining such an exemption from permitting and from other applicable requirements (“conditions for exemption”).

An “independent requirement” in the context of the RCRA hazardous waste generator regulations is an unqualified standard. For example, the requirements of 40 CFR part 262 subpart D (Recordkeeping and Reporting), and the requirements in §§ 262.30 through 262.33, are among the independent requirements applicable to generators. If a generator violates an independent requirement, it may be subject to an enforcement action under section 3008 of RCRA. Unlike conditions for an exemption, independent requirements have no direct relationship to the option of obtaining or maintaining an exemption from certain RCRA regulations.<sup>8</sup>

A “condition for exemption,” on the other hand, is a prerequisite that is necessary to occur or be met in order for something else to take legal effect. Thus, in the context of the RCRA hazardous waste generator regulations, a RCRA “condition for exemption” is a requirement that a generator must comply with in order to obtain or maintain an exemption from RCRA permitting requirements in part 270 and the requirements in part 264 or part 265. For example, a conditionally exempt small quantity generators (CESQGs)

must meet a condition for exemption in order for its hazardous waste to be exempt from the requirements in parts 124, 262 through 266, 268, or 270, or from any requirement for notification under section 3010 of RCRA for its hazardous waste. A CESQG that fails to meet all of the conditions for an exemption for CESQGs in § 261.5 would now be subject to all these requirements.

The conditions for exemption available to large and small quantity generators are found in the current regulations at § 262.34.<sup>9</sup> Should a small quantity generator or large quantity generator fail to meet all the conditions for an exemption, it would not only be subject to having to obtain a permit under part 270 but also to the requirements in part 264 or part 265.

As stated above, complying with the conditions for exemption is not required because it is not mandatory for a generator to obtain and maintain an exemption from RCRA permitting requirements. Instead, when a generator does not comply with a certain condition or conditions for exemption, the consequence is that the generator either fails to obtain—or loses—the exemption from the RCRA permitting requirements (unless it has complied with all of the conditions for a different applicable exemption from those requirements). This means that, because there is no exemption, permitting requirements become applicable to the generator for the same time period that the generator is out of compliance with the conditions for exemption.

## 3. Types of Conditional Exemptions

The current RCRA regulations afford generators two types of conditional exemptions: (1) An exemption from most of the 40 CFR part 262 requirements, available to farmers and to CESQGs, and (2) an exemption from 40 CFR parts 124, 264 through 268, 270, and 279 requirements, and from the notification requirements of section 3010 of RCRA, available to SQGs and LQGs that accumulate hazardous waste.

The first conditional exemption is available only to farmers and CESQGs. With respect to farmers, this conditional exemption is found in part 262 subpart G and is limited to waste pesticides that are RCRA hazardous wastes that the farmer generates, provided the farmer triple rinses each emptied pesticide container in accordance with § 261.7(b)(3) and disposes of the pesticide residues on his own farm in a

manner consistent with the disposal instructions on the pesticide label. This exemption from part 262 relieves farmers and CESQGs from the requirements related specifically to the generation, management, and transportation of hazardous wastes provided such waste meets certain conditions, including that the waste is treated or disposed of on site or is delivered to an off-site treatment, storage, or disposal facility which is located in the United States and is one of seven specified types of facilities. Provided the farmer and/or CESQG meets these conditions, they are not subject to the 40 CFR part 262, as well as other hazardous waste management requirements.

The second type of conditional exemption relieves generators that accumulate hazardous waste from the permitting and other requirements applicable to treatment, storage, and disposal facilities and makes temporary accumulation of hazardous waste possible for generators and is found in § 262.34. In EPA’s experience, virtually every generator accumulates or stores its hazardous waste on site for some period before sending it to either an on-site or off-site permitted or interim status treatment storage or disposal facility (TSDF) or other RCRA-authorized disposal site. However, provided the generator meets the conditions in this exemption, they would not be subject to the permitting requirements and operations requirements applicable to a hazardous waste management facility for storage, or a “storage facility.”<sup>10</sup>

The generator regulations in part 262, therefore, are made up of both independent requirements and conditions for exemptions. All generators are subject to at least one requirement in part 262 (*i.e.*, making a hazardous waste determination); however, the total number of part 262 requirements applicable to a generator depends on the total quantity of hazardous waste it generates each calendar month and therefore what generator category it is for that month. All generators can choose the extent of their regulation under RCRA by either meeting, or failing to meet, all of the conditions for an exemption from regulation as a storage facility.

Of all the generators, LGQs are subject to the most independent requirements. The current regulations at § 262.34(a) are quite clear for LQGs where they state that a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having

<sup>8</sup> EPA is proposing to make the distinction between “independent requirement” and “condition for exemption” more clear by placing definitions of these terms in the regulations at § 262.1. See section VIII.A.1 for additional discussion.

<sup>9</sup> Under this proposed rule these conditions for exemption would be moved to proposed sections §§ 262.14 through 262.17.

<sup>10</sup> See 40 CFR 270.2 (“hazardous waste management facility”).

interim status, provided that it meets the listed conditions for the exemption. These conditions relate to the technical requirements for containers, tanks, drip pads, and containment buildings, in addition to marking and labeling of containers, closure, personnel training, emergency response procedures, and contingency planning. In effect, should an LQG not meet any one of these conditions, it would be operating illegally without a permit. The same regulatory framework applies to CESQGs and SQGs, but with different conditions.

SQGs have fewer independent requirements and conditions for exemption than LQGs. In particular, SQGs have longer accumulation time limits than LQGs (up to 180 days, or 270 days, if the hazardous waste is shipped greater than 200 miles) and have fewer regulations related to personnel training, contingency planning, and emergency response procedures. SQGs

also do not have to submit biennial reports. However, like LQGs, SQGs must obtain an EPA ID number, meet the technical standards for containers and tanks, comply with manifesting regulations, and send their hazardous waste to a RCRA permitted hazardous waste TSDF. In addition, SQGs may not accumulate more than 6,000 kilograms of hazardous waste at any one time.

CESQGs have very few conditions. Specifically, in order for CESQGs to be excluded from 40 CFR parts 124, 262 through 266, 268, and 270 and the notification requirements of section 3010 of RCRA, they must (1) make correct hazardous waste determinations;<sup>11</sup> (2) accumulate no more than 1,000 kilograms of hazardous waste at any one time or accumulate no more than the quantities of acute hazardous wastes set forth in § 261.5(e)(1) or (2) at any one time; and (3) send hazardous waste to one of seven specified types of facilities

described in §§ 261.5(e)(3) and 261.5(g)(3).<sup>12</sup> All other regulations applicable to LQGs and SQGs are not applicable to CESQGs that comply with these conditions.

Table 1—Summary of Generator Regulations provides a summary of requirements that represent conditions for an exemption for CESQGs, SQGs and LQGs. As noted in the table, the category “Conditions for Exemption” applies to such requirements as the quantity generated and accumulated, accumulation time, the technical standards for containers, tanks, drip pads and containment buildings, marking and labeling, personnel training, contingency planning and emergency procedures. It is important to note that a waste determination is an independent requirement for SQGs and LQGs, whereas it is a condition for exemption for CESQGs as defined at § 261.5(f)(1) and (g)(1).<sup>13</sup>

TABLE 1—SUMMARY OF GENERATOR REGULATIONS

	CESQGs	SQGs	LQGs
Generator Category .....	≤100 kg/month ..... ≤1 kg/month of acute hazardous waste. ≤100 kg/month of acute spill residue or soil. §§ 261.5(a) and (e) .....	>100 and <1,000 kg/month ..... ≤1 kg/month of acute hazardous waste. ≤100 kg/month of acute spill residue or soil. §§ 262.34(d) and 261.5(e) .....	≥1,000 kg/month ..... >1 kg/month of acute hazardous waste >100 kg/month of acute spill residue or soil §§ 262.34(a) and 261.5(e).
<b>Conditions for Exemption</b>			
Hazardous Waste Determination.	§ 262.11 .....	N/A .....	N/A.
On-Site Accumulation Quantity.	≤1,000 kg ..... ≤1 kg acute ..... ≤100 kg of acute spill residue or soil § 261.5(f)(2) and (g)(2) .....	≤6,000 kg ..... § 262.34(d)(1) .....	No limit.
Satellite accumulation .....	Not applicable .....	§ 262.34 (c)(1) and (2) .....	§ 262.34 (c)(1) and (2).
Accumulation Time Limits ....	None .....	≤180 days or ≤270 days (if greater than 200 miles). § 262.34(d)(2) and (3) .....	≤90 days. § 262.34(a).
Accumulation Conditions .....	§ 261.5 (f)(1) and (2); § 261.5 (g)(1) and (2).	Reduced standards for the management of hazardous waste in containers and tanks. § 262.34(d)(2) and (3) .....	Full compliance for management of hazardous waste in containers, tanks, drip pads, or containment buildings. § 262.34(a).
Sent To: .....	One of seven state approved or RCRA permitted/interim status facilities. § 261.5(f)(3) and (g)(3) .....	RCRA permitted/interim status facility.	RCRA permitted/interim status facility.
Personnel Training .....	Not required .....	Reduced training standards ..... § 262.34(d)(5)(iii) .....	Full compliance with §§ 265.16 and 262.34(a)(4).
Marking and labeling .....	Not required .....	§ 262.34 (a)(2) and (3) .....	§ 262.34 (a)(2) and (3).
Contingency Plan .....	Not required .....	Reduced standards ..... § 262.34(d)(5)(i) .....	Full compliance with part 265 subparts C and D. § 262.34(a)(4).

<sup>11</sup> Making a correct hazardous waste determination is a condition for the exemption for CESQGs but an independent requirement for SQGs and LQGs.

<sup>12</sup> A CESQG may send hazardous waste to the following types of facilities: (1) A hazardous waste facility permitted by EPA; (2) an interim status hazardous waste facility; (3) a hazardous waste facility permitted by an authorized state; (4) a

facility permitted, licensed or registered by a state to manage municipal solid waste; (5) a facility permitted, licensed or registered by a state to manage non-municipal non-hazardous solid waste; (6) a facility which beneficially uses or reuses or legitimacy recycles or reclaims its wastes or treats its waste prior to beneficial use or reuse or legitimacy recycling or reclamation; or (7) universal waste handler or destination facility subject to the

requirements in 40 CFR part 273. The Agency is proposing an eighth location where CESQGs would be allowed to send their hazardous wastes (e.g., an LQG within the same company provided specified conditions are met).

<sup>13</sup> Note that state hazardous waste programs may be more stringent than the federal program and also broader in scope.

TABLE 1—SUMMARY OF GENERATOR REGULATIONS—Continued

	CESQGs	SQGs	LQGs
Emergency Procedures .....	Not required .....	Part 265 subpart C ..... § 262.34(d)(5)(iv) .....	Full compliance with part 265 sub- parts C and D. § 262.34(a)(4). § 262.34(a)(1)(iv)/§§ 265.111 and 265.114.
Closure .....	Not required .....	Not required .....	
Land Disposal Restrictions ...	Not required .....	40 CFR 262.34(a)(4)/40 CFR part 268.	40 CFR 262.34(a)(4)/40 CFR part 268.

*C. Hazardous Waste Generator Demographics*

In 2011, 16,447 generators reported generating approximately 34.4 million tons of hazardous waste.<sup>14</sup> Of the 16,447 generators, 14,262 were LQGs and 2,185 were non-LQGs, meaning these entities submitted a biennial report but did not report generating sufficient amounts of hazardous waste to be categorized as an LQG.

The fifty largest hazardous waste generators reported generating 28.7 million tons, or 83 percent of the total. Additionally, 3,148 generators, or approximately 19 percent of the total reporting universe, reported generating only one hazardous waste stream, while 8,435 generators, or 51 percent of the total reporting universe, reported generating between one and five hazardous waste streams.<sup>15</sup> At the other extreme were 843 generators, or 5 percent of the total reporting universe, that reported generating 41 or more hazardous waste streams. These generators included sites from the waste treatment industry as well as academic and industrial laboratories.

Of the 34.4 million tons of hazardous waste generated in 2011, 30.5 million tons, or 89 percent, were generated in just five industrial sectors: Basic Chemical Manufacturing (which alone accounted for 55 percent of the hazardous waste generated); Petroleum and Coal Products Manufacturing; Waste Treatment and Disposal; Pesticide, Fertilizer, and Other Chemical Manufacturing; and Iron and Steel Mills and Ferroalloy Manufacturing.

Unlike LQGs, who must submit a biennial report every two years describing the types and quantities of hazardous waste generated and its subsequent disposition, SQGs are not required to provide such information to the Agency. Consequently, the Agency lacks the level of detail for SQGs that is

available for LQGs. However, based on a review of biennial report data provided by treatment, storage, and disposal facilities (which must report waste received from all hazardous waste generators) and site identification data (from SQGs obtaining an EPA ID number), EPA estimates the number of SQGs to range from 45,762 to 59,702.<sup>16</sup>

Because CESQGs are not required to obtain a RCRA ID, the information available to the Agency is limited to those states that require their CESQGs to obtain a RCRA ID. Therefore, in estimating the size of the CESQG universe, the Agency developed a methodology that extrapolated the size of the CESQG universes based on the data available in those states that require CESQGs to obtain a RCRA ID. We first established a ratio of SQGs to CESQGs in those states where information was available on the CESQG universe and then used that ratio to estimate the size of a state's CESQG universe where CESQG information was unavailable. Using this methodology, EPA currently estimates the size of the CESQG universe to range from 302,807 to 425,752.<sup>17</sup> However, we believe this range most likely underestimates the true number of CESQGs because we believe there are many more facilities unaware of their obligations under the RCRA hazardous waste regulations and the need to conduct correct hazardous waste determinations.

<sup>16</sup> Estimate of Total Number of SQGs and CESQGs, July 2013. We estimated this range by doing the following: (1) Identifying hazardous waste generators who shipped hazardous waste off site in 2007, 2009, and 2011 using the Biennial Report's WR form and (2) cross walking that universe with data received from Site ID forms to identify the "active" SQG universe. The high-end estimate represents SQGs who shipped hazardous waste off site in any one of the three Biennial Report cycles, since many hazardous waste generators fluctuate in the regulatory status from year to year. The estimate also includes new SQGs who notified after the 2011 biennial report. The low-end represents SQGs who shipped hazardous waste off site in 2011 only as well as new SQG notifiers. A copy of the results can be found in the docket to this proposal.

<sup>17</sup> Methodology to Estimate the National Number of CESQGs, July 2013.

*D. 2004 Hazardous Waste Generator Program Evaluation*

On April 22, 2004, EPA published the "Hazardous Waste Generator Program Evaluation" Advanced Notice of Proposed Rulemaking (69 FR 21800). The purpose of the April 2004 notice was to seek information from stakeholders in order to evaluate the effectiveness of the RCRA hazardous waste generator program, as well as to identify areas for potential improvement.

Specifically, the April 2004 notice requested that stakeholders answer a series of questions in a number of areas of the hazardous waste generator regulatory program, including program effectiveness, improvements, redundancy, innovation, performance, burden reduction, pollution prevention and recycling, and priorities. Questions included whether the existing RCRA hazardous waste generator regulatory program is meeting its goal of protecting human health and the environment and whether the regulations are easy to understand, including questions asking which specific regulations are unclear or have been interpreted inconsistently.

EPA also included in the April 2004 notice a list of program areas that had previously been identified by stakeholders as needing improvement. These program areas included waste accumulation times, waste generation quantity thresholds and counting rules for LQGs, SQGs, and CESQGs, episodic generator provisions, waste sampling and testing, waste management standards, satellite accumulation, generator accumulation and treatment in containers or tanks, closure standards for generators, co-generator standards, RCRA identification numbers, waste minimization, and land disposal restriction requirements applicable to generators. During the comment period, EPA also held four public meetings in May 2004 in Boston, MA, Chicago, IL, Washington, DC, and Seattle, WA.

In response to the April 2004 notice and the May 2004 public meetings, EPA received over 500 comments from 55 organizations and individuals, including 9 states, 5 federal agencies, 2

<sup>14</sup> EPA's National Biennial RCRA Hazardous Waste Report (Based on 2011 Data) <http://www.epa.gov/osw/inforesources/data/br11/index.htm>.

<sup>15</sup> Summary of the number of GM forms submitted by LQGs in 2011 Biennial Report.



universities, 12 trade associations, and 22 companies.<sup>18</sup> Overall, EPA's effort to seek information regarding the effectiveness of the hazardous waste generator regulatory program received a favorable response.

Many commenters agreed that implementation of the generator regulations has made significant improvements in managing hazardous waste and has resulted in fewer releases of hazardous waste to the environment. However, many commenters identified several improvements they believed needed to be made to regulations. Specifically, they suggested the following:

- Simplify the regulations to make them more user-friendly and easy to understand, such as eliminating cross-referencing and codifying guidance into regulations, where applicable.
- Improve the efficiency of the program by clearing up ambiguities and removing potential redundancies, such as defining what constitutes a closed container and clarifying parts of the satellite accumulation regulations.
- Provide greater flexibility in the regulations, such as regulations that allow for episodic generation and that allow wastes to be shipped from remote locations to a centralized location to enable better waste management.
- Require re-notification to ensure better data quality to support compliance monitoring of SQG facilities (state commenters).
- Improve regulations on hazardous waste determinations, including when it is appropriate to use generator knowledge instead of analytical testing (Industry commenters).

In response to the comments on the April 2004 notice, EPA took several actions to help improve the hazardous waste generator program in order to foster better compliance. Actions included (1) improving EPA's Web site for the hazardous waste generator regulatory program,<sup>19</sup> (2) developing an online guide to the hazardous waste generator regulations,<sup>20</sup> (3) releasing guidance for management of hazardous waste in closed containers,<sup>21</sup> (4) issuing

<sup>18</sup> Public comments can be found in Docket ID No. RCRA-2003-0014.

<sup>19</sup> <http://www.epa.gov/osw/hazard/generation/index.htm>.

<sup>20</sup> "Hazardous Waste Generator Regulations: A User-Friendly Reference Document" (<http://www.epa.gov/osw/hazard/downloads/tool2012.pdf>).

<sup>21</sup> Memorandum from Betsy Devlin, Acting Director of EPA's Waste Recovery and Waste Management Division, to RCRA Division Directors, "Closed Container Guidance: Questions and Answers (Qs & As), November 3, 2011, incorporating Memorandum from Robert Dellinger, Director of EPA's Materials Recovery and Waste

a technical corrections direct final rule,<sup>22</sup> and (5) conducting an evaluation of the hazardous waste determination program.<sup>23</sup> While these actions have helped to improve the hazardous waste generator program, the Agency recognizes that many of the changes identified by commenters can only be made through rulemaking. Thus, this proposed rule requests comment on a number of changes to the hazardous waste generator regulations.

## VI. Proposed Revisions to 40 CFR Part 260—Hazardous Waste Management System: General

### A. Generator Category Definitions (40 CFR 260.10)

EPA is proposing to codify definitions for the three categories of hazardous waste generators (CESQG, SQG and LQG). The term "small quantity generator" is codified in the regulations, but is outdated, whereas "conditionally exempt small quantity generator" and "large quantity generator" have been used within the RCRA hazardous waste community for several decades, but their exact definitions have not been codified. The regulations differentiate between the categories by stating the quantity of hazardous waste generated in a calendar month in each instance.

As the terms are most commonly used, CESQGs are generators that generate 100 kilograms or less of non-acute hazardous waste and 1 kilogram or less of acute hazardous waste in a calendar month; SQGs are generators that generate greater than 100 kilograms of non-acute hazardous waste but less than 1,000 kilograms of non-acute hazardous waste and 1 kilogram or less of acute hazardous waste in a calendar month; and LQGs are generators that generate 1,000 kilograms or greater of non-acute hazardous waste and/or greater than 1 kilogram of acute hazardous waste in a calendar month. However, generators often fail to consider residues from the cleanup of a spill of acute hazardous waste or do not count both the non-acute and acute hazardous waste they generate in a calendar month. The proposed definitions have been drafted to incorporate all the various categories of hazardous wastes—that is, acute hazardous waste, non-acute hazardous waste, and residues for the cleanup of a spill of acute hazardous wastes.

Management, Division, to RCRA Division Directors, "Guidance on 40 CFR 264.173(a) and 265.173(a): Closed Containers," December 3, 2009, RCRA Online 14826.

<sup>22</sup> 75 FR 12989, March 18, 2010.

<sup>23</sup> Hazardous Waste Determination Program Evaluation, April 2013 (<http://www.epa.gov/evaluate/pdf/waste/haz-waste-determination.pdf>).

Considering the significance a generator's category has in determining the appropriate set of regulations that the generator must comply with, the Agency believes it is necessary to define the specific hazardous waste generator categories in the regulations.

The proposed generator category definitions are based solely on the amount of hazardous waste generated. While EPA acknowledges that accumulation limits may trigger different generator regulations, those accumulation limits do not affect a generator's generation category, which is based on how much hazardous waste is generated in a calendar month.

Therefore, EPA is proposing to add the following definitions to § 260.10:

*Very small quantity generator* is a generator who generates less than or equal to the following amounts in a calendar month: (1) 100 kilograms (220 lbs) of non-acute hazardous waste; and (2) 1 kilogram (2.2 lbs) of acute hazardous waste listed in § 261.31 or § 261.33(e); and (3) 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in sections § 261.31 or § 261.33(e);<sup>24</sup>

*Small quantity generator* is a generator who generates the following amounts in a calendar month: (1) Greater than 100 kilograms (220 lbs) but less than 1000 kilograms (2200 pounds) of non-acute hazardous waste; and (2) less than or equal to 1 kilogram (2.2 lbs) of acute hazardous wastes listed in § 261.31 or § 261.33(e); and (3) less than or equal to 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in § 261.31 or § 261.33(e);

*Large quantity generator* is a generator who generates any of the following amounts in a calendar month: (1) Greater than or equal to 1000 kilograms (2200 lbs) of non-acute hazardous waste; or (2) greater than 1 kilogram (2.2 lbs) of acute hazardous waste listed in § 261.31 or § 261.33(e); or (3) greater than 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water,

<sup>24</sup> As part of this rulemaking, EPA is proposing to change the name of "conditionally exempt small quantity generator (CESQG)" to "very small quantity generator (VSQG)." This change is discussed in section VI.B. For the sake of a consistent discussion, however, EPA is using the term CESQG throughout the preamble unless directly stating the content of the proposed regulatory text.

of any acute hazardous waste listed in § 261.31 or § 261.33(e).

EPA is also proposing to add definitions to § 260.10 for the terms “acute hazardous waste” and “non-acute hazardous waste,” which are both used in the above definitions for generator categories. The term acute hazardous waste is used for hazardous wastes that are particularly dangerous to human health and is defined as those hazardous wastes that meet the listing criteria in § 261.11(a)(2) and are therefore listed in § 261.31 and assigned the hazard code of (H) or are listed in § 261.33(e), also known as the RCRA P-list. In this proposal, any distinctions

between acute and non-acute hazardous wastes are only being made in the context of determining generator category. Generally the term “hazardous waste” refers to both acute and non-acute hazardous waste.

As previously stated, the definitions of generator categories are based solely on the amount of hazardous waste generated in a calendar month and are generally consistent with how the regulated community understands the various categories based on EPA’s references in existing publications to how much hazardous waste is generated in a calendar month. Additionally, these definitions reflect that a generator may

only have one generator category in a calendar month even if the generator generates both acute hazardous waste and non-acute hazardous waste in the same calendar month, a topic discussed further in section VII.A.

In practice, five waste generation scenarios exist with different combinations of acute hazardous waste, non-acute hazardous waste, and residues from the cleanup of spills of acute hazardous waste generated in a calendar month. These scenarios are summarized in Table 2—Generator Categories Based on Quantity of Waste Generated.<sup>25</sup>

TABLE 2—GENERATOR CATEGORIES BASED ON QUANTITY OF WASTE GENERATED

#	Quantity of acute hazardous waste generated in a calendar month	Quantity of non-acute hazardous waste generated in a calendar month	Quantity of residues from the cleanup of acute hazardous waste generated in a calendar month	Generator category
1	> 1 kg	Any amount	Any amount	LQG.
2	Any amount	≥ 1,000 kg	Any amount	LQG.
3	Any amount	Any amount	> 100 kg	LQG.
4	≤ 1 kg	> 100 kg and < 1,000 kg	≤ 100 kg	SQG.
5	≤ 1 kg	≤ 100 kg	≤ 100 kg	VSQG/(CESQG).

Note: When calculating generator categories, the quantities of acute hazardous waste and non-acute hazardous waste are considered separately.

In three of the scenarios in Table 2—Generator Categories Based on Quantity of Waste Generated, the generator would be an LQG, in one scenario the generator would be an SQG, and in one scenario the generator would be a CESQG. In the first three scenarios, the generator is an LQG if it generates any of the following in a calendar month, regardless of the amounts of hazardous waste generated in the other categories: more than 1 kilogram of acute hazardous waste, 1,000 kilograms or more of non-acute hazardous waste, or more than 100 kilograms of residues from the cleanup of a spill of acute hazardous waste. This is made clear in the proposed regulatory definition of “LQG” by use of the word “any” and by the use of the word “or” between (1), (2), and (3). In these scenarios, the generator would need to comply with the independent requirements and conditions for the exemption for LQGs (specified in proposed § 262.17), as well as any applicable regulations for SAAs at § 262.15.

In the fourth scenario, the generator would be an SQG if, in a calendar

month, it generates greater than 100 kilograms and less than 1,000 kilograms of non-acute hazardous waste and also 1 kilogram or less of acute hazardous waste and 100 kilograms or less of residues from the cleanup of a spill of acute hazardous waste.<sup>26</sup> The proposed regulatory text expresses this scenario by using the word “and” between (1), (2), and (3) in the definition of SQG. As a result, the generator would need to comply with the independent requirements and conditions for the exemption for SQGs (specified in proposed § 262.16), as well as any applicable regulations for SAAs at § 262.15.

Finally, in the fifth scenario, if a generator generates 1 kilogram or less of acute hazardous waste and 100 kilograms or less of non-acute hazardous waste and 100 kilograms or less of residue from the cleanup of a spill of acute hazardous waste, then the generator is a CESQG for that calendar month. The proposed regulatory text expresses this scenario by using the word “and” between (1), (2), and (3) in the definition. As a result, the generator would need to comply with the conditions for the exemption for CESQGs (specified in proposed § 262.14).<sup>27</sup>

EPA requests comment on these proposed changes.

*Effect of the Proposed Reorganization:* This section is not affected by the proposed reorganization.

*B. Renaming CESQG to VSQG (40 CFR 260.10)*

Currently only one of the three generator categories—CESQG—uses the words “conditionally exempt” in its title; however both SQGs and LQGs, which typically accumulate hazardous waste on site, are also conditionally exempt from obtaining a RCRA permit or complying with the interim status standards in 40 CFR parts 264 and 265, respectively, provided they meet certain conditions. In addition, while CESQGs are subject to few conditions for exemption, they are still considered hazardous waste generators, and must comply with the relevant regulations. If a CESQG does not comply, it would be out of compliance with the hazardous waste regulations and potentially subject to enforcement action. This inconsistency in terminology has caused some confusion throughout the regulated community. Therefore, EPA is proposing to change the name of the category from “conditionally exempt small quantity generator (CESQG)” to “very small quantity generator (VSQG).”

<sup>25</sup> EPA is proposing to include this table in the regulations as Table 1 in § 262.13.

<sup>26</sup> Amount of hazardous waste accumulated on site at any given time can also impact what regulations the SQG must comply with.

<sup>27</sup> EPA is proposing to move the CESQG regulations from §§ 261.5 to 262.14. See section XIII of this preamble for more information.

EPA notes that this change is consistent with some states, such as Minnesota, which are already using the VSQG term. All regulations applicable to a CESQG would apply to a VSQG.

EPA requests comment on this proposed change.

*Effect of the Proposed Reorganization:* This section is not affected by the proposed reorganization.

### C. Definition of Central Accumulation Area (40 CFR 260.10)

The Agency is also proposing to define the term “central accumulation area” in § 260.10 to mean any on-site hazardous waste accumulation area with hazardous waste accumulating in units subject to either § 262.16 (for small quantity generators) or § 262.17 (for large quantity generators).<sup>28</sup> The definition also states that a central accumulation area at an eligible academic entity that chooses to be subject to part 262 subpart K must also comply with § 262.211 when accumulating unwanted material and/or hazardous waste.

LQGs may accumulate hazardous waste on site without a permit or complying with the interim status standards for up to 90 days provided they comply with § 262.34(a) and SQGs may do the same for up to 180 days, provided they comply with § 262.34(d) though (f).<sup>29</sup> Over the years, stakeholders have used different terms to refer to these on-site generator accumulation areas, including “generator accumulation areas,” “less-than-90-day areas,” and “less-than-180-day areas.” In December 2008, EPA promulgated a definition of “central accumulation area” in subpart K of part 262 to refer to these types of areas (“Academic Labs Rule”; 73 FR 72912, December 1, 2008). As explained in the preamble to the proposed Academic Labs Rule, EPA codified the term “central accumulation area” for the sake of convenience to distinguish these types of accumulation areas from satellite accumulation areas and laboratories, which are both subject to different regulations than central accumulation areas are. At the time, EPA promulgated the term in § 262.200 and indicated that the definition only

applied to part 262 subpart K. Since then, the term has become more widely used and EPA is now proposing to define the term “central accumulation area” in § 260.10 to allow its use when referring to generator accumulation areas that are not operating under part 262 subpart K.

EPA emphasizes that we are proposing to define the term “central accumulation area” only as a matter of convenience. It is helpful for both the regulated community and the implementers to have a common term to use when referring to locations where generators accumulate hazardous waste other than satellite accumulation areas. Furthermore, the term is helpful for EPA to use when writing regulations, preamble, and guidance. The addition of the term does not establish any new regulatory standards or burden on generators. Generators may continue to have more than one central accumulation area on site; the use of the word “central” does not limit a generator to one area.

We have rephrased the proposed definition from how it currently appears in part 262 subpart K to make this clearer. The definition, as it appears in part 262 subpart K, currently states that a central accumulation area means an on-site hazardous waste accumulation area. We are proposing to revise the definition to say that a central accumulation area means *any* on-site hazardous waste accumulation area. Further, the use of the word “central” does not indicate that the generator must establish the central accumulation area in a location that is centrally located within the site. The use of the word “central” is used because many generators use a central accumulation area to consolidate or *centralize* their hazardous waste from multiple satellite accumulation areas prior to shipment off-site.

Because the proposed definition to be added to § 260.10 will now reference part 262 subpart K (the definition states that a central accumulation area at an eligible academic entity that chooses to be subject to part 262 subpart K must also comply with § 262.211 when accumulating unwanted material and/or hazardous waste), we are proposing to remove the definition of central accumulation area from part 262 subpart K.

*Effect of the Proposed Reorganization:* This section is affected by the proposed reorganization. The definition of “central accumulation area” references other regulatory citations that are part of the proposed reorganization. The reorganization is discussed in section XIII of this preamble.

## VII. Proposed Revisions to 40 CFR Part 261—Identification and Listing of Hazardous Wastes

EPA is proposing four changes to the regulations currently in 40 CFR part 261. First, the Agency is proposing to add a new provision that would explain what generator category would apply to a hazardous waste generator that generates both acute and non-acute hazardous waste in the same calendar month. Second, EPA is proposing to modify the regulations at §§ 261.5(h) and (i) and 261.3 that address the mixing of a non-hazardous waste with a hazardous waste. Third, the Agency is proposing to amend § 261.5(f)(3) and (g)(3) to allow a CESQG to send its hazardous waste to an LQG under control of the same person. Finally, the Agency is proposing to amend § 261.6(c) to require biennial reporting for owners or operators of facilities that recycle hazardous waste without storing them before they are recycled.

### A. Generators That Generate Both Acute and Non-Acute Hazardous Waste in the Same Calendar Month (40 CFR 261.5)

When a generator is determining what category it belongs in, it must consider three relevant categories of hazardous waste: hazardous waste (or non-acute hazardous waste, for purposes of this discussion), acute hazardous waste, and residues from the cleanup of a spill of acute hazardous waste. EPA is proposing regulations that make clear what a generator’s category is for a calendar month when it generates any combination of non-acute hazardous waste, acute hazardous waste, and residues from the cleanup of a spill of acute hazardous waste in the same calendar month and which set of regulations apply. Currently, the RCRA hazardous waste regulations do not address situations involving combinations of wastes and Agency statements about this issue have been inconsistent.

According to the November 19, 1980, FR notice discussing changes to § 261.5, “the regulation is revised to clarify that the lower exclusion levels for acutely hazardous waste apply only to generators who otherwise are deemed small quantity generators.<sup>30</sup> The Agency believes that a generator who produces more than 1,000 kilograms of hazardous waste a month and is therefore subject to full regulation should handle his

<sup>28</sup> This proposed definition includes citations to new sections of part 262 that we are proposing to include as part of the reorganization of the generator regulations. The existing small quantity generator regulations are at §§ 262.34(d) through (f) and the existing large quantity generator regulations are at § 262.34(a). For a full discussion of the proposed reorganization, see section XIII of the preamble.

<sup>29</sup> As noted previously, SQGs can accumulate hazardous waste for up to 270 days if they ship the hazardous waste greater than 200 miles.

<sup>30</sup> Note: Prior to 1986, there were only two categories of generators: large quantity generators and small quantity generators. When the small quantity generator regulations were promulgated in 1986, a third category of generators, conditionally exempt small quantity generators, was established.

acutely hazardous wastes in the same manner as his other wastes” (45 FR 76622).

In other words, if a generator generates 1,000 kilograms or more of non-acute hazardous waste in a calendar month, it would be considered an LQG for that month and therefore should, for both practical and environmental reasons, manage the acute hazardous wastes under the same regulations as an LQG (even if the amount of acute hazardous waste generated in a calendar month is less than 1 kilogram).

However, a provision regarding how to determine one’s generator category when generating a combination of non-acute hazardous waste, acute hazardous waste, and residues from the cleanup of a spill of acute hazardous waste was not included in the regulatory language.

Conversely, in a September 2, 1987, letter concerning the accumulation time for acute hazardous waste and non-acute hazardous waste in the same month, the Agency stated, “Acute hazardous wastes are counted and managed separately from hazardous wastes (§ 261.5(e)). In the example given, the generator would have 90 days to send the acute hazardous waste off site, but would have 180 days for the non-acute hazardous waste.”<sup>31</sup> These different Agency interpretations have ultimately led to confusion regarding which regulations apply to hazardous waste generators that generate different categories of hazardous waste in the same calendar month.

The Agency believes the more practical approach is for a generator to be in only one generator category in a calendar month, the approach outlined in the 1980 **Federal Register** discussion. When a generator generating only non-acute hazardous wastes counts its waste, it must consider the total amount of all its different kinds of non-acute hazardous waste, not the amount of each type of hazardous waste (such as, type of waste identified by individual EPA hazardous waste number) separately. Considering the combination of acute hazardous wastes, non-acute hazardous wastes, and residues from the cleanup of a spill of acute hazardous waste generated in a calendar month when determining what category a generator belongs to follows the same logic. In addition, many of the regulations for LQGs are site-wide, such as submitting the biennial report, developing a contingency plan, and conducting training, and therefore a

generator would still have to comply with these conditions and would not gain a significant economic advantage by having more than one generator category. We note that many EPA Regions and states have taken this same approach in implementing the RCRA hazardous waste program.

This is why EPA is proposing to expressly state in the definitions which generator category would apply to hazardous waste generators that generate a combination of non-acute hazardous waste, acute hazardous waste, and/or residues from the cleanup of spills of acute hazardous waste in a calendar month as discussed in section VI of this preamble. In conjunction with these changes, EPA is proposing a new section § 262.13 explaining how a generator determines which generator category applies to it. This topic is fully discussed in section VIII of this preamble. The Agency is soliciting comment on the proposal to revise the existing regulations to indicate that a generator can only have one generator category in a calendar month, according to the quantity of acute and non-acute hazardous waste it generates.

*Effect of the Proposed Reorganization:* This section is affected by the proposed reorganization. All the proposed definitions of generator categories would be found in § 260.10. The reorganization is discussed in section XIII of this preamble.

#### *B. Generators That Mix a Non-Hazardous Waste With a Hazardous Waste*

EPA is proposing to modify how mixtures of non-hazardous waste and hazardous waste would affect the generator categories of CESQGs and SQGs. Additionally, EPA is proposing to add a reference in 40 CFR part 262 that assists LQGs with finding the regulations applicable to mixing hazardous waste with non-hazardous waste.

##### 1. CESQGs That Mix a Non-Hazardous Waste With a Hazardous Waste (40 CFR 261.5(h) and (i))

With the partitioning of the original 1980 SQG regulations into two sets of regulations for CESQGs and SQGs in 1986, potential confusion surrounds the current reading and implementation of § 261.5(h) and (i). When the regulations at § 261.5(h) and (i) were promulgated on November 19, 1980 (45 FR 76623), the title of § 261.5 was “Special requirements for hazardous waste generated by small quantity generators.” At that time, there were only two hazardous waste generator categories: LQGs and SQGs. Prior to the

promulgation of the new SQG regulations on March 24, 1986 (52 FR 10146), an SQG was a generator who generates less than 1,000 kilograms of hazardous waste in a calendar month; the regulations did not make a distinction between SQGs and CESQGs at that time. Prior to 1986, paragraphs (h) and (i) of section 261.5 read as follows:

“(h) Hazardous waste subject to the reduced requirements of this section may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous waste identified in subpart C.

(i) If a small quantity generator mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this section, the mixture is subject to full regulation.”

With the promulgation of the SQG regulations in 1986, SQGs were broken into two classes of generators: (1) CESQGs (generators who generate up to 100 kilograms of hazardous waste in a calendar month) and (2) SQGs (generators who generate greater than 100 kilograms and less than 1,000 kilograms of hazardous waste in a calendar month). The regulations for CESQGs were established at § 261.5, while those for SQGs were moved to § 262.34 (d)–(f). Similarly the title of § 261.5 was changed to read, “Special requirements for hazardous waste generated by *conditionally exempt* small quantity generators” [emphasis added]. The language of § 261.5(h) did not change when the SQG regulations were promulgated, while paragraph (i) was modified slightly to read: “If any person mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this section, the mixture is subject to full regulation.” The phrase “any person” was substituted for the phrase “small quantity generator.”

EPA believes that the readability of these regulations could be improved, particularly for paragraph (i), to expressly state whether the regulation applies to situations where the hazardous waste being mixed exceeds the CESQG quantity exclusion level or to situations where the mixture exceeds the CESQG quantity exclusion level. Additionally, “full regulation,” could be interpreted as regulation commensurate with an LQG, even if the resultant mixture exceeds CESQG quantity levels, but not SQG quantity levels.

For these reasons, EPA is proposing to modify the language regarding mixing of non-hazardous waste with hazardous waste by CESQGs (which is currently

<sup>31</sup> Letter from Marcia E. Williams, Director of EPA’s Office of Solid Waste, to Fred Hutchison, University of Idaho, September 2, 1987, RCRA Online 11288.

located at § 261.5(h) and (i)) to make these points clear. Specifically, it states that a CESQG may mix listed or characteristic hazardous waste with non-hazardous waste and remain eligible for the conditional exemption provided that either of the following is true:<sup>32</sup> (1) The mixture does not exhibit any of the characteristics of hazardous waste identified in subpart C of part 261 of this chapter; or (2) the mixture does not cause the generator to exceed the very small quantity generator calendar month quantity limits identified in the definition of very small quantity generator at § 260.10.<sup>33</sup>

For example, if a CESQG mixed 50 kilograms of characteristic hazardous waste with 100 kilograms of non-hazardous waste and the resultant 150 kilograms mixture did not retain the characteristics of hazardous waste, then the generator could still comply with the CESQG conditions. However, if a CESQG mixed 50 kilograms of characteristic hazardous waste with 100 kilograms of non-hazardous waste and the resultant 150 kilograms mixture *did* retain the characteristics of hazardous waste, then the generator would no longer be a CESQG, but an SQG, and the generator would need to comply with all applicable regulations for an SQG for that calendar month. Similarly, if a CESQG mixed 50 kilograms of characteristic hazardous waste with 1,000 kilograms of non-hazardous waste and the resultant 1,050 kilograms mixture retained the characteristics of hazardous waste, then the generator would no longer be a CESQG, but an LQG, and the generator would need to comply with all applicable regulations for an LQG for that calendar month.<sup>34</sup>

EPA notes that the regulations covering mixing of hazardous and non-hazardous waste would apply regardless of when the initial wastes are generated. In other words, when a generator mixes a hazardous waste with a non-hazardous waste, the generator may have changed the properties of the hazardous waste and thus must make a hazardous waste determination on the resultant mixture. For example, if a CESQG mixed 50 kilograms of characteristic hazardous waste that it generated at different

points over the last three months with 100 kilograms of non-hazardous waste and the resultant mixture *did* retain the characteristics of hazardous waste, then the generator would no longer be a CESQG at the point that the mixture was generated, but an SQG, and the generator would need to comply with all applicable regulations for an SQG for that calendar month during which the mixing occurred. The time period for the accumulation of wastes begins at the point the mixture is generated and the generator becomes a SQG.

In modifying the language, the Agency is not changing the intent of the existing hazardous waste regulations, but is improving the readability of the regulatory text. Thus, this change in language does not impose any additional burden on CESQGs.

*Effect of the Proposed Reorganization:* This section is affected by the proposed reorganization. The reorganization of the generator regulations would move these provisions to 262.14(b). The reorganization is discussed in section XIII of this preamble.

#### 2. LQGs and SQGs That Mix a Non-Hazardous Waste With a Hazardous Waste (40 CFR 261.3)

LQGs and SQGs are subject to the mixture rule in § 261.3. In short, the mixture rule has three parts: (1) If non-hazardous waste is mixed with listed hazardous waste, then the mixture is considered the listed hazardous waste (§§ 261.3(a)(2)(iv) and 261.3(b)(2)); (2) if non-hazardous waste is mixed with listed hazardous waste that is listed solely for exhibiting an ignitability, corrosivity, or reactivity characteristic in part 261 subpart C (such as F003 hazardous waste), then the mixture is considered hazardous waste only if it exhibits a characteristic (§ 261.3(g)(2)(i)); and (3) if non-hazardous waste is mixed with characteristic hazardous waste, then the mixture is considered hazardous waste only if the mixture exhibits a characteristic of hazardous waste (§ 261.3(b)(3)) (45 FR 33066, May 19, 1980; 66 FR 27266, May 16, 2001).

However, because the mixture rule appears in § 261.3 and the SQG and LQG regulations appear in 40 CFR part 262, the regulated community may not totally appreciate how the mixture rules apply to SQGs and LQGs. Therefore, EPA is proposing to include references in §§ 262.16(c) and 262.17(f) that assist SQGs and LQGs with finding the regulations applicable to the mixing of hazardous waste with non-hazardous waste. Additionally, EPA wants to modify the regulations to improve understanding of what circumstances an

SQG may mix hazardous waste with non-hazardous waste and still remain subject to the SQG requirements.

Specifically, EPA is proposing to add a provision for SQGs that states that a small quantity generator may mix its hazardous waste with non-hazardous waste and remain eligible for the conditional exemption applicable to a small quantity generator under two circumstances: (1) The mixture is not a hazardous waste according to the mixture rules in §§ 261.3(a)(2)(iv), 261.3(b)(2), 261.3(b)(3), and 261.3(g)(2)(i); or (2) if the mixture is a hazardous waste, the mixture does not cause the generator to exceed the small quantity generator quantity limits for a calendar month, as identified in the definition of small quantity generator at § 260.10.<sup>35</sup>

For example, if an SQG mixed 100 kilograms of listed hazardous waste (that was not listed solely for the ignitability, corrosivity and/or reactivity characteristic) with 1,000 kilograms of non-hazardous waste, then the resultant 1,100 kilogram mixture would be considered a listed hazardous waste and the generator would no longer be an SQG, but rather an LQG. The generator would then need to comply with all applicable regulations for an LQG for that month during which the SQG mixed the waste.<sup>36</sup>

However, if an SQG mixed 100 kilograms of either characteristic hazardous waste or listed hazardous waste (that was listed solely for the ignitability, corrosivity and/or reactivity characteristic) with 1,000 kilograms of non-hazardous waste and the resultant 1,100 kilograms mixture did not retain the characteristics of hazardous waste, then the generator could still comply with the SQG regulations because the resulting mixture would no longer be considered a hazardous waste (although it would still be subject to applicable land disposal restriction requirements in 40 CFR part 268).

EPA is also proposing to add a provision for LQGs that states that mixtures of hazardous waste with non-hazardous waste are subject to the mixture rule in § 261.3(a)(2)(iv), (b)(2) and (3), and (g)(2)(i).

In modifying the language, the Agency is not changing the existing hazardous waste regulations, but is improving the readability of the

<sup>32</sup> EPA is proposing to use the term "very small quantity generator (VSQG)" in place of "conditionally exempt small quantity generator." See section VI.B of this preamble for more information.

<sup>33</sup> This regulatory citation is the proposed new location for the definition of a VSQG. See section VI.B of this preamble for more information.

<sup>34</sup> Additionally, the generator would have to comply with the SQG or LQG regulations for as long as its total quantity of hazardous waste accumulated on-site was greater than or equal to the CESQG accumulation limit of 1000 kg.

<sup>35</sup> This regulatory citation is the proposed new location for the definition of SQG. See section VIII of this preamble for more information.

<sup>36</sup> Additionally, a generator would have to comply with the LQG regulations for as long as its total quantity of hazardous waste accumulated on-site was greater than or equal to the SQG accumulation limit of 6000 kg.

regulatory text. Thus, this change does not impose any additional burden on SQGs and LQGs.

*Effect of the Proposed Reorganization:* This section is affected by the proposed reorganization. EPA is proposing to address the mixing regulations for SQGs at § 262.16(c) and the mixing regulations for LQGs at § 262.17(f). The reorganization is discussed in section XIII of this preamble.

### 3. Request for Comment

The Agency requests comment on whether the proposed language for CESQGs and SQGs improves the understanding of the regulations regarding how mixtures of non-hazardous waste and hazardous waste would affect the generator category for CESQGs and SQGs. Additionally, EPA requests comment on whether the proposed language for LQGs assists LQGs in more easily finding the applicable mixture regulations.

#### *C. Allowing CESQGs To Send Hazardous Waste to LQGs Under the Control of the Same Person*

EPA is proposing to allow CESQGs to send their hazardous waste to an LQG that is under the control of the same person, as defined at § 260.10, provided both the CESQG and LQG comply with specified conditions.<sup>37</sup>

#### 1. Purpose

Under the existing regulations at § 261.5(f)(3) for acute hazardous waste, and § 261.5(g)(3) for non-acute hazardous waste, a CESQG may either treat or dispose of its hazardous waste on site or ensure delivery to an off-site treatment, storage, or disposal facility, which can include RCRA-permitted hazardous waste facilities, interim status hazardous waste facilities, municipal solid waste facilities, non-municipal non-hazardous waste facilities, recycling facilities, and universal waste handlers. The existing CESQG regulations do not allow a generator to send its hazardous waste off site to another generator, unless the receiving generator has a storage permit or is otherwise one of the types of facilities cited above. Thus, persons looking to reduce their overall environmental liability across multiple sites are prohibited from managing their CESQG hazardous waste at one or more of their LQG sites without first obtaining a permit or complying with the interim

status standards, both of which would increase regulatory burden and costs.

EPA believes that allowing CESQGs to send their hazardous waste to an LQG that is under the control of the same person would provide an additional option for CESQGs to manage their hazardous waste. It may also improve the management of that hazardous waste for four main reasons.

First, LQGs are subject to more stringent management conditions, such as accumulation time, labeling, training, emergency planning, and containment standards, as compared to CESQGs. In addition, LQGs may only transport hazardous waste to a RCRA-permitted or interim status hazardous waste TSDF, which in turn, is subject to more stringent management standards than the municipal or non-municipal solid waste facilities that CESQGs are allowed to use. Therefore, allowing hazardous waste generated by a CESQG to be sent to an LQG under the control of the same person could improve overall oversight and management of the hazardous waste and enable more effective environmental protection. Furthermore, a company, because of economies of scale, may reduce its overall waste management costs, as well as its potential financial liabilities for hazardous waste it generates at CESQG facilities, as it would be handled under the more comprehensive LQG and TSDF regulatory programs.

Second, whereas LQGs have up to 90 days to accumulate hazardous waste in compliance with all the LQG conditions for exemption without having to obtain a RCRA storage permit or comply with all the other standards otherwise applicable, CESQGs may accumulate up to 1,000 kilograms of non-acute hazardous waste or up to 1 kilogram of acute hazardous waste or up to 100 kilograms of residues from the cleanup of a spill of acute hazardous waste without any time constraint. Even though the amount of hazardous waste allowed on site by CESQGs at any one time is limited, the longer that hazardous waste is accumulated on site the greater the risk of adverse impacts to human health and the environment. Allowing CESQGs to send their hazardous waste to an LQG under the control of the same person may reduce the overall time that the CESQG accumulates hazardous waste on site, which would further reduce the potential risk to human health and the environment.

Third, this proposed change would allow consolidation by an LQG of hazardous waste generated by several CESQGs under its control, which

increases the potential opportunities for hazardous waste recycling by the LQG.

Fourth, this proposed change would give companies flexibility in allocating labor and resources required to manage the company's total quantity of hazardous waste generated, as the company would be allowed to consolidate its hazardous waste from CESQG facilities at its LQG sites.

EPA has received requests over the years from industry for the regulations to allow CESQGs to send their hazardous waste to LQGs for consolidation. EPA believes that such a change in the regulations would enable generators to employ greater control over the management of their hazardous waste, thereby resulting in improved efficiency and reduced liability for the generator. EPA believes numerous situations exist where CESQGs and LQGs under the same ownership could take advantage of this proposed change. For example, Army National Guard and Reserve units that may be CESQGs would have the opportunity to send their hazardous waste to an active Army base that is an LQG. The same situation applies to Air Force, Navy, and Marine Corps reserve units as well.

Additionally, many universities have engineering, medical, and science laboratories located on campus, with each laboratory building possibly qualifying as a CESQG. Allowing different laboratory buildings within a university or industrial environment that are CESQGs to send their hazardous waste to another university or industrial entity that is an LQG would provide both economic and environmental benefits. Furthermore, utilities, retailers, and remote oil and gas production facilities also represent examples of industrial sectors that may realize benefits from the intra-company transfer of hazardous waste from CESQGs to LQGs.

#### 2. Scope

As discussed above, EPA is proposing to amend the regulations under the existing regulatory framework at § 261.5(f)(3) and (g)(3) to allow CESQGs to send hazardous waste to an LQG under the control of the same person.<sup>38</sup> "Person" is defined in § 260.10 to mean 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

<sup>37</sup> EPA is also proposing to rename "CESQG" to "VSQG" (very small quantity generator) (see section VIII.A.1 of the preamble for more information). However, for this discussion, we continue to use CESQG as this term is most familiar to the regulated community.

<sup>38</sup> EPA is proposing to reorganize the regulations for CESQGs by moving provisions from § 261.5 to § 262.14. The proposed revision to allow CESQGs to send hazardous waste to LQGs under control of the same person can be found at § 262.14(b)(3)(viii).

body. For the purposes of this section, “control” would mean the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person shall not be deemed to “control” such facilities.

The Agency believes limiting transfers to facilities under control of the same person is appropriate because it ensures common control is maintained over both facilities and takes advantage of strong incentives to ensure the hazardous waste is safely managed. Additionally, if a CESQG sends hazardous waste to an LQG under the control of the same person, the LQG is likely to be familiar with the type of hazardous waste generated by the CESQG. Furthermore, questions regarding liability and responsibility for such hazardous waste are likely to be clearer than is the case with facilities from unrelated companies.

EPA is also proposing some labeling and marking standards for CESQG waste being transferred to LQGs under the control of the same person under this provision. Note that aside from these two conditions, the same standards for management of CESQG waste apply to materials going to an LQG under this provision as to other CESQG waste, including the exemption from the requirement to ship using a hazardous waste manifest. DOT shipping requirements do still apply.

### 3. Conditions for Exemption

#### Condition for Exemption for CESQGs

As part of this provision, CESQGs would be required to meet the following conditions for exemption, proposed at § 262.14(a)(viii).

*Under control of the same person.* As described above, the CESQG and the LQG would have to be under control of the same person, according to the existing definitions in § 260.10.

*Labeling and marking of containers.* The Agency is proposing that a CESQG transferring waste to an LQG under the control of the same person label its containers with (1) the words “Very small quantity generator hazardous waste”; (2) other words that identify the contents of the containers (e.g., the name of the chemical(s), such as “acetone” or “methylene dichloride” or the type or class of chemical, such as “organic solvents” or “halogenated organic solvents” or, as applicable, the proper shipping name and technical name markings used to comply with Department of Transportation (DOT) requirements at 49 CFR part 172 subpart D); (3) an indication of the hazards of

the contents of the container, such as the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); a hazard class label consistent with the DOT requirements at 49 CFR part 172 subpart E (labeling); a label consistent with the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard at 29 CFR 1920.1200; a chemical hazard label consistent with the National Fire Protection Association (NFPA) code 704; a hazard pictogram consistent with the United Nations’ Globally Harmonized System (GHS); or any other marking and labeling commonly used nationwide in commerce that would alert workers and emergency responders to the nature of the hazards associated with the contents of the containers; and (4) the applicable EPA hazardous waste number(s) (EPA hazardous waste code) in subparts C and D of part 261 to assist the receiving LQG in managing the hazardous waste received. This condition is also consistent with the changes proposed for labeling and marking of containers in the revisions to 40 CFR parts 262, 263, and 268 discussed in various sections elsewhere in this preamble. A generator subject to DOT shipper/carrier packaging requirements should be familiar with and aware of the marking requirements at 49 CFR 172.301 and 49 CFR 172.304, as well as prohibited labeling and label visibility requirements at 49 CFR 172.401 and 172.406, respectively.

Because the hazardous waste generated and accumulated by a CESQG will be subsequently sent off site to an LQG under the same company in compliance with DOT hazardous material regulations, the CESQG may choose to use an appropriate DOT proper shipping name found in the 49 CFR 172.101 hazardous materials table to identify the contents of the container while hazardous waste is accumulating on site. That way, the generator will fulfill EPA and DOT requirements simultaneously; however, EPA is not proposing to require the use of the DOT shipping names while the hazardous waste is accumulating on site. We only suggest that the DOT shipping name may be one way that some generators may choose to identify the contents of the container.

EPA believes use of the DOT marking requirement should be sufficient in many situations involving DOT Class 9 hazardous materials that are also hazardous waste, with the DOT shipping name ending in N.O.S. (not otherwise specified). As noted at 49 CFR 172.301(b), generators using a DOT shipping name ending in N.O.S. must

also provide the technical name of the hazardous material in association with the proper shipping name. However, the Agency is requesting comment on examples of when the DOT shipping name would not meet EPA’s intent of “identifying the contents of the container” and suggestions for addressing this situation.

EPA believes that CESQGs should label and mark containers of hazardous waste sent to LQGs in order to communicate the contents of the containers to facility personnel that can then safely manage the hazardous waste in compliance with the LQG regulations. Since CESQGs already must make a hazardous waste determination to determine if and what types of hazardous waste they generate, the Agency does not believe this condition will pose an undue burden. In fact, if the CESQG was not required to provide this information, the burden to the LQG receiving the hazardous waste may increase because the LQG would then have to do so.

#### Conditions for Exemption for LQGs

EPA is proposing that LQGs receiving hazardous waste from CESQGs under the control of the same person comply with the following conditions for exemption, all proposed at § 262.17(g).

*a. Notification.* EPA is proposing that LQGs receiving hazardous waste from CESQGs under the control of the same person submit a notification to EPA or their authorized state using EPA form 8700–12 (i.e., the Site Identification (Site ID) form) 30 days prior to receiving the first shipment of hazardous waste from the CESQG. LQGs would be required to identify in the Comments section of the Site ID form the name(s), site address(es), and contact information for the CESQG(s) that will be transferring hazardous waste to the LQG. LQGs would also be required to submit an updated Site ID form within 30 days should the name, site address, or contact information for the CESQG change.

Notification in this instance serves to inform the regulatory authorities of which LQGs are receiving hazardous waste from which CESQGs under control of the same person. The Agency believes notification is necessary in order to communicate to inspectors the origin of the hazardous waste received by the LQG and to ensure that the received shipment is managed in compliance with the conditions of the provision. EPA also believes that notification by the LQG, rather than notification by the CESQG, is more efficient and less burdensome, because LQGs are already required to submit

Site ID forms as part of obtaining a RCRA Identification Number and as part of the biennial reporting process. Additionally, it is more efficient for one LQG to notify on behalf of many CESQGs.

EPA has recently made available an electronic interface for states and the regulated community to use to submit Site ID forms electronically, which will further reduce burden on LQGs. Facilities should check with their states regarding whether their state will use EPA's electronic submittal process.

*b. Recordkeeping.* LQGs would be required to maintain records for three years from the date the hazardous waste was received from the CESQG with the following information:

- The name, site address, and contact information for each CESQG; and
- A description of each waste shipment received from the CESQG, including the quantity, EPA hazardous waste number(s) of each waste received, and the date the hazardous waste was received.

EPA believes recordkeeping is necessary to ensure the requirement that the CESQG and LQG are under control of the same person is met, as well as to ensure that the hazardous waste from the CESQG is managed according to the other conditions for exemption of this provision, such as that LQGs are receiving shipments of hazardous waste from CESQGs in quantities commensurate with the CESQG's generator category. EPA believes this recordkeeping condition could be fulfilled through routine business records, such as a bill of lading, and would not present undue burden to the LQG. Additionally, the LQG could use this information in order to report the hazardous waste from the CESQG on its biennial report forms.

*c. Labeling and marking of containers.* The Agency is proposing that LQGs comply with the labeling and marking conditions for exemption under proposed § 262.17(a)(5), including the date accumulation started (*i.e.*, the date the hazardous waste was received from the CESQG). (Note: These are the same proposed standards that CESQGs must comply with in labeling and marking containers that they send to LQGs, as discussed above.) If the LQG is consolidating incoming hazardous waste from a CESQG with either its own hazardous waste or with hazardous waste from another CESQG, the LQG would be required to mark each container with the earliest date any hazardous waste in the container was accumulated on site.

Because the LQG must manage the hazardous waste it receives from

CESQGs according to the LQG regulations, EPA believes that the same labeling and marking regulations should apply to hazardous waste from a CESQG that is accumulated and managed by an LQG. EPA believes that it is important that employees, transporters, downstream handlers, emergency personnel, EPA, and the states know as much as possible about the potential hazards of the contents in containers that LQGs accumulate, transport, and manage.

*d. Waste management.* Under this proposal, an LQG would be required to manage all incoming hazardous waste from a CESQG in compliance with the regulations applicable to its LQG generator category. In other words, there would be no difference in how the hazardous waste from a CESQG was managed relative to the management of the LQG's own hazardous waste, although hazardous waste from a CESQG would not be eligible for management under the satellite accumulation regulations (proposed § 262.15).

#### 4. Biennial Reporting

An LQG would also be required to report the hazardous waste it receives from CESQGs on its biennial report, as required under § 262.41. EPA plans to include a new source code in the biennial report instructions (if this provision is made final) that LQGs would use to identify the hazardous waste as being received from a CESQG (to differentiate from hazardous waste the LQG generates on site). Generators would be required to report hazardous waste they receive from CESQGs by type of hazardous waste. In other words, if an LQG receives the same type of hazardous waste from multiple CESQGs, it would only need to report the total quantity of that hazardous waste received from all CESQGs. This provision is consistent with the existing provision that LQGs must report information on the quantities and types of hazardous waste they generate as part of the biennial reporting process. It will also enable states and EPA to better understand the additional volumes and types of hazardous wastes managed at an LQG, which will assist in prioritizing compliance assistance.

#### 5. No Maximum Limit of Hazardous Waste LQGs Receive From CESQGs

Because LQGs currently have no maximum limit on the amount of hazardous waste they can accumulate, and because the regulations that are applicable to LQGs are protective, the Agency believes there is no need to establish a maximum limit on the

amount or types of hazardous waste that an LQG could receive from CESQGs. In fact, we believe the more hazardous waste that is shipped to LQGs, the greater potential for reduced risk, since these hazardous wastes would be managed under the more comprehensive hazardous waste regulations, as opposed to potentially being sent to non-hazardous waste disposal facilities.

#### 6. Enforcement

EPA believes the proposed conditions to allow CESQGs to send their hazardous waste to an LQG under the control of the same person are necessary to ensure protection of human health and the environment. Failure to meet one or more of the conditions could lead to potential mismanagement of the hazardous waste, potentially resulting in a release of hazardous waste or hazardous waste constituents to the environment. Persons taking advantage of the proposed provision that fail to meet one or more of the conditions for exemption would be subject to an enforcement action under RCRA section 3008 for violations of applicable independent requirements in part 264, 265, 267, 268, and 270. EPA and authorized states would also have the authority to cease certain transfers of hazardous waste from CESQGs to an LQG in the context of an enforcement action. EPA also notes that failure on the part of the LQG to meet one of the conditions for exemption would not mean that the CESQG is subject to permitting or other standards in 264, 265, and 270, provided that the CESQG met its conditions for exemption and vice versa.

#### 7. Interstate Shipments

Under RCRA, authorized state programs may be more stringent than the federal program and thus states may choose not to adopt the proposed provision allowing CESQGs to send their hazardous waste to an LQG under the control of the same person. In the case of interstate shipments where a CESQG wants to transfer its waste to an LQG located in a different state than the CESQG, the CESQG must ensure that both states have adopted the provision in order to ship the hazardous waste to an LQG. Additionally, if a CESQG wants to transfer its waste through states that have not adopted the proposed provision, these transit states may also impose state requirements on the shipment while it is being transported through the state. Therefore, EPA recommends that generators contact any states through which the hazardous



waste will be shipped to ascertain their policy about such shipments.

#### 8. Request for Comment

EPA requests comment regarding its proposal to allow CESQGs to ship their hazardous waste to an LQG under the control of the same person.

EPA is also requesting comment on whether to establish a process that would allow an entity (whether CESQG or LQG) to request approval from its EPA Regional Administrator or the authorized state to transfer hazardous waste from CESQGs to LQGs that are not under the control of the same person. For example, such inter-company transfers could occur between high school laboratories and university laboratories or other waste management companies, such as those assisting with school chemical clean-outs. While the Agency believes that this should not be allowed as a general matter, we also recognize that there may be instances where such an arrangement may be appropriate, and thus, are taking comment on allowing such arrangements on a case-by-case basis. EPA is interested in whether such inter-company transfers would produce the same benefits as for intra-company transfers in enabling greater control over the management of CESQG hazardous waste, thereby resulting in improved efficiency and reduced liability for the generator.

The request for approval submitted to the state or Regional office would have to include the name, address, and contact information for each entity involved in the arrangement, how the entities will assign responsibility for the safe management of the hazardous waste during transport to and accumulation by the LQG, as well as a description of the actual practices that will be followed by the CESQG and LQG to ensure the safe management of the hazardous waste. EPA does not believe that these requests for approval would need publication in the **Federal Register** and, instead, would either be approved or denied by the EPA Regional Administrator or the authorized state. If a request is granted by the EPA Regional Administrator or the authorized state, the CESQG(s) and LQG would need to comply with the conditions discussed above for those CESQGs and LQGs that are “under control” of the same person. In addition, the LQG would need to keep a copy of the request for approval, as well as EPA’s or the state’s approval for as long as the CESQG sends their hazardous waste to the LQG.

EPA is requesting comment on an additional variation for allowing LQGs to consolidate CESQG hazardous waste

when the generators are not under the control of the same person with a self-implementing request for approval. Under this variation, the implementing agency would have sixty days from the date the request was sent to approve or deny it. After sixty days, the generator may start consolidating regardless of whether it has heard back from the implementing agency. This option provides the state or Regional office the ability to deny requests that pose a risk to human health or the environment or that come from entities that have a history of not managing waste responsibly, but puts a limit on how long a generator must wait for a response to its request for approval.

*Effect of the Proposed Reorganization:* This section is affected by the proposed reorganization. The reorganization of the generator regulations would move the conditions for CESQGs from § 261.5 to § 262.14 and the conditions for LQGs from § 262.34 to § 262.17. The reorganization is discussed in section XIII of this preamble.

#### *D. Requiring Biennial Reporting for Owners or Operators of Facilities That Recycle Hazardous Waste Without Storing It (40 CFR 261.6(c)(2))*

EPA is proposing to modify 40 CFR 261.6(c)(2) to require owners or operators of facilities that recycle hazardous waste without storing it prior to recycling to comply with the biennial reporting requirements at 40 CFR 265.75. Because these entities receive hazardous waste using a hazardous waste transporter and hazardous waste manifest, similar to a permitted TSDF or a facility with interim status, the Agency is proposing to amend its regulations and instructions to specify that such facilities must complete and submit a biennial report to EPA. Without this information, the Agency and states may have an incomplete picture of which facilities recycle hazardous waste and the quantities of regulated hazardous wastes that are recycled, impeding their ability to provide adequate oversight for those facilities.

The Agency believes that only a few recycling facilities will be affected by this change. Additionally, considering that most facilities already have sophisticated information systems to manage and track incoming shipments of hazardous waste, we believe the burden imposed on such facilities should be minimal.

The Agency requests comment on this proposed change. Additionally, the EPA is interested in information regarding whether these facilities already routinely submit biennial reports or are

required by the states to submit biennial reports.

*Effect of the Proposed Reorganization:* This section is not affected by the proposed reorganization.

### **VIII. Proposed Revisions to 40 CFR Part 262—Standards Applicable to Generators of Hazardous Waste**

#### *A. Proposed Addition of Terms Used in This Part and Changes to Purpose, Scope, and Applicability (40 CFR 262.1 and 262.10)*

As previously discussed, one of the objectives of this proposal is to revise the hazardous waste generator regulations to make them more user-friendly and easily understood by both the regulated community and federal and state regulators. Currently, the hazardous waste generator regulations are located primarily in three different parts of the CFR (40 CFR parts 261, 262, and 265). In some cases, it is difficult to determine what components of the regulations apply to different categories of hazardous waste generators.

The proposed reorganization will address many of these problems by moving the regulations at § 261.5 and some of the technical standards of part 265 into part 262 and by organizing the regulations based on a generator’s category so generators can more easily determine which regulations they are subject to. That is, EPA is proposing that § 262.14 contain conditions for exemption for conditionally exempt small quantity generators, that § 262.15 contain conditions for exemption for satellite accumulation areas, that § 262.16 contain conditions for exemption for small quantity generators, and that § 262.17 containing conditions for exemption for large quantity generators.

In concert with the reorganization of the generator conditions for exemption, EPA is proposing to add some regulatory language to more clearly explain how the regulations work for generators and to lay out which provisions the various categories of generators are responsible for complying with. The proposed addition of § 262.1 and the proposed revisions to § 262.10 are meant to achieve these goals.

#### 1. Proposed Addition of 40 CFR 262.1

One concern regarding the current generator regulations is that they are not sufficiently clear about the distinction between the two types of generator requirements: Those that a generator must meet because it is an entity that generates hazardous waste— independent requirements—and those that a generator must meet only if it

wants the benefits of an exemption from RCRA permitting—conditions for exemption. In order to make the regulations clearer regarding this distinction, EPA is proposing to include definitions for these terms in a new section of the regulations at § 262.1.

The difference between independent requirements and conditions for exemption, as discussed previously in this preamble, lies in the nature of each, and in the consequences that result when each is not met. An independent requirement is an unqualified or unconditional requirement imposed without reference or regard to obtaining an optional exemption from regulation. That is, independent requirements must be met whether or not the generator accumulates hazardous waste. An independent requirement is applicable and enforceable, independent of whether the generator is attempting to obtain an exemption.

A condition for exemption, on the other hand, is a requirement that is contingent in nature, in that it is only necessary to meet in order to obtain an optional exemption from other requirements. As an example, the regulations in § 262.34(a) introduce the conditions of the LQG exemption by stating that the LQG may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status, provided that it meets the conditions listed in that paragraph.

This distinction is relevant because while an entity can “violate” and be penalized for violating an independent requirement, an entity cannot be penalized for not complying with a condition for an optional exemption. Instead, if the entity does not comply with the conditions of the exemption, that exemption no longer applies and the entity becomes subject to full regulation. Violation of an independent requirement, such as an SQG failing to obtain an EPA identification number, can result in a notice of violation and enforcement action for that particular provision. Noncompliance with a condition for exemption, such as an LQG accumulating hazardous waste for more than 90 days, however, can result in an entity losing its conditional status and becoming the operator of a non-exempt storage facility subject to the applicable requirements for storage facilities in parts 124, 264, 265, 267, 268 and 270, and for generators in part 262.

EPA is proposing to define an “independent requirement” as a requirement of any of part 262 that states an event, action, or standard that must occur or be met and that applies without relation to, or irrespective of, the purpose of obtaining a conditional

exemption from a permit or having interim status under § 262.14, 262.15, 262.16, or 262.17.

EPA is proposing to define a “condition for exemption” as any requirement in § 262.14, 262.15, 262.16, or 262.17, that states an event, action, or standard that must occur or be met in order to obtain a conditional exemption from any requirement in parts 124, 262 through 268, or 270, or from any requirement for notification under section 3010 of RCRA.

We will be using these terms throughout this preamble to distinguish between these two types of provisions for generators.

EPA is requesting comment on this proposed change to the regulations, particularly whether it clarifies implementation of the generator regulations by industry and the regulating entities.

*Effect of the Proposed Reorganization:* This section is not affected by the proposed reorganization.

## 2. Proposed Changes to 40 CFR 262.10(a)

As part of the reorganization of the generator regulations, § 262.10(a), which addresses the purpose, scope, and applicability of the hazardous waste generator regulations, will list which generator provisions are independent requirements and which are conditions for a generator exemption from part 124, from the applicable standards of parts 264 through 268, from the permitting requirements of part 270, and from section 3010 of RCRA.

Specifically, EPA is proposing two changes to § 262.10(a): (1) Stating that a hazardous waste generator is subject to all the applicable independent requirements of part 262 and listing those independent requirements and (2) stating that a generator that accumulates hazardous waste on site is also considered to be a facility storing hazardous waste unless it meets the conditions for one of the generator exemptions in § 262.14, 262.15, 262.16, or 262.17.

*a. Independent requirements.* As stated above, under the RCRA hazardous waste program, certain regulations are independent requirements and certain regulations are conditions for exemption from RCRA permitting and the interim status standards.

To be clear about the distinctions between these types of standards, EPA is proposing to state at § 262.10(a)(1) that a person who generates a hazardous waste as defined by 40 CFR part 261 is subject to all the applicable independent requirements in the

subparts and sections listed, unless the person is a conditionally exempt small quantity generator (or “very small quantity generator,” in the terminology of the proposed rule) that meets the conditions for exemption in § 262.14. This new addition will reinforce to generators that they must meet these independent requirements whether or not they accumulate hazardous waste on site.

*b. Conditional exemption for CESQG, SQG, and LQG.* The RCRA hazardous waste generator regulations provide generators that accumulate hazardous waste on site with exemptions from the hazardous waste permitting standards and compliance with interim status standards in 40 CFR parts 264 and 265, provided certain conditions are met.

Therefore, EPA is proposing to state at § 262.10(a)(2) that a generator that accumulates hazardous waste on site is also considered a facility that stores hazardous waste, unless it is excluded because it meets the conditions of being a generator. The paragraph then lists the generator categories and where to find the relevant conditions for each, in § 262.14, 262.16, or 262.17.

These proposed changes to § 262.10 do not constitute substantive changes to the hazardous waste generator regulations. Rather, these changes simply reorganize the independent requirements and conditions for exemption applicable to all hazardous waste generators based on their generator category into one section of the regulations. EPA also believes these changes will reduce confusion for the regulated community in the context of enforcement actions. It has been the Agency’s longstanding position that generators that do not comply with a condition of a generator exemption fail to qualify for the exemption and, if they have not qualified for any other exemption, they would be considered an operating TSDF without a permit and/or in violation of the storage facility operating standards in parts 264 or 265. The Agency believes this proposed reorganization will improve the use of and compliance with the regulations.

EPA is requesting comment on these proposed changes.

*Effect of the Proposed Reorganization:* This section is affected by the proposed reorganization. The reorganization is discussed in section XIII of this preamble.

## 3. Proposed Deletion of § 262.10(c)

Section 262.10(c) of the hazardous waste regulations is a provision that describes the requirements for a generator who treats, stores, or disposes of hazardous waste on-site and includes

a list of provisions these generators must comply with. EPA believes that this provision in the regulation is outdated and confusing and can be removed. EPA is proposing to delete and reserve this paragraph.

When § 262.10(c) was initially promulgated on February 26, 1980, the hazardous waste generator regulations distinguished between the generators that sent hazardous waste to be managed off site and those that managed their hazardous waste on site. Generators that sent hazardous waste off site could manage it for 90 days in an accumulation area, but generators that managed hazardous waste on site were expected to manage it under their permits or under interim status regulations. The purpose of § 262.10(c) was to provide the list of requirements that generators managing hazardous waste were required to follow in addition to those permits or interim status requirements.

This distinction meant that the two types of generators had very different standards for the areas where newly generated hazardous waste was managed. Significantly, generators sending hazardous waste off site could easily make physical changes to their accumulation areas, whereas a similar generator managing hazardous waste on site under a permit had to go through the permit modification process to make the same kind of changes. EPA effectively eliminated the distinctions by revising these regulations (45 FR 76624, November 19, 1980 and 47 FR 1248, January 11, 1982). The final rule promulgated in January 11, 1982, made a change to § 262.10(c) that added the generator accumulation provisions at § 262.34 to the list of things a generator who treats, stores, or disposes of hazardous waste on site must comply with. Currently, the Agency does not make this distinction between generators that send waste for treatment off site and those that manage waste on site. This revision is therefore outdated and not well understood and can be deleted and reserved without disruption to the generator hazardous waste regulations.

EPA seeks comment on whether anyone is using this provision or has objection to its removal and what the reasoning for that objection is.

*Effect of the Proposed Reorganization:* This proposed deletion is not affected by the proposed reorganization.

#### 4. Generators Are Subject To Enforcement of Applicable Requirements and Penalties Under Section 3008 of RCRA if They Fail To Meet the Independent Requirements Made Applicable by the Failure To Obtain a Conditional Exemption (40 CFR 262.10(g))

The existing regulation at § 262.10(g) states that a generator is subject to the compliance requirements and penalties prescribed in section 3008 of [RCRA] if it does not comply with the requirements of that part. However, this paragraph does not expressly state that a generator that is not meeting the conditions of its exemption—and is, therefore, an illegal TSDF—is liable under section 3008 of RCRA for failing to meet the requirements for TSDFs in parts 124, 264 through 268, and 270.

Therefore, EPA is proposing to revise § 262.10(g) to state that a generator is subject to enforcement of the applicable requirements and penalties under section 3008 of RCRA if it fails to meet its applicable independent requirements under part 262: § 262.11 (Hazardous waste determinations and recordkeeping), § 262.12 (Obtaining an EPA identification number), part 262 subpart B (Manifest), §§ 262.30 through 260.33 (Pre-transport) and part 262 subpart D (Recordkeeping and reporting). The new language would further explain that a generator is subject to enforcement of the applicable requirements and penalties under section 3008 of RCRA if it fails to meet the applicable requirements of parts 124, 263 through 268, and 270, including such requirements made applicable when such person is not meeting the conditions of the generator exemption.

EPA is requesting comment on these proposed changes.

*Effect of the Proposed Reorganization:* This section is not affected by the proposed reorganization.

#### 5. Proposed Deletion of Laboratory XL Project Regulations (40 CFR 262.10(j) and Part 262 Subpart J)

The Laboratory XL Project was created for Boston College, the University of Massachusetts, and the University of Vermont, and was finalized in the **Federal Register** on September 28, 1999 (64 FR 53292). Originally, the program was to expire on September 30, 2003. But on June 21, 2006, EPA extended the program and the new expiration date was changed to April 15, 2009 (71 FR 35550). Since the program has now expired, EPA is proposing to remove paragraph (j) from § 262.10, as well as part 262 subpart J.

EPA is requesting comment on this proposed change.

*Effect of the Proposed Reorganization:* This section is not affected by the proposed reorganization.

#### 6. Generators Shall Not Transport to a Non-Designated Facility

The Agency is proposing to add a new provision at § 262.10(a)(3) that would clearly and succinctly state that a generator cannot offer or otherwise cause its waste to be sent to a facility that is not authorized to accept it.

As the Agency has stated numerous times in the development and implementation of the RCRA hazardous waste program, a fundamental aspect of the program is the responsibility placed on the generator of hazardous waste to ensure its hazardous waste is properly managed from cradle to grave. Numerous existing regulatory provisions are designed to ensure that generators send their hazardous waste only to authorized TSDFs or other authorized facilities. See for example, §§ 262.12(c), 262.20(b), 262.40(a). However, from experience with the program, the Agency has found situations where a generator failed to send its hazardous waste to a facility authorized to receive that waste, thus creating both regulatory and potential hazardous waste mismanagement problems. The Agency believes this provision is necessary to ensure generators understand they have this obligation and, for that reason, is placing it in the initial provisions of the generator regulations.

This provision is being added to the regulatory framework and not replacing §§ 262.12(c), 262.20(b), 262.40(a), as those provisions are aimed at other aspects of the generator program (for example, ensuring manifests are properly completed).

The Agency requests comment on adding this new provision.

#### B. Waste Determinations (40 CFR 262.11)

EPA is proposing to revise the hazardous waste determination regulations at § 262.11 in order to provide a more complete explanation of the regulation and improve compliance by hazardous waste generators. The proposed changes are intended to provide more information about when a waste determination must be made, as well as to better explain the methods and procedures for generators to determine whether they have a listed hazardous waste or a characteristic waste. The proposed changes also address some deficiencies in the current recordkeeping regulations.

Specifically, the proposed changes discussed in this section are the following: (1) Confirming that a generator's waste must be classified at its point of generation and, for wastes potentially exhibiting a hazardous characteristic, at any time during the course of its management when the properties of the wastes may change; (2) revising the language on making a determination for a listed hazardous waste in § 262.11 to explain more fully how generators can make this kind of determination, including use of acceptable kinds of generator knowledge; (3) explaining more completely in the regulations in § 262.11 how a generator should evaluate its waste for hazardous characteristics; (4) moving the independent recordkeeping and retention requirements for hazardous waste determinations currently found at § 262.40(c) into § 262.11 to integrate this provision more directly into the hazardous waste determination regulations; (5) revising the hazardous waste determination recordkeeping regulations to require that SQGs and LQGs maintain records of any test results, waste analyses, or other determinations made in accordance with § 262.11 for at least three years, including waste determinations where a solid waste (as defined in § 261.2) is found not to be a RCRA hazardous waste (as defined in § 261.3); (6) revising the hazardous waste determination regulations by copying § 262.40(d) into § 262.11 to address situations where an enforcement action has been initiated and the period of record retention (*e.g.*, three years from when the record was generated) must be extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator; and (7) making clear at the very beginning of § 262.11 that the hazardous waste determination must be accurate.

In addition, EPA is asking for comment in this section on two additional potential changes regarding the accuracy of hazardous waste determinations and the length of time records must be maintained.

Finally, EPA discusses the potential development of an electronic decision making tool for hazardous waste determinations and takes comment on whether that would be a helpful tool to generators.

The revisions proposed at § 262.11 are designed to improve compliance by generators in making a hazardous waste determination for their solid wastes. To a great extent, the success of the RCRA hazardous waste regulatory program

begins with and relies on generators making this determination. Failure to make an accurate hazardous waste determination may lead to mismanagement of the waste, with potential adverse consequences to human health and the environment. As described below, generators may have a difficult time making an accurate hazardous waste determination for a variety of reasons.

Many of the proposed changes at § 262.11 derive from policy statements and clarifications the Agency has made through the years in FR notices, guidance documents, and policy letters to help explain how hazardous waste determinations should be made. The proposed changes also derive from issues identified in EPA's 30 years of experience implementing the RCRA hazardous waste program.

### 1. Background

The regulations at § 262.11 require generators of solid waste (as defined at § 261.2) to determine whether their waste is also a hazardous waste. Under RCRA, a solid waste may be hazardous if it is either listed as hazardous or exhibits a hazardous waste characteristic. Listed hazardous wastes are wastes that the Agency has specifically evaluated and determined may present a risk to human health and the environment, if improperly managed. Such wastes can be generated by specific processes of particular industries or by many different types of industry (*e.g.*, spent degreasing solvents) or hazardous commercial chemical products being discarded as surplus, off specification, or for another reason. Wastes that exhibit any of the four hazardous characteristics (ignitability, corrosivity, reactivity, toxicity) are also classified as hazardous. Hazardous wastes are subject to a number of handling and disposal requirements intended to prevent them from damaging human health or the environment.

Once a generator has determined from § 261.2 that it has generated a solid waste, the regulations at § 262.11 currently provide the following method for a generator to determine if a waste is a hazardous waste:

(1) It should first determine if the waste is excluded from regulation under the exclusions found in 40 CFR 261.4.

(2) It must then determine if the waste is listed as a hazardous waste in subpart D of 40 CFR part 261. Note that even if the waste is listed, the generator still has an opportunity under 40 CFR 260.22 to demonstrate to the Administrator that the waste from his particular facility or operation is not a hazardous waste.

(3) For purposes of compliance with the land disposal restrictions in 40 CFR part 268, or if the waste is not listed in subpart D of 40 CFR part 261, the generator must then determine whether the waste is identified in subpart C of 40 CFR part 261 by either:

(A) Testing the waste according to the methods set forth in subpart C of 40 CFR part 261, or according to an equivalent method approved by the Administrator under 40 CFR 260.21; or

(B) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

(4) Finally, if the waste is determined to be hazardous, the regulations state that the generator must refer to parts 261, 264, 265, 266, 267, 268, and 273 of this chapter for possible exclusions or restrictions pertaining to management of the specific waste.

A generator's responsibility begins with applying due diligence through knowledge of its processes, feedstocks, and wastes generated, and/or testing to make an accurate hazardous waste determination for the solid waste it has generated (see § 261.2). The Agency considers the application of the above information (*e.g.*, knowledge of the production processes, feedstocks, and wastes generated and/or information from testing) to be acceptable types of generator knowledge. Failure to consider any relevant types of knowledge could be viewed critically if a situation arose in which a particular generator's waste determination came under scrutiny. Once a determination has been made that a generator's solid waste is a hazardous waste, then the generator can initiate the process of quantifying the total amount of hazardous waste generated in a calendar month to determine its generator category, and from that, determine the regulations with which it must comply. If an incorrect hazardous waste determination is made (*i.e.*, a hazardous waste is identified as non-hazardous), there is a strong possibility that the waste will not be managed appropriately, potentially leading to environmental releases and damage.

From experience with the waste determination program, the Agency has found that there are a number of situations in which generators may misclassify their wastes. In some cases, generators overlook certain wastes that are unrelated to their production processes, discarding them in the trash without realizing that they have discarded a hazardous waste. In other cases, generators may not understand how the hazardous waste characteristics or listings regulations may apply to the waste. There are also instances in which

generators have not even known that RCRA and its regulations apply to their wastes.

States have also identified difficulties generators have in making hazardous waste determinations as a concern. A study conducted by the State of New Hampshire found that generators often overlooked hazardous wastes they had generated apart from their main production operations, for example, solvent-contaminated wipes and aerosol cans.<sup>39 40</sup>

The Georgia Department of Natural Resources (GADNR) has also highlighted this problem in one of its publications, stating “Many solid waste streams at facilities tend to be overlooked as hazardous wastes because the solid waste usually does not resemble what one would think a hazardous waste looks like [*i.e.*, wastes that are not a liquid chemical waste (rags, absorbents, or filters); or wastes that are not directly generated in manufacturing process (universal wastes, computers, electronics, or sludge in drains or sumps); wastes that are newly regulated (electronics); or wastes that are similar to household hazardous wastes (mercury thermometers, aerosol cans, batteries, and lamps), which are excluded as hazardous waste in accordance with § 261.4(b)(1).]”<sup>41</sup>

The importance of generators making an accurate hazardous waste determination cannot be over-emphasized. In 2013, a contractor for EPA completed a third-party program evaluation of the hazardous waste determination regulations to better understand the reasons generators may have difficulty making reliable hazardous waste determinations.<sup>42</sup> This study involved examining national compliance statistics associated with hazardous waste determinations and meeting with representatives of three state programs—Texas, Minnesota, and Colorado—and the regulated community in those states. Questions

<sup>39</sup> A final rule for solvent-contaminated wipes was published in the *Federal Register* on July 31, 2013. This rule provides an exclusion from the definition of solid waste for solvent-contaminated wipes that are recycled and an exemption from the definition of hazardous waste for discarded wipes provided specific conditions are met (78 FR 46447).

<sup>40</sup> Summary of Waste Determination Meetings with VT and NH State Officials on September 27–28, 2010.

<sup>41</sup> “10 Most Common Hazardous Waste (RCRA) Violations in Georgia: 40 CFR 262.11 “Hazardous Waste Determination,” Georgia Department of Natural Resources [https://epd.georgia.gov/sites/epd.georgia.gov/files/related\\_files/site\\_page/guidehwdet.pdf](https://epd.georgia.gov/sites/epd.georgia.gov/files/related_files/site_page/guidehwdet.pdf).

<sup>42</sup> Hazardous Waste Determination Program Evaluation, IEC, April 2013. <http://www.epa.gov/evaluate/pdf/waste/haz-waste-determination.pdf>.

focused on rates of non-compliance with the hazardous waste determination regulations, obstacles to generator compliance, the role of state waste management programs and the role of third parties, such as environmental services companies or industry trade organizations. The interviewers also solicited stakeholder recommendations for improvement of the waste determination regulations.

The evaluation reported the following findings. First, the average non-compliance rate with the RCRA hazardous waste determination regulations across the United States is approximately 34 percent. This figure is based on an analysis of hazardous waste determination violations during EPA compliance inspections recorded in EPA’s RCRAInfo data system from 2001 to 2011.<sup>43</sup> These results are supported by the results of other EPA analyses. For example, in a review of inspection reports of the foundry sector by EPA’s Office of Compliance, EPA found 26 of 69 facilities, or 38 percent, with hazardous waste determination violations.<sup>44</sup> Additionally, an EPA analysis of inspections at CESQG facilities conducted by the State of Kansas inspectors for the 2009–2012 time period found a waste determination non-compliance rate of 21 percent, and an EPA analysis of inspections of Iowa CESQG facilities conducted by EPA Region 7 inspectors for the same time period found a waste determination violation rate of 36 percent.<sup>45 46</sup>

Probably the most comprehensive analysis involved examining all compliance evaluation inspections of LQs, SQs, and CESQs conducted by both the EPA Regions and the states for fiscal years 2008–2012.<sup>47</sup> Of the 62,003 compliance evaluation inspections conducted during that time period, EPA and the states found 8,148 waste determination violations, resulting in a non-compliance rate of 13.1 percent. While the estimates of waste determination violation rates vary somewhat across the studies examining them, all of them identify violation rates that are significant.

The evaluation also discussed a number of implementation challenges

<sup>43</sup> RCRAInfo is EPA’s national repository for hazardous waste generation and management data.

<sup>44</sup> “Review of RCRA Inspection Report Practices,” May 2007.

<sup>45</sup> EPA administers Iowa’s hazardous waste program.

<sup>46</sup> Iowa CESQG Inspections 2009–2012, October 2012; Kansas CESQG Inspections 2009–2012, December 2012.

<sup>47</sup> State Compliance Evaluation Inspections (CEI) for FY 2008–2012.

that lead to non-compliance with the hazardous waste determination regulations. The evaluation identified 30 recurring themes that describe various obstacles, challenges, and factors that influence hazardous waste generators’ compliance with the hazardous waste determination regulations. These 30 themes fall into three overarching categories: (1) Challenges related to the regulations; (2) challenges related to generators; and (3) challenges related to regulatory agencies.<sup>48</sup>

The Agency is proposing changes intended to address the two challenges identified that are related to the regulations. These are (1) difficulty understanding the regulations as written and (2) difficulty interpreting and applying the regulations to specific circumstances. The proposed changes to § 262.11 are intended to elaborate on the meaning and intent of these regulations to make them easier for generators to understand. We believe the better understanding resulting from these changes will also make it easier to appropriately apply the requirements to a broader range of specific circumstances.

## 2. Improvements to the Existing Hazardous Waste Determination Regulations

EPA’s evaluation of the waste determination regulatory program noted that improving compliance in making accurate waste determinations is a multi-faceted problem. The Agency believes improving the clarity of the regulatory text is an important step because it represents the foundation from which all subsequent EPA and state outreach, technical assistance and enforcement efforts begin. In this regard, EPA identified several particular areas for possible improvements to the current regulations:

—Confusion about where and when to make a hazardous waste determination, particularly when further management of that material may result in a change in the hazardous waste determination.

—§ 262.11(b), which relates to whether or not a solid waste is a listed hazardous waste, does not describe how a generator should determine if the material in question is a listed hazardous waste.

—§ 262.11(c) states that a generator can either test its waste or use process knowledge or knowledge about its waste to determine whether a solid waste is a characteristic hazardous waste.

<sup>48</sup> Hazardous Waste Determination Program Evaluation, IEC, April 2013. <http://www.epa.gov/evaluate/pdf/waste/haz-waste-determination.pdf>.

However, there is little guidance in the regulation on using knowledge to classify waste.

—The existing regulatory text notes that test methods are included in the hazardous characteristic definitions in subpart C of part 261, but does not note that tests are not provided for all aspects of the hazardous characteristics identified there.

The Agency has provided guidance on these issues over the past 30 years and through these proposed regulatory revisions intends to incorporate key aspects of that guidance into the regulatory language.

Finally, EPA is proposing to address deficiencies in the recordkeeping for hazardous waste determinations. These deficiencies include both a lack of specificity regarding what materials used in a hazardous waste determination must be maintained and lack of a specific statement that the independent requirement to maintain records is extended when there is an unresolved enforcement action. In addition, there are large number of hazardous waste determinations for which records are not being kept because the generator determines that the material in question is not a hazardous waste. Failure to maintain records in these cases makes it difficult for regulatory agencies to determine how a generator made the determination and to quickly assess whether the determination is accurate.

### 3. When and Where To Make a Hazardous Waste Determination

To respond to generator concerns about identifying the most appropriate point at which to make a hazardous waste determination, EPA is proposing to revise § 262.11 to add a paragraph (a), which would state that a hazardous waste determination must be made at the point of waste generation (*i.e.*, when the material becomes a solid waste).<sup>49</sup> The RCRA statute makes clear that the term “hazardous waste generation” means the act or process of producing hazardous waste.<sup>50</sup> By requiring that the initial hazardous waste determination be made at the point of generation, the regulation clarifies that the determination cannot be made downstream in the process where other materials could be mixed with the waste or where the waste changed its physical characteristics simply as a result of time elapsing affecting the hazardous waste determination. This standard must be

met even in instances in which another entity, such as a waste management facility, makes the waste determination on behalf of the generator.

The 1980 preamble to the original hazardous waste regulations explicitly discussed this scenario, stating that a solid waste which is a hazardous waste because it is listed in part 261 subpart D must begin to be managed as a hazardous waste when it first meets the subpart D listing description. The preamble explains that most of the hazardous wastes listed in §§ 261.31 and 261.32 of subpart D (the F-list and the K-list) are process residues, emission control dusts, or wastewater treatment sludges and the point in time when they are created is generally well defined. For other hazardous wastes, such as spent solvents or those hazardous wastes listed in § 261.33, the point at which they meet the listing description is somewhat less well defined, but generally occurs when their intended use has ceased and they begin to be accumulated or stored for disposal, re-use, or reclamation. The preamble then goes on to provide several examples illustrating how this provision would operate in practice (45 FR 33095–96, May 19, 1980).

The 1980 regulatory preamble also addressed this issue for characteristic hazardous waste. In defining what waste is considered hazardous, § 261.3(b)(3) states that “a solid waste becomes a hazardous waste . . . when the waste exhibits any of the characteristics.” EPA elaborated on this regulatory definition in 1980 by noting that “paragraph (b) provides that a solid waste is a hazardous waste whenever it exhibits one or more of the characteristics. As a practical matter, this means that persons handling solid waste must determine whether they meet the characteristics whenever the management of the waste would be subject to EPA’s part 262–265 regulations” (45 FR 33095, May 19, 1980).

This implies that a generator’s waste characterization obligations may continue beyond the determination made at the initial point of generation. In the case of a non-hazardous waste that may, at some point in the course of its management, exhibit a hazardous waste characteristic, there is an ongoing responsibility to monitor and reassess its regulatory status if changes occur that may cause the waste to become hazardous. Thus, the generator must monitor the waste for potential changes if there is reason to believe that the waste may physically or chemically change during management in a way that might cause the waste, or a portion of the waste, to become hazardous.

The preamble to the final rule for the toxicity characteristic reiterated that the current rules require that the determination of whether a waste is hazardous is to be made at the point of its generation (*i.e.*, when the material becomes a solid waste).<sup>51</sup> In the preamble to that rule, EPA stated that it believes that the determination of the regulatory status of a waste at the point of generation continues to be appropriate and that EPA was retaining the existing approach of requiring that a determination be made at the point of generation (55 FR 11830, March 29, 1990).

Thus, for determining whether a waste exhibits a hazardous characteristic, generators of solid waste are required to make a hazardous waste determination at the initial point of generation, in the form the waste is generated in (*i.e.*, “as is”), following the procedure described in § 262.11, which allows use of generator knowledge and/or testing, as appropriate. A generator’s hazardous waste determination at the initial point of generation is critical to ensure proper management of the waste not only by the generator, but also by transporters and TSDFs who rely upon the generator’s determination to allow them to safely manage the waste and provide appropriate treatment.<sup>52</sup>

As an example, in a letter regarding a waste consisting of solvents mixed with water that separates and becomes biphasic over time, the Agency stated that in this situation, the generator must make the hazardous waste determination not only at the initial point of generation, but also after the waste separates into phases. This letter went on to say that a generator’s responsibility to make a hazardous waste determination may continue beyond the determination made at the initial point of generation. In the case of a nonhazardous waste that may, at some point in the future, exhibit a hazardous waste characteristic, there is an ongoing responsibility to monitor and reassess if changes occur that may cause the waste to become hazardous.

Again, if there is reason to believe that the waste may physically or chemically change during management in a way that might cause the waste, or portion of the waste, to become hazardous, the generator must monitor the waste for these changes. The generator should also notify any subsequent handlers of the waste so they are aware that they

<sup>51</sup> A material must be a solid waste before it can be a hazardous waste under RCRA.

<sup>52</sup> Note that making a solid and hazardous waste determination is also applicable for the exemptions identified at §§ 261.2 and 261.4 since such exemptions negate the determination.

<sup>49</sup> A material must be a solid waste before it can be a hazardous waste under RCRA.

<sup>50</sup> See Solid Waste Disposal Act, Sec. 1004, page 9.

should also monitor the waste for changes. This is analogous to and consistent with situations the Agency has discussed in the past such as when, over time, sludges that exhibit the characteristic of toxicity settle out of nonhazardous wastewaters managed in surface impoundments.<sup>53</sup>

Therefore, to clarify that hazardous waste determination must be made at the point of generation, the Agency is proposing to revise the regulations at 40 CFR 262.11 by adding a new paragraph (a) that would state that a hazardous waste determination for each solid waste must be made at the point of waste generation, before any dilution, mixing, or other alteration of the waste occurs, and at any time in the course of its management that it has, or may have, changed its properties as a result of exposure to the environment or other factors that may change the properties of the waste.

This addition of paragraph (a) would change current § 262.11(a) into § 262.11(b) and bump all subsequent paragraphs in that section.

EPA requests comments on the proposed changes to § 262.11 and in particular is soliciting comment on whether the proposed new language is sufficient to improve the existing regulatory text and better assist generators in making effective hazardous waste determinations. Additionally, EPA is interested in comments regarding improvements the Agency could make to the proposed regulatory text.

*Effect of the Proposed Reorganization:* This section is not affected by the proposed reorganization.

#### 4. Determining Whether a Waste Is a Listed Hazardous Waste

*a. Identifying listed hazardous wastes.* As a general matter, determining whether a waste is a listed hazardous waste consists of comparing the waste that the generator generates to the hazardous waste listing descriptions in §§ 261.31 through 261.33. For many wastes, identifying the origin of the waste is sufficient to determine whether it is a listed waste and this determination is rather straightforward. However, this is not always the case. Sometimes additional information about the waste, the process that generated it (including production feedstocks), and the listing regulations is needed to make a reliable determination, including the following: (1) The regulatory language of

the hazardous waste listing; (2) the regulatory intent of the original hazardous waste listing (as evidenced by FR notices and technical support documents and interpretative letters from the original listings); and (3) facts specific to the waste stream at issue.<sup>54</sup>

These three types of information can be considered as acceptable types of generator knowledge about a waste stream for making a hazardous waste determination. A November 20, 1997, **Federal Register** notice elaborates on the use of knowledge to make a listing determination—that is, determining whether a waste is a listed hazardous waste can be accomplished by comparing information on the waste stream origin with the RCRA listings set forth in 40 CFR part 261 subpart D. These listings are separated into four major categories or lists and are identified by EPA hazardous waste numbers starting with the letters K, F, P, or U, depending on the category of the waste. The hazardous waste numbers are associated with a specific waste description, specific processes that generate the wastes, or certain chemical compounds. For example, EPA hazardous waste number K103 is defined as “Process residues from aniline extraction from the production of aniline.” A generator that produces such residues should know, without any sampling or analysis, that these wastes are “listed” RCRA hazardous wastes by examining the K103 hazardous waste description in the hazardous waste lists and comparing this with the production process that generated the waste.

Other hazardous waste listings describe wastes generated from generic processes that are common to various industries and activities. They include, for example, waste solvents (*e.g.*, EPA hazardous waste numbers F001–F005), which are often used in the degreasing or cleaning processes of manufacturing operations, and thus are widely generated. EPA hazardous waste number F001 is a listed waste from a non-specific source that is defined by providing a list of spent halogenated solvents at a particular concentration before use and stating that they are F001 when used in degreasing. Because this listed waste is from a non-specific source, the generator would compare this listing description to any industry

operation where solvent degreasing is conducted to determine whether this waste meets the specific listing description.

Note that these spent solvents are regulated as hazardous under RCRA, but only if the total of all the solvent constituents before use is greater than or equal to ten percent of the material’s volume. This adds a layer of complexity to the hazardous waste determination and requires that the generator have knowledge of the composition of the unused solvent before the waste is generated.

Finally, the hazardous waste regulations include the “derived from” and “mixture” rules, which state that any solid waste derived from the treatment, storage, or disposal of a listed RCRA hazardous waste, or any solid waste mixed with a listed RCRA hazardous waste, respectively, is itself a listed RCRA hazardous waste until delisted (see § 261.3(a)(2)(iv) and § 261.3(c)(2)(i), respectively) (62 FR 62082, November 20, 1997). The exception to these rules is when the waste is listed solely because it exhibits a hazardous waste characteristic, but the particular waste in question no longer exhibits any hazardous characteristic (§ 261.3(g)).

*b. Proposal to provide further explanation in regulatory text about listed waste determinations.* The current regulation at § 262.11(b) provides minimal information to generators for determining whether their waste is a listed hazardous waste. EPA is proposing that this paragraph be expanded and that it be redesignated as § 262.11(c) to make room for existing paragraph (a) of § 262.11, which would be redesignated as paragraph (b) under the proposed new regulatory framework at § 262.11 and which addresses the generator determination of whether the solid waste it has generated is excluded from regulation under 40 CFR 261.4.

The new § 262.11(c) would identify the types of acceptable information that the generator could consider in evaluating its waste against the hazardous waste listing descriptions and would assist them in determining if they have generated a listed hazardous waste. This proposed paragraph would state that if the waste is not excluded under 40 CFR 261.4, the person must then use knowledge of the waste to determine if the waste meets any of the listing descriptions under subpart D of 40 CFR part 261. Acceptable knowledge that may be used in making an accurate determination as to whether the waste is listed includes, but is not limited to, waste origin, composition, the process producing the waste, feedstock, and

<sup>53</sup> Letter from Betsy Devlin, Director of EPA’s Materials Recovery and Waste Management Division, to Gary Jones, Printing Industries of America, November 20, 2012, RCRA Online 14834.

<sup>54</sup> Note that once listed at §§ 261.31–33 wastes remain listed as hazardous wastes unless and until they are delisted in accordance with §§ 260.20 and 260.22 or unless they are specifically excluded from § 261.3, regardless of their actual composition and constituent concentrations even if the manufacturing and/or treatment processes do not use any of the constituents for which the wastes were listed.

other relevant information. If the waste is listed, the person may file a delisting petition under 40 CFR 260.20 and 260.22 to demonstrate to the Administrator that the waste from this particular site or operation is not a hazardous waste.

EPA requests comments on these proposed modifications to § 262.11(c).

*Effect of the Proposed Reorganization:* This section is not affected by the proposed reorganization, but the contents of the current § 262.11(b) are proposed to be revised and moved to § 262.11(c) to account for the proposed inclusion of a new § 262.11(a).

#### 5. Determining Whether a Waste Is a Characteristic Hazardous Waste

The RCRA hazardous waste regulations identify four characteristics that can result in a hazardous waste classification: ignitability, corrosivity, reactivity, and toxicity. Wastes exhibiting any of these characteristics have EPA hazardous waste numbers starting with the letter “D” and the regulations defining these characteristics are at §§ 261.20 through 261.24. The current § 262.11 regulations identify two methods for determining whether a solid waste is hazardous because it exhibits a hazardous characteristic: (1) Testing of the waste or (2) using knowledge of the hazard characteristic and the materials and processes used in generating the waste. Further, even if a waste is a listed hazardous waste, the regulations require the generator to determine whether it also exhibits a hazardous characteristic to ensure that all waste treatment obligations under part 268 are met. This ensures that the waste can be treated to mitigate hazards posed by chemicals or properties for which it was listed, and also any characteristic hazards, which may be different from hazards that are the basis for listing.

*a. Use of testing to identify waste exhibiting a hazardous characteristic.* The current regulations at §§ 261.20 through 261.24 describe two different ways to determine whether a solid waste is a hazardous waste because it exhibits certain characteristics. In some cases, the regulations identify specific test methods, the results of which can be used directly to determine whether the waste exhibits that characteristic (although testing is not required, and knowledge may be used). These include for example, the pH test for the corrosivity characteristic, the flashpoint test for liquids for the ignitability characteristic, and the toxicity characteristic leaching procedure (TCLP) for the toxicity characteristic. Other hazardous characteristics are

defined narratively, such as the definitions for ignitable solids or oxidizers in the ignitability characteristic, and the reactivity characteristic. When there is no regulatory test, then knowledge of the waste’s origin, production processes, feedstocks, chemical composition, and other relevant information is acceptable and necessary for determining whether wastes exhibit one of these characteristics. Testing that may illustrate and support identification of the properties of the waste (even though it is not part of the regulation) can be part of the generators’ knowledge of the waste.

The proposed language associated with testing at § 262.11(d)(1) specifies that generators testing their waste must obtain a representative sample for testing, as defined at § 260.10 and as required by all of the hazardous characteristic regulations. For those characteristics that include a specific test as part of the regulation, the results of that test, when properly performed and compared with regulatory thresholds, are definitive for determining whether the waste is hazardous. The tests specified by the regulations are available in EPA’s “Test Methods for Evaluation Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846. This document which contains all of OSWER’s analytical methods, is available on EPA’s Web site at: <http://www.epa.gov/epawaste/hazard/testmethods/index.htm>.

When evaluating a waste for one of the hazardous characteristics for which there is a regulatory test, generators are not required to use the test provided the generators’ knowledge about the waste is adequate to make a reliable determination about the RCRA status of the waste, as discussed in the next section. However, if a disagreement arises between a generator and an inspector about whether a particular waste is hazardous, we would recommend that the generator use the regulatory test, since the results of the test, when properly performed, should resolve such a disagreement.

For those characteristics that do not include a specific test, but provide a narrative definition, the generator can use appropriate tests, such as those identified in SW-846 that identify hazardous properties as part of their knowledge about the waste to help determine whether the waste exhibits the hazardous waste characteristic. In addition, test methods used by DOT, the National Fire Protection Association, or other third-party testing organizations may be useful or relevant for evaluating

a particular waste. However, the generator would need to show the relevance of the test to the waste evaluation.

The Agency has discussed the use or requirement of testing in various **Federal Register** notices, guidance documents, and letters. In promulgating the toxicity characteristic regulations in 1990, EPA considered whether to require TCLP testing. However, the Agency determined that the flexibility of the current approach resulted in a more effective and practical program overall and that liability for incorrect determinations would provide a strong incentive for generators to not misclassify their wastes as non-hazardous (55 FR 11829–30, March 29, 1990). In a 1992 letter, the Agency re-emphasized that generators are not required to test their waste to determine whether it is hazardous. As part of that letter, the Agency made clear that to ensure proper handling and treatment, the generator must identify all the hazardous characteristics a waste may exhibit as identified in part 261 subpart C.<sup>55</sup> In another letter, the Agency discussed the importance of testing a representative sample of the waste, as required by the hazardous characteristics regulations.<sup>56</sup> The introductory chapters (1–13) of SW-846 provide guidance on a number of important analytical issues, including development of sampling plans and sampling methods, as well as quality control and an overview of the different types of methods in the guidance.

*b. Use of knowledge to identify waste exhibiting a hazardous characteristic.* As we discussed previously with respect to the identification of listed hazardous wastes, EPA is also proposing to modify § 262.11 to include the acceptable types of information that a generator can consider when applying generator knowledge for making hazardous waste determinations for potentially characteristic hazardous waste. Much of this information has been discussed in **Federal Register** notices and other guidance documents over the past 30 years.

Specifically, several FR notices discuss what constitutes “process knowledge” for making a hazardous waste determination and include the following potential sources: (1) Waste analysis data or studies on wastes generated from processes similar to that

<sup>55</sup> Letter from Sylvia Lowrance, Director of EPA’s Office of Solid Waste to Basil Constantelos, Safety-Kleen, October 28, 1992, RCRA Online 13570.

<sup>56</sup> Letter from Sylvia Lowrance, Director of EPA’s Office of Solid Waste to James Maes, Blue Beacon International, Inc., May 1, 1991, RCRA Online 11603.



which generated the original waste;<sup>57</sup> (2) waste analysis data obtained by TSDFs from the specific generators that generated the waste and sent it off site, and (3) waste analysis data obtained by generators or TSDFs from other generators, TSDFs, or areas within a facility that test chemically identical wastes.<sup>58</sup> In addition, information about chemical and physical properties of manufacturing feedstocks or product contained in Material Safety Data Sheets (MSDS), or Safety Data Sheets (SDS) under OSHA's regulations implementing the UN Global Harmonized System of Classification and Labelling of Chemicals (GHS), or other reliable data sources may be used to assist the generator in determining whether any of the product's constituents or properties would make it a characteristic waste, when discarded.<sup>59</sup> Also, an FR notice from 2003 identifies still other information that the Agency has considered appropriate and useful in using knowledge to classify waste, including special handling of waste by the generator to temporarily prevent it from exhibiting a hazardous characteristic (e.g., keeping it either wet or dry to prevent reaction to air or water, respectively); testing using non-regulatory tests that may illustrate some of the waste's properties; classification under certain Department of Transportation hazardous material designations that may be similar to or overlap with RCRA hazardous characteristics, as well as identification of environmental damage attributable to mismanagement or disposal of the waste.<sup>60</sup><sup>61</sup> All of the above examples are considered as acceptable types of knowledge that can be used by a generator.

Some states have also provided guidance to their generators on some of the challenges of only using process knowledge. For example, the Connecticut Department of Energy and Environmental Protection notes that although knowledge of process information can be very useful (especially in identifying hazardous constituents that are known to be

present), it may not always be adequate to fully and properly characterize a waste. In particular, knowledge of the process may not account for factors such as trace contaminants that may not be listed on an MSDS (only chemicals present at concentrations greater than 1% are typically identified), contaminants introduced during use, and cross-contamination from other wastes. As a result, some sampling may be required by the state to properly characterize a waste.<sup>62</sup>

Similarly, the Georgia DNR has highlighted some of the challenges of only using process knowledge. In particular, a GADNR publication states, "Using [process] knowledge alone to make a hazardous waste determination may not always be adequate due to the variability of the waste, or the lack of knowledge of chemical processes in generating the waste. In those cases where the waste generated is variable, generators may choose to make a determination that the waste is hazardous waste rather than testing the waste each time it is generated. In addition, in the case of a hazardous waste that is always hazardous, but is characteristic for certain constituents at times, but not at others, the generator may choose to be inclusive of all potential waste codes, rather than test the waste each time it is generated. If the generator with a variable waste chooses not to treat the waste as described above in this paragraph, the waste must be tested as generated."<sup>63</sup>

The Georgia DNR has also issued useful guidance for its generators regarding the testing and recordkeeping for waste, stating that, "If test methods are used to determine if the waste exhibits a characteristic, a description of how the waste was sampled to obtain a representative sample and copies of the analytical results for that sample should be included as documentation of the hazardous waste determination. The generator may apply knowledge of the waste and the generation process to determine which constituents/parameters to include in analyses, as well as where and when sampling is most appropriate. However, if the full suite of analyses is not applied, the generator must have sufficient documentation to demonstrate why only

certain analyses were applied, and not all. Adequate documentation includes a list of constituents/chemicals that make up the waste, their physical and chemical properties, the effects of the process on the product/materials in the waste, and whether the product/material picks up additional hazardous constituents (contaminants) in the process; all of which provide knowledge as to what constituents should be included in the analyses."<sup>64</sup> Other states have also issued guidance illustrating the need for generators to understand the wastes they generate and to consider all factors affecting waste composition and properties in making hazardous waste determinations.

*c. Proposal on using process knowledge.* In consideration of the above discussion and to better assist generators in making hazardous waste determinations, EPA is proposing to revise the regulations associated with using knowledge to identify waste exhibiting a hazardous characteristic currently found at § 262.11(c)(2). Under this proposed rule, § 262.11(c)(2) would move to § 262.11(d)(2) and would identify various types of information that EPA has identified in the past as potentially relevant and acceptable for making a RCRA waste determination, including information about chemical feedstocks and other inputs to the production process; knowledge of products, by-products, and intermediates produced by the manufacturing process; chemical or physical characterization of wastes; information on the chemical and physical properties of the chemicals used or produced by the processor or otherwise contained in the waste; testing that illustrates the properties of the waste; or other reliable and relevant information about the properties of the waste or its constituents.

A test other than a test method set forth in subpart C of 40 CFR part 261, or an equivalent method approved by the Administrator under 40 CFR 260.21, is also acceptable and may be used as part of a person's knowledge to determine whether a solid waste exhibits a characteristic of hazardous waste. However, such tests do not, by themselves, provide definitive results and the generator may need to identify why the test is relevant.

The Agency requests comments on the proposed changes associated with revising § 262.11(c) and moving it to

<sup>57</sup> 62 FR 62081-2, November 20, 1997; 58 FR 48111-12, September 14, 1993.

<sup>58</sup> 62 FR 62081-2, November 20, 1997.

<sup>59</sup> Letter from Matt Hale, Director of EPA's Office of Solid Waste, to Michael Beckel, 3E Company, June 6, 2008, RCRA Online 14790, and 68 FR 59940, October 20, 2003.

<sup>60</sup> 68 FR 59939-40, October 20, 2003.

<sup>61</sup> Test methods developed by the UN Committee on Transport of Dangerous Goods, the National Fire Protection Association, or others may be useful and relevant for evaluating a particular waste. However, the generator must show the relevance of the test to waste evaluation.

<sup>62</sup> See Connecticut Department of Environmental Protection Web site, Hazardous Waste Determinations/Knowledge of Process at [http://www.ct.gov/deep/cwp/view.asp?a=2718&q=325422&deepNav\\_GID=1967](http://www.ct.gov/deep/cwp/view.asp?a=2718&q=325422&deepNav_GID=1967).

<sup>63</sup> "10 Most Common Hazardous Waste (RCRA) Violations in Georgia: 40 CFR 262.11 "Hazardous Waste Determination," Georgia Department of Natural Resources [https://epd.georgia.gov/sites/epd.georgia.gov/files/related\\_files/site\\_page/guidehwdet.pdf](https://epd.georgia.gov/sites/epd.georgia.gov/files/related_files/site_page/guidehwdet.pdf).

<sup>64</sup> "10 Most Common Hazardous Waste (RCRA) Violations in Georgia: 40 CFR 262.11 "Hazardous Waste Determination," Georgia Department of Natural Resources [https://epd.georgia.gov/sites/epd.georgia.gov/files/related\\_files/site\\_page/guidehwdet.pdf](https://epd.georgia.gov/sites/epd.georgia.gov/files/related_files/site_page/guidehwdet.pdf).

§ 262.11(d). In particular, EPA requests comment on whether the proposed language is sufficient to improve the existing regulatory text and better assist generators in making more effective hazardous waste determinations or whether other improvements should be made to the proposed regulatory text.

*Effect of the Proposed Reorganization:* This section is not affected by the proposed reorganization, but the contents of current § 262.11(c) are being revised and bumped to § 262.11(d) to account for the new § 262.11(a).

#### 6. Documenting and Maintaining Records for Hazardous Waste Determinations

The Agency is proposing to make one organizational change and several revisions to the recordkeeping provisions associated with making a hazardous waste determination, a provision found currently at § 262.40(c). Section 262.40(c) currently states that a generator must keep records of any test results, waste analyses, or other determinations made in accordance with § 262.11 for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal. This independent recordkeeping requirement is applicable to SQGs and LQGs only. CESQGs are not affected by this section.

First, the Agency is proposing that this paragraph be moved to § 262.11(e) to integrate this provision with the hazardous waste determination regulations in that section. Additionally, EPA is proposing to revise the wording to better articulate the types of information acceptable to making an accurate hazardous waste determination that must be maintained and to emphasize the importance of this section.

These records must include, but are not limited to, the following types of information that have been used by the generator in making the waste determination: The results of any tests, sampling, or waste analyses; records documenting the tests, sampling, and analytical methods used and demonstrating the validity (or quality assurance/quality control) and relevance of such tests; records consulted in order to determine the process by which the waste was generated, information on the composition of the waste and the properties of the waste; and records which explain the basis for the generator's determination as described at § 262.11(d)(2).

Second, the Agency is also restating that these records must be maintained for at least three years from the date that the waste was last generated by the

facility and also stating that should the generator be involved in any unresolved enforcement action regarding a waste determination, then the periods of record retention are extended automatically or if requested by the Administrator. An "unresolved enforcement action" means any formal administrative, civil or criminal enforcement action which has been filed or issued against a generator by EPA or authorized state pursuant to RCRA subchapter III or VII and for which all rights of appeal have not been exhausted.

Additionally, EPA is proposing to revise the wording of the section to better articulate the types of waste determination information that must be maintained and to emphasize the importance of this section. In an effort to improve compliance with the hazardous waste determination regulations, and therefore improve environmental protection, EPA is proposing to revise the recordkeeping regulations to require small and large quantity generators making a waste determination to document and maintain records of all their hazardous waste determinations, including determinations where a solid waste is found not to be a hazardous waste.<sup>65</sup> In many respects, this proposed change also relates to the above proposed change in the regulations to clarify that generators must use due diligence in making a hazardous waste determination by applying process knowledge and/or testing results to the solid waste they generated. The Agency believes it is very important that generators make accurate hazardous waste determinations to avoid potential adverse impacts to human health and the environment from the possible mismanagement of hazardous waste. Therefore, we believe the benefits to human health and the environment far outweigh the minimal costs of requiring SQGs and LQGs to document hazardous waste determinations, including determinations where the solid waste was found not to be a hazardous waste.

CESQGs would not be affected by this change. However, maintaining a copy of their hazardous waste determinations may be beneficial to a CESQG to support any questions posed during an inspection by EPA or state inspector, as well as to support their waste generator category. In analyzing Kansas and Iowa inspection data of CESQG facilities, instances were found where the

generator failed to make an accurate hazardous waste determination resulting in the generator moving into a higher generator category and becoming subject to the regulations of either an SQG or LQG.

The hazardous waste determination process is the gateway to the hazardous waste generator regulatory program and, to a great extent, its ultimate success. If a generator can accurately identify the types of hazardous wastes it generates, it can then identify the applicable regulations it must comply with to ensure safe management of that waste. Conversely, if a generator fails to make an accurate hazardous waste determination, that failure can potentially lead to the mismanagement of hazardous waste and environmental damages. In addition, the generator could then be cited in an enforcement action not only for that violation, but also for failing to comply with other generator regulations, including operating without a RCRA permit (see § 262.34(a) and (d)).

The Agency made this point clear when it initially promulgated the hazardous waste generator rules in February 1980, where it stated, "The determination is the crucial, first step in the regulatory system, and the generator must undertake this responsibility seriously" (45 FR 12727, February 26, 1980). Unfortunately, as previously discussed, there is a high rate of noncompliance with the hazardous waste determination regulations.

Under the current regulations at § 262.40(c), a generator is required to document and maintain records of any test results, waste analyses, or other determinations made in accordance with § 262.11 for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal. When an inspector sees a container or other waste management unit, that inspector has the authority to ask the generator how it determined the regulatory status of the waste, and the generator should be able to articulate how that determination was made. In many instances, the inspector will also ask to see any documentation supporting a questionable determination that a material is not a hazardous waste in order to understand how the generator applied process knowledge or the results of testing the waste to support its non-hazardous waste determination.

The Agency strongly believes that documentation must be maintained for waste determinations, not only when a solid waste is a hazardous waste but also when a solid waste is determined by the generator to not be a hazardous

<sup>65</sup> As will be discussed later in this section, the Agency does not intend for this provision to apply to those generators that generate a solid waste that clearly has no potential to be a hazardous waste.

waste. The primary obligation for generators is to accurately determine whether or not a solid waste is a hazardous waste. Requiring documentation of this determination, regardless of the outcome, is critical in ensuring compliance with the current hazardous waste determination regulations.

The requirement that a generator maintain records of determinations that a solid waste is not a hazardous waste was originally discussed in the preamble to the 1978 proposed rule for the hazardous waste regulatory program. In fact, the Agency proposed the following at 40 CFR 250.10(d)(1)(iii): “Generators who determine that their waste is not hazardous shall retain copies of the evaluation performed and shall repeat the necessary evaluation or testing when there is a significant change in their feed material or operations which may alter the test results.” (43 FR 58955, December 18, 1978). In the February 26, 1980, final rule for hazardous waste generators, however, the Agency did not make this requirement final. Rather, the Agency simply promulgated the provision stating that a generator must keep records of any test results, waste analyses, or other determinations made in accordance with § 262.11 for at least three years from the date the waste was last sent to on-site or off-site treatment, storage or disposal (45 FR 12734), which could be interpreted to mean either that a generator was required to keep records or that a generator was not required to keep records of solid wastes that were not hazardous wastes. (This provision is currently located at § 262.40.)

The Agency next discussed this issue in a March 29, 1990, **Federal Register** notice which clarified the rules by stating that recordkeeping for determinations that a solid waste was not a hazardous waste was not necessary. Specifically, the preamble to this final rule stated, “If a waste is determined to be hazardous, the generator must keep records establishing the basis for that determination (40 CFR 262.40(c)). These records must be maintained for at least 3 years after the generator no longer handles the waste in question. Neither of these recordkeeping requirements, however, applies to solid waste generators who do not generate hazardous wastes” (55 FR 11829, March 29, 1990).

At the time the 1980 rules were finalized, the Agency had no experience with their implementation and whether documentation associated with determinations that a waste was not a hazardous waste was necessary. The

Agency now believes that the original approach was insufficient. We now have 30 years of experience and compliance data to support an independent requirement that, as part of their obligation to determine whether a waste is hazardous under § 262.11, generators need to keep records and documentation of their waste determinations, including determinations that a solid waste is not a hazardous waste.

As an example, Georgia DNR requires that, in using generator knowledge, the determination must be valid, correct, and supported by documentation, especially when that determination is that the waste is not a hazardous waste or does not carry certain waste codes (contain certain contaminants).<sup>66</sup> Even in cases where state regulations do not explicitly require documentation supporting a determination that a solid waste is not a hazardous waste, they will seek documentation supporting that determination when evidence suggests the material is a hazardous waste. Should documentation not be presented, EPA and the states will often take a sample to answer their own questions about waste status.

The Agency does not believe requiring generators to retain documents used to make their non-hazardous waste determinations will pose an undue burden. In a review of 26 state waste determination regulations as well as discussions with several state agencies, the Agency found that 17 states already require documentation and recordkeeping of a solid waste that is not a hazardous waste.<sup>67</sup> In EPA’s discussions with states, several states mentioned that they interpret the term “other determinations” at § 262.40(c) to mean determinations that a solid waste is not a hazardous waste. Further, generators should already have this information collected as part of their compliance with other parts of § 262.11.

An examination of biennial report data for a small sample of LQGs for both 2009 and 2011 reporting cycles demonstrated that the majority of generators generate the same hazardous waste streams from year to year. In other words, the Agency believes that, for the most part, SQGs and LQGs will make a hazardous waste determination once

<sup>66</sup> “10 Most Common Hazardous Waste (RCRA) Violations in Georgia: 40 CFR 262.11 “Hazardous Waste Determination,” Georgia Department of Natural Resources [https://epd.georgia.gov/sites/epd.georgia.gov/files/related\\_files/site\\_page/guidehwdet.pdf](https://epd.georgia.gov/sites/epd.georgia.gov/files/related_files/site_page/guidehwdet.pdf).

<sup>67</sup> As an example, some states interpret the term “other determinations” at 40 CFR 262.40(c) to mean determinations that a solid waste is not a hazardous waste.

and will not need to make a new solid waste determination unless something changes in their process, thereby reducing the need to document waste determinations. This suggests that the burden of documenting a non-hazardous waste determination should be relatively minimal.<sup>68</sup>

In light of the importance of making accurate hazardous waste determinations, and because of the high rates of non-compliance with § 262.11 among generators, the Agency is proposing to modify § 262.11 to specifically require that SQGs and LQGs document and maintain records of all determinations, including determinations that their solid waste is not a hazardous waste. Again, the Agency is not proposing to apply this independent requirement to CESQGs.

A key issue with this provision will be defining the scope of applicable entities for this requirement. First, documentation will not be required for entities that do not generate a solid waste, as defined by § 261.2, or that generate a solid waste that has been excluded or exempted from RCRA Subtitle C controls. However, all potential entities, with the exception of households, must determine whether they generate a solid waste as defined by § 261.2 for purposes of the existing RCRA hazardous waste regulations. Solid wastes under § 261.2 include spent materials, sludges, by-products, scrap metal, and commercial chemical products (CCPs) that are discarded. Specifically:

- Spent materials as defined in § 261.1(c)(1), include any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.
- Sludge, as defined in § 260.10, means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility.
- A by-product, as defined in § 261.1(c)(3), is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slugs or distillation column bottoms. The term does not include a co-product that is produced for the general public’s use and is ordinarily used in the form it is produced by the process.

<sup>68</sup> Assessment of the Potential Costs, Benefits, and Other Impacts of the Improvements to the Hazardous Waste Generator Regulatory Program, As Proposed, prepared for U.S. Environmental Protection Agency by Industrial Economics, Incorporated, May 2015, page 3–8.

- Scrap metal, as defined in § 261.1(c)(6), is bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering, which when worn or superfluous can be recycled.

- CCPs are those materials listed in § 261.33 or those CCPs which exhibit one or more of the hazardous waste characteristics. The term CCP includes those chemical substances which are manufactured or formulated for commercial or manufacturing use and consist of commercially pure grades of the chemical substance, any technical grades of the chemical substance that are produced or marketed, and all formulations in which the chemical substance is the sole active ingredient. CCPs do not include or refer to wastes, such as a manufacturing process residue, that contain any of the chemical substances.

Where there is a potential for a discarded material to be a hazardous waste listed under part 261 subpart D or when the material may contain hazardous constituents that would exhibit a characteristic of hazardous waste (i.e., ignitability, reactivity, corrosivity or toxicity) under part 261 subpart C, these entities must make a hazardous waste determination and document that determination, including for those solid wastes that are not hazardous wastes.

If an entity is generating a hazardous waste (and is, therefore, a hazardous waste generator) and if it is generating sufficient amounts of hazardous waste in a calendar month to be considered an SQG or an LQG, then these generators would be responsible for documenting determinations under this proposed revision.

We would note that the existing hazardous waste regulations already require every generator to make a waste determination and that the only additional provision that this proposal is addressing is that they document that waste determination, including for those wastes that are not hazardous waste. The focus of this provision is on solid wastes that have the potential to be hazardous wastes. Thus, for the purposes of this proposed provision, the Agency is not interested in entities that generate solid wastes that clearly have no potential to be hazardous, such as food waste, restroom waste, or paper products. There are literally hundreds of thousands of entities who generate such wastes. In addition, lawyers and accountants, business offices, religious organizations, governmental organizations, engineering and architectural firms, among other sectors,

are not meant to be impacted by this provision for everyday municipal waste that does not have the potential to be hazardous. Most elementary schools also should not be affected by this provision unless they have laboratories that use large amounts of hazardous chemicals where greater than 100 kilograms of non-acute hazardous waste (or 1 kilogram of acute hazardous waste) is discarded monthly or another source of potentially hazardous waste.

In addition, as noted previously, for the purposes of this proposed provision, the Agency is not interested in entities that generate 100 kilograms or less of non-acute hazardous waste or 1 kilogram or less of acute hazardous waste in a calendar month (e.g., CESQGs). The Agency requests comment on verifying the above sectors and identifying other industrial or non-industrial sectors where the probability is high that generators either do not generate solid wastes that would be identified or characterized as hazardous under RCRA, or if they do, they generate small enough amounts to most likely qualify as a CESQG.

The Agency does not believe the cost of documenting a waste determination, whether non-hazardous waste or hazardous waste, will be substantial. As previously discussed, generators may use either the results of testing their waste or process knowledge to make a hazardous waste determination. If a generator tests its waste or hires a third party to do so, then the written results of those tests will be the documentation. Similarly, if generator knowledge is used to make the waste determination, then a statement describing what the basis of that knowledge was (e.g., information about chemical feedstocks and other inputs to the production process and how those chemical feedstocks may change when introduced into the production process; knowledge of products, by-products, and intermediates produced by the manufacturing process; chemical or physical characterization of wastes; information on the chemical and physical properties of the chemicals used or produced by the processor or otherwise contained in the waste; testing that illustrates the properties of the waste; or other reliable and relevant information about the properties of the waste or its constituents) will most likely be sufficient.

In estimating the impact of requiring SQGs and LQGs to document their non-hazardous waste determinations, the Agency examined the relationship of the number of hazardous wastes generated per facility to non-hazardous waste generated per facility and established an

approximate relationship of 60% to 40%. As part of this analysis, the Agency also found from examining the biennial report data that 50 percent of LQGs generate from one to five hazardous waste streams annually and that many of these generators continue to generate the same waste streams from year to year.<sup>69</sup> Therefore, for most LQGs, the incremental cost to document their non-hazardous waste determinations should be minimal. The Agency believes that many SQGs also generate the same waste streams from year to year.

However, from examining biennial report data, the Agency is also aware of situations where a generator generates many different hazardous waste streams each year. Examples include academic and industrial laboratories, chemical manufacturers, and TSDFs. As an example, an analysis of the 2011 Biennial Report identified 843 LQGs reporting that they generated 41 or more hazardous waste streams. This analysis derived an average of 17 hazardous waste streams being generated by LQGs. EPA can infer that these entities also generate numerous types of solid, but not hazardous, waste streams.<sup>70</sup>

Although TSDFs and chemical manufacturers may generate many different types of hazardous waste, many of them also have sophisticated protocols and testing procedures in place to make a hazardous waste determination. These processes should be sufficient to provide the proposed documentation to verify that the solid waste is or is not a hazardous waste. Other organizations may not and the Agency is interested in how best to address this important subject.

The Agency believes that requiring SQGs and LQGs to document their non-hazardous waste determinations is important to the success of RCRA hazardous waste program in protecting human health and the environment. Additionally, the Agency believes the proposed change will encourage generators to develop better internal processes and improve overall compliance with the RCRA hazardous waste regulations. At issue is how best to implement this provision in the most cost-effective manner possible. Therefore, the Agency seeks comment

<sup>69</sup> Assessment of the Potential Costs, Benefits, and Other Impacts of the Improvements to the Hazardous Waste Generator Regulatory Program, As Proposed, prepared for U.S. Environmental Protection Agency by Industrial Economics, Incorporated, May 2015, page 3–8.

<sup>70</sup> A more detailed discussion of this analysis can be found in the Regulatory Impact Analysis that accompanies this preamble and that can be found in the docket to this rulemaking.

on how to balance the burden of recordkeeping with the benefits from ensuring waste is properly identified and managed.

The Agency seeks comment from those generators that generate many new wastes each year, on ways that could be used to reduce burden while maintaining sufficient protection. The Agency also seeks comment on whether there are particular industrial sectors where many, if not most, solid wastes generated could be clearly determined not to be hazardous wastes and whether there are families of solid wastes where it is clear that they will not be hazardous wastes and thus can be eliminated from this provision.

*Effect of the Proposed Reorganization:* This section is affected by the proposed reorganization and is located at § 262.11(e) of the proposed regulation. The proposed reorganization is discussed in section XIII of this preamble.

#### 7. Specifically Stating That the Hazardous Waste Determination Must Be Accurate

Generators have an obligation to apply due diligence in making an accurate hazardous waste determination by using either knowledge of their processes and waste and/or testing of their waste. As discussed above, RCRA inspectors often cite generators for “failing to make a waste determination” at § 262.11. By that we mean the generator failed to accurately identify a material that could be a solid waste, or failed to accurately make a hazardous waste determination. In both cases, the generator’s failure to make accurate solid and hazardous waste determinations may result in adverse impacts to human health and the environment.

As previously stated, at the core of the RCRA hazardous waste program is the need for generators to make an accurate hazardous waste determination. Therefore, to emphasize this point the Agency is modifying the regulatory text at 40 CFR 262.11 to emphasize and make clear that a generator who generates a solid waste, as defined in 40 CFR 261.2, must accurately determine if that waste is a hazardous waste.

A 1993 FR notice states that in the case where a generator sends waste off site for treatment, storage, or disposal, the TSDF may rely on process knowledge supplied by the generator as a basis for the TSDF’s waste characterization (40 CFR 264.13). The notice points out that while using process knowledge is “seemingly attractive because of the potential savings associated with using existing

information (such as published data), the facility must ensure that this information accurately characterizes applicable wastes” (58 FR 48111, September 14, 1993).

Generators often rely on a third party, such as a TSDF, to help them make a hazardous waste determination. Whether the generator uses a third party or not, the generator is responsible for that determination. As such, the generator should still apply its due diligence to ensure a solid waste is not a hazardous waste, and if a hazardous waste, that it is characterized accurately.

Also with respect to characterizing a hazardous waste accurately, a generator identifying all possible RCRA waste numbers (or RCRA hazardous waste codes) on its manifest or container marking does not satisfy the requirement to make an accurate waste determination. First, the TSDF will not be able to treat the waste effectively or efficiently to comply with land disposal restriction requirements because it will not know precisely what waste it needs to treat. Second, the generator clearly did not apply its due diligence seriously.

The Agency also realizes that generators, whether inadvertently or intentionally, often make a hazardous waste determination when the material is actually a non-hazardous solid waste. The intent of this proposed change would not impact such determinations. The generator is always free to manage its solid waste as a hazardous waste if it so desires. However, the Agency is concerned about other related situations, such as when a generator applied due diligence but still made an incorrect hazardous waste determination potentially posing a risk to the environment, or where a generator intentionally tried to circumvent waste determination requirements.

EPA specifically requests comment on reasons why it may not be feasible to require a generator’s solid and hazardous waste determinations to be accurate and how best the Agency can make clear that generators are responsible for making an accurate hazardous waste determination. EPA also requests comment regarding ways the proposed regulatory text could be improved to better assist generators in making more effective hazardous waste determinations.

*Effect of the Proposed Reorganization:* This section is not affected by the proposed reorganization.

#### 8. Taking Comment on Maintaining Records Until the Generator Closes

EPA is also using this notice to take comment on an additional revision to the hazardous waste determination regulations at § 262.11, but is not proposing any regulatory text for this change. The Agency requests comment on requiring SQGs and LQGs to maintain records of their waste determinations until the generator closes its site, rather than for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage and disposal. Because an inspector may not be able to inspect every SQG and LQG within three years from when the solid or hazardous waste was first generated, a generator may discard its waste determination records prematurely. For practical reasons, the Agency believes a generator will want to maintain records of its solid and hazardous waste determinations to support and respond to any questions an inspector may have about a particular waste determination—even if it is more than three years from when it was first generated. Similarly, the Agency believes generators that generate large numbers of solid and hazardous waste streams annually will computerize their records, making it easy to store and retrieve them when necessary. For these reasons, the Agency does not believe requiring SQGs and LQGs to maintain records of their active solid and hazardous waste streams should be overly burdensome.

Finally, while the Agency is not proposing that CESQGs maintain documentation of their non-hazardous waste determinations, the Agency does seek comment on the economic costs and environmental benefits of potentially requiring CESQGs to maintain documentation of their hazardous waste determinations, including their non-hazardous waste determinations. The Agency realizes that the total number of CESQGs is very large—ranging from an estimated 293,000 to 463,000; however, the Agency believes that based on the number of waste streams generated by SQGs and LQGs that such generators should only be generating a few solid waste streams and in many cases using their knowledge of the process and process materials in making hazardous waste determinations. In other words, the burden of documenting their hazardous waste determination should not be that costly for each CESQG.

Conversely, the costs of not making an accurate hazardous waste determination could be significant environmentally and financially to the CESQG. For

example, in the case that a CESQG fails to make an accurate hazardous waste determination, resulting in the CESQG actually being either a SQG or LQG, hazardous wastes will likely be illegally managed. Hazardous wastes that should have been sent to a RCRA-permitted treatment, storage or disposal facility would instead be sent to a municipal solid waste landfill, potentially posing future environmental problems for that landfill and community. EPA requests comment on the potential environmental benefits that could be achieved if the Agency were to require that CESQGs document determinations that their solid waste is or is not a hazardous waste.

#### 9. Hazardous Waste Determination Electronic Decision Tool

Building upon the above discussion and the importance of making accurate hazardous waste determinations, the Agency also seeks comment on the feasibility of developing a user-friendly electronic hazardous waste determination decision tool that generators could use to assist them in making a hazardous waste determination. This electronic tool would guide generators through a series of analytical decision-type (Yes or No) questions to assist them in determining whether the solid waste they have generated is also a hazardous waste subject to the applicable RCRA hazardous waste regulations. As part of this decision tool, generators would be able to document reasons why the solid waste is a hazardous waste, or conversely, why the solid waste is not a hazardous waste.

Given the large number and great variety of hazardous waste streams, a key challenge would be to determine how best to design this decision tool if the Agency went forward in developing it. Potential approaches include designing the tool conceptually around the following: (1) Industrial sectors; (2) families of industrial materials (*i.e.*, solvents, acids, metals, etc.); (3) broad type of hazardous secondary material (*i.e.*, spent material, by-product, sludge, etc.); (4) listed hazardous waste organized by specific industrial sector or non-specific sectors (*e.g.*, solvents, electroplating wastes, and characteristic hazardous waste), or (5) an eclectic approach that combined different aspects of the approaches in (1) through (4).

This decision tool could assist generators to make the following determinations under § 262.11:

- Whether the waste is excluded from regulation under § 261.4 [§ 262.11(a)]

- Whether the waste meets any of the hazardous waste listing descriptions in part 261 subpart D [§ 262.11(b)]

- Whether the waste exhibits one or more hazardous characteristics of hazardous waste, as identified in part 261 subpart C [§ 262.11(c)]

- What are all applicable EPA hazardous waste codes for wastes determined to be hazardous [§ 262.11(f)]

An electronic decision tool could also possibly provide a way for SQGs and LQGs to maintain records supporting their waste determinations [§ 262.11(e)].

Developing this decision tool would be a major investment on the part of the Agency and could take several years to fully develop, test, and make operational, with different components produced for use over time. However, even when completed (assuming it was a worthwhile Agency investment to pursue), this decision tool would never be able to account for all the industrial sector/family of industrial materials/type of hazardous secondary material possibilities that exist in industry. Therefore, scoping such a decision tool to capture as much of the most likely industrial sector/family of industrial materials/type of hazardous secondary material possibilities would be the Agency's goal.

Additionally, if such a decision tool were to be developed, the generator would still be ultimately responsible for making the hazardous waste determination, since no decision tool could ever account for its site-specific circumstances.

Hazardous waste determination software or tools could be web-based, off-the-shelf, or both. The software or tools could be developed by EPA, by authorized states and tribes, by private parties, or by public and private sector collaboration.

The Agency particularly requests comment on the feasibility of the private sector developing electronic application software (apps). An initial search for preexisting hazardous waste determination software identified no relevant, privately-developed, off-the-shelf software products to assist generators in making accurate waste determinations. However, EPA did identify a variety of state and academic internet-based hazardous waste determination tools and workbooks.<sup>71</sup>

<sup>71</sup> See, for example, the Washington Department of Ecology created an Excel program titled "Designation Tool 2.0 for Excel 2007," to help business make accurate waste designations in the state of Washington. [http://www.ecy.wa.gov/programs/hwtr/manage\\_waste/des\\_intro.html](http://www.ecy.wa.gov/programs/hwtr/manage_waste/des_intro.html); the Texas Commission on Environmental Quality created an online hazardous waste determination tool, the "Waste Designation Decision Matrix."

At issue is whether there is a market for such an app and what EPA could do to facilitate software development. The Agency estimates the universe of hazardous waste generators to be approximately 400,000 to 500,000, with a large majority being conditionally-exempt small quantity generators that generate up to 220 pounds in a calendar month.

EPA is seeking comment on whether development of an electronic hazardous waste determination decision tool is feasible and by whom. The Agency requests comment on what circumstances would encourage the private sector to develop such a tool or app and on what generators would like to see in terms of components and organization that would facilitate a generator using it.

#### C. SQG and LQG Re-notification (40 CFR 262.12)

##### 1. Background

Under existing 40 CFR 262.12, SQGs and LQGs are required to notify EPA using EPA form 8700-12 (Site ID form) in order to obtain an EPA identification number (EPA ID). Without such identification, a generator cannot treat, store, dispose of, or transport, its hazardous waste. Once a generator applies for and receives an EPA ID, information provided by the generator (*e.g.*, name, address, contact, industrial sector, EPA hazardous waste numbers) is entered into the state system and/or EPA's national data system (RCRAInfo) to support program management activities.

Subsequent to obtaining an EPA ID, there is no federal regulation requiring LQGs or SQGs to re-notify EPA to update their site information or confirm the information remains accurate. However, LQGs do update their site information as part of the biennial report.

EPA believes that about half the states require annual reporting by LQGs and some require periodic reporting by SQGs in order to determine user fees based on the amount of hazardous waste they generate. However, the data from these annual reports may not always be submitted to EPA's national RCRA database. Additionally, although many LQGs currently submit a Site ID form as part of their biennial report, this

<http://www.tceq.texas.gov/assistance/waste-matrix/matrixenter.html>, and The Connecticut Department of Energy and Environmental Protection's RCRA Help page provides a guide designed to help businesses and individuals figure out which hazardous waste requirements apply and how to comply with them. [http://www.ct.gov/deep/cwp/view.asp?a=2718&q=434308&deepNav\\_GID=1967%20](http://www.ct.gov/deep/cwp/view.asp?a=2718&q=434308&deepNav_GID=1967%20).

independent requirement does not apply to SQGs or to entities that initially notified as an LQG, but were an SQG during the biennial reporting year and, thus, were not required to submit a biennial report.

## 2. Problems With Outdated Information

The lack of re-notification at the federal level greatly impairs EPA's and the states' ability to use the information for compliance monitoring and programmatic purposes. This is because a one-time notification provides no assurance that the information collected in EPA's and the states' databases over time will accurately reflect which facilities are generating hazardous waste. For example, a recent examination of EPA's data reveals that there are thousands of SQGs who last notified over 20 years ago.<sup>72</sup> EPA is concerned that the probability a generator that last notified prior to 1990 is still active and still an SQG is quite small. Because of the outdated information, it is difficult for EPA to ascertain even simple statistics, such as the number of SQGs currently operating, let alone information that can be reliably used for programmatic and compliance monitoring purposes.

Because of the lack of integrity in the data, the Agency and states must spend their limited resources to 'clean up' the data every time regulatory authorities try to use it, for example, to estimate regulatory burden and benefits to the regulated community, offer compliance assistance, or produce public reports on hazardous waste generation. Furthermore, regulatory authorities may waste time and resources monitoring compliance at entities that no longer generate hazardous waste. This inefficient use of resources lowers the effectiveness of regulators to monitor compliance overall and could potentially increase the risk of environmental damage from mismanagement of hazardous waste. In summary, the Agency and many states have, for the most part, an outdated, incomplete, and inaccurate understanding of the LQG and SQG universe. Consequently, over time, this undermines the ability of EPA or the states to make effective programmatic decisions.

## 3. Proposed Periodic Re-Notification

EPA is proposing to add an explicit independent requirement to the regulations that both LQGs and SQGs re-notify EPA using the Site ID form (EPA

form 8700-12).<sup>73</sup> The intent of this re-notification provision is to provide basic information to the regulatory agencies about who is generating and managing hazardous waste. The information required in the Site ID form includes:

- Site name, address, contact information, and EPA ID number
- NAICS (North American Industry Classification System) code
- Information regarding the entity's legal owner and operator
- Type of regulated waste activity (e.g., hazardous waste generator category and whether the entity is a transporter, treater, storer, disposer, or recycler of hazardous waste)
- Universal waste activities
- Used oil activities
- Notification for opting into or withdrawing from managing laboratory hazardous waste under 40 CFR part 262 subpart K
- Description of hazardous waste, including a list of applicable federal and state hazardous waste numbers
- Notification of hazardous secondary material activity managed under certain definition of solid waste exclusions.
- Certification signed by the entity's legal owner, operator, or authorized representative.

The specific information included in the notification will enable regulatory agencies to monitor compliance adequately and to ensure hazardous wastes are managed according to the appropriate RCRA hazardous waste regulations. The information can be used to assist RCRA inspectors in determining which facilities may warrant greater oversight and provides a basis for setting enforcement priorities. Notification information is collected in EPA's RCRAInfo database, which is the national repository of all RCRA Subtitle C site identification information, whether collected by a state authority or EPA. EPA provides public access to this information through EPA's public Web site at <http://www.epa.gov/enviro/html/>.

Once an initial notification (to obtain an EPA ID number) is submitted, to re-notify, a generator need only review the previous notification and either make changes if necessary or confirm that the information remains accurate. Furthermore, EPA has recently made available an electronic system for the regulated community to use to submit Site ID forms electronically, which will further reduce burden on generators. Facilities should check with their states

regarding whether their state will use EPA's electronic submittal process.

The proposed rule would require LQGs, having first obtained an EPA ID number, to re-notify EPA using the Site ID form prior to March 1 of each even-numbered year. This time frame is the same as that for the biennial reports in 40 CFR 262.41. Adding this provision to § 262.12 in the existing regulations (which is § 262.18 in the proposed reorganization in this proposed rule) reflects existing processes by which LQGs already submit Site ID forms as part of the biennial reporting process. EPA also believes that the requirement to re-notify is particularly important considering generators may change regulatory status from LQGs to SQGs and vice versa.

EPA is also proposing that SQGs, having first obtained an EPA ID number, must re-notify EPA using the Site ID form prior to February 1 of each even-numbered year. We propose the two-year time frame to mimic the current biennial reporting process for LQGs; however, we propose to require that SQG re-notifications (due by February 1 of each even-numbered year) to occur one month prior to the due date for LQG re-notifications (due by March 1 of each even-numbered year) to help reduce the burden on states that must process the re-notifications. We are also taking comment on whether re-notifying every four years would be appropriate for SQGs.

EPA also considered whether to require SQGs to re-notify on alternate years—that is, by March 1 of each odd-numbered year, from LQGs, in order to further reduce the burden on states. However, this may complicate the regulations because a generator can change its generator category year-to-year. For example, it is possible that a generator who is an LQG during the SQG-reporting year and an SQG during the LQG-reporting year would not have to submit any notification to EPA. Furthermore, requiring SQG and LQG re-notifications during the same year enables EPA to include information regarding SQGs in its National Biennial RCRA Hazardous Waste Report.

EPA believes that requiring a set due date (i.e., February 1) will ease implementation and compliance with the re-notification provision. However, one alternative that the Agency seeks comment on is to allow for 'rolling' notifications, in that generators could re-notify at any time of the year as long as they re-notified within two years of the date of their last notification. EPA understands that this alternative may further reduce burden on the states that would process the re-notifications, in

<sup>72</sup> Count of SQGs by Year of Last Notification Received, December 12, 2012. Developed from RCRAInfo data system using Form 8700-12 Site Identification Form information.

<sup>73</sup> To the extent that other parts of the RCRA regulations require the submittal of EPA form 8700-12, for example, used oil generators or handlers, the proposed re-notification provision would not impact them, unless they were also an LQG or SQG of hazardous waste.

that the state would receive the notifications throughout the year rather than all at once; however, it may also complicate compliance by the regulated community, as well as compliance monitoring by the states and EPA, as each LQG and SQG would have a unique 'due date' that must be individually tracked.

Another alternative to requiring periodic notification (*e.g.*, every two years) that the Agency seeks comment on would be for EPA to require an SQG or LQG to re-notify only in the event of a change to certain information, such as (1) change in ownership and (2) change in generator category.<sup>74</sup> The Agency believes that updating this specific information is particularly important because:

- Re-notifying when a generator has a change of ownership is important so that EPA and the states understand who is legally responsible for managing the generated hazardous waste.
- Re-notifying due to a change in generator category provides EPA and the state with information regarding what regulations apply to the generator and thus assist with compliance assistance and monitoring activities.

EPA notes that, because an EPA ID number is specific to a site location, a change in site address for an entity already requires the entity to apply for a new EPA ID number using the Site ID form.

In this case, EPA would require re-notification within 30 days of when the change occurred. Re-notification in the event of change to these two items may further reduce burden on LQGs and SQGs, because EPA assumes that these changes would happen fairly infrequently. However, EPA also notes that although LQGs and SQGs would only have to re-notify in the event of a change in its ownership or generator category, re-notification would require a complete submittal of all information included in the Site ID form. EPA understands that this alternative may also increase the complexity of implementing the regulation because it would be difficult for regulatory authorities to ensure that re-notifications were received according to the regulations. For example, if a facility last notified ten years ago, it would be difficult for EPA and the states to ascertain whether the generator has failed to re-notify in compliance with the regulations or that the generator's

information simply hasn't changed since its last notification. Additionally, EPA notes that re-notification based on a change does not result in data that is as reliable as data provided in periodic re-notifications because it provides no information on generators that have stopped operations.

#### 4. Request for Comment

EPA requests comment on its proposed change to require re-notification for SQGs and LQGs, including information regarding the benefits and burden of such a provision. EPA also requests comment on whether such re-notification should be every two years or one of the other alternatives discussed above. Finally, EPA requests comment on any other alternatives for an independent re-notification requirement, including suggestions that would reduce the burden on states that must process re-notifications.

*Effect of the Proposed Reorganization:* This section is affected by the proposed reorganization. EPA is proposing to move § 262.12 (EPA identification numbers) to § 262.18 and is proposing to revise the title of the section to read "EPA identification numbers and re-notification for large quantity generators and small quantity generators."

#### D. Determining Generator Category (Proposed New Section 262.13)

EPA is proposing a new section § 262.13, which would describe how a generator determines which generator category it would be subject to. Proposed § 262.13 discusses the framework for making a generator determination in paragraph (a) and stresses that the calculation is made monthly and that the generator category can change from month to month. The proposed regulatory text would state that a generator's category is determined each month by the amount of hazardous waste it generates and may change from month to month. The regulation sets forth procedures to determine whether a generator is a very small quantity generator, a small quantity generator, or a large quantity generator for a particular month, as defined in § 260.10.

The discussion in § 262.13(a) is not a new requirement for generators, but these steps are not currently laid out in the regulations in as succinct a manner. EPA believes that the addition of the definitions of generator categories to § 260.10 and this paragraph on how to make a generator category determination should provide specific instructions on this matter for the regulated community and thereby improve compliance with the generator regulations.

Proposed paragraph (b) of § 262.13 would specifically address the situation in which a generator generates any combination of non-acute hazardous waste, acute hazardous waste, and the residues from the cleanup of a spill of acute hazardous waste. This paragraph presents a series of steps for a generator to follow when determining its generator category to ensure that it selects the appropriate category for the total amount and types of hazardous waste generated.

Proposed §§ 262.13(c) and (d) are existing provisions that we are proposing to move from §§ 261.5(c) and (d) of the existing regulations with a few small wording changes to reinforce that category determinations are made monthly and do not otherwise represent a change in the generator regulations.

EPA is requesting comment on the proposal to add this description of how a generator is to determine its generator category to the regulations.

*Effect of the Proposed Reorganization:* This section is partially affected by the proposed reorganization. Some of the language proposed for § 262.13 on what materials to count when determining generator category are moved from existing § 261.5, but much of this proposed regulation is new text.

#### E. Requiring Hazardous Waste Numbers When Marking of Containers Prior to Shipping Hazardous Waste Off Site to a Designated RCRA Facility (40 CFR 262.32)

The Agency is proposing to modify 40 CFR 262.32 to require SQGs and LQGs to mark their containers with the applicable EPA hazardous waste number (RCRA hazardous waste code) prior to transporting their hazardous waste off site to a designated RCRA facility for subsequent management. EPA is proposing this revision so that TSDFs can readily identify the contents of hazardous waste containers they are receiving from generators and effectively treat the wastes to meet land disposal restriction requirements (LDRs). As described elsewhere in this proposal, the Agency is proposing revisions to the marking and labeling of containers and other waste accumulation units in order for employees, inspectors, emergency responders, and waste handlers to better understand the potential hazards associated with the contents of hazardous waste contained in a unit.

This proposed provision should not increase burden on generators as it reaffirms commonly used waste management practices. Most generators, or their designated waste handlers, already mark their containers with the

<sup>74</sup> EPA is also proposing a notification requirement for (1) generators undergoing closure (section VII.G.); (2) LQGs that receive hazardous waste from CESQGs (section VII.C) and (3) episodic generators (section IX), which are discussed in other parts of this preamble.



applicable EPA hazardous waste numbers prior to transporting their hazardous waste off site. In fact, requiring that applicable EPA hazardous waste numbers be marked on containers decreases overall burden because it avoids the need for a TSDF to identify the hazardous waste or send it back to the generator for proper identification.

The Agency requests comment on this proposed change.

*Effect of the Proposed Reorganization:* This section is not affected by the proposed reorganization.

*F. Modifications to Management of Containers, Tanks, Drip Pads, and Containment Buildings (40 CFR 262.34(a)(2) and(3) and 40 CFR 262.34(a)(1))*

The existing regulations for LQGs that address the conditions for exemption related to marking and labeling are at § 262.34(a)(2) and (3) for containers and at § 262.34(a)(3) for tanks. The marking and labeling condition for SQGs who accumulate hazardous waste in both tanks and containers are at § 262.34(d)(4), which references § 262.34 (a)(2) and (3). For practical reasons, there are no requirements to mark drip pads or containment buildings that accumulate hazardous waste other than requiring that documentation must exist that describes the procedures to ensure that each waste volume remains in the unit for no more than 90 days.

EPA is proposing to modify § 262.34(a)(2) to strengthen the marking and labeling conditions for exemption for containers and to modify § 262.34(a)(3) to strengthen and consolidate the marking and labeling conditions for exemption for hazardous waste tanks, drip pads, and containment buildings by LQGs. The Agency is also proposing to modify § 262.34(d) to strengthen the marking and labeling conditions of containers, tanks, drip pads, and containment buildings by SQGs.

The proposed changes are consistent with the applicable discussion of marking and labeling of containers in SAAs in section VIII.I. Where differences may occur is when the container may be shipped off-site as opposed to when the contents of the container are managed on-site, or temporarily managed on-site (e.g., when the container is moved from the SAA to a central accumulation area and then shipped off-site to a TSDF).

1. Container Marking and Labeling for LQGs and SQGs (40 CFR 262.34(a)(3))

Currently, § 262.34(a)(3) requires each container and tank to be labeled or

marked clearly with the words, "Hazardous Waste." However, while the words "Hazardous Waste" on containers and tanks provide some measure of information regarding the contents of these units, this information fails to describe the specific hazards of the contents and what risk these wastes could pose to human health and the environment. EPA believes it is important that employees, transporters, downstream handlers, emergency personnel, and EPA and state inspectors know as much as possible about the potential hazards of the contents in containers being accumulated, transported, and managed, whether on-site and/or off-site, so that the hazardous wastes are managed in an environmentally sound manner.

The Agency is proposing two modifications that would strengthen the labeling and marking conditions for LQGs and SQGs accumulating hazardous waste in containers. These changes are similar to those proposed for containers stored in satellite accumulation areas (see section VIII.I.) First, the Agency is proposing that SQGs and LQGs accumulating hazardous waste in containers mark their containers with both the words "Hazardous Waste" and other words that identify the contents of the containers that a third party, such as an emergency responder, co-worker unfamiliar with the material, or even the general public may recognize. Although the words "Hazardous Waste" are important to convey that the container contains a waste, as opposed to a product, and that a hazardous waste determination has been made for the contents, it does not convey more practical information regarding the contents of the container. Examples of other words that identify the contents of the container may include, but are not limited to the name of the chemical(s), such as "acetone" or "methylene dichloride"; or the type or class of chemical, such as "organic solvents" or "halogenated organic solvents." Another option for complying with this provision is to use the proper shipping name and technical name markings used to comply with DOT requirements at 49 CFR part 172 subpart D. The Agency does not consider chemical formulas, such as CH<sub>2</sub>Cl<sub>2</sub> for methylene dichloride, to be "words that identify the contents of the container" since chemical formulas may not be widely known among emergency responders, workers, and hazardous waste handlers other than chemists.

If the hazardous waste will subsequently be sent off-site for treatment and disposal, an SQG or LQG

may choose to use an appropriate DOT proper shipping name found on the hazardous materials table at 49 CFR 172.101 to identify the contents of the container while it is accumulating on-site. That way, the generator will fulfill EPA and DOT requirements simultaneously; however, EPA is not proposing to require the use of the DOT shipping names while the hazardous waste is accumulating on-site. We only suggest that the DOT shipping name may be one way that some generators may choose to identify the contents of the container.

EPA also believes use of the DOT marking requirement should be sufficient in many situations involving DOT Class 9 hazardous materials that are also hazardous waste, with the DOT shipping name ending in N.O.S. (not otherwise specified). As noted at 49 CFR 172.301 (b), generators using a DOT shipping name ending in N.O.S. must also provide the technical name of the hazardous material in association with the proper shipping name. However, the Agency is requesting comment on examples of when the DOT shipping name would not meet EPA's intent of "identifying the contents of the container" and suggestions for addressing this situation. EPA notes that additional pre-transport requirements, other than the DOT shipping name, apply when shipping hazardous waste off-site. We are not proposing to change EPA's existing requirements for pre-transport requirements that are currently found in §§ 262.30 through 262.33. Similarly, for packages subject to 49 CFR, the generator or shipper/ carrier should be familiar with and aware of the marking requirements at 49 CFR 172.304 and prohibited labeling and label visibility requirements at 49 CFR 172.401 and 172.406, respectively.

The second modification we are proposing for labeling containers in central accumulation areas is to add a provision that SQGs and LQGs mark and label their containers with an indication of the hazards of the contents of the containers. SQGs and LQGs will have flexibility in how to comply with this new provision. That is, generators can indicate the hazards of the contents of the container using any of several established methods, including, but not limited to an EPA hazardous waste characteristic(s) (ignitable, corrosive, reactive or toxic); a hazard class label consistent with the DOT requirements at 49 CFR part 172 subpart E (labeling); a label consistent with the OSHA Hazard Communication Standard at 29 CFR 1920.1200; a chemical hazard label consistent with NFPA code 704; or a hazard pictogram consistent with the

United Nations' Global Harmonized System (GHS). Generators also may use any other marking or labeling commonly used nationwide in commerce that would alert workers and emergency responders to the nature of the hazards associated with the contents of the containers.

EPA believes that placing both the appropriate label and marking on containers during hazardous waste accumulation will enable persons who may come in contact with it to be aware of the hazardous contents of the container with little or no additional cost to generators. In many instances, this proposed condition will already have been satisfied if the generator elects to move a container accumulating hazardous waste in a satellite accumulation area to a central accumulation area.

In summary, EPA is proposing to modify § 262.34(a)(3) and require LQGs and SQGs to mark containers with the following: (1) the words "Hazardous Waste," (2) other words that identify the contents of the containers, and (3) an indication of the hazards of the container's contents. We are not proposing to change § 262.34(a)(2), which requires LQGs and SQGs to mark clearly and visibly the date accumulation began on each container and make that marking visible for inspection.

The Agency requests comment on the proposed changes for container marking and labeling for LQGs and SQGs.

*Effect of the Proposed Reorganization:* This section is affected by the proposed reorganization in that the labeling and marking regulations would be moved from § 262.34 to § 262.16(b)(6) (for SQGs) and to § 262.17(a)(5) (for LQGs). The reorganization is discussed in section XIII of this preamble.

## 2. Tank Marking and Labeling for LQGs and SQGs (40 CFR 262.34(a)(3))

The Agency is proposing to modify the regulations at § 262.34(a)(3) to require LQGs and SQGs to use inventory logs, monitoring equipment, or records indicating the date the hazardous waste first entered the tank in order to support a generator's determination that it has not exceeded its 90 day accumulation time limit, or in the case of an SQG, its 180-day time limitation. Exceeding the 90- or 180-day time limitation for LQGs and SQGs, respectively, would be a violation of a condition for an exemption from permitting requirements. Records from tank level sensors also may be used which could be either automatically logged from the sensors to a computer record, or recorded as part of a tank's operational

daily inspection (see 40 CFR 265.195). Generators may also use any other methods that clearly demonstrate the date hazardous waste first entered the tank and show that the hazardous waste was subsequently emptied within 90 days of the date it first entered that tank, or 180 days in the case of an SQG (unless the hazardous waste must travel greater than 200 miles to a TSDF in which case 270 days is allowed). The generator must also use inventory logs to identify the hazardous waste contents and hazards of the tank.

With respect to the accumulation start date, in the preamble to the promulgation of the SQG regulations (51 FR 10160, March 24, 1986), EPA stated that § 262.34 contains the conditions for exemption for generators that accumulate hazardous waste on site. Under § 262.34(a), an LQG may accumulate hazardous waste on site in tanks or containers in any quantity for up to 90 days (and up to 180 days for a SQG unless the hazardous waste must travel greater than 200 miles to a TSDF in which case 270 days is allowed) without the need to have interim status or obtain a storage permit under RCRA, provided the generator complies with the conditions of § 262.34, which include marking the date upon which the period of accumulation begins. While the preamble mentions marking tanks and containers, the final regulation at § 262.34(a)(2) requires generators to mark the date upon which each period of accumulation begins only on containers.

As part of EPA's Hazardous Waste Technical Corrections and Clarifications Direct Final Rule (75 FR 12989, March 18, 2010), the Agency sought to correct this oversight by including what it thought to be the appropriate clarifying language. The proposed regulatory language required generators to mark the date upon which each period of accumulation begins on each container and tank, which would bring the regulation in line with the preamble to the 1986 rule. However, EPA received numerous adverse comments regarding this change and as a result withdrew that proposed change. The comments stated, among other things, that, unlike containers, the Agency failed to realize that generators do not actually mark their tanks with the date upon which each period of accumulation begins because the tank is often a fixture that is used and emptied repeatedly. Commenters argued that marking tanks would cause confusion since there would be numerous markings all over the tank making it difficult for the generator and inspector to identify when the last period of accumulation

began or could cause an extra effort of removing the old marking before applying a new one.

At least one commenter also cited an EPA letter clarifying § 262.34(a)(1)(ii) in connection with the turnover of hazardous waste stored in generator accumulation tanks.<sup>75</sup> In that letter, EPA stated that "LQGs utilizing a batch process must meet the requirements of § 262.34(a)(1)(ii). For example, the use of inventory records in conjunction with tank markings may provide confirmation that the tank has been emptied within an appropriate time period. Specifically, the inventory records typically show the dates and quantity of hazardous waste entering the tank, as well as the dates the tank was emptied. Shipping or hazardous waste manifest records also may be used to verify when the tank was emptied. Likewise, tanks accumulating hazardous wastes may have information indicating the time and date hazardous waste first entered the tank." The Agency went on to say that there may be other methods to demonstrate that a tank has been emptied, but any method used to confirm compliance with § 262.34(a)(1)(ii) must be reasonable and easily discernible to EPA or an authorized state.

Later in this letter, EPA stated that LQGs accumulating hazardous wastes through a continuous flow process must "demonstrate that the hazardous waste has not been stored for more than 90 days . . . For example, a generator could confirm that the volume of a tank has been emptied every 90 days by recording the results of monitoring equipment both entering and leaving a tank. This recordkeeping, in conjunction with the tank volume, would enable inspectors, as well as [site] personnel, to demonstrate compliance with § 262.34(a)(1)(ii). Likewise, in marking the tank, a generator could mark both the tank volume and estimated daily throughput to allow inspectors to determine the number of days that hazardous wastes resides in a tank to determine compliance with § 262.34(a)(1)(ii). As noted above, there may be other methods to demonstrate that the tank has been emptied, but any method or demonstration to confirm compliance must be reasonable and easily discernible to EPA or an authorized state."

Subsequent to withdrawing the provision at § 262.34(a)(2) as part of

<sup>75</sup> Letter from Matt Hale, Director of EPA's Office of Solid Waste to John Hopewell, National Paint and Coatings Association, February 16, 2007, RCRA Online 14764.

EPA's Hazardous Waste Technical Corrections and Clarifications Direct Final Rule due to adverse comment, EPA also confirmed with state officials that current operating practices do not include generators physically marking their tanks. Instead, generators are able to use inventory logs, monitoring equipment, or other methods to demonstrate that a tank has been emptied within 90 days of the date hazardous waste first entered the tank.

Therefore, with respect to the accumulation start date for tanks, EPA is proposing that generators may use inventory logs, monitoring equipment or records indicating the date the hazardous waste first entered the tank, as long as this information is immediately accessible for inspection. Records from tank level sensors also may be used that are either automatically logged from the sensors to a computer record or recorded as part of a tank's operational daily inspection (required by 40 CFR 265.195). Generators may also use any other methods that clearly demonstrate the date hazardous waste first entered the tank and was subsequently emptied within 90 days of the date hazardous waste first entered that tank.

The same issue potentially applies to a generator physically marking and labeling the contents of the tank and its associated hazards. If the contents and associated hazards frequently change, then physically marking the tank could result in numerous markings and labels on the tank, making it difficult for employees and others to identify its contents. Therefore, following the same logic, the Agency is proposing that generators use inventory logs or records to identify the contents of the tank and its associated hazards. The Agency is also proposing that such tank logs be immediately accessible by the generator should the need arise.

The Agency requests comment on the feasibility and effectiveness of using inventory logs or records to identify the contents and hazards of a hazardous waste tank. The Agency also requests comment on alternative methods of identifying the contents and hazards of a hazardous waste tank in a more cost-effective manner.

Consistent with the existing regulations for tanks at § 262.34(a)(3), the Agency will continue to require that hazardous waste tanks be labeled with the words "Hazardous Waste."

*Effect of the Proposed Reorganization:* This section is affected by the proposed reorganization. The labeling and marking regulations would be moved from § 262.34 to § 262.16(b)(6) (for SQGs) and to § 262.17(a)(5) (for LQGs).

The reorganization is discussed in section XIII of this preamble.

### 3. Drip Pad and Containment Building Marking and Labeling for LQGs and SQGs (40 CFR 262.34(a)(3))<sup>76</sup>

The existing regulations for drip pads at § 262.34(1)(iii)(A) and (B) require generators to produce a description of the procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least every 90 days, and to produce documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal. Likewise, the existing regulations for containment buildings at § 262.34(1)(iv)(A) and (B) require the generator to produce a written description of the procedures to ensure that each waste volume remains in the containment building for no more than 90 days, a written description of the waste generation and management practices for the facility showing that they are consistent with respect to the 90-day limit, and documentation that the procedures are complied with. However, in both instances, the existing regulation explicitly fails to account for when the hazardous waste is first placed in or on the unit, which raises questions as to how a generator documents that it has met the 90-day limit.

Therefore, to address this shortcoming, and because the risks for accumulating hazardous wastes on drip pads and containment buildings are similar to those accumulating in tanks, and for purposes of consistency and uniformity with the marking and labeling provisions for tanks, the Agency is proposing the same marking and labeling regulatory framework for hazardous wastes accumulated on drip pads and in containment buildings that it is proposing for tanks.

Specifically, the Agency is proposing that hazardous waste accumulated on drip pads and in containment buildings be labeled in a conspicuous place near these units with the words "Hazardous Waste." The Agency is also proposing to revise the existing marking regulations and clarify that LQGs and SQGs document the date that the hazardous waste was first placed on the drip pad and the sump or collection system in order to verify that the removal or turnover of the hazardous wastes on the drip pad took place within 90 days or less in order to support a generator's

determination that it has not exceeded its 90-day accumulation time limitation. Exceeding the 90-day time limitation for LQGs and SQGs, respectively would be a violation of a condition for an exemption from permitting requirements. Note that this is also important because, as described in section VIII.J below, SQGs may move their wastes from one type of unit to another (e.g., drip pad to containers), and without knowing the start and end dates, the generator will not be able to confirm that it met the appropriate accumulation time limitations.

Consistent with current drip pad regulations in 40 CFR 262.34(a)(1)(iii)(A) and (B), these provisions will continue to include a description of the procedures to be followed by both SQGs and LQGs to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days as well as documentation of each waste removal.

Finally, the Agency is proposing that generators use inventory logs or records to identify the contents of the drip pad and its associated hazards and that such logs and records be immediately accessible. The Agency believes that these requirements are necessary to ensure that workers and emergency responders handling or coming in contact with the waste understand the hazards and dangers that they may be exposed to.

In addition, as with the proposed changes for hazardous wastes accumulated in tanks and on drip pads, the Agency is proposing to clarify that LQGs and SQGs may use inventory logs, monitoring equipment, or any other effective means to document the date the hazardous waste was first placed in the containment building and the date when the hazardous waste was removed to verify that the waste was accumulated no more than 90 days at any one time.

Consistent with the existing regulation at § 262.34(a)(1)(iv)(A) and (B) for containment buildings, the proposed regulation for both LQGs and SQGs will state that the generator must maintain the following records and that they can do so by using inventory logs, records from monitoring equipment, or any other effective means:

(1) A professional engineer certification that the building complies with the design standards specified in 40 CFR 265.1101 in the facility's operating record prior to operation of the unit; and

(2) A written description of procedures to ensure that each waste volume remains in the unit for no more

<sup>76</sup>Note: Under a separate provision discussed in section VIII.J, the Agency is proposing to allow hazardous waste to be accumulated by SQGs in drip pads and containment buildings.

than 90 days by identifying the date hazardous waste first started to be accumulated, a written description of the waste generation and management practices for the site showing that they are consistent with respecting the 90 day limit, and documentation that the procedures are complied with; or

(3) Documentation that the unit is emptied at least once every 90 days.

Finally, the Agency is proposing that generators use inventory logs or records to identify the contents of the containment building and its associated hazards and that such logs and records be immediately accessible. As with the proposed changes to the marking and labeling of drip pads, the Agency believes that these requirements are necessary to ensure that workers and emergency responders handling or coming in contact with the waste understand the hazards and dangers that they may be exposed to.

As with the proposed changes to the tank marking and labeling regulations at § 262.34(a)(3), the Agency requests comment on the necessity and effectiveness of explicitly requiring generators to use inventory logs or records to identify the contents and hazards of hazardous waste accumulated on a drip pad or in a containment building. The Agency also requests comment on alternative methods of identifying the contents and hazards of a hazardous waste on a drip pad or in a containment building in a more cost-effective manner. Lastly, the Agency requests comment on how a generator can more effectively mark or label a drip pad or containment building with the words "Hazardous Waste."

*Effect of the Proposed Reorganization:* This section is affected by the proposed reorganization. The labeling and marking regulations would be moved from § 262.34 to § 262.16(b)(6) (for SQGs) and § 262.17(a)(5) (for LQGs). The reorganization is discussed in section XIII of this preamble.

#### 4. Request for Comment on Documentation of Waste Accumulation Unit Inspections

*a. Container inspections at §§ 262.34.* The Agency is requesting comment in this proposal on requiring both LQGs and SQGs, as a condition for exemption to record the results of their required "at least weekly" inspections to emphasize the importance of these inspections in preventing releases into the environment and to provide a measure of accountability that a generator inspection of its containers actually took place.

As part of the proposed reorganization to make the generator regulations more

user-friendly, the Agency is proposing to incorporate parts of the existing regulatory text at § 265.174 (Container Inspections) into § 262.34 (§ 262.16(b)(2) for SQGs and § 262.17(a)(1) for LQGs under the proposed reorganization) and to revise these paragraphs to incorporate the existing regulatory text at § 265.171 for remedial action that is required if deterioration or leaks are detected.

The requirement for container inspections at § 265.174 states that the owner or operator must inspect areas where containers are stored at least weekly and that the owner or operator must look for leaking containers and for deterioration of containers caused by corrosion or other factors.

Currently, neither SQGs nor LQGs are required to record the results of their weekly inspections. As a result, EPA and some states have no reliable way to verify that such inspections took place unless, by the rare chance, an inspector is inspecting a generator site at the same time that the "at least weekly" inspection occurs or an inspector notices a release from a container during an inspection. This problem is compounded by the fact that generators accumulating hazardous wastes in containers are not required to have any type of secondary containment for their containers. Therefore, should a release occur, these problems could be compounded if the "at least weekly" inspection fails to occur.

A review of state programs found that many states already require generators accumulating hazardous waste in containers to maintain records of their weekly inspections. Many of these states provide templates for generators to use to assist them in recording the results of their inspections.<sup>77</sup>

EPA does not believe the burden imposed upon generators to record the results of its weekly inspections would be significant, particularly if generators use a template of some type to document the results of inspections (see examples of templates provided by states to generators to assist them in recording the results of inspections in the docket to this proposal).

The Agency also believes that best management practices for generators would already include documenting the results of their weekly inspections to not only prevent any releases, but also identify situations, such as a damaged container, that could lead to a potential release to the environment. That is, the Agency believes that the incremental cost of documenting the results of

weekly inspections would be less than the costs of having to clean up after a release.

The Agency is also seeking comment on modifying the generator accumulation conditions (the proposed language at §§ 262.16(b)(2)(iv) and 262.17(a)(1)(v) under the reorganization) to add a provision that generators document their weekly inspections of containers in central accumulation areas and keep the log of the inspections at the site for at least three years. The record of each inspection would document the following: the visual inspection of containers to identify any hazardous wastes accumulated in rusting, bulging, or leaking containers; a description of any discrepancies or problem areas encountered in the inspection and corrective actions taken; and the signature or initials of the inspector and the date of the inspection.

In requesting comment on documenting the results of "at least weekly" container inspections, the Agency is interested in the environmental and economic impacts of requiring all generators accumulating hazardous waste in containers to document weekly container inspection, as a condition for exemption. Additionally, the Agency requests comment on whether to require documentation of such inspections if the generator has a secondary containment system to control leaks in the event of a release of hazardous wastes or other such incidents. The Agency also requests comment on whether this documentation requirement should be limited to those generators that accumulate a certain amount of hazardous waste at any one time or generators that accumulate more than a certain number of containers in a central accumulation area at any one time. Lastly, the Agency also seeks comment from generators in states who already must maintain records of their container inspections on their experience with this provision and whether there are effective alternative options worth considering that achieve the same goals.

*b. Tank inspections for SQGs at § 262.34(d)(3) with cross-reference to §§ 265.201(c) and (d).* The Agency also requests comment on requiring small quantity generators accumulating hazardous waste in tank systems to document the results of their tank inspections in order to emphasize the importance of these inspections in preventing releases into the environment and to provide a measure of accountability that a generator inspection of its tanks actually took place. Unlike LQGs accumulating

<sup>77</sup> See *Sample of States With Container Documentation Requirements* in the docket for this rulemaking.

hazardous wastes in tanks, who must document the results of their inspections, SQGs have no such provision in part 262. EPA proposes to incorporate the regulatory text of § 265.201(c) and (d) into § 262.16.

The regulations at § 265.201(c)(1) through (5) state that SQGs must inspect discharge equipment, data from monitoring equipment, and levels of waste in a tank daily, unless the tanks have secondary containment and leak detection equipment or procedures, in which case these can be inspected at least weekly. In addition, SQGs must inspect the construction of tanks and of discharge confinement structures like dikes and the areas immediately surrounding them at least weekly.

Section 265.201(d) also requires that SQGs with full tank secondary containment to document in the facility's operating record when an alternative inspection schedule is used. However, neither § 265.201(c) nor (d) contains a requirement to document the results of any inspection findings. Therefore, the Agency requests comment on adding a paragraph to § 262.16 that would require that generators record in a log the daily and weekly results of inspecting their tanks and maintain a record of those inspections on site for at least three years.

Similarly, the Agency requests comment on adding a similar provision to § 262.16 to address tanks with secondary containment and leak detection systems or practices to ensure that leaks that are identified, that the generator would be required to record in a log the results of inspecting these areas, including any leakage that may occur and maintain a record of those inspections on site for at least three years.

In commenting on this matter, please consider, in particular, whether it is environmentally and economically worthwhile to require SQGs accumulating hazardous waste in tanks to document the results of daily and weekly tank inspections. The Agency also requests comment on whether to require the documentation of such inspections if the SQG has a secondary containment system to control leaks in the event of the release of hazardous wastes. Additionally, the Agency requests comment on whether this documentation requirement should be limited to those generators that accumulate a certain amount of hazardous waste at any one time or generators that accumulate hazardous waste in more than a certain number of tanks in a central accumulation area. Lastly, the Agency also seeks comment

from SQGs in states who already must maintain records of their tank inspections on their experience with this requirement and whether there are effective alternative options worth considering that achieve the same goal.

*c. Drip pad inspections for both SQGs and LQGs at § 262.34.* The Agency also requests comment on requiring both LQGs and SQGs accumulating hazardous waste on drip pads to document the results of their drip pad inspections. The current regulation in § 262.34(a)(1)(iii) references subpart W of part 265. Section 265.444 in subpart W currently requires that after installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters and that while a drip pad is in operation, it must be inspected weekly and after storms to detect evidence of various types of damage to the drip pad or the systems that prevent and detect run-off and leakage.

As with hazardous waste accumulated in containers by LQGs and SQGs and hazardous waste accumulated in tank systems by SQGs, there is no regulation requiring them to document the results of drip pad inspections. Therefore, the Agency requests comment on modifying the generator accumulation conditions (§§ 262.16(b)(4) and 262.17(a)(3) in the proposed reorganization) to add a condition that the generator record in a log the results of weekly inspections and inspections after storms and that the records address deterioration, malfunctions or improper operation of run-on and run-off control systems; the presence of leakage in and proper functioning of leakage detection systems; and deterioration or cracking of the drip pad surface. The generator would be required to keep a record of the inspections on site for at least three years from the date of the last inspection.

In commenting, please consider whether it is environmentally and economically worthwhile to require SQGs accumulating hazardous waste on drip pads to document the results of weekly drip pad inspections. Additionally, the Agency requests comment on whether this documentation requirement should be limited to those generators that accumulate a certain amount of hazardous waste at any one time. The Agency also seeks comment from SQGs and LQGs in states who already must maintain records of their drip pad inspections on their experience with this provision, including whether it makes environmental and economic sense to ensure releases do not occur

and whether there are effective alternative options that achieve the same goals.

#### G. Generator Closure Regulations

EPA is proposing three changes to the closure conditions for exemption from permitting for LQGs in § 262.34(a)(1)(iv)(B). First, EPA is proposing to consolidate the closure regulations for LQGs accumulating hazardous waste at § 262.17(a)(8). This consolidation would include both the general performance requirements found at §§ 265.111 and 265.114 for containers, tanks, drip pads, and containment buildings, and the unit specific requirements found at § 265.197 for tanks, § 265.445 for drip pads, and § 265.1102 for containment buildings.

Second, EPA is proposing to strengthen the closure regulations for LQGs accumulating hazardous waste in containers in central accumulation areas that plan to stop hazardous waste accumulation in those containers by requiring them to meet the same type of closure regulations that apply for tanks, drip pads and containment buildings, including in those situations where a generator is not able to demonstrate that its contaminated soils can be practicably removed or decontaminated.

Third, EPA is proposing to require an LQG to notify EPA or the authorized state using EPA form 8700-12 at least 30 days prior to closing the generator's site or when the generator closes a unit accumulating hazardous waste. Additionally, EPA is proposing that an LQG notify EPA or their authorized state within 90 days after closing the site or the unit accumulating the hazardous waste. This notification would state that the LQG has clean closed or failed to clean close and therefore must close as a landfill.

#### 1. Consolidation of Closure Regulations for LQGs in Part 262

EPA is proposing to consolidate all of the closure regulations for LQGs accumulating hazardous waste in tanks, drip pads, and containment buildings in the generator accumulation conditions (§ 262.17(a)(8) under the proposed reorganization). EPA believes that the current structure of these regulations can be confusing and difficult to follow.

Currently, the closure regulations for LQGs are found at § 262.34(a)(1). These regulations refer to the general performance requirements for closure at §§ 265.111 and 265.114. Section 265.111 references the unit specific closure regulations found at subpart J of part 265 (for tanks), subpart W of part 265 (for drip pads) and subpart DD of part 265 (for containment buildings). The

closure regulations for LQGs refer to the TSDf regulations because the waste accumulation units at LQGs (tanks, drip pads, and containment buildings) are similar to those at TSDFs and, thus, present the same potential for adverse impacts to human health and the environment if closure is not conducted properly.

However, while §§ 265.111 and 265.114 cite the specific closure regulations for different types of units, missing from § 265.111 is a reference to drip pads and missing from § 265.114 is a reference to both drip pads and containment buildings. The Agency believes these are inadvertent oversights where EPA failed to make the appropriate conforming changes when the regulations for drip pads and containment building were promulgated in 1990 and 1992, respectively.<sup>78</sup>

Furthermore, as with other parts of the hazardous waste generator regulations, the accumulation regulations at § 262.34 often reference the detailed technical regulations of part 265 to reduce duplication. Part 265 describes the technical regulations for interim status TSDFs. Usually, the technical requirements in part 265 are clear in distinguishing the generator standards from standards for interim status TSDFs (e.g., § 265.201 specifies that the provisions of that paragraph are only for SQGs); however, this is not the case for the LQG closure regulations.

Finally, EPA believes the closure regulations are unnecessarily confusing. For example, the tank system regulations for LQGs at § 262.34(a)(1)(ii) make clear that the requirements of § 265.197(c) do not apply to LQGs. Yet, LQGs must comply with § 265.111, which in turn, at paragraph § 265.111(c) requires LQGs to comply with § 265.197, which includes paragraph (c). One commenter wrote about this confusion when the Agency proposed to clarify the closure regulations for LQGs as part its March 18, 2010, Hazardous Waste Technical Corrections and Clarifications Direct Final Rule (75 FR

12989).<sup>79</sup> The Agency has made clear in guidance that generators are not subject to § 265.111(c), except if the facility cannot clean close its waste accumulation unit(s), but we believe that a regulatory change would make this even more clear.<sup>80</sup>

Therefore, as a first step in improving the usefulness of the closure regulations for LQGs accumulating hazardous waste in containers, tanks, drip pads, and containment buildings, EPA is proposing to consolidate and integrate all relevant closure provisions for LQGs accumulating hazardous waste in tanks, drip pads, and containments buildings at § 262.17(a)(8). The closure regulations include the following: (1) the general closure performance standards found at § 265.111(a) and (b); (2) a modified version of the standards found at § 265.114 (Disposal or decontamination of contaminated equipment, structures, and soils) that incorporates regulatory language applicable to containers, tanks, drip pads, and containment buildings undergoing closure; (3) the unit-specific closure regulations relevant to tanks, drip pads, and containment buildings found at §§ 265.197(a) and (b), 265.445(a) and (b), and 265.1102(a) and (b), respectively;<sup>81</sup> (4) a provision addressing the disposition of any hazardous waste generated in the process of closing either the generator's site or unit(s) accumulating hazardous waste, and (5) a provision addressing the situation when a waste accumulation unit or site cannot clean close and must close as a landfill. This includes situations where an LQG accumulating hazardous wastes in containers cannot clean close. More specifically, the proposed new closure regulations in the generator accumulation conditions at § 262.17(a)(8)(ii) would require LQGs at closure to close the waste accumulation unit or site in a manner that achieves all of the following:

(1) Minimizes the need for further maintenance by controlling, minimizing, or eliminating, to the extent necessary to protect human health and the environment, the post-closure

escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere;

(2) Properly disposes of or decontaminates all contaminated equipment, structures and soil and any remaining hazardous waste residues from waste accumulation units including containment system components (pads, liners, etc.), contaminated soils and subsoils, bases, and structures and equipment contaminated with waste. Any hazardous waste residues remaining in the unit(s) being closed must be removed from the unit(s). Any leakage must also be decontaminated or removed and managed as a hazardous waste unless § 261.3(d) applies;

(3) Manages any hazardous waste generated in the process of closing either the generator's site or unit(s) accumulating hazardous waste in accordance with all applicable requirements of parts 260 through 270, including removing any hazardous waste contained in these units within 90 days of generating it and managing these wastes in a RCRA Subtitle C hazardous waste permitted or interim status treatment, storage and disposal facility or interim status facility; and

(4) Ensures that if the generator demonstrates that all contaminated soils cannot be practicably removed or decontaminated as required in this section, then the generator must close the waste accumulation unit(s) and perform post-closure care in accordance with the closure and post-closure care regulations that apply to landfills (§ 265.310). In addition, for the purposes of closure, post-closure, and financial responsibility, such a waste accumulation unit is then considered to be a landfill, and the generator must meet all of the standards for landfills specified in subparts G and H of part 265.

## 2. Closure Regulations for LQGs Accumulating Hazardous Waste in Containers

As an additional condition to qualify to accumulate hazardous waste without a permit or interim status, EPA is proposing to require LQGs accumulating hazardous wastes in containers in central accumulation areas that plan to stop hazardous waste accumulation in those containers to meet the same type of closure regulations discussed above—that is, the closure regulations for tanks, drip pads, and containment buildings. This includes situations where an LQG accumulating hazardous wastes in containers can demonstrate that any

<sup>78</sup> Memo from Robert Springer, Director of EPA's Office of Solid Waste, to RCRA Directors, September 24, 2003, RCRA Online 14681; Drip Pad Closure Notification and Certification Requirements, November 1, 1997, RCRA Online 14130; and RCRA/Superfund Hotline Monthly Report, December 1998, RCRA Online 14321, that states: "LQGs are subject to the most stringent requirements, which include general closure provisions and unit-specific ones. The general closure requirements appear in Section 265.111 and Section 265.114 (Section 262.34(a)(1))." Additionally, the report states: "LQGs storing or treating waste in tanks, on drip pads, or in containment buildings are also subject to closure requirements specific to these types of units."

<sup>79</sup> Comments from the National Mining Association, May 3, 2010. Docket ID No: ID EPA-HQ-RCRA-2008-0678.

<sup>80</sup> RCRA/Superfund Hotline Monthly Report, December 1998, RCRA Online 14321.

<sup>81</sup> Note: During the partial and final closure periods, all contaminated equipment, structures and soil must be properly disposed of, or decontaminated unless specified otherwise in § 265.197, 265.228, 265.258, 265.280, or 265.310. By removing all hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that hazardous waste in accordance with all applicable requirements of part 262.

contaminated soils cannot be practicably removed or decontaminated and as a result, the generator must close the waste accumulation unit(s) and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (§ 265.310). In addition, for the purposes of closure, post-closure, and financial responsibility, such a waste accumulation unit is then considered to be a landfill, and the generator must meet all of the requirements for landfills specified in subparts G and H of part 265.

Supporting these proposed regulations are damage cases by generators who accumulated hazardous wastes in containers. An examination of Superfund removal actions shows LQGs accumulating hazardous waste in containers have sometimes closed their doors or abandoned their sites, resulting in environmental problems.<sup>82</sup> Most LQGs use containers to accumulate hazardous wastes. Some LQGs may generate relatively small quantities of hazardous waste and therefore may not need many containers to accumulate their hazardous wastes, but other generators generate a sufficient quantity of hazardous waste to require the use of a large number of containers each day. Not ensuring that these sites are closed properly increases the risk of more damage cases.

For LQGs that accumulate hazardous waste in containers or container units, EPA is proposing closure regulations that replicate the regulations in paragraphs § 262.17(a)(8)(ii), mentioned above. The Agency believes the closure regulations are applicable to LQGs who have accumulated hazardous waste in containers as well as to LQGs who have accumulated hazardous waste in tanks, drip pads and containment buildings in order to prevent adverse impacts to human health and environment. Therefore, as with LQGs that accumulate hazardous wastes in tanks, drip pads, and containment buildings, should a generator decide to close a container or stop accumulating hazardous waste in containers at the site altogether, it would be responsible for complying with the regulations proposed at § 262.17(a)(8)(ii) and removing all relevant hazardous wastes accumulated within 90 days of generating it and any hazardous wastes that also may have been accumulated in SAAs. Otherwise, the generator would fail to meet the conditions for the exemption from permitting and would be subject to the requirements of 40 CFR

parts 264, 265, 267 and the permit requirements of part 270.

### 3. Notification by LQGs Upon Closure of their Hazardous Waste Accumulation Units

EPA is also proposing that an LQG notify either EPA or its authorized state at least 30 days prior to closure of a hazardous waste accumulation unit, such as a container, tank, drip pad, or containment building, or closure of the site altogether. EPA is also proposing that such generators subsequently notify EPA or its authorized state no later than 90 days after closure of the site or a hazardous waste accumulation unit that they have either clean closed (*e.g.*, complied with the applicable generator closure regulations) or, if they cannot clean close, that they must close as a landfill. If these changes are finalized, EPA will amend EPA form 8700-12 to incorporate collection of this information.

The hazardous waste regulatory program is a “cradle to grave” system in which any hazardous waste generated by an LQG (or SQG) must be subsequently managed, either on site or off site at an appropriate RCRA destination facility. Missing from the current regulatory framework is knowledge by the regulatory authority that the LQG, upon closing either a waste accumulation unit or closing the site altogether, properly closed the accumulation unit in compliance with the applicable closure regulations. Without this knowledge, regulatory authorities do not know whether generators have abandoned the site, leaving behind hazardous waste that could subsequently result in a release to the environment and adverse impacts to human health and the environment. Thus, these closure notifications are important to ensure that LQGs close their waste accumulation unit, or site, in compliance with the applicable closure regulations. Fail to properly close would be a violation of the waste accumulation exemption.

### 4. Request for Comment

EPA requests comment regarding its proposal to consolidate the closure regulations for hazardous waste generated by LQGs in § 262.17(a)(8) and whether this approach would improve the readability/understandability of the rules, and thus, improve compliance. EPA also requests comment on whether parts of the proposed closure regulations at § 262.17(a)(8) should be modified.

EPA also requests comment regarding its proposal to strengthen the closure

regulations for LQGs accumulating hazardous waste in containers.

In addition, EPA requests comment on whether it should require LQGs to notify EPA regarding closure both prior to closure (*e.g.*, at least 30 days prior to closure) and after closure (*e.g.*, notify no later than 90 days after the site has closed one or all of its hazardous waste accumulation units either by clean closure or closed as a landfill) or whether EPA should just require notification only once—that is, after closure (*e.g.*, no later than 90 days after closure). Requiring notification only after closure of the hazardous waste accumulation unit or site reduces the generator’s paperwork burden in half and allows EPA and the state to focus on results. However, requiring notification both before and after closure creates greater visibility for this important activity. The notification creates an incentive for the generator to take all appropriate actions once the unit or site is closed and also provides notice to EPA and the state to be aware of this important activity and to plan for a possible inspection to verify clean closure has successfully occurred or determine if additional closure efforts are needed. EPA is currently of the opinion that the additional environmental benefits accrued from requiring both notifications will exceed the additional paperwork costs to the generator. In conjunction with an LQG notifying EPA no later than 90 days after closure, EPA is also requesting comment on whether, as part of the closure notification requirements, LQGs should be required to certify that they have clean closed or failed to clean close all applicable hazardous waste accumulation units. This type of notification would have the added benefit of ensuring EPA knows that an LQG performed their due diligence in closing and can certify to either clean closing or closing as a landfill.

Because there are no federal regulations for closure of a waste accumulation unit or site closure by SQGs, SQGs are not required to comply with the clean closure regulations, as well as notify when they close any or all waste accumulation units. Unlike LQGs, which have no waste accumulation limits as long as they remove any hazardous waste within 90 days of generating it, SQGs do have a waste accumulation quantity limitation of 6,000 kilograms. Given this waste accumulation quantity limitation, EPA sees no reason at this time to propose requiring SQGs to clean close or close as a landfill if they cannot clean close. However, EPA sees a potential benefit in having SQGs notify EPA when SQGs

<sup>82</sup> See EPA’s On Scene Coordinator (OSC) Web site: <http://www.epaosc.org>.

close to allow the regulatory authority to follow-up and ensure that all hazardous waste was removed and properly managed. Therefore, EPA is requesting comment regarding whether SQGs that stop accumulating and close any or all of their hazardous waste accumulation units should notify EPA within 60 days after closing.

*Effect of the Proposed Reorganization:* This section is affected by the proposed reorganization. The LQG closure regulations would move to § 262.17(a)(8). The reorganization is discussed in section XIII of this preamble.

*H. Changes to the Preparedness, Prevention, and Emergency Procedures Provisions (40 CFR 262.34(a)(4) and 262.34(d)(4) and (5))*

EPA is proposing a number of modifications to the conditions for exemption for both SQGs and LQGs regarding preparedness, prevention and emergency procedures. The conditions for SQGs are found at §§ 262.34(d)(4) and (5) (which refer to the technical standards at 40 CFR part 265 subpart C) and the conditions for LQGs are found at § 262.34(a)(4) (which refers to the technical standards at part 265 subparts C and D).

The proposed revisions are organized in this section as follows: (1) Revising the scope of the contingency planning and emergency procedures regulations; (2) revising § 265.37(a) to state that when making arrangements with local authorities regarding emergency procedures, an SQG or LQG must first attempt to make emergency preparedness and procedures agreements with its Local Emergency Planning Committee (LEPC), and, if this attempt is not successful (or there is no LEPC in the area), the generator must make an arrangement with its local fire department and other emergency responders; (3) modifying the regulations for contingency plans for LQGs in §§ 265.52 and 265.53 to add an executive summary to the plan that a new LQG would submit to the LEPC and to adjust the content of an element of the required contingency plan; (4) making two revisions to the technical standards regarding required equipment that are part of the preparedness and prevention regulations in part 265 subpart C that are applicable to both SQGs and LQGs; (5) modifying the preparedness and prevention provisions for SQGs at § 262.34(d)(5) regarding posted emergency coordinator information and responsibility for cleaning up a spill; (6) modifying the personnel training provision for LQGs; (7) taking comment on what personnel

should have mandated personnel training, and (8) taking comment on whether any of these proposed revisions would be appropriate for TSDFs in addition to generators.

Recent catastrophic chemical accidents in the United States, such as the 2013 West, Texas, fire and explosion that killed 15 people, the 2010 explosion and fire at Tesoro Refinery in Anacortes, Washington, that killed seven employees, and the 2012 Chevron Refinery hydrocarbon fire in Richmond, California, that affected 15,000 people in the surrounding area, highlight the need for continued improvement in a number of areas related to chemical facility safety. To address these concerns, the President issued Executive Order 13650—Improving Chemical Facility Safety and Security (EO) on August 1, 2013.<sup>83</sup> The EO directed the Department of Homeland Security, EPA, the Department of Labor, the Department of Justice, the Department of Agriculture, and the Department of Transportation to identify ways to improve operational coordination with state, local, tribal, and territorial partners; enhance federal agency coordination and information sharing; modernize policies, regulations, and standards to enhance safety and security in chemical facilities; and work with stakeholders to identify best practices to reduce safety and security risks in the production and storage of potentially harmful chemicals.

One of the key goals the EPA is addressing through this effort is enhancing and providing additional support to State Emergency Response Commissions (SERCs) and LEPCs to assist them in collecting and analyzing the chemical information they receive from local facilities and developing local emergency response plans to mitigate or prevent a devastating chemical disaster. Several of the proposed requirements are aligned with these EO efforts and will assist in furthering this goal and with those of the EO in general because they update the regulations to make them compatible with the current infrastructure of emergency planning and response by referencing LEPCs. Additionally, these revisions would provide a more usable contingency plan to emergency responders en route to a time-sensitive emergency at a generator of hazardous waste. Before finalizing these provisions, EPA will ensure that they are aligned with the efforts to

improve chemical plant safety and security under the EO.

This preamble also discusses how EPA might incorporate modern technology into the emergency planning and procedures regulations for generators in order to provide information more quickly to emergency responders when faced with an event at a generator.

In addition to the changes listed above, as part of the reorganization of the preamble discussed in section XIII, EPA is proposing to copy the preparedness and prevention regulations for SQGs into § 262.16 and to create a new subpart in part 262—subpart M—that would contain the more extensive preparedness, prevention, and emergency procedures regulations for LQGs. Copying a version of these regulations into part 262 allows most of the preparedness, prevention, and emergency procedures regulations for generators to be easily found without accessing part 265 and with minimal cross-referencing.<sup>84</sup>

As part of this reorganization, our proposed regulation has replaced the word “facility” in the regulations with “site” because “facility” is defined in § 260.10 as specific to TSDFs. Another small revision that we propose because of the reorganization of these regulations is folding the “comment” in § 265.55 into the body of the corresponding proposed regulation at § 262.264. We are proposing this because **Federal Register** style no longer permits this kind of comment in new regulations.

**1. Areas Subject to Preparedness, Contingency Planning, and Emergency Procedures Regulations**

The current preparedness and emergency procedures regulations do not clearly state whether they are applicable to the entire generator site or only to areas where hazardous waste is generated and accumulated on site (or where allowable treatment may occur in accumulation units) and when transported off site for subsequent treatment, storage, and disposal. EPA is proposing that the regulations for preparedness and prevention and for contingency planning and emergency procedures apply only to those areas of a generator's site where hazardous waste

<sup>83</sup> <http://www.whitehouse.gov/the-press-office/2013/08/01/executive-order-improving-chemical-facility-safety-and-security>.

<sup>84</sup> Note that throughout this section, although we are referring to the regulations by their current citations, the fact that we are also proposing in most cases to reorganize those requirements and copy them into the generator requirements in part 262 means that the revisions discussed in this section would not automatically apply to interim status TSDFs, as the proposed revisions only apply to the version of these regulations that is being proposed to be in part 262.



is generated and accumulated and, where applicable, to those areas where allowable treatment may occur in accumulation units.

The Agency is proposing to explicitly state that the RCRA preparedness and emergency procedures regulations are limited strictly to areas where hazardous waste is generated and accumulated.

The Agency has previously signaled that these requirements do not apply to the entire generator site. In a November 7, 2006, letter, EPA stated that the 40 CFR part 265 regulations for LQGs set forth in § 262.34(a)(4) apply to units accumulating hazardous wastes. The letter states that in order to comply with the part 265 requirements referenced in § 262.34(a)(4), LQGs only need to address those tanks, containers, drip pads, and containment buildings that accumulate hazardous wastes and are subject to the 90-day generator accumulation provision. As an example, the letter states that when developing a contingency plan, LQGs would only need to include those 90-day accumulation units involving the on-site management of hazardous waste.<sup>85</sup>

It makes sense to limit the applicability of these regulations only to these areas because several other statutes already address the development and implementation of contingency plans associated with other areas of a generator site, such as the storage of chemical materials other than hazardous wastes. We also note that considerable overlap exists in the requirements in the various statutes and, since 1997, the federal government has encouraged facilities to develop integrated contingency plans and has provided guidance for doing so in the **Federal Register**. The integrated contingency plan is discussed further in section VIII.H.3, below.

The language EPA is proposing to change currently appears in §§ 265.30 and 265.50, though we are proposing to move it to a new part 262 subpart M to make it specific to generators. EPA proposes that subpart M apply only to those areas of a large quantity generator where hazardous waste is generated and accumulated on site in accordance with the conditions in § 262.17. This proposal includes a parallel change for the emergency procedures regulations for small quantity generators in § 262.16.

The Agency requests comment on making it explicit in the regulations that the preparedness, prevention, and

emergency procedures regulations apply only to those areas of the generator's site where hazardous waste is generated and accumulated, and where applicable, those areas where allowable treatment may occur in accumulation units.

*Effect of Proposed Reorganization:* This section is affected by the proposed reorganization. The proposed revisions would appear at § 262.250 in a new subpart M of part 262 and would not appear in part 265. The reorganization is discussed in section XIII of this preamble.

## 2. Making Arrangements With the Local Emergency Planning Committee

Sections 262.34(a)(4) and (d)(4) set forth conditions for LQGs and SQGs that accumulate without a permit. Both these paragraphs include references to part 265 subpart C, which contains a reference to § 265.37. Section 265.37(a) states that "The owner or operator must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations" and goes on to list the types of local emergency officials that should be informed about hazardous waste at a facility, such as fire departments and emergency response teams, and the information the generator should provide them.

The Agency is proposing to revise this provision for generators to state that SQGs and LQGs must first attempt to enter into agreements with their LEPC, but if there is no LEPC in the area or if the LEPC does not respond or is unwilling to enter an agreement, the generator must enter into an agreement(s) with the local fire department and other emergency responders. This proposed revision would add to the regulations both a reference to LEPCs and an explicit statement that generators must enter into an agreement with emergency planning officials, rather than just attempt to enter into an agreement.

*a. Local emergency planning committees.* The Agency is proposing to revise regulations that were finalized in 1980. The national and local infrastructure for emergency planning and response has changed significantly since that time, but these regulations have not been updated to reflect those changes. The proposed revision to specifically name LEPCs in this regulation addresses that deficiency.

The Superfund Amendments and Reauthorization Act (SARA) was enacted in 1986. Title III of SARA is also known as the Emergency Planning and Community Right-To-Know Act (EPCRA). EPCRA helps increase the

public's knowledge and access to information regarding chemicals at individual facilities, their uses, and releases into the environment. States and communities, working with facilities, can use the information to improve chemical safety and protect public health and the environment. EPCRA requires both small and large entities to report chemical information to the SERC, the LEPC, the local fire department, and tribal nations.

EPCRA requires LEPCs to prepare a comprehensive plan for local communities designed to help them prepare for and respond to emergencies involving extremely hazardous substances (EHS). Facilities covered by EPCRA planning provisions are required to cooperate in emergency plan preparation and designate a facility emergency coordinator to participate in the planning process as well as notify their SERC and LEPC within 60 days of becoming subject to the emergency planning requirements (when an EHS is first present at the facility from a shipment or production). Additionally, as part of the community-right-to-know provisions of EPCRA, facilities that have hazardous chemicals for which they must have or prepare an MSDS or SDS and have at or above the threshold amount of those chemicals must also annually complete and submit an Emergency and Hazardous Chemical Inventory form (also known as a Tier II) to the LEPC, to the SERC, and to the local fire department by March 1. These facilities must send copies of their MSDS, SDS, or a list of hazardous chemicals to the LEPC, to the SERC, and to the fire department.<sup>86</sup>

In turn, LEPCs must develop an emergency response plan, review it at least annually, and provide information about chemicals in the community to citizens. These plans are developed by LEPCs with stakeholder participation. There are more than 3,000 designated local emergency planning districts, although not all of these districts have functioning LEPCs. The LEPC membership must include (at a minimum) elected state and local officials; police, fire, civil defense, and public health professionals; environment, transportation, and hospital officials; facility representatives; and representatives from community groups and the media. Although in many areas the LEPCs are the main organizing entities for emergency response, the RCRA hazardous waste regulations do not

<sup>85</sup> Memorandum from Matt Hale, Director of EPA's Office of Solid Waste, to RCRA Division Directors, November 7, 2006, RCRA Online 14758.

<sup>86</sup> The regulations implementing the emergency planning and notification requirements of EPCRA can be found at 40 CFR part 355.

mention them or their role in contingency planning.

The proposed language directly references LEPCs, stating that the generator must make arrangements with the Local Emergency Planning Committee for the types and quantities of hazardous waste handled at the site.<sup>87</sup> This modification merely updates the RCRA hazardous waste regulations to match the current emergency planning landscape.

Consistent with this proposed modification at § 265.37, the Agency is also proposing that when the language in current § 265.52(c) is copied into part 262, it state that the plan must describe arrangements agreed to with the Local Emergency Planning Committee. Should there be no Local Emergency Planning Committee, should it not respond, or should the Local Emergency Planning Committee determine that it is not the appropriate organization to make arrangements with, then the large quantity generator must make arrangements with its local fire department and other relevant emergency responders (e.g., police and hospitals) to coordinate emergency services, pursuant to § 262.256.

The Agency requests comment on this proposal to modify the language in §§ 265.37(a) and 265.52(c) when they are copied into part 262.

*Effect of Proposed Reorganization:* These sections are affected by the proposed reorganization. The proposed regulation would appear in the SQG standards at § 262.16(b)(8)(vi) and in the new part 262 subpart M for LQGs at § 262.256 for arrangements and § 262.261(c) for the content of the contingency plan. The reorganization is discussed in section XIII of this preamble.

*b. Making required arrangements.* The other proposed modification to the language currently in § 265.37(a) when it is copied into part 262 addresses the ambiguity of the current language, which requires only that the owner or operator “attempt to make” arrangements with local emergency response authorities.

Section 265.37(a) states that the owner or operator must attempt to make arrangements with local fire and emergency organizations, as appropriate for the type of waste handled at the facility and the potential need for the services of these organizations.

Paragraph (a)(1) makes clear that these arrangements involve familiarizing these organizations with the layout of the facility, properties of the hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes. Because an SQG is not required to submit a contingency plan, this language suggests that SQGs need only invite local officials to visit and familiarize themselves with the site as compared to LQGs, which are required to develop a written contingency plan and provide it to local officials.

Given the importance of emergency preparedness and planning, EPA is proposing to require that an SQG or an LQG must make direct arrangements with its LEPC as part of this condition. The Agency believes the LEPCs, in turn, will work with their local responders to integrate the activities of SQGs and LQGs into the overall emergency response plan.

Many SQGs and LQGs may already have arrangements with their LEPCs because most SQGs and LQGs either have EHSs that require reporting to the LEPC, which triggers EPCRA emergency planning requirements, or use chemicals that require an SDS, triggering the EPCRA community right-to-know requirement to report to LEPCs. However, in the case that a hazardous waste generator does not have a relationship with the LEPC, that LEPC may view working with non-EPCRA facilities as outside the scope of their authority. Alternatively, there may be a hazardous waste generator in a location where there is no organized LEPC. Therefore, as part of this regulation, EPA proposes to require that an SQG or LQG attempt to make formal arrangements with its LEPC unless there is no LEPC, the LEPC does not respond, or the LEPC determines that it is not the appropriate organization to make an arrangement with. In this case, the SQG or LQG would be required to make arrangements with its local fire department, as well as with other relevant emergency responders, such as the police department and local hospitals.

The proposed regulatory text for this condition would state that the generator must make arrangements with the Local Emergency Planning Committee for the types and quantities of hazardous waste handled at the site, as well as the potential need for the services of the local police department, other emergency response teams, emergency response contractors, equipment

suppliers, and local hospitals.<sup>88</sup> Should there be no Local Emergency Planning Committee, should it not respond, or should the Local Emergency Planning Committee determine that it is not the appropriate organization to make arrangements with, then the generator must make arrangements with the local fire department and other relevant emergency responders (e.g., police and hospitals).

EPA is also proposing regulatory text that describes procedures for how a facility that is not able to make arrangements with the LEPC would make such arrangements with the fire department and other local emergency services. Much of this language corresponds with the existing standards for making arrangements with emergency responders. These mandated steps are not necessary in the case of arrangements with the LEPC because that group is likely to have standardized procedures of its own to follow to make these arrangements with facilities.

The Agency requests comment on its proposal to require an SQG or an LQG to enter into arrangements with its LEPC unless there is no LEPC, the LEPC does not respond, or the LEPC determines that it is not the appropriate organization to make arrangements with, in which case the SQG or LQG would enter into an arrangement with its local emergency responders.

EPA is also proposing to add new language to supplement this condition because current § 265.37(a) does not specify the frequency that hazardous waste generators must make arrangements with local authorities. For example, should arrangements be updated according to a set schedule or only when modification is needed. Considering that some SQGs and LQGs may already coordinate with their LEPCs annually as part of their EPCRA requirements, the Agency is of the opinion that it is not necessary to include time frames for updating in this rule. The Agency requests comments on whether the regulations should mandate how frequently a generator must communicate with its LEPC or local fire department if it has not otherwise communicated with them.

*Effect of Proposed Reorganization:* This section is affected by the proposed reorganization. The proposed regulation would appear in the SQG standards at § 262.16(b)(8)(vi) and in the new part 262 subpart M for LQGs at § 262.256. The reorganization is discussed in section XIII of this preamble.

<sup>88</sup> This condition is being proposed at § 262.16(b)(8)(vi)(A) for SQGs and § 262.256 for LQGs due to the proposed reorganization.

<sup>87</sup> Although much of the discussion of these provisions for the purposes of this rule revolves around hazardous waste generators, because the provisions are located in part 265 for interim status hazardous waste TSDFs, they will refer to the persons regulated as “owner or operator” and the entity being regulated as the “facility.”

*c. Documenting arrangements.* As noted above, the EPA thinks it is important for both SQGs and LQGs to make arrangements with their LEPCs. In addition, EPA believes that documentation of these arrangements would be useful in ensuring that generators have taken the necessary steps to prepare for an emergency and have a clearly defined plan with the LEPC for emergency response.

Therefore, when EPA copies this condition into part 262, EPA is proposing to modify the language to state that the generator shall maintain records documenting the arrangements with the Local Emergency Planning Committee, or if appropriate, with the local fire department as well as any other organization necessary to respond to an emergency. This documentation may include a certified letter or any other documentation that confirms such arrangements actively exist.

One alternative suggested as part of the 2004 Program Evaluation of the hazardous waste generator regulatory program would be to require hazardous waste generators to list the emergency response agencies that have agreed to respond in the event of an emergency with some documentation confirming that the arrangements exist. In addition to helping generators prepare for emergencies, documentation of these arrangements would provide the necessary information for inspectors when determining compliance. The Agency believes this alternative may be the most effective approach to addressing the ambiguity that exists with the existing regulations at § 265.37(b).

The Agency seeks comment on this proposed change to documentation, in particular whether local ordinances already require generators to have documentation of arrangements with local emergency response organizations.

*Effect of the Proposed Reorganization:* This section is affected by the proposed reorganization. The proposed regulation would appear in the SQG standards at § 262.16(b)(8)(vi) and in the new part 262 subpart M for LQGs at § 262.256(b). The reorganization is discussed in section XIII of this preamble.

*d. Request for comment on emergency procedures at large facilities with internal emergency teams.* Many large organizations, particularly those that operate 24 hours a day, such as airports and military bases, have their own emergency response capabilities. This raises the question of whether and under what circumstances arrangements with local authorities would not be needed to ensure effective emergency response. The Agency seeks comment

on the feasibility of providing a waiver from requiring either an SQG or LQG to enter into arrangements with an LEPC or, if appropriate, other local authorities when they have 24-hour on-site emergency response capabilities, particularly under what circumstances a waiver would be granted.

### 3. Changes to Contingency Plan Regulations for LQGs

Under § 262.34(a)(4), LQGs are required to comply with 40 CFR part 265 subpart D, §§ 265.50–265.56, which describes the regulations on contingency planning and emergency procedures. These regulations address the purpose of the contingency plan, what it must contain, who receives copies, how to amend the contingency plan, and responsibilities of the facility's emergency coordinator and emergency procedures. One important thing to note is that the owner or operator of the facility can develop one contingency plan that meets all the regulatory standards for the various statutory and regulatory provisions for contingency planning:

- EPA's Oil Pollution Prevention Regulation (SPCC and Facility Response Plan Requirements) at 40 CFR 112.7(d), 112.20, and 112.21;
- EPA's Risk Management Programs Regulation at 40 CFR part 68;
- EPA's Resource Conservation and Recovery Act Contingency Planning Requirements at 40 CFR part 264 subpart D, 40 CFR part 265 subpart D, and 40 CFR 279.52;
- Department of Interior's Bureau of Safety and Environmental Enforcement (BSEE) Facility Response Plan Regulation at 30 CFR part 254;
- Pipeline and Hazardous Materials Safety Administration (PHMSA) Response Plans for Onshore Oil Pipelines at 49 CFR part 194;
- U.S. Coast Guard's (USCG) Facility Response Plan Regulation at 33 CFR part 154 subpart F;
- OSHA's Emergency Action Plan Regulation at 29 CFR 1910.38(a);
- OSHA's Process Safety Standard at 29 CFR 1910.119; and
- OSHA's HAZWOPER Regulation at 29 CFR 1910.120.

EPA recommends that generators base their contingency plan on the National Response Team's Integrated Contingency Plan Guidance (One Plan), discussed in the **Federal Register** on June 5, 1996, at 61 FR 28642.

In this action, EPA is proposing three modifications to the contingency planning regulations for generators: One is meant to improve the ability of emergency response teams to respond to an emergency at an LQG and the other

two are technical changes to the content of the contingency plan.

*a. Submitting a contingency plan executive summary to emergency management authorities.* The Agency is proposing to require that a new LQG, as of the effective date of the rule, submit an executive summary of its contingency plan to the emergency management authorities. As part of this revision, EPA proposes to change the language of the regulation to include LEPCs, as discussed above in section VIII.H.2.

The current regulations at § 265.53 state that a copy of the contingency plan must be submitted to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.

In discussions with EPA, emergency management professionals indicated that the length of the facility contingency plans prevents first responders from being able to fully review a facility's contingency plan when responding to an emergency.<sup>89</sup> Instead, they need readily available information that describes what they must confront when they arrive at the scene. Once the incident is under control, the first responders can then review the detailed contingency plan to determine their next steps, if applicable. Thus, the Agency believes that a shorter document, such as an executive summary of the contingency plan would be more effective for an emergency responder when responding to an incident at a facility accumulating hazardous waste. As currently happens in practice, once the incident is under control, then the emergency responders can review the more detailed contingency plan if necessary for long-term responses.

A review of the information required as part of a RCRA contingency plan in § 265.52, as well as information required by the local fire department, identified certain components that would be useful in an executive summary and EPA used this information in developing this proposed regulation. Specifically, the Agency is proposing to require that the following information be included in an executive summary to assist emergency responders in the event of an incident: (1) The types/names of hazardous wastes in layman's terms and the associated hazard associated with each waste present at any one time (e.g., toxic paint wastes,

<sup>89</sup> Notes from discussion with Phil Oakes and Jim Narva, International Association of Fire Marshalls, concerning Contingency Planning and Emergency Response Regulations, July 2012.

spent ignitable solvent, corrosive acid); (2) the estimated maximum amount of each waste that may be present at any one time; (3) the identification of any hazardous wastes where exposure would require a unique or special treatment by medical or hospital staff; (4) a map of the site showing where hazardous wastes are generated and accumulated and routes for accessing these wastes; (5) a street map of the facility in relation to surrounding businesses, schools, and residential areas to understand how best to get to the facility and also evacuate citizens and workers; (6) the locations of water supply (e.g., fire hydrant and its flow rate, drafting locations); (7) the identification of on-site notification systems (e.g., a fire alarm that rings off-site, smoke alarms); and (8) the name of the emergency coordinator and 24/7 emergency telephone number.

EPA believes these are the appropriate elements for the executive summary but is taking comment on them. In addition, for identification of the hazardous waste under element (1), EPA is taking comment on whether providing the name of the waste in layman's terms is sufficient for ensuring that first responders will be able to identify the appropriate actions to take in response. A reference to the material in the North American Emergency Response Guide, where appropriate, would likely reduce the time it takes for first responders to get the necessary information for managing the situation. EPA is interested in whether this type of reference would be useful to first responders and whether generators can easily access this information to add to their contingency plans.

EPA is also taking comment on whether the executive summary should add to element (3) a requirement that the generator provide information on the medical information for exposure to those hazardous wastes that do require special treatment. EPA is specifically interested in whether this information is readily available to the generator to be included in the executive summary of the contingency plan and whether first responders would find this additional information useful for responses.

Under the proposed condition for contingency plans at LQGs, EPA is proposing that an LQG that becomes subject to this rule after the rule's effective date be required to develop and submit an executive summary of its contingency plan to the LEPC in addition to the full contingency plan. The Agency is not proposing to require that an LQG that has already developed and submitted a contingency plan to local emergency responders develop an

executive summary because of the additional burden that would be imposed on existing LQGs to go back to their contingency plans and develop this summary. The Agency has determined that developing the executive summary during the initial writing of the contingency plan would not be a significant extra step. However, we recommend that an LQG that is not required to develop an executive summary of its contingency plan may want to do so and submit that executive summary to the LEPC when doing a periodic update on its contingency plan to ensure that the emergency responders have the appropriate information on hand in the event of an emergency.

EPA, therefore, is proposing to modify the condition regarding copies of the contingency plan to require that a copy of the contingency plan and all revisions to the plan must be maintained at the large quantity generator's site and the large quantity generator must submit a copy of the contingency plan to the Local Emergency Planning Committee. If there is no Local Emergency Planning Committee, if it does not respond, or if the Local Emergency Planning Committee determines that it is not the appropriate organization to make arrangements with, the facility must then submit the copy to the local emergency responders.

We are proposing to list in the regulations the eight elements described above as the most valuable items for emergency responders.

The Agency requests comment on this proposed revision. In addition, EPA requests comment on whether an existing LQG that has already provided its full contingency plan should also be required to submit an executive summary to the LEPC or, if appropriate, the fire department or other emergency responders.

The Agency also requests comment on whether an SQG should be required to develop an executive summary of a contingency plan. The major differences between the preparedness, prevention, and emergency procedures regulations applicable to SQGs and those applicable to LQGs are the development and implementation of a contingency plan and more rigorous responsibilities for the LQG emergency coordinator. Realizing that many SQGs may already have developed contingency plans to comply with other statutory and regulatory requirements, however, many of the elements of an executive summary may already be available and that the only addition would be summary information on the types and quantities of hazardous waste on site,

their associated risks, and their location within the facility. Therefore, requiring SQGs to provide an executive summary of a contingency plan to first responders could provide information that is critical during emergencies with little extra effort by the SQGs.

*Effect of Proposed Reorganization:* This section is affected by the proposed reorganization. These proposed regulations would appear in the new part 262 subpart M for LQGs at §§ 262.261 and 262.262. The reorganization is discussed in section XIII of this preamble.

*b. Eliminating employee personal information in LQG contingency plans.* As stated above, the condition for exemption for LQGs at § 262.34(a)(4) references part 265 subpart D, which includes a list of what the contingency plan must contain. The Agency is also proposing to modify the language currently at § 265.52(d) when it is copied into part 262 to now allow an LQG the flexibility to eliminate unnecessary employee personal information that is currently required in the contingency plan. This would protect those individuals' privacy, but still provide necessary information to address emergencies. Section 265.52(d) currently states that the plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see § 265.55), and requires that this list be kept up to date. It specifies that where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates. The proposed revision would remove the unnecessary references to addresses in this language and change the reference to home and office telephone numbers to "emergency telephone number."

Also as part of this revision, the Agency is proposing revisions to address situations where the facility has an emergency coordinator on duty 24 hours every day of the week. In those situations, the plan may list the staffed position (e.g., operations manager, shift coordinator, shift operations supervisor), as well as an emergency telephone number that can be guaranteed to be answered 24 hours a day, 7 days a week, 365 days a year. The EPA proposes to add language stating that in situations where the generator site has an emergency coordinator continuously on duty because it operates 24 hours per day, every day of the year, the plan may list the staffed position (e.g., operations manager, shift coordinator, shift operations supervisor,

or some other similar position) as well as an emergency telephone number that can be guaranteed to be answered at all times.

The Agency requests comment on this proposed modification.

*Effect of Proposed Reorganization:*

This section is affected by the proposed reorganization. The proposed regulation would appear in the new part 262 subpart M for LQGs at § 262.261(d). The reorganization is discussed in section XIII of this preamble.

*c. Request for comment to include alternative evacuation routes in contingency plan (40 CFR 265.52(f)).* The Agency also requests comment on modifying the condition on alternative evacuation routes in a contingency plan, currently found at § 265.52(f). This paragraph currently states that the plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary and that this plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

At issue is whether a contingency plan must contain information about alternative evacuation routes or whether a different approach for addressing alternative evacuation routes would be more effective. As part of the 2004 Program Evaluation of the hazardous waste generator regulatory program, the Agency received a comment stating that it does not make sense to include in the contingency plan the hundreds of possible evacuation routes that may be present at a facility depending on its configuration. The commenter argued that the regulation should be modified to require that evacuation routes be posted and drills be conducted but that the regulations should not require the routes to be in the contingency plan.<sup>90</sup>

The Agency does not believe the current regulation requires all potential evacuation routes be identified and believes emergency responders may need this type of information in order to determine the most efficient and timely approach to reach the facility, which raises the question of whether the regulation should be modified in this way. However, the Agency seeks comment on whether the commenter's proposal to require the posting of evacuation routes and holding annual evacuation training and drills would be

an effective substitute to maintaining alternative evacuation routes in the contingency plan. The Agency also seeks comment on whether this paragraph of the regulations should discuss shelter-in-place as part of contingency plans.

*Effect of the Proposed Reorganization:* This section is affected by the proposed reorganization. Under the reorganization, the proposed regulation would appear in the new part 262 subpart M for LQGs at § 262.261(f). The reorganization is discussed in section XIII of this preamble.

*d. Request for comment on the usefulness of a potential electronic RCRA contingency planning application.*

The Agency requests comment on whether contingency plans should be submitted electronically to emergency responders to enhance their ability to respond safely and effectively to an emergency at an LQG and what EPA's role should be in electronic submittals. Currently EPA makes numerous electronic databases and tools available for helping first responders with emergency management. These tools include CAMEO (Computer-Aided Management of Emergency Operations), which assists with data management requirements under EPCRA, such as the required annual submittal of an Emergency Hazardous Chemical Inventory Form to the LEPC. EPA is taking comment on whether an additional tool to manage contingency plans under RCRA would be a useful addition to this software suite and whether it would assist LEPCs by integrating the contingency plan with their existing data on facilities, making the information available to the first responders in the most usable way.

Specifically, we request comment on the feasibility and effectiveness of private sector parties or non-profit or governmental entities developing software that LQGs could use to provide important information to emergency responders in responding to an emergency. Building on the concept of a standard list of information to be included in a contingency plan executive summary that was discussed above, private sector or non-profit parties could design electronic software to identify the appropriate information emergency responders quickly need to assess an emergency. In turn, LQGs would then input that information into the application and provide that information to their local LEPC or emergency response organization for use should an emergency arise. The objective would be to allow emergency responders to more quickly and

effectively analyze and respond to emergencies rather than having to review a lengthy document.

**4. Technical Changes Applicable to Both SQGs and LQGs**

The Agency is proposing two additional clarifications and modifications to the existing preparedness, prevention, and emergency procedures regulations for SQGs and LQGs and is taking comment on one more.

The Agency is proposing revisions based on 30 years of experience with these rules, feedback from stakeholders as part of the Agency's 2004 Program Evaluation of the hazardous waste generator regulatory program and discussions and communication with stakeholders. EPA believes these clarifications will foster improved compliance without adversely affecting the protection of human health and the environment.

*a. Proposed technical changes to introductory paragraph on required equipment.* Sections 262.34(a)(4) and (d)(4) include the condition that LQGs and SQGs comply with part 265 subpart C, which includes § 265.32. Section 265.32 requires that all facilities must be equipped with certain types of equipment unless none of the hazards posed by waste handled at the facility could require that particular kind of equipment. The paragraph goes on to list required equipment such as an internal communications system, a telephone or radio, fire extinguishers, and access to adequate water. The existing regulation is not clear as to whether the required equipment must be placed in those areas of operation where hazardous waste is generated and accumulated, (or treated, stored and disposed in the case of an interim status TSDF) or whether other parts of the facility could store this equipment—that is, where hazardous waste is not generated or accumulated.

The Agency believes it may not always be appropriate or safe to have this equipment stored in the actual waste generation or accumulation area and instead, we are proposing that the regulation state that the hazardous waste generator should have this equipment located where it can be immediately accessed without jeopardizing a timely and effective response to any emergency. For example, the waste generation area may be in an enclosed room. Should a fire occur in the enclosed room, it might be more appropriate to exit the room and call the fire department rather than stay inside and be exposed to smoke inhalation and other risks. EPA believes

<sup>90</sup> Summary of Hazardous Waste Generator Regulatory Program Evaluation, November 2004. See also public comments in Docket ID No. RCRA-2003-0014.

the existing regulatory text should be revised to explain that while this equipment applies to only those areas applicable to the generation and accumulation (and treatment, as appropriate) of hazardous waste, the generator has the flexibility to store this equipment in other areas of the facility to address those situations where it is infeasible or inappropriate for safety reasons to have the equipment immediately next to hazardous waste generation and accumulation areas.

Therefore, EPA is proposing to modify the introductory paragraph to provide generators subject to subpart C of part 265 the flexibility to determine the most appropriate locations within the facility to locate equipment necessary to prepare for and respond to emergencies.

The proposed regulation would state that all areas where hazardous waste is either generated or accumulated must be equipped with the listed types of equipment (unless none of the hazards posed by waste handled at the site could require a particular kind of equipment or the actual waste generation or accumulation area does not lend itself for safety reasons to have a particular kind of equipment). It would also state that a generator may determine the most appropriate locations within its generator site to locate equipment necessary to prepare for and respond to emergencies.

The Agency requests comment on its proposal to modify § 265.32.

*Effect of the Proposed Reorganization:* This section is affected by the proposed reorganization. The proposed regulation would appear in the SQG standards at § 262.16(b)(8)(ii) with some changes to make it specific to SQGs and in the new part 262 subpart M for LQGs at § 262.252. The reorganization is discussed in section XIII of this preamble.

*b. The meaning of “immediate access.”* Sections 262.34(a)(4) and (d)(4) include the condition that LQGs and SQGs comply with part 265 subpart C, which also includes § 265.34. Section 265.34(a) states that whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, *unless* such a device is not required under § 265.32. At issue is whether the phrase “immediate access” is clearly understood or whether additional clarity is necessary. As part of the Agency’s 2004 Program Evaluation of the hazardous waste generator program, stakeholders raised a

concern about whether the regulated community has a sufficient understanding about what this phrase means and we are proposing to address that concern here.

In the interest of clarity, the Agency is proposing to modify this language to read, “immediate access (e.g., direct or unimpeded access).” The Agency believes that adding this parenthetical example provides further guidance on the meaning of “immediate access.” This phrase is used again in the next paragraph in a similar context and EPA is proposing to add the words “(direct or unimpeded access)” in that case as well.

The Agency requests comment on the usefulness of modifying this language.

*Effect of the Proposed Reorganization:* This section is affected by the proposed reorganization. The proposed regulation would appear in the SQG standards at § 262.16(b)(8)(iv) and in the new part 262 subpart M for LQGs at § 262.254. The reorganization is discussed in section XIII of this preamble.

#### 5. Technical Changes Applicable to SQGs

Current preparedness and prevention standards for SQGs are found at § 262.34(d)(5). SQGs must comply with the following:

- § 262.34(d)(5)(i)—have at least one employee either on the premises or on call with the responsibility for coordinating all emergency response measures (e.g., the emergency coordinator);
- § 262.34(d)(5)(ii)—post specified information next to the telephone, including the name and telephone number of the emergency coordinator; the location of fire extinguishers and spill control material, and, if present, fire alarm; and the telephone number of the fire department, unless the facility has a direct alarm;
- § 262.34(d)(5)(iii)—ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies; and
- § 262.34(d)(5)(iv)—have the emergency coordinator or his designee follow the specified procedures in the event of a fire, spill, or explosion.

EPA is proposing changes to two of these provisions.

*a. Require certain information be posted “next to the telephone” (40 CFR 262.34(d)(5)(ii)).* The Agency is proposing to revise § 262.34(d)(5)(ii) in order to facilitate improved compliance on the part of SQGs. This language requires, among other items, that certain information be posted “next to the

telephone,” such as the name and telephone number of the emergency coordinator and the location of fire extinguishers and spill control material. Based on experience and feedback received from the regulatory community, the Agency believes it is unclear in this description where in the facility this information should be posted. A facility may have many operations and components that have no relationship with the generation and accumulation of hazardous waste.

Stakeholders have recommended deletion of § 262.34(d)(5)(ii) because, in this age of near-universal 911 availability, they state it is simply not important from a regulatory point of view to have emergency telephone numbers posted. They argue that locations of fire extinguishers, spill control material, fire alarms, etc., should be conveyed to relevant employees and displayed in a worker break area rather than the facility office and that posting the name and telephone number of the emergency coordinator is also not necessary. For the majority of the SQG universe, the emergency coordinator is the owner or shop supervisor.<sup>91</sup>

EPA disagrees with eliminating this provision because we believe that posting this information is important for workers and others to have readily available information so that they would know what to do and where to go in the case of an emergency. However, the Agency believes that the regulation should be modified to state clearly that the pertinent information should be posted where hazardous waste is generated and accumulated, since facility personnel can quickly seek assistance from it there.

Also unstated is whether the telephone number refers to the emergency coordinator’s home phone or business phone. Over the years the Agency has received requests that we modify this provision to ensure that personal information not be used or distributed, particularly to individuals or organizations that could use such information to cause harm to the individual.<sup>92</sup> With cell phones and other means of instant communication now prevalent, EPA is proposing to clarify this provision to provide the hazardous waste generator with the necessary flexibility to allow its emergency coordinator to perform specified responsibilities effectively

<sup>91</sup> Summary of Hazardous Waste Generator Regulatory Program Evaluation, November 2004. See also public comments in Docket ID No. RCRA-2003-0014.

<sup>92</sup> Letter to Jim O’Leary from Derek Swick, American Petroleum Institute, September 28, 2011.

using the emergency telephone number of the emergency coordinator.

Therefore, EPA is proposing that § 262.34(d)(5)(ii) be modified to state that the small quantity generator must post the name and emergency telephone number of the emergency coordinator next to telephones or in areas directly involved in the generation and accumulation of hazardous waste. Section 262.34(d)(5)(ii)(B) and (C) are unchanged.

EPA requests comment on this proposed change.

*Effect of the Reorganization:* This section is affected by the reorganization and would move to § 262.16(b)(9)(ii)(A). The reorganization is discussed in section XIII of this preamble.

*b. Allow containment and cleanup to be conducted by a contractor (40 CFR 262.34(d)(5)(iv)(B)).* Section 262.34(d)(5)(iv)(B) currently reads, “In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil.” If such a spill were considered an emergency under OSHA’s regulations in 29 CFR 1910.120, an SQG would be required to take a minimum of eight hours of initial training with an annual refresher, and in certain circumstances additional hours of training. Feedback from stakeholders suggests that most SQGs would hire a spill cleanup contractor to provide such services, if needed, rather than train employees to perform the response. We would agree that allowing an SQG to hire a contractor that is trained to address hazardous waste spills would certainly be appropriate. However, the regulations in § 262.34(d)(5)(iv)(B) arguably do not provide this flexibility.<sup>93</sup>

Therefore, the Agency is proposing to modify § 262.34(d)(5)(iv)(B) and place the responsibility on the SQG to either perform the necessary cleanup of hazardous wastes or contract out the cleanup. The proposed language would state that in the event of a spill, the small quantity generator is responsible for containing the flow of hazardous waste to the extent possible, and as soon as is practicable, cleaning up the hazardous waste and any contaminated materials or soil. The proposal would allow such containment and cleanup to be conducted either by the small quantity generator or by a contractor on behalf of the small quantity generator.

The Agency requests comment on the proposed revision to

§ 262.34(d)(5)(iv)(B) and whether any unintended consequences arise from providing SQGs with this flexibility.

*Effect of the Proposed Reorganization:* This section is affected by the proposed reorganization and would move to § 262.16(b)(9)(iv)(B). The reorganization is discussed in section XIII of this preamble.

#### 6. Technical Changes on Personnel Training Applicable to LQGs

The Agency is proposing to modify the condition regarding personnel training for LQGs, currently found at § 262.34(a)(4), which refers to § 265.16. The proposed modification would allow a generator to use online computer training, in addition to classroom instruction and on-the-job training, to complete the personnel training requirements. Since the personnel training regulations were promulgated in the 1980s, use of computerized training has become a common practice for generators to teach their workers about the management of hazardous waste. In fact, many generators already use this method for training workers and this modification would simply bring the hazardous waste personnel training regulations up to date with existing industry practices.

The proposal would modify the first sentence of this provision by adding the words “online training” and would state that site personnel must successfully complete a program of classroom instruction, online training, or on-the-job training that teaches them to perform their duties in a way that ensures compliance with this part.

The Agency requests comment on the proposed modification.

*Effect of the Proposed Reorganization:* This section would be affected by the proposed reorganization. Under the reorganization this provision would be found at § 262.17(a)(7)(i)(A). The proposed reorganization is discussed in section XIII of this preamble.

#### 7. Taking Comment on Applicability of Personnel Training

The Agency seeks comment on clarifying what positions within an LQG must be responsible for receiving training associated with the management of hazardous waste, as well as identifying those positions for which a written job description is necessary. Under the current regulations, LQGs are responsible for complying with § 262.34(a)(4), which references, among other technical requirements, the personnel training provisions in § 265.16. Under the proposed reorganization discussed in section XIII,

this condition for LQGs would move into 40 CFR 262.17.

The current regulations are not specific about which personnel at an LQG must complete the hazardous waste training. Other than stating that under § 265.16(a)(3) personnel must be able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, no other areas of hazardous waste management are cited.

At issue is the scope of these training standards and the applicability of the training provision to employees that are not assigned to work in the 90-day accumulation areas. The Agency is considering whether to require training and a written job description for specific types of employees working in areas of hazardous waste management related to 90-day accumulation areas. This clarification would have the benefit of assisting LQGs in determining more readily the scope of their hazardous waste training program.

The Agency, with the assistance of staff from the states of Vermont, Connecticut and New York,<sup>94</sup> have identified the following areas of hazardous waste management for which personnel training and a written job description should be required: Anyone who (1) completes and/or signs the hazardous waste manifest, (2) manages hazardous waste in areas where hazardous wastes are accumulated, (3) maintains hazardous waste inventory, (4) conducts daily or weekly inspections of areas where hazardous wastes are accumulated, and (5) plans or responds to emergencies that involve hazardous wastes.

The Agency seeks comment on whether the regulations should specifically identify positions at LQGs where hazardous waste training would be required and for which a written job description is necessary and what those areas should be. In addition, the Agency seeks comment on whether personnel involved in handling or managing hazardous wastes in SAAs should be required to undergo hazardous waste training. Current Agency guidance excludes staff working in satellite accumulation areas from the training requirements.<sup>95</sup> The Agency is of the

<sup>94</sup> Correspondence between Steve Simoes, State of Vermont, with Ross Bunnell and Bill Yeman, from Connecticut and New York, respectively, a copy of which is found in the docket to this proposal.

<sup>95</sup> Memorandum from Robert Springer, Director of the Office of Solid Waste to RCRA Directors, EPA Regions 1–10, “Frequently Asked Questions about Satellite Accumulation Areas,” March 17, 2004, RCRA Online 14703 <http://yosemite.epa.gov/osw/>

<sup>93</sup> Summary of Hazardous Waste Generator Regulatory Program Evaluation, November 2004. See also public comments in Docket ID No. RCRA–2003–0014.

opinion that such personnel have a similar need to know the risks associated with hazardous wastes as personnel working in central accumulation areas.

#### 8. Taking Comment on Applying Emergency Planning and Procedures Revisions to Parts 264 and 265

The proposed revisions discussed throughout this section of the preamble on the emergency planning and procedure regulations would only pertain to generators, as the proposed language would be found in the expanded generator regulations in part 262. However because many of the preparedness and emergency procedure provisions discussed in this section are taken from part 265 with only slight revisions, we are taking comment on whether these same proposed revisions should also be made in the applicable paragraphs of parts 264 and/or 265 as well to ensure consistency between the generator regulations and those for permitted facilities or facilities operating under interim status. The Agency requests comment on whether these revisions for consistency would be helpful and appropriate for facilities operating under part 264 or part 265 or whether the regulations should remain unchanged despite the result that generators and TSDFs would be left with some regulations that are very similar but not exactly the same.

#### *I. Revisions to Satellite Accumulation Area Regulations for SQGs and LQGs (40 CFR 262.34(c))*

The Agency is proposing a number of changes that would revise and strengthen the conditions for exemption for satellite accumulation areas (SAA) at § 262.34(c). These include (1) requiring SQGs and LQGs accumulating hazardous waste in SAAs to comply with the special requirements for incompatible wastes found at § 265.177; (2) providing limited exceptions to the regulation requiring generators to keep containers closed at all times; (3) strengthening the marking and labeling standards for SAAs (note these marking and labeling changes are the same as those proposed for containers in central accumulation areas); (4) confirming that three days means three consecutive calendar days, not business days; (5) providing a maximum weight for the accumulation of acute hazardous waste in SAAs in addition to a volume; (6) rewording the regulations for when the maximum volume or weight is exceeded

in an SAA; (7) rescinding a guidance memo regarding the accumulation of reactive (D003) hazardous waste away from the point of generation; and (8) providing examples in the preamble to help generators better understand the term “under the control of the operator,” which is used in the SAA regulations.

In addition to these proposed changes, the SAA regulations would be moved as part of the proposed reorganization. These regulations would all be found together in § 262.15. The reorganization is discussed in section XIII of this preamble.

Using an SAA is not required of hazardous waste generators, but the regulations allowing them and setting the conditions for their use are designed to assist generators who generate and accumulate small amounts of hazardous waste in different parts of their facilities. SQGs and LQGs, however, may choose to accumulate hazardous waste only in central accumulation areas (CAAs) rather than SAAs or they may accumulate up to 55 gallons of non-acute hazardous waste and/or one quart of acute hazardous waste within each facility's SAAs and once that threshold has occurred, ship the hazardous waste to a designated facility. A generator may also accumulate hazardous waste within an SAA(s) and never move the waste to a CAA once the 55 gallons limit is reached, but instead, ship the waste directly to a RCRA designated facility.

#### 1. Requiring SQGs and LQGs to Comply with the Special Requirements for Incompatible Wastes for Containers Accumulating Hazardous Wastes in SAAs

Under the current regulations in § 262.34(c)(1)(i), generators accumulating hazardous waste in SAAs must meet the conditions for exemption, including complying with the container requirements at §§ 265.171, 265.172, and 265.173(a). These container requirements include accumulating hazardous waste in containers of good condition, ensuring the waste is compatible with, or will not react with, the contents of the container, and ensuring that the container accumulating hazardous waste is closed, except when it is necessary to add or remove waste. We are proposing to modify this part of the SAA container management standards by requiring that hazardous wastes not be mixed or be placed in the same container with other hazardous waste that are incompatible and could potentially result in fires, explosions, gaseous emissions, leaching,

or other discharge of hazardous waste or hazardous waste constituents.<sup>96</sup>

The Agency believes that in developing the regulations for SAAs, it inadvertently failed to account for the potential for accumulating incompatible wastes, especially since the current regulations already prohibit placing hazardous waste in containers that it may react with and that impair the containers ability to contain the hazardous waste. Therefore, the Agency is proposing that SQGs and LQGs accumulating hazardous waste in SAAs also comply with the part 265 subpart I container management standards for incompatible hazardous wastes at § 265.177. The Agency believes most generators already are aware of and comply with this best management practice at their SAAs since they must comply with this regulation when they move the SAA container(s) into a 90-day or 180-day central accumulation area.

The Agency requests comment on this proposed modification.

*Effect of the Proposed Reorganization:* This section is affected by the proposed reorganization. The SAA regulations are currently at § 262.34(c). We are proposing to move this provision to § 262.15(a)(1)(iii). The reorganization is discussed in section XIII of this preamble.

#### 2. Limited Exceptions to Keeping Containers Closed at all Times in SAAs

As noted in the previous section, the current regulation in § 262.34(c)(1)(i) for generators accumulating hazardous waste in SAAs requires containers accumulating hazardous waste to be kept closed, except when it is necessary to add or remove waste. The SAA regulations reference the requirement in § 265.173(a) that containers be closed while accumulating hazardous wastes at interim status treatment, storage and disposal facilities. We are proposing to modify this provision from § 262.34(c)(1)(i) in the new section for SAA conditions at § 262.15, but only as it pertains to SAAs; it will not affect the requirements for container management at interim status treatment, storage and disposal facilities. Because this modification is only meant to apply to containers accumulating hazardous waste in SAAs, and not to containers being stored at interim status treatment, storage, or disposal facilities, we are proposing to modify this requirement by eliminating the reference in the SAA regulations in part 262 to the container management standards for interim status treatment, storage or disposal facilities at § 265.173(a) and

*rcra.nsf/0c994248c239947e85256d090071175f/0ac9e15424b2897d8525770600609793?Open Document.*

<sup>96</sup> See Comment in § 265.177.



incorporating the closed container provision directly into the SAA regulations in § 262.15, under the proposed reorganization.

Specifically, we are proposing to modify the standard in order to allow containers of hazardous waste in SAAs to remain open under limited circumstances. Specifically, we are proposing that containers of hazardous waste in SAAs may be open when it is necessary either for the operation of equipment to which the SAA container is attached or to prevent dangerous situations, such as the build-up of extreme pressure or heat because closing a container can be more dangerous than keeping it open temporarily in those situations. Stakeholders have identified situations where keeping SAA containers closed can interfere with the operation of equipment when the container is attached directly to the equipment via piping or tubing. Stakeholders have also identified situations in which closing a container can be more dangerous than keeping it open temporarily; for example, when the hazardous waste is very hot.

Therefore, EPA is proposing to modify the regulations to allow containers to be vented in such situations. However, we are also proposing that when the danger passes (*e.g.*, the contents cool), then the requirement to keep the container closed applies and when the equipment is not in operation, the requirement to keep the container closed applies.

As noted above, the flexibility proposed for containers to remain open in specific situations applies only to containers in SAAs since that is where hazardous waste initially accumulates. The Agency does not anticipate that it is necessary to extend this flexibility to containers of hazardous waste in central accumulation areas.

The Agency requests comment on this proposed modification.

*Effect of the Proposed Reorganization:* This section is affected by the proposed reorganization. The SAA regulations are currently at § 262.34(c). We are proposing to move this provision to § 262.15(a)(1)(iv). The reorganization is discussed in section XIII of this preamble.

### 3. Strengthening the Marking and Labeling Provisions for Containers in SAAs

Currently, the regulations for SAAs in § 262.34(c)(1)(ii) require a generator to mark “his containers either with the words ‘Hazardous Waste’ or with other words that identify the contents of the containers” [emphasis added]. The Agency is proposing two modifications

that would strengthen the labeling and marking regulations for containers accumulating hazardous waste in SAAs. First, EPA is proposing to change the “or” to an “and” and thus require that generators mark containers in the SAA with both the words “Hazardous Waste” and other words to identify the contents of the container that are accumulated in SAAs.

Second, EPA is proposing that generators also indicate the hazards of the contents of the containers. EPA believes these proposed changes will alert workers, emergency responders, and others to the potential hazards posed by its contents. Identifying the hazard increases awareness to workers and others who might come into contact with the hazardous waste container and reduces potential risks to human health and the environment from container mismanagement. As discussed previously in section VIII.E, these changes are similar to those proposed for containers stored in central accumulation areas.

Specifically, EPA is proposing to modify the marking and labeling regulations for SAAs to require LQGs and SQGs to mark containers with the following: (1) The words “Hazardous Waste”; (2) other words that identify the contents of the containers. Examples may include, but are not limited to the name of the chemical(s), such as “acetone” or “methylene dichloride,” or the type or class of chemical, such as “organic solvents” or “halogenated organic solvents” or, as applicable, the proper shipping name and technical name markings used to comply with DOT requirements at 49 CFR part 172 subpart D; and (3) an indication of the hazards of the contents of the container. Examples of hazards include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.*, ignitable, corrosive, reactive, toxic); a hazard class label consistent with the DOT requirements at 49 CFR 172 part 172 subpart E (labeling); a label consistent with the OSHA Hazard Communication Standard at 29 CFR 1920.1200; a chemical hazard label consistent with the NFPA code 704; or a hazard pictogram consistent with the United Nations’ GHS. Generators also may use any other marking and labeling commonly used nationwide in commerce that would alert workers and emergency responders to the nature of the hazards associated with the contents of the containers.

The pre-transport requirements of part 262 subpart C already require hazardous waste generators to comply with the DOT labeling/marking requirements of 49 CFR part 172. By requiring generators

to include other words that identify the contents of the containers, the Agency is proposing that generators perform a task that is already required when preparing the container prior to transporting the hazardous waste off site for subsequent waste management. In addition, the Agency is proposing to modify the marking and labeling of containers prior to shipping the hazardous waste. We are proposing that SQGs and LQGs can use the DOT hazard class labels to comply with the new labeling and marking regulation for containers in SAA. Alternatively, they may choose another method to indicate the hazards of the container that suits them better, as noted above.

The Agency requests comment on these proposed changes.

*Effect of the Proposed Reorganization:* This section is affected by the proposed reorganization. The SAA regulations are currently at § 262.34(c). We are proposing to move this provision to § 262.15(a)(1)(v). The reorganization is discussed in section XIII of this preamble.

### 4. Clarify What Is Meant by “Three Days”

The current regulations at § 262.34(c)(2) state that a generator who accumulates either hazardous waste or acutely hazardous waste must, with respect to that amount of excess waste, comply “within three days” with paragraph (a) of that section or other applicable provisions of the chapter. The Agency is proposing to state in the regulations that the term “three days” means three consecutive calendar days, not three business days or three working days. The Agency has already clarified this term in a memo, which was based on preamble discussions from the proposed and final SAA regulations.<sup>97 98</sup> As stated in the memo, “Originally, the Agency had proposed to use 72 hours as the time limit but realized that determining when 72 hours had elapsed would have required placing both the date *and* time of day on containers. In the final rule the Agency switched to using three days so that generators only need to date containers that hold the excess of 55 gallons of non-acute hazardous waste (or 1 quart of acute hazardous waste).”

The Agency requests comment on this codification of an existing interpretation.

<sup>97</sup> Memorandum from Robert Springer, Director of EPA’s Office of Solid Waste, to RCRA Regional Directors, “Frequently Asked Questions About Satellite Accumulation Areas,” March 17, 2004, RCRA Online 14703.

<sup>98</sup> Proposed rule: January 3, 1983 48 FR 118; Final rule: December 20, 1984; 49 FR 49569.

*Effect of the Proposed Reorganization:* This section is affected by the proposed reorganization. The SAA regulations are currently at § 262.34(c). We are proposing to move this provision to § 262.15(a)(2)(i). The reorganization is discussed in section XIII of this preamble.

#### 5. Providing a Maximum Weight for the Accumulation of Acute Hazardous Waste in Containers at SAAs

Currently, the regulations at § 262.34(c)(1) impose maximum volumes of hazardous waste that may be accumulated in an SAA without requiring a permit, complying with interim status standards, or complying with the generator accumulation standards. For non-acute hazardous waste, the maximum volume is 55 gallons. For acute hazardous waste, the maximum volume is 1 quart. When the SAA regulations were finalized, EPA explained that 55 gallons was selected for non-acute hazardous waste in part because it is the size of the most commonly used accumulation container.<sup>99</sup> EPA also explained that 1 quart was chosen for acute hazardous waste because it is the volumetric equivalent to 1 kilogram of acute hazardous waste used elsewhere in the regulations and commenters expressed opposition to using a weight measure. Since then, however, stakeholders have indicated that the 1-quart volume maximum is not a practical way to measure the accumulation of some wastes, particularly non-liquid acute hazardous wastes. Therefore, we are proposing to add a weight measurement to the SAA regulations for the maximum accumulation of acute hazardous wastes. Specifically, we are proposing that 1 quart or 1 kilogram (2.2 pounds) of acute hazardous waste may be accumulated in an SAA. Generators that accumulate acute hazardous waste in SAAs will have the choice of whether to use 1 quart or 1 kilogram, but they will be required to identify which metric they choose to use.

We are not proposing to add a similar weight equivalent to the 55-gallon threshold for non-acute hazardous waste since stakeholders have not expressed a similar need. However, we request comment on whether it would be useful to have a maximum weight for the accumulation of non-acute hazardous waste in SAAs.

*Effect of the Proposed Reorganization:* This section is affected by the proposed reorganization. The SAA regulations are currently at § 262.34(c). We are proposing to move this provision to

§ 262.15(a)(1). The reorganization is discussed in section XIII of this preamble.

#### 6. Modifying the Language for When the Maximum Volume or Weight Is Exceeded in an SAA

Currently, the regulation at § 262.34(c)(2) states that when the maximum volumes are exceeded in an SAA, a generator “must, with respect to that amount of excess waste, comply within three days with paragraph (a) of this section or other applicable provisions of this chapter.” The Agency is rewording this regulation in order to more clearly state the generator’s options for managing the materials that exceed the limit. The proposed regulatory text states that a generator who accumulates either non-acute hazardous waste or acute hazardous waste listed in § 261.31 or § 261.33(e) in excess of the amounts listed in paragraph (a)(1) of this section at or near any point of generation must remove the excess from the satellite accumulation area within three calendar days either to a central accumulation area, an on-site interim status or permitted treatment, storage, or disposal facility, or an off-site designated facility. Similarly, during the three-calendar-day period the generator must continue to comply with paragraphs (a)(1)(i) through (iv) of this section and must mark the container(s) holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

The Agency does not view this as a substantive change to the SAA regulations. Nevertheless, the Agency solicits comments on this proposed change.

*Effect of the Proposed Reorganization:* This section is affected by the proposed reorganization. The SAA regulations are currently at § 262.34(c). We are proposing to move this provision to § 262.15(a)(6). The reorganization is discussed in section XIII of this preamble.

#### 7. Rescinding a Memo Regarding Accumulating Reactive Hazardous Waste Away From the Point of Generation

In a memo dated January 13, 1988, EPA wrote that a storage shed that is outside of a building where a reactive hazardous waste (D003) is initially generated, could be considered an SAA.<sup>100</sup> EPA is proposing to revoke this interpretation. EPA acknowledges that in some instances it is safer to

accumulate hazardous waste away from the initial point of generation, such as with hazardous wastes that are explosive. However, because SAAs are subject to less stringent conditions than CAAs, EPA believes it is not appropriate for such dangerous hazardous wastes to be stored in SAAs. Rather, EPA believes that if a generator accumulates hazardous waste that is so dangerous it needs to be accumulated away from the point of generation, it should be accumulated under the more rigorous accumulation standards for central accumulation areas.

The Agency requests comment on proposing to revoke this interpretation of the SAA regulations.

#### 8. Examples of the Meaning of “Under the Control of the Operator”

The SAA regulation at § 262.34(c)(1) uses the term “under the control of the operator.” EPA has not defined this term in the regulations, nor have we discussed it in preamble or guidance letters. However, over the years, the Agency has received inquiries about what constitutes “under the control of the operator.” In an effort to assist generators to better understand this term and to foster improved compliance with the SAA provisions, the Agency is providing examples in this preamble of what constitutes “under the control of the operator.” For example, EPA would consider waste to be “under the control of the operator” if the operator controlled access to an area, building, or room that the SAA is in, such as with entry by access card, key or lock box. Another example would be if the operator accumulates waste in a locked cabinet and controlled access to the key, even if the cabinet is stored inside a room to which access is not controlled.

The Agency requests comment on additional practices that would constitute “under the control of the operator.”

#### J. SQGs Accumulating Hazardous Waste on Drip Pads and in Containment Buildings (40 CFR 262.34(d))

EPA is proposing to modify the regulations at § 262.34(d) to require SQGs that accumulate hazardous waste for 90 days or less on drip pads without a permit or interim status to comply with the technical standards of 40 CFR part 265 subpart W and with all other conditions for an exemption associated with the accumulation of hazardous waste by an SQG.

Additionally, EPA is proposing to modify the conditions for an exemption currently at § 262.34(d) to require SQGs that accumulate hazardous waste for 90 days or less in a containment building

<sup>100</sup> Letter from Marcia E. Williams, Director of EPA’s Office of Solid Waste, to Michael E. Young, Atlantic Research Corporation, January 13, 1988, RCRA Online 11317.

<sup>99</sup> December 20, 1984; 49 FR 49569–70.

without a permit or interim status to comply with the technical standards of 40 CFR part 265 subpart DD and with all other conditions for exemption associated with the accumulation of hazardous waste by an SQG.

#### 1. Accumulation of Hazardous Waste on Drip Pads

On December 30, 1988, EPA issued a proposed rule listing three additional hazardous wastes from wood preserving operations that use chlorophenolic, creosote, and/or inorganic (arsenic and chromium) preservatives, and listing one hazardous waste from surface protection processes that use chlorophenolics (53 FR 53282). As part of this rule, the Agency proposed additional standards “applicable to drip pads in treated wood storage yards and in kick back areas used in managing hazardous wastes at wood preserving and surface protection facilities. These standards are intended to provide for proper handling of treated wood drippage” (53 FR 53308).

In terms of the types of RCRA facilities this regulation would apply to, the proposed rule identified and discussed the regulatory requirements for two groups: Hazardous waste TSDFs subject to the part 264 permitting standards and LQGs subject to the part 265 interim status drip pad standards. More specifically, the preamble stated that “in the event that drippage is collected and is moved from the drip pad within 90 days following generation, generators may avail themselves of the 90-day accumulation standards of 40 CFR 262.34, and would not need Part B permits for their drip pads or tanks (consistent with § 264.1(g)(3), 265.1(c)(7), and 270.1(c)(2)(i)) provided that they comply with the Part 265 standards, as required by 40 CFR 262.34” (53 FR 53309).

When EPA promulgated the final rule for these hazardous wastes (55 FR 50450, December 6, 1990), the discussion addressed the same universe of facilities (*i.e.*, hazardous waste TSDFs subject to the part 264 permitting standards and LQGs subject to the part 265 interim status drip pad standards).

Pursuant to § 262.34(a), LQGs may accumulate the hazardous waste they generate without having to obtain a RCRA permit provided they comply with several specified conditions, including the technical standards for containers, tanks, drip pads, or containment buildings found at part 265 subparts I, J, W, and DD, respectively. Similarly, pursuant to § 262.34(d), SQGs may accumulate the hazardous waste they generate without having to obtain

a permit, provided they comply with several specified conditions, including the technical standards for containers and tanks found at part 265 subparts I and J, respectively. Although there is no explicit condition for SQGs accumulating and managing their hazardous waste on drip pads, EPA intended SQGs accumulating hazardous wastes on drip pads either to comply with all of the conditions for exemption, as well as any associated independent requirements for LQGs at part 265 subpart W, or else obtain a Part B permit for their drip pads (consistent with §§ 264.1(g)(3), 265.1(c)(7), and 270.1(c)(2)(i)).

EPA has consistently interpreted this regulatory requirement to apply to SQGs. For example, as stated in the wood preserving technical guidance document issued by EPA in 1996, a copy of which is found in the docket, “this 90-day limit applies to both large quantity and small quantity generators. While small quantity generators may normally accumulate hazardous waste in accumulation units for up to 180 days, this is not the case for small quantity generators accumulating waste on Subpart W drip pads. Owners/operators of wood preserving facilities who generate between 100–1,000 kilograms of hazardous waste per calendar month and who accumulate the waste on drip pads are not eligible for the reduced standards normally provided for small quantity generators. Instead, these generators must comply with all the management conditions for large quantity generators accumulating hazardous waste on drip pads.”<sup>101</sup>

Similarly, the RCRA training module for drip pads, a copy of which is found in the docket to this proposal, reinforced this principle by stating the following: “Under § 262.34(d), small quantity generators (SQGs) are subject to a reduced set of requirements when accumulating hazardous wastes in tanks or containers meeting the interim status unit standards. SQGs who accumulate wood-preserving wastes on drip pads do not qualify for this partial exemption. Consequently, all generators of more than 100 kilograms of waste per month who manage wood-preserving wastes on drip pads must comply with the requirements applicable to LQGs in § 262.34(a). As a result, the maximum generator accumulation time period on drip pads is 90 days.”<sup>102</sup>

<sup>101</sup> “Wood Preserving Resource Conservation and Recovery Act Compliance Guide—A Guide to Federal Environmental Regulation,” U.S. EPA, EPA-305-B-96-001, June 1996, Section 5-8.

<sup>102</sup> “Introduction to Drip Pads (40 CFR parts 264 and 265, subpart W),” RCRA, Superfund & EPCRA

At the end of the same paragraph, the document states, “Generators using drip pads must also comply with the requirements that apply to large quantity generators for personnel training, development of a full contingency plan, and biennial reporting,” suggesting that SQGs accumulating hazardous waste on drip pads must comply with all of the conditions and independent requirements for LQGs, and not just the accumulation time limits.

Because of this statement, the Agency believes that confusion may potentially exist about the applicability of the regulations. As stated above, if an SQG accumulates hazardous waste in containers, it can comply with a reduced set of regulations, including accumulation of hazardous waste for up to 180 days, whereas if the SQG accumulates hazardous waste on drip pads, it must comply with the regulations for LQGs. The Agency believes a more effective and efficient approach is to require SQGs accumulating hazardous waste on drip pads to comply with the technical standards of part 265 subpart W, including compliance with the LQG 90-day accumulation limit (as opposed to the SQG 180-day accumulation limit), but to otherwise comply with less stringent conditions for SQGs found at 40 CFR 262.34(d). EPA notes that hazardous waste that is generated elsewhere at the wood preserving facility and accumulated in tanks or containers (*i.e.*, not accumulated on drip pads) will remain subject to the SQG accumulation limits. Only waste that is accumulated on drip pads must comply with the LQG accumulation limits.<sup>103</sup>

Because both the monthly generation quantities (*e.g.*, greater than 100 kg and less than 1,000 kg) and accumulation total (*e.g.*, not to exceed 6,000 kg at any one time) for SQGs are significantly less than the generation and accumulation quantities for LQGs, the Agency believes that SQGs complying with the less stringent conditions at § 262.34(d) (*e.g.*, personnel training, contingency plan) will be protective of human health and the environment. Other than complying with the management standards at 40 CFR part 265 subpart W, the Agency sees no difference in the risks associated with hazardous wastes accumulated in tanks or containers. Therefore, EPA is proposing to modify the SQG regulations to require SQGs who

Call Center Training Module, U.S. EPA, EPA530-K-02-008I, October 2001, page 7.

<sup>103</sup> “Wood Preserving Resource Conservation and Recovery Act Compliance Guide—A Guide to Federal Environmental Regulation,” U.S. EPA, EPA-305-B-96-001, June 1996, Section 5-8.

accumulate hazardous waste on drip pads to comply with the technical standards of 40 CFR part 265 subpart W, with the 90-day accumulation limit for that hazardous waste, and with all of the other hazardous waste accumulation standards for an SQG currently found at § 262.34(d).

Situations may also occur where an SQG initially accumulates hazardous waste on a drip pad but subsequently transfers this waste to a container or tank for subsequent management. Similarly, the opposite situation may occur where hazardous wastes are generated and first accumulated by an SQG in a tank or in containers and then transferred to a drip pad. The Agency is proposing that the SQG have up to a total of 180 days to accumulate the hazardous wastes, which includes both the time the waste is on a drip pad and when it is in a tank or container, but that the total amount of time to accumulate the hazardous waste on the drip pad must not exceed 90 days. For example, if an SQG accumulates hazardous wastes on a drip pad for 80 days prior to transferring its waste to a tank, the SQG would be able to accumulate waste up to 100 days in the tank before it would be required to send it off-site for subsequent waste management, or conversely, treat and dispose of the waste on-site in compliance with all applicable RCRA regulations under parts 262 through 268 and 270.

In the case of an SQG first accumulating a hazardous waste in a tank or container and then transferring the waste to a drip pad, the generator would still have up to a total of 180 days, depending on the circumstances, to send the waste off-site for subsequent waste management, or conversely, treat and dispose of the waste on-site in compliance with all applicable RCRA regulations under parts 262 through 268 and 270. However, under the proposal, the amount of time allowed for the SQG to accumulate the hazardous waste on a drip pad may not exceed 90 days. For example, if an SQG first accumulated hazardous wastes in a tank or container for 100 days and then transferred the waste to a drip pad, the SQG would be able to accumulate up to 80 days more (for a total of 180 days) to accumulate the waste on the drip pad before the generator would be required to send the waste off-site for subsequent waste management, or conversely, treat and dispose of the waste on-site in compliance with all applicable RCRA regulations under parts 262 through 268 and 270.

However, if an SQG first accumulated hazardous wastes in a tank or container

for 80 days and then transferred the waste to a drip pad, the SQG would only have 90 days more (or a total of 170 days) to accumulate the waste on the drip pad before the generator sent the waste off-site for subsequent waste management, or conversely, treat and dispose of the waste on-site in compliance with all applicable RCRA regulations under parts 262 through 268 and 270.

EPA solicits comments on these proposed revisions. In particular, EPA requests comment on whether SQGs accumulating hazardous waste on drip pads should be subject to the accumulation time limit of 180 days, similar to SQGs accumulating hazardous wastes in containers and tanks. Conversely, EPA is seeking comment on whether SQGs accumulating hazardous waste on drip pads should be subject to all applicable conditions and requirements for LQGs, and not just the 90-day accumulation time limit.

The Agency also requests comment on the procedures for documenting and ensuring hazardous wastes are removed from the sump or collection system 90 days or less from being first placed on the drip pad and also for situations where hazardous waste accumulation involves both drip pads and containers or tanks.

*Effect of the Proposed Reorganization:* This section is affected by the proposed reorganization. As part of the reorganization in this action, EPA is proposing to move the conditions for exemption for SQGs accumulating hazardous waste from § 262.34 to § 262.16. The proposed drip pad conditions for SQGs can be found at § 262.16(b)(4). The reorganization is discussed in section XIII of this preamble.

## 2. Accumulation of Hazardous Waste in Containment Buildings

Consistent with the changes proposed for hazardous wastes accumulated on drip pads by SQGs, the Agency is also proposing that SQGs that accumulate hazardous waste in containment buildings for 90 days or less without a permit or interim status must comply with the technical standards of part 265 subpart DD and with all other conditions associated with the accumulation of hazardous waste by SQGs currently found at § 262.34(d).

Similar to the drip pad regulations, the containment building regulations promulgated in 1992 (August 18, 1992, 57 FR 37194) did not discuss the possibility of an SQG accumulating hazardous wastes in a containment building, but instead only discussed

TSDFs and LQGs accumulating hazardous waste in containment buildings (57 FR 37212). Thus, under the current regulations, SQGs that choose to manage hazardous wastes in containment buildings can only do so if they comply with the LQG requirements or obtain a Part B permit for their containment building.

EPA is proposing to modify the regulations to allow SQGs to accumulate hazardous wastes in containment buildings for 90 days or less without a permit or without having interim status provided they comply with the technical standards of part 265 subpart DD and comply with all other conditions associated with the accumulation of hazardous waste by an SQG found at § 262.34(d). As with wastes accumulated by SQGs on drip pads, the Agency believes that SQGs complying with the less stringent conditions at § 262.34(d) (e.g., personnel training, contingency plan) will be protective of human health and the environment and other than complying with the management standards at 40 CFR part 265 subpart DD, the Agency sees no difference in the risks associated with hazardous wastes accumulated in tanks or containers.

As with drip pads, situations may potentially arise where hazardous wastes are first accumulated in a containment building and then transferred to containers for subsequent accumulation, or vice-versa. The Agency is proposing the same framework as described in the discussion on drip pads above for how long SQGs may accumulate hazardous wastes in a containment building to maintain their hazardous waste accumulation exemption.

EPA solicits comments on this proposed revision. In particular, EPA requests comment regarding whether SQGs accumulating hazardous waste in containment buildings should be subject to the accumulation time limit of 180 days, similar to SQGs accumulating hazardous wastes in containers and tanks or, conversely, whether SQGs accumulating hazardous waste in containment buildings should be subject to all applicable conditions for an exemption and independent requirements for LQGs, and not just the 90-day accumulation time limit. EPA also seeks comment on situations where hazardous waste accumulation involves both containment buildings and containers or tanks.

*Effect of the Proposed Reorganization:* This section is affected by the proposed reorganization. As part of the reorganization in this action, EPA is proposing to move the conditions for

exemption for SQGs accumulating hazardous waste from § 262.34 to § 262.16. The proposed containment building regulations for SQGs can be found at § 262.16(b)(5). The proposed containment building regulations for LQGs can be found at § 262.17(a)(4). The reorganization is discussed in section XIII of this preamble.

#### K. Deletion of Performance Track Regulations

EPA launched The National Environmental Performance Track in 2000 to provide regulatory and administrative benefits to Performance Track members. Performance Track was a public-private partnership that encouraged continuous environmental improvement through use of environmental management systems, community outreach, and measurable results. In order to provide regulatory benefits to members, EPA made changes to the RCRA hazardous waste regulations, among others, that specifically referenced members of Performance Track.

EPA terminated the Performance Track program in 2009. Therefore, EPA is proposing to remove obsolete references to Performance Track in the RCRA hazardous waste regulations as a part of this rulemaking. In some cases, a whole paragraph of regulation will be removed and in other instances we will remove just the part of the paragraph that references Performance Track. The deleted paragraphs would then be reserved to reduce the possibility of confusion by replacing them with other regulations. The references that would be removed would be the following:

- § 260.10: Definition of Performance Track member facility;
- § 262.34(j), (k), and (l): Regulations for accumulation of hazardous waste by LQGs in Performance Track;
- § 262.211(c): Two parenthetical references to § 262.34 (j) and (k) in the regulations for academic labs in subpart K of part 262;
- §§ 264.15(b)(4) and 265.15(b)(4): References to the requirements for inspection of areas of the facility subject to spills in §§ 264.15(b)(5) and 265.15(b)(5), respectively;
- §§ 264.15(b)(5) and 265.15(b)(5): Requirements for Performance Track member facilities that reduce inspection frequency for areas subject to spills;
- §§ 264.174 and 265.174: References to Performance Track requirements for inspections of areas where containers are stored;
- §§ 264.195(e), 265.195(d), and 265.201(e): Requirements for Performance Track member facilities for inspections of tank systems;

- §§ 264.1101(c)(4) and 265.1101(c)(4): Requirements for Performance Track member facilities for reduced inspections of containment buildings;

- § 270.42(l): Procedures for permit modifications for Performance Track member facilities; and
- Appendix 1 to § 270.42—Classification of Permit Modification, Section O.1: Indication that a permit modification for reduced inspections for a Performance Track member facility is a Class 1 permit modification.

The provisions that EPA is proposing to remove were added to the regulations in the National Environmental Performance Track Program final rule, dated April 22, 2004 (69 FR 21737), the Resource Conservation and Recovery Act Burden Reduction Initiative final rule, dated April 4, 2006 (71 FR 16862), and the Academic Laboratories final rule, dated December 1, 2008 (73 FR 72912). The Agency is requesting comment on whether there are additional references to the Performance Track program in the RCRA hazardous waste regulations that should be removed as a part of this rulemaking.

*Effect of the Proposed Reorganization:* This section is not affected by the proposed reorganization.

#### L. Clarification of Biennial Reporting Requirements (40 CFR 262.41)

EPA is proposing to modify the biennial reporting regulations for generators found at 40 CFR 262.41 in order to make the regulations consistent with Agency guidance, including its biennial report instructions and forms. More specifically, the Agency is proposing the following revisions: (1) Only LQGs need to submit biennial reports; (2) LQGs must report all of the hazardous waste they generate for the entire reporting year, not just the month(s) the generator was an LQG; (3) LQGs completing a biennial report must report all hazardous wastes they generated in the reporting year, regardless of whether they transferred the waste off site during the reporting year; and (4) a reference to the biennial report form (EPA form 8700–13) at § 262.41 rather than the list of specific data elements in currently at that citation.

Additionally, EPA is proposing to modify the title of subpart D from “Recordkeeping and Reporting” to “Recordkeeping and Reporting Applicable to Small and Large Quantity Generators” in order to highlight which entities need to comply with this subpart.

#### 1. Biennial Report Requirements Are Only Applicable to LQGs

The first proposed change is to modify the biennial reporting regulations in § 262.41 to make these only applicable to LQGs (and thus not applicable to SQGs and CESQGs). Currently, the biennial report regulations at § 262.41(a) and (b) refer to “a generator” and “any generator,” but do not further specify which categories of generators must complete and submit a biennial report. However, current EPA guidance, as well as a 1986 FR notice, states that only LQGs must complete and submit a biennial report to EPA.<sup>104 105</sup> To reduce confusion between the regulations and EPA’s current guidance regarding the applicability of biennial reporting requirements, EPA is proposing to modify § 262.41 to state that only LQGs are required to complete and submit a biennial report. This proposed change would not result in a substantive change to the existing regulations, but would make clear who is required to submit the biennial report. Additionally, EPA is proposing to modify the phrase “prepare and submit” which is the existing language in § 262.41, to “complete and submit” because the Agency believes that “complete and submit” more accurately reflects that LQGs must complete all applicable elements of the biennial report forms.

*Effect of the Proposed Reorganization:* This section is not affected by the proposed reorganization.

#### 2. LQGs Must Report All Hazardous Waste Generated During the Reporting Year, Not Just for the Month(s) the Generator Was an LQG

The second proposed change is to modify the biennial reporting regulations to require LQGs to report all of the hazardous waste they generate for the entire reporting year, not just the month(s) the generator was actually an LQG. (Additionally, if EPA were to make final the proposed provision allowing an LQG to receive hazardous waste from a CESQG under control of

<sup>104</sup> The **Federal Register** notice states, “the Agency is today finalizing the proposed exemption from the biennial report requirements of § 262.41 for generators of 100–1000 kg/mo, including an exemption from the provisions of this section requiring a description of efforts taken during the reporting year to minimize waste generation.” (51 FR 10160, March 24, 1986). Additionally, EPA’s Hazardous Waste Report Instructions and Forms specify that only LQGs (as well as facilities that treat, store, or dispose of RCRA hazardous waste on-site) must complete and file the biennial report (<http://www.epa.gov/osw/inforesources/data/biennialreport/index.htm>).

<sup>105</sup> Both EPA and the states have received questions from generators regarding whether they must submit a biennial report.

the same person, an LQG would also have to report the waste it received during the reporting year. See section VII.C of the preamble for discussion of this provision.) The Agency is proposing this change since there have been different positions provided by EPA regarding whether LQGs must report on the amount of hazardous waste generated and managed for the entire reporting year or only for those months they were an LQG, and, thus, were subject to the LQG standards, including biennial reporting. In addition, although the vast majority of states require LQGs to report the total amount of hazardous waste they generate for the entire reporting year, even if they were an LQG for only one calendar month, there are at least two states that only require LQGs to report the amount of hazardous waste generated and managed for those months they were an LQG.<sup>106</sup>

Specifically, in a 1980 **Federal Register** notice, the Agency stated, “The recordkeeping and reporting requirements of part 262 apply, however, only to those periods in which the generator’s hazardous waste is subject to full regulation under part 262. Thus, for example, the annual report of a generator whose waste is subject to full regulation under part 262 for three months in a year would cover the generator’s activity only for those three months” (45 FR 76621, November 19, 1980). However, current EPA guidance in the Hazardous Waste Report Instructions and Forms instructs generators to report the total quantity of hazardous waste generated during the reporting year. The regulations in § 262.41 are silent on this issue.

In the interest of national consistency, EPA proposes to modify the regulations at § 262.41 to require LQGs to report the total amount of hazardous waste generated during the entire reporting year. EPA believes that this change will ensure a more complete and reliable estimate on the total amount of hazardous waste generated in order to support various RCRA program development and implementation efforts by EPA and the states.

The Agency does not anticipate significant added burden from this provision. First, EPA knows of only two states (Idaho and Kentucky) that currently require generators to report only those hazardous wastes generated

during the months the generator was an LQG. Thus, this modification will only affect a small percentage of the LQG universe that in certain months are not LQGs. Second, these LQGs are already completing a biennial report, so the change in burden will be in reporting the additional amounts of hazardous waste they generate for the remaining months of the reporting year that they were not an LQG. Third, generators are already required under § 261.5(c) and (d) to count the amount of hazardous waste they generate monthly to determine their regulatory status and thus would be counting hazardous waste during months they are not LQGs. Fourth, most generators transfer the hazardous waste they generate off site and, thus, should be able to use their hazardous wastes manifests to calculate the total amount of hazardous wastes they generate annually.

*Effect of the Proposed Reorganization:* This section is not affected by the proposed reorganization.

### 3. LQGs Must Report All Hazardous Waste Generated During the Reporting Year, Regardless of When the Waste Was Transferred Off Site

The third proposed change requires LQGs completing a biennial report to report all hazardous wastes they generated during the reporting year, regardless of when the hazardous waste was transported off site. Although the current biennial report instructions clearly state that LQGs should report the total quantity of hazardous waste that was generated during the reporting year, the regulations do not address cases in which the generator generates hazardous waste during the reporting year, but ships the waste off site during the next calendar year.

For purposes of completeness and to be consistent and avoid confusion with the current biennial report and its instructions, the Agency is proposing to state in § 262.41 that LQGs must report all hazardous wastes they generate in the reporting year, regardless of when the generated hazardous waste was transferred off site. The Agency believes that this change will not pose a significant burden since the information is already available; it is simply stating clearly in which year the data is reported.

*Effect of the Proposed Reorganization:* This section is not affected by the proposed reorganization.

### 4. Replace the List of Specific Data Elements With an Independent Requirement To Complete and Submit All Data Elements Required in the Biennial Report Form (EPA Form 8700–13)

EPA is proposing to modify the regulations at 40 CFR 262.41 to eliminate the specific list of data elements and to require the completion and submission of all data elements contained in the biennial report form (EPA form 8700–13).

Section 262.41(a) currently requires that the biennial report include a specific list of data elements, including the name, address, and EPA ID number of the generator and each transporter and TSDf, the EPA hazardous waste number for each hazardous waste shipped off site, and a signed certification, among other things.

In the nearly three decades since the biennial report regulations were first promulgated, EPA’s biennial report form and instructions have evolved to enable better data analysis and to reduce burden, where possible. Thus, the regulations at § 262.41 no longer accurately reflect the data elements currently listed in EPA’s biennial report instructions and forms. For example, current EPA guidance for biennial reporting requires generators to identify their hazardous wastes using not only the EPA hazardous waste number, but also using source, form, and management method codes. Additionally, EPA no longer requires the collection of the name and EPA identification number of each transporter in the biennial report. In order to maintain consistency between the regulations at § 262.41 and the EPA biennial report instructions and forms, EPA is proposing to remove the list of specific data elements currently in the regulations and to simply require completion and submission of all the data elements required in EPA form 8700–13. This change eliminates the need to update the list of data elements in the regulations, which would require periodic rulemakings, every time that changes were made to the information to be provided.

At least every three years, EPA’s biennial report instructions and forms are reviewed and approved through the information collection request (ICR) process under the Paperwork Reduction Act (PRA). The PRA requires EPA to issue proposed and final notices in the **Federal Register** and to provide opportunity for public comment, thus ensuring that the regulated community is informed and has the opportunity to comment on the report instructions and

<sup>106</sup> Relatedly, EPA is also proposing to allow CESQGs and SQGs that generate additional amounts of hazardous waste in response to an episodic event that would have required a bump up in generator category to maintain their generator category provided certain conditions are met. See section IX of this preamble for more information.

form. The PRA also requires approval by the Office of Management and Budget. Eliminating the list of specific data elements currently in the regulations therefore does not eliminate public input and avoids duplication with the review and approval processes established under the PRA.

EPA does not believe this change in any way affects the enforceability of the biennial reporting regulations. Generators must complete and submit all information required by EPA form 8700–13. EPA also notes that this approach is similar to the current regulations at § 262.12, which require generators to obtain an EPA identification number using EPA form 8700–12 (Site ID form). Section 262.12 does not contain an itemized list of specific data elements contained in EPA form 8700–12. Instead, it requires the completion and submission of the specified form.

EPA also notes that some states develop their own biennial report forms, based on the federal forms. EPA does not believe this proposed change would impact the biennial reporting processes in these states. Authorized states that use a different form for collecting biennial report information would simply refer to their authorized state form in their state regulations.

#### 5. Request for Comment

The Agency requests comment on the proposed changes to § 262.41. EPA also specifically requests whether commenters believe the proposed change to eliminate the specific data elements in § 262.41 will ease compliance and understanding of the current biennial reporting procedures.

#### *M. Provision Prohibiting Generators from Disposing of Liquids in Municipal Solid Waste Landfills (Proposed § 262.14 and § 262.35)*

EPA is proposing to add a paragraph at § 262.14 (for CESQGs) and § 262.35 (for SQGs and LQGs) that hazardous waste generators are prohibited from disposing of liquid hazardous wastes in landfills. This is not a new requirement; it is a reflection of existing regulations found at § 258.28 for municipal solid waste landfills (MSWLFs), and §§ 264.314 and 265.314 for permitted and interim status hazardous waste landfills. The Agency believes it is important to emphasize that the responsibility for complying with this provision not only resides with municipal and hazardous waste haulers and landfill operators, but also with hazardous waste generators.

The restriction for disposal of liquid hazardous waste in MSWLFs has been

in place since 1991 at § 258.28 and specifically restricts “bulk or noncontainerized liquid wastes, except (1) household wastes (other than septic wastes), and (2) leachate and gas condensate that is derived from the MSWLF unit where the unit is equipped with a composite liner and a leachate collection system. . . . designed and constructed to maintain less than 30 centimeters of leachate over the liner” (56 FR 51055, October 9, 1991).<sup>107</sup>

In the same preamble, EPA went on to state that liquids restrictions are necessary because the disposal of liquids into landfills can be a significant source of leachate generation and that restricting the introduction of liquids into landfills would minimize the leachate generation potential of landfills and reduce the risk of liner failure and subsequent contamination of the ground water.<sup>108</sup> The special requirements for bulk and containerized liquids in part 264 address similar concerns about the management of liquids in landfills.<sup>109</sup>

Under current practices and operations, the primary onus for seeing that hazardous waste liquids are restricted from landfills generally resides with the hauler. Should a random inspection at a landfill of the hauler’s waste find liquid hazardous waste, the landfill operator cannot accept the hauler’s waste without violating its landfill permit. As a result, the hauler would be required to transport its waste back to the generator or to a RCRA-permitted treatment facility and pay the significantly higher tipping fees for any required treatment prior to disposal. While the waste management hauler or transporter can provide a measure of oversight, ultimately the hauler must rely on the due diligence and waste management practices of the hazardous waste generator to avoid such an outcome. In other words, the hazardous waste generator is responsible for ensuring that hazardous waste liquids are not disposed of in landfills.

Considering the importance of restricting liquid hazardous wastes in landfills, the Agency believes including a mirror provision in the 40 CFR part 262 hazardous waste generator regulations would increase awareness, and thus compliance, by generators with the liquids restriction that currently exists in §§ 258.28, 264.314(a) and 265.314(a). Therefore, the Agency is proposing to incorporate this provision

<sup>107</sup> The prohibition on liquid wastes in MSWLFs applies to all liquid wastes and not just liquid hazardous wastes.

<sup>108</sup> 56 FR 51055, October 9, 1991.

<sup>109</sup> 40 CFR 264.314(a) and 265.314(a).

into the generator regulations at part 262.

*Effect of the Proposed Reorganization:* This section is affected by the proposed reorganization in that we are proposing to include the provision as a condition in § 262.14 for CESQGs, as well as in § 262.35 for SQGs and LQGs.

#### *N. Extending Time Limit for Accumulation Under Alternative Requirements for Laboratories Owned by Eligible Academic Facilities (40 CFR Part 262 Subpart K)*

The Agency is proposing to extend the accumulation time for unwanted material by eligible academic entities with laboratories operating under 40 CFR part 262 subpart K from six months to one year.

Under 40 CFR part 262 subpart K eligible academic entities have the choice of operating their laboratories under the alternative subpart K standards instead of the satellite accumulation area regulations at 40 CFR 262.34(c). Currently, if the eligible academic entity chooses to operate its laboratories under subpart K, the entity must remove the unwanted material from each laboratory under the following two circumstances: (1) Every 6 months; or (2) within 10 days, if the laboratory accumulates more than 55 gallons of unwanted material or 1 quart of reactive acutely hazardous unwanted material.

Operating under the SAA regulations, an eligible academic entity has no time limit for accumulation. Therefore, for smaller eligible academic entities that do not accumulate 55 gallons in a laboratory, subpart K’s six month accumulation time limit can mean a shorter, more stringent, accumulation time than they have under the satellite accumulation area regulations. Eligible academic entities have cited this shorter accumulation time as a disincentive for opting into the alternative standards in subpart K. The Agency therefore requests comment regarding its proposal to increase the accumulation time limit in an eligible academic entity’s laboratory to 12 months.

Lengthening the time would yield a cost savings for those operating under subpart K compared to the costs they have now. The longer accumulation time would come with no increased risk because the volume limits—which are the same as the SAA volume limits—would continue to be in place for the rare cases where labs do accumulate 55 gallons of unwanted material or 1 quart of reactive acutely hazardous unwanted material.

The Agency requests comment on extending the accumulation time for

unwanted material by eligible academic entities with laboratories operating under 40 CFR part 262 subpart K, from six months to one year.

*Effect of the Proposed Reorganization:* This section is not affected by the proposed reorganization.

### **IX. Proposed Addition to 40 CFR Part 262 for Generators that Temporarily Change Generator Category as a Result of an Episodic Event**

EPA is proposing to allow a CESQG or an SQG to maintain its existing generator category if, as a result of a planned or unplanned episodic event, the generator would generate a quantity of hazardous waste in a calendar month sufficient to bump the facility into a more stringent generator category (*i.e.*, CESQG to either an SQG or an LQG; or an SQG to an LQG). This proposed change would allow a CESQG or SQG to generate additional quantities of hazardous waste—exceeding its normal generator category limits temporarily—and still maintain its existing regulatory category provided it complies with specified conditions discussed below. Because these events are considered to be temporary and episodic in nature, the hazardous waste generator would only be allowed to take advantage of this provision once every calendar year. Also as explained below, a CESQG or SQG could petition EPA to manage one additional episodic event per calendar year.

#### *A. Background*

Under the current RCRA regulatory framework for hazardous waste generators, a generator's category is determined by the quantity of hazardous waste it generates in a calendar month. For example, if a generator generates less than or equal to 100 kilograms of non-acute hazardous waste and 1 kilogram of acute hazardous waste in a calendar month, then it can comply with the regulations applicable to a CESQG.<sup>110</sup> However, if that same generator generates more than 100 kilograms but less than 1,000 kilograms of non-acute hazardous waste and less than or equal to 1 kilogram of acute hazardous waste in the following calendar month, then it must comply with all applicable regulations associated with an SQG.

At issue is when the generator generates an additional quantity of hazardous waste in a calendar month as a result of an episodic event—(planned or unplanned)—only to revert back to its

normal waste generation quantities in the following month. For example, a CESQG plans a short-term demolition project that generates an additional 500 kilograms of hazardous waste in the calendar month, resulting in the CESQG becoming an SQG for that calendar month. However, once the demolition project has been completed, the generator's waste generation drops such that it again qualifies as a CESQG. Other examples of planned episodic events include tank cleanouts, short-term construction projects, site remediation, equipment maintenance during plant shut downs, and removal of excess chemical inventories.

Unplanned episodic events, which may be less frequent, include production process upsets, product recalls, excess inventory, accidental spills, or "acts of nature," such as a tornado, hurricane, or flood. For example, an SQG suffers an unplanned disruption in production that results in the generation of 3,000 kilograms of an off-specification product that cannot be sold and must be discarded, therefore bumping the generator from an SQG to an LQG for that calendar month.

Currently, for the one month the hazardous waste generator was subject to more stringent regulations, the generator has two options: (1) Temporarily change its waste management practices to comply with those of the more stringent generator category for the duration of the event or (2) permanently adjust and manage all subsequent quantities it generates in the more stringent generator category (even though it is in a less stringent generator category in subsequent months). Generators that do not comply will be out of compliance with the applicable regulations.

Under the current regulatory framework, a CESQG must comply with minimal conditions for an exemption. For non-acute hazardous waste, these include the following: making a hazardous waste determination; counting the amount of hazardous waste it generates to ensure it is a CESQG (*e.g.*, generates less than or equal to 100 kilograms of non-acute hazardous waste and 1 kilogram of acute hazardous waste in a calendar month); accumulating no more than 1,000 kilograms on site at any one time; and sending its hazardous waste for subsequent off-site waste management to one of several specified designation facilities.<sup>111</sup> However, if an

episodic event were to occur, such as the generation of an additional 500 kilograms of non-acute hazardous waste resulting from a disruption in production process, the generator would need to comply with the SQG regulations that include both independent requirements and conditions for exemption. Having to obtain a RCRA identification number would be an example of an independent requirement, whereas managing its hazardous wastes in containers or tanks subject to the applicable 40 CFR part 265 subparts I and J regulations, and marking and labeling the containers would be examples of conditions for exemption. EPA believes requiring a CESQG to comply with the additional SQG or LQG regulations or an SQG to comply with the LQG regulations for the month its hazardous waste exceeded the quantity limits based on an episodic event (planned or unplanned) may be unnecessary to protect human health and the environment. Instead, the Agency is proposing a more practical approach to ease compliance for episodic generators and still protect human health and the environment. By complying with the specified conditions, the generator would be able to maintain its current generator category and would not be required to comply with the more stringent site-wide regulations applicable to the higher generator category.

Although EPA does not have specific information regarding the number of generators that may take advantage of its proposed alternative episodic standards, we can make certain estimates using data collected through the biennial report. EPA currently estimates that 1,270–2,550 generators could potentially take advantage of this provision if it is finalized.<sup>112</sup> However, EPA believes that the potential universe of generators that may want to take advantage of the episodic event standards may be significantly higher and is seeking comment on what a more reliable estimate might be. For example, there may be certain industrial sectors in which generators have a higher probability of being episodic generators

facility permitted, licensed or registered by a state to manage non-municipal non-hazardous solid waste; (6) a facility which beneficially uses or reuses or legitimacy recycles or reclaims its wastes or treats its waste prior to beneficial use or reuse or legitimacy recycling or reclamation; or (7) universal waste handler or destination facility subject to the requirements in 40 CFR part 273.

<sup>112</sup> Assessment of the Potential Costs, Benefits, and Other Impacts of the Improvements to the Hazardous Waste Generator Regulatory Program, As Proposed, prepared by U.S. Environmental Protection Agency by Industrial Economics, Incorporated, May 2015.

<sup>110</sup> Note: Besides the generation of non-acute hazardous waste, a generator's category is also determined by the quantities of acute hazardous waste it generates in a calendar month.

<sup>111</sup> A CESQG may send its hazardous waste to (1) a hazardous waste facility permitted by EPA; (2) an interim status hazardous waste facility; (3) a hazardous waste facility permitted by an authorized state; (4) a facility permitted, licensed or registered by a state to manage municipal solid waste; (5) a



than in others (e.g., retail, oil and gas exploration, utilities, and military bases).

On February 14, 2014, EPA published a Notice of Data Availability for the Retail Sector in which the Agency requested, among other topics, comments from retailers on issues they face in complying with the RCRA regulations. Some commenters mentioned the challenge posed by complying with the hazardous waste regulations when an irregular event causes them to exceed the threshold of their normal generator category for a single month. This provision would provide a way for retailers and others to manage that challenge.

### B. Proposed Conditions for Episodic Generators

Under the proposed framework, a CESQG or an SQG generating an increased quantity of hazardous waste because of an episodic event that resulted in a temporary change in a generator's category would be able to maintain its existing generator category provided specified conditions are met as the waste is accumulated. We believe these conditions will be sufficient to ensure these additional hazardous wastes are managed in an environmentally sound manner. Similar to the existing hazardous waste regulatory framework, should a CESQG fail to meet the specified conditions, it would immediately lose the CESQG accumulation exemption and be the operator of a non-exempt storage facility unless it also immediately complied with all of the conditions for exemption for an SQG or LQG. If an SQG failed to meet any specified condition for exemption, it would immediately lose its exemption and be the operator of a non-exempt storage facility unless it had immediately complied with all of the conditions for an exemption for an LQG.

For both CESQGs and SQGs taking advantage of this provision, the following conditions must be met:

(1) Episodic events are limited to one per calendar year;

(2) The generator must notify EPA at least 30 calendar days prior to initiating a planned episodic event or within 24 hours after an unplanned episodic event or as soon as possible; identify the start and end dates, which may be no more than 45 days apart, as well as other information about the event; and identify a facility contact and/or emergency coordinator with 24-hour telephone access to discuss notification submittal or respond to emergency;

(3) The generator must obtain an EPA ID number (CESQGs);

(4) The generator must comply with specified hazardous waste management conditions as the waste is accumulated on-site;

(5) The generator must use a hazardous waste manifest and hazardous waste transporter to ship the waste generated by the episodic event to a RCRA-designated facility within 45 calendar days from the start of the episodic event;

(6) The generator must complete and maintain specified records.

EPA is also proposing a petition process to allow hazardous waste generators to request from EPA one additional episodic event within the same calendar year and/or an extension of up to 30 calendar days to complete an episodic event and still be eligible to maintain its generator category. An example of how the implementation of these provisions would work in practice, particularly the start and end dates in conjunction with normal waste generation and accumulation operations, follows a discussion of these requirements.

The proposed regulations for episodic generators are located at a new part 262 subpart L, §§ 262.230–232.

#### 1. Number of Episodic Events per Calendar Year

The Agency is proposing that a CESQG or a SQG be allowed to exceed its generator category limits only once per calendar year without affecting its generator category.<sup>113 114</sup> EPA has several reasons for this restriction. First, if a CESQG or SQG exceeds its generator category limits more frequently than once per calendar year, EPA is concerned that these generators are more likely to be routinely generating greater amounts of hazardous waste and thus it may be more appropriate for the generator to comply with the regulations applicable to the higher generator category, at least for the months they exceed the quantity limits for their generator category. Second, EPA believes most hazardous waste generators experience an episodic event infrequently, such as once every few years, and these events are typically planned maintenance projects. Third, the Agency does not consider an episodic event to be limited to one project within the generator's site. In fact, a generator could start and

<sup>113</sup> As discussed later, the length of a generator's episodic event may overlap two calendar years in which case discretion would be provided to EPA or the authorized state as to how it would address a request for another episodic event in the second year by a generator.

<sup>114</sup> EPA is proposing a process to petition the Agency for an additional event, if warranted.

complete multiple projects (e.g., a small demolition project, a tank cleanout, and removal of excess chemicals) at different dates within the 45 day time limit so long as it stayed within the 45 day start and end dates identified on the notification form with all hazardous waste generated considered part of the same episodic event.

#### 2. Notification

A SQG or CESQG would have to notify EPA no later than 30 days prior to initiating a planned episodic event using EPA form 8700–12 (Site ID form). Should EPA finalize this provision, EPA will provide instructions in the Site ID form on how to report an episodic event (for example, using the notes section of the form). The hazardous waste generator would be required to identify the dates the episodic event will begin and end—a time frame not to exceed 45 calendar days—as well as describe the reason for the event and the types and estimated quantities of hazardous wastes that would be generated during the event. Should an unplanned event occur, the generator would be required to notify EPA as soon as possible via phone or email, but must submit EPA form 8700–12 (Site ID form) within 24 hours of the unplanned event, or as soon as possible depending upon the circumstances. Unless notified by EPA or an authorized state, a CESQG or SQG would be allowed to begin its episodic event on the date identified on its form 8700–12.

The date identified on the notification form as the start date for the episodic event is assumed to be the date the generator initiates physical action in generating and accumulating the hazardous waste. Whether such action actually occurs on that date or after by the generator will have no impact in changing the end date of the episodic event identified on the notification form.

No matter what, the end date must be no later than 45 calendar days from the date identified on the notification form as the start date of the episodic event. The end date will be the date on which all hazardous waste generated from the episodic event, and possibly other hazardous waste also generated during that time period as part of normal operations, will have had to be removed and sent to a RCRA designation facility as verified by the hazardous waste manifest. The Agency does not see any reason to preclude a generator taking advantage of this provision to also dispose of other hazardous wastes generated during the time of the episodic event.

As part of the notification form, a CESQG would have to notify its local fire department that it was taking advantage of an episodic event. The notice would need to include the start and end dates and identify the types and quantities of hazardous wastes that would be generated.

EPA believes notification is essential to inform regulatory authorities of the facility's activities in order to enable adequate compliance monitoring of the facility with the conditions of the alternative standards.

### 3. EPA ID Number

A CESQG generating and accumulating quantities of hazardous waste that would otherwise result in a higher generator category because of an episodic event (whether planned or unplanned) would be required, under the proposed regulations, to obtain an EPA ID number using EPA form 8700-12 if one had not previously been assigned. A generator cannot initiate a hazardous waste shipment to a RCRA-designated facility without an EPA ID number. (SQGs are already required to obtain an EPA ID number.)

### 4. Waste Management Standards

*a. Accumulation standards for CESQGs.* Under the current regulations, a CESQG must not accumulate more than 1,000 kilograms of non-acute hazardous waste at any one time, but otherwise does not have any on-site waste management standards when accumulating hazardous waste, primarily because the quantities generated every month are so small. EPA is proposing to require a CESQG that generates episodic hazardous waste that would cause the CESQG to exceed its generator category limit for the calendar month to comply with the following accumulation standards for containers and tanks that manage the episodic wastes if it wants to take advantage of the episodic generator provision (CESQGs are prohibited from using a drip pad or a containment building). EPA believes that these standards are necessary because the quantity of hazardous waste that is accumulated during this episodic period requires standards for safe management in order to adequately protect human health and the environment.

When accumulating hazardous waste in containers, the CESQG would be required to mark its containers with the following: (1) The words "Episodic Hazardous Waste"; (2) other words that identify the contents of the containers—examples may include, but are not limited to the name of the chemical(s), such as "acetone" or "methylene

dichloride," or the type or class of chemical, such as "organic solvents" or "halogenated organic solvents" or, as applicable, the proper shipping name and technical name markings used to comply with DOT requirements at 49 CFR part 172 subpart D; and (3) an indication of the hazards of the contents of the container—examples of hazards include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.*, ignitable, corrosive, reactive, toxic). In the case of hazardous wastes ultimately treated and disposed of off-site, the generator could use a hazard class label consistent with the DOT requirements at 49 CFR part 172 subpart E (labeling), use a label consistent with the OSHA Hazard Communication Standard at 29 CFR 1920.1200, or use a chemical hazard label consistent with the NFPA code 704; or a hazard pictogram consistent with the United Nations' GHS. Generators also may use any other marking or labeling commonly used nationwide in commerce that would alert workers and emergency responders to the nature of the hazards associated with the contents of the containers.

These marking standards are the same as those for LQGs and SQGs accumulating hazardous wastes in containers in the course of normal business operations and are necessary to protect human health and the environment. In addition to these, the CESQG would be required to mark the date that the episodic event began clearly on each container.

For tanks, the CESQG would have to mark or label the tank containing hazardous waste accumulated during the event with the words "Episodic Hazardous Waste" and would be required to use inventory logs, monitoring equipment, or other records to identify the contents of the tank, the quantity accumulated as a result of the episodic event, and the associated hazards and to identify the date that the episodic event began. The records containing this information would have to be immediately accessible by the generator.

In addition, the generator would be required to manage the hazardous waste in a manner that minimizes the possibility of an accident or release. Management standards are critical to ensure the hazardous waste does not pose a risk to human health and the environment. A CESQG may use best management practices to comply with this condition. In practice, this includes managing the hazardous waste in containers that are in good condition and chemically compatible with any hazardous waste accumulated therein

and keeping the containers closed except to add or remove waste. Complying with the standards in part 265 subpart I would satisfy this condition.

With respect to tanks, the following standards are proposed: (1) Having procedures in place to prevent overflow (*e.g.*, the tank is equipped with a means to stop inflow with systems such as a waste feed cutoff system or bypass system to a standby tank when hazardous waste is continuously fed into the tank); (2) inspecting the tank(s) at least once each operating day during the episodic event to ensure all applicable discharge control equipment, such as waste feed cutoff systems, bypass systems, and drainage systems, are in good working order and (3) using appropriate controls and practices to prevent spills and overflows from tank or secondary containment systems including at a minimum spill prevention controls (*e.g.*, check valves, dry disconnect couplings), overfill prevention controls (*e.g.*, level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank), maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation. Such practices are necessary to prevent the release of the hazardous waste or hazardous constituents to air, soil, or water, which could threaten human health and the environment.

As mentioned above, an emergency coordinator (in compliance with proposed § 262.16(b)(9)(i)) must be identified for the duration of the episodic event on the notification form. A CESQG taking advantage of this provision would also need to notify the local fire department of who their emergency coordinator was if they had not done so already for other emergency preparedness and planning reasons. An emergency coordinator is needed because the CESQG will be generating greater amounts of hazardous waste than normal and, should an accident occur, the emergency coordinator would need to be prepared to handle the situation.

EPA believes these management standards are necessary to adequately protect human health and the environment because of the additional quantities of hazardous waste generated and accumulated as a result of an episodic event. The Agency, however, seeks comment on these proposed management standards. In particular, the Agency is aware of concerns expressed by generators in the past that the marking and labeling of tanks with the date the generator first began

accumulating hazardous waste could prove problematic since the tank could have numerous markings on it. (See comments found in RCRA Docket EPA-HQ-RCRA-2008-0678 in response to EPA's Technical Corrections Direct Final rule, 75 FR 12989.) The Agency has responded to this concern by allowing generators to use log books and other means to identify the hazardous waste accumulation start date. However, the Agency is proposing that CESQGs (and SQGs) label their tanks with the words "Episodic Hazardous Waste" so that emergency responders and others are readily aware of the tank's contents and situation. The Agency requests comment on whether this requirement could also prove problematic, and if so, why, and what cost-effective alternatives exist to address those concerns and still allow emergency responders, inspectors, workers, etc. to be readily aware of the tank's hazardous waste contents.

Under the existing regulations, CESQGs may not treat hazardous waste generated on site in a manner equivalent to SQGs and LQGs under § 262.34, except in an on-site elementary neutralization unit. Elementary neutralization units, as defined in § 260.10, are exempt from RCRA treatment, storage, and disposal standards and permitting requirements. The elementary neutralization unit exclusion does not preclude a CESQG from treating waste in the exempt unit as long as the generator meets the criteria outlined in §§ 264.1(g)(6), 265.1(c)(10), and 270.1(c)(2)(v). Specifically, the elementary neutralization unit must meet the definition of a container, tank, tank system, transport vehicle, or vessel, and must be used for neutralizing wastes that are hazardous only because of the corrosivity characteristic.<sup>115</sup>

Considering that CESQGs will be required to meet additional waste management requirements under this proposed rule for episodic generation, the Agency seeks comment on whether CESQGs taking advantage of this provision should be allowed to treat their episodic hazardous waste on site in a manner equivalent to SQGs and LQGs at § 262.34. In particular, the Agency seeks comment on whether the volume of hazardous waste generated from an episodic event exceeds the capacity and expertise of CESQGs, which are accustomed to managing smaller quantities of hazardous waste, and whether the Agency should identify a select list of allowable types of

treatment that would not pose a risk to human health and the environment.

*b. Manifest use by CESQGs and management at a RCRA-designated facility.* EPA is proposing to require CESQGs to manifest the hazardous waste generated from an episodic event and send it to a RCRA-designated facility. Under current regulations, CESQGs are not required to manifest their hazardous waste to a RCRA-designated facility, but can ship them without a manifest and to one of seven types of facilities listed in § 261.5(f)(3). Because the CESQG will be generating quantities of hazardous waste that exceed its normal generator category thresholds, the Agency believes the use of a hazardous waste manifest and the shipment of the hazardous waste to a RCRA-designated facility is necessary to protect human health and the environment. However, the condition to manifest the hazardous waste and send it off site to a RCRA-designated facility would only apply to the hazardous waste generated as a result of the episodic event. The condition would not apply, unless if for economic or logistical reasons, the CESQG desired to ship off site to a RCRA-designated facility all hazardous waste generated and accumulated either as a result of the episodic event, independent of the episodic event, or prior to the event.

*c. Accumulation standards for SQGs.* Under the current regulations, SQGs must comply with the waste accumulation, waste management, employee training, and emergency preparedness and prevention conditions at 40 CFR 262.34 (d)–(f) with references to 40 CFR 265 subparts C, I, and J in order to accumulate hazardous waste without a RCRA storage permit or compliance with interim status standards. SQGs may not take advantage of this proposed episodic generation provision for wastes accumulated on drip pads or in containment buildings although EPA does seek comment on allowing episodic event wastes to be accumulated in these units prior to sending the hazardous waste off-site for treatment and disposal to a RCRA designated facility. Under this proposed rule, EPA is proposing to require an SQG that generates episodic hazardous waste that would cause the SQG to exceed their generator category limits for the calendar month to comply with certain standards for containers and tanks if it desires to take advantage of the episodic generator provision.

When accumulating hazardous waste generated as a result of an episodic event in containers, the SQG would be required to mark its containers with the following: (1) The words "Episodic

Hazardous Waste"; (2) other words that identify the contents of the containers—examples may include, but are not limited to the name of the chemical(s), such as "acetone" or "methylene dichloride," or the type or class of chemical, such as "organic solvents" or "halogenated organic solvents" or, as applicable, the proper shipping name and technical name markings used to comply with DOT requirements at 49 CFR part 172 subpart D; and (3) an indication of the hazards of the contents of the container—examples of hazards include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.*, ignitable, corrosive, reactive, toxic). In the case of hazardous wastes ultimately treated and disposed of off-site, the generator could use a hazard class label consistent with the DOT requirements at 49 CFR part 172 subpart E (labeling), a label consistent with the OSHA Hazard Communication Standard at 29 CFR 1920.1200, a chemical hazard label consistent with the NFPA code 704, or a hazard pictogram consistent with the United Nations' GHS. Generators also may use any other marking or labeling commonly used nationwide in commerce that would alert workers and emergency responders to the nature of the hazards associated with the contents of the containers.

These standards are the same as those for SQGs accumulating hazardous wastes in containers in the course of normal business operations and are necessary to protect human health and the environment. In addition to these, the SQG would be required to mark the date that the episodic event began clearly on each container.

For tanks, the SQG would be required to mark or label the tank containing hazardous waste accumulated during the event with the words "Episodic Hazardous Waste" and would be required to use inventory logs, monitoring equipment, or other records to identify the contents of the tank and the associated hazards and to identify the date that the episodic event began and ended. The generator would need to have records containing this information immediately accessible.

In addition, the SQG would need to comply with all the conditions of the exemption in § 262.34 (d) through (f) with references to 40 CFR 265 subparts C, I, and J, part 268 land disposal restrictions (§ 262.16 under the proposed reorganization)—that is, the waste accumulation, waste management, employee training, and emergency preparedness and prevention conditions.

<sup>115</sup> RCRA Hotline Q & A, February 1996, RCRA Online 13778.

*d. Manifest use by SQGs.* As under the current regulations, EPA is proposing that SQGs manifest the hazardous waste generated from an episodic event and send it to a RCRA-designated facility, unless the waste is managed on site. The Agency believes the use of a hazardous waste manifest and shipment of the hazardous waste to a RCRA-designated facility is necessary to protect human health and the environment. However, unlike CESQGs, the use of the hazardous waste manifest would apply not only to the wastes generated from the episodic event, but all other hazardous wastes the SQG generates within its generator category.

#### 5. Forty-five (45) Days or Less Would be Allowed to Treat and Dispose of Hazardous Wastes On Site (SQGs) or Manifested and Shipped Off Site (CESQGs or SQGs) to a RCRA-Designated Facility

The Agency is proposing to allow SQGs and CESQGs 45 calendar days to initiate and complete an episodic event, which includes generation, accumulation and management (*e.g.*, recycling, treatment and disposal—either on site, such as waste neutralization in a container, or off site at a RCRA-designated facility) of all hazardous waste resulting from the episodic event. The Agency believes 45 days is sufficient time for a generator to complete management of the hazardous waste from the time that the generator begins generating and accumulating the hazardous waste. However, as discussed below, a CESQG or SQG can petition the Agency for additional time to complete the generation and removal of the hazardous waste during the episodic event, if necessary.

#### 6. Recordkeeping

Finally, generators would need to keep the following information in their records: (1) Beginning and end dates of the episodic event; (2) a description of the episodic event; (3) a description of the types and quantities of hazardous wastes generated during the episodic event; (4) a description of how the hazardous waste was managed as well as the name of the RCRA designated facility that received the hazardous waste; (5) name(s) of hazardous waste transporters, as appropriate; (6) an approval letter from EPA, if the generator successfully petitioned to conduct an additional episodic event during the calendar year; and (7) an approval letter from EPA, if the generator successfully petitioned for an additional 30 calendar day extension. These records would need to be maintained on site by the generator for

three years from the completion date of each episodic event.

EPA believes the recordkeeping condition is critical to enable effective and credible oversight. We also believe that the information to be maintained is the minimum information necessary to determine that any hazardous waste generated during the episodic event is managed properly.

#### 7. Petitions

##### a. Petition To Request one Additional Episodic Event

While the Agency believes that most generators will experience an episodic event infrequently, we also recognize that there may be situations, often unexpected, where a hazardous waste generator may have more than one episodic event within a calendar year, such as an unexpected product recall, a major spill, or an act of nature.

Therefore, the Agency is proposing to allow CESQGs and SQGs to petition EPA (at least 30 days before initiating a planned episodic event and within 24 hours after an unplanned event) for permission to manage one additional episodic event without impacting the hazardous waste generator category. The petition must include (1) the reason why an additional episodic event is needed and the nature of the episodic event; (2) the estimated amount of hazardous waste to be managed from the event; (3) how the hazardous waste is to be managed; (4) the estimated length of time needed to complete management of the hazardous waste generated from the episodic event—not to exceed 45 days; and (5) information regarding previous episodic event(s) managed by the generator and whether it complied with the proposed conditions. EPA will then evaluate this and other site-specific information to determine whether a generator should be allowed to initiate a second episodic event under the proposed alternative standards. The petition by the generator may be made via fax, email, or letter. The generator may not manage hazardous waste for an additional episodic event until written approval by EPA (or the authorized state) has been received. The generator must retain written approval in its records for three years from the date the episodic event ended.

##### b. Petition To Request Additional Time To Complete an Episodic Event

Events may arise, particularly unplanned events, such as an “act of nature,” where 45 days is insufficient to complete the event. The Agency is proposing to allow generators to petition EPA for an additional 30 days to

complete the generation and removal of hazardous waste, if needed. The petition must include (1) the nature of the episodic event; (2) the estimated amount of hazardous waste to be managed from the event; and (3) the generator’s rationale for needing an extension for an additional 30 days beyond the 45-day limit to complete the episodic event. EPA will then evaluate the generator’s request to determine whether it should be allowed up to an additional 30 days to complete the episodic event. For example, a situation may exist where a hazardous waste transporter cannot arrive and remove hazardous waste generated until the 46th day because of unforeseen problems with its truck or the generator did not foresee problems with completing a tank cleanout because cleanout equipment failed to operate. These are all site-specific situations that EPA or authorized state would evaluate when making its decision. The generator cannot go beyond the 45-day limit unless written approval by EPA has been received.

The generator would need to petition EPA for approval at least 15 days before the original end date of the episodic event. The petition by the generator may be made via fax, email, or letter. The generator must retain written approval in its records for three years from the date the episodic event ended.

Should the generator request an extension from the Agency or authorized state with less than 15 days remaining and be denied the extension, then the generator would have to remove all hazardous wastes generated as a result of the episodic event as of the specified end date in its notification or be in violation of its exemption.

Unlike rulemaking petitions in part 260 subpart C of the hazardous waste regulations, the Agency is not proposing to have a notice and comment period for granting an episodic event or an extension. The Agency believes a generator’s actions and performance will dictate approval or disapproval of a generator’s request. In addition, in some cases a timely response to these requests is critical, especially with requests for extension. Taking notice and comment would delay that response.

#### 8. Tracking and Accounting for Hazardous Waste Generation and Accumulation as a Result of an Episodic Event Along With Normal Production Operations

In practice, a generator taking advantage of this rule, in particular a CESQG or SQG, must track and monitor the start and end dates of the episodic event in conjunction with the date the

calendar month ends to ensure compliance with all RCRA regulatory provisions associated with waste generation and management. An example may be the best way of explaining how this rule would work.

A CESQG could have a number of facility operations (e.g., tank cleanouts, disposal of off-spec products it cannot sell or reclaim, repair work involving the removal of lead paint chips) that will often result in a temporary change in its regulatory category. The CESQG decides to notify its authorized state two months prior (as well as identifying a point of contact and emergency coordinator) that it will initiate the planned episodic event on July 20 and take advantage of the full 45 days allowed to conduct the event and end on September 2. Beginning on July 20, the generator must comply with all of the regulatory standards of subpart L discussed above to maintain its exemption as a CESQG. Under this example, if the generator complies with subpart L, it need not be concerned about the total amount of hazardous waste it will generate in the calendar months of July and August (e.g. 100 kg or less) or whether it will exceed the hazardous waste accumulation total of less than 1,000 kilograms associated with a CESQG.

However, on or before September 2, the generator must remove and dispose of all the hazardous wastes it generated over the course of the last 45 days that represented the episodic event. Provided the generator meets that deadline, that waste would not count when determining the generator's status. In this example, the generator chooses to also dispose of waste generated from its normal operations by September 2. In this case, it would then not count that waste in determining its generator status for July, August, and September. The CESQG would then estimate the quantity of hazardous waste it generates and accumulates for the remainder of September (starting on September 3 until the end of the month) to determine its regulatory category.

If the generator decides to separate out normal production operations from episodic event operations, then the waste from normal operations is counted each month to determine the generator's status. For example, assume the generator at the beginning of the episodic event had accumulated 950 kg of hazardous waste and proceeds to accumulate another 75 kg over the course of the 45-day episodic event that is associated with normal operations.<sup>116</sup>

<sup>116</sup>Note that it would not matter how much the CESQG had generated during a calendar month in

On September 3, if the generator had not disposed of that 1,025 kg of hazardous waste along with all of the episodic event hazardous wastes it generated and accumulated, then it would have violated the accumulation provision of a CESQG at 40 CFR 261.5(g)(2) (e.g., less than 1,000 kg) and would be in violation of the conditions of the CESQG exemption. A similar concern might occur if the generator generated 101 kg of hazardous wastes on September 1 and 2 from normal operations and did not dispose of it by September 2 with the waste from the episodic event. The generator would not be in compliance with the CESQG threshold for the calendar month and would be required to comply with the SQG conditions for exemption or be in violation of the exemption.

There are numerous variations on the above example (e.g., request to extend the length of time for the episodic event, etc.) that a generator would have to be aware of when it ended its episodic event to avoid exceeding waste generation totals for the calendar month or waste accumulation limitation totals.

#### 9. An Episodic Event Involving Two Calendar Years

An episodic event may also involve overlapping two calendar years. The Agency is proposing that the generator count all the waste from the episodic event in the year with the most days involved in the episodic event. In other words, if the episodic event begins on December 16 of year 1 and ends on January 30 of year 2, the waste would count in year 2.

#### C. Request for Comment

The Agency requests comment on its proposed approach for addressing hazardous waste generated during an episodic event. Specifically, the Agency requests comment on whether the overall approach proposed would assist generators and allow a CESQG or SQG to maintain its generator category and not be bumped up into a more stringent generator category temporarily.

EPA also requests comment on the number of episodic events that would be allowed under these proposed alternative regulations. As stated above, we are proposing to allow CESQGs and SQGs to take advantage of this alternative regulatory framework for one episodic event per calendar year, with the ability to petition EPA for one additional event per calendar year. EPA

which the episodic event begins because all of that hazardous waste is now folded into the hazardous waste generated as a result of the episodic event. Otherwise, the rule would not work from a practical viewpoint.

is interested in ideas on how best to structure this alternative framework in terms of identifying a reasonable number of episodic events allowed per year and identifying an appropriate time period allowed to conduct and manage the hazardous waste from an episodic event in a way that would be effective while still ensuring protection of human health and the environment.

Additionally, the Agency requests comment regarding its proposed conditions for CESQGs and SQGs managing hazardous waste generated from the episodic event, such as the proposed 45-day limit to generate and manage the waste and the ability for CESQGs and SQGs to petition the Agency for one additional episodic event per calendar year or an additional 30 days to complete an episodic event. The Agency also requests comment on whether the proposed conditions for CESQGs and SQGs are reasonable and sufficient to protect human health and the environment.

Finally, the Agency requests comment on whether to allow a CESQG or SQG to accumulate hazardous waste either on a drip pad or in a containment building in compliance with 40 CFR part 265 subparts W and DD, respectively, as a result of an episodic event. As proposed, the Agency has focused on hazardous wastes accumulated in containers or tanks as a result of an episodic event since almost all CESQGs and SQGs accumulate waste in containers with a small percentage accumulated in tanks. However, there may be circumstances that lend themselves to a CESQG or SQG accumulating hazardous wastes on a drip pad or in a containment building.

*Effect of the Proposed Reorganization:* This section is not affected by the proposed reorganization.

#### X. Proposed Revisions to 40 CFR Part 263—Standards Applicable to Transporters of Hazardous Waste

The current regulations at § 263.12 for transporters handling hazardous waste at a transfer facility for ten days or less state that the transporter is not subject to the storage regulations in 40 CFR parts 264, 265, 267, 268 and 270. In addition, the regulation stipulates that containers that hold hazardous waste must meet the provisions in § 262.30 that reference DOT's packaging regulations at 49 CFR parts 173, 178, and 179.

The Agency is proposing to change the marking and labeling requirements for transporters handling hazardous waste at transfer facilities, found at § 263.12, to be consistent with the proposed changes for marking and

labeling conditions for containers for SQGs, for LQGs, and in SAAs.<sup>117</sup> In addition to these proposed changes, EPA is also proposing to require that containers of hazardous waste at transfer facilities be labeled prior to being transported off site to a RCRA-designated facility with the applicable EPA hazardous waste number(s) (EPA hazardous waste codes), which will help the TSDf receiving the hazardous waste comply with the LDR regulations in 40 CFR part 268. The Agency is proposing these modifications to ensure that hazardous wastes are appropriately labeled and marked throughout transportation to a RCRA-permitted or interim status TSDf or to another transfer facility.

Specifically, EPA is proposing that transporters storing hazardous wastes in containers at transfer facilities mark the containers with the following: (1) The words “Hazardous Waste”; (2) the applicable EPA hazardous waste number(s) (EPA hazardous waste codes) in subparts C and D of part 261; (3) other words that identify the contents of the containers—examples may include, but are not limited to the name of the chemical(s), such as “acetone” or “methylene dichloride”; or the type or class of chemical, such as “organic solvents” or “halogenated organic solvents” or, as applicable, the proper shipping name and technical name markings used to comply with DOT requirements at 49 CFR part 172 subpart D; and (4) an indication of the hazards of the contents of the container—examples of which include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.*, ignitable, corrosive, reactive, toxic); a hazard class label consistent with the DOT requirements at 49 CFR part 172 subpart E (labeling); a label consistent with the OSHA Hazard Communication Standard at 29 CFR 1920.1200; a chemical hazard label consistent with the NFPA code 704; or a hazard pictogram consistent with the United Nations’ GHS. Transfer facilities also may use any other marking and labeling commonly used nationwide in commerce that would alert workers and emergency responders to the nature of the hazards associated with the contents of the containers.

A transfer facility may choose to use an appropriate DOT proper shipping name found in the 49 CFR 172.101 hazardous materials table to identify the contents of the container. That way, the

transfer facility will fulfill EPA and DOT requirements simultaneously; however, EPA is not proposing to require the use of the DOT shipping names while the hazardous waste is accumulating on-site. We only suggest that the DOT shipping name may be one way that some generators may choose to identify the contents of the container.

As previously discussed, the Agency believes providing this information on the container will alert workers and other handlers to the contents of the container and the potential hazards of the materials therein. This information increases the awareness of workers and others who might come into contact with the hazardous waste in the containers and reduces potential adverse impacts from container mismanagement. The Agency does not believe this proposed change will adversely impact transfer facility operations since similar marking and labeling standards are proposed for hazardous waste generators. One difference, however, is the inclusion of the EPA hazardous waste number in the list of labeling requirements. Although generators are not required to have the EPA hazardous waste number on the hazardous waste while accumulating it, we are proposing in this rulemaking that generators must include the EPA hazardous waste number on the label before transporting the hazardous waste off site, so when a container arrives at the transfer facility it should already have the EPA hazardous waste number on its label.

Given that containers received by the transfer facility will already be marked and labeled by the generator, the Agency believes the additional burden on the transfer facility will be minimal. However, there may be situations where the transporter would be required to mark and label a container. One example of when a transfer facility would be required to mark and label its containers would be when it consolidates two containers with the same hazardous waste into a new container or when it is able to combine and consolidate two different hazardous wastes that are compatible with each other and are able to be subsequently managed consistently in compliance with the applicable regulations in parts 264, 265, 267, 268 and 270 of this chapter.

The Agency requests comment on this proposed change, particularly the identification of any unintended problems from this requirement.

*Effect of the Proposed Reorganization:* This section is not affected by the proposed reorganization.

## **XI. Proposed Revisions to 40 CFR Parts 264 and 265—Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities and Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities**

The Agency is proposing to modify the biennial report requirements for facilities subject to 40 CFR 264.75 and 40 CFR 265.75 and the special requirements for ignitable and reactive wastes at 40 CFR 265.176.

### *A. Proposed Changes to Biennial Reporting Requirements (40 CFR 264.75 and 40 CFR 265.75)*

EPA is proposing to modify the regulations at §§ 264.75 and 265.75 to eliminate the list of specific data elements and to require the completion and submission of all data elements in the biennial report form (EPA form 8700–13).

Section 264.75 currently requires that the biennial report include a specific list of data elements, including the name, address, and EPA ID number of the generator and each transporter and TSDf, the EPA hazardous waste number for each hazardous waste shipped off site, and a signed certification, among other things.

Section 265.75 includes the above data elements as well as requiring monitoring data under § 265.94(a)(2)(ii) and (iii), and (b)(2), where required.

Similar to the approach EPA is proposing for the biennial reporting requirements for LQGs in § 262.41, EPA believes removing the specific data elements in the regulations and replacing it with a requirement to complete and submit all the data elements required in the biennial report form will ensure that the regulations and forms remain consistent. For example, the existing regulations require closure cost information and, at § 265.75(f), groundwater monitoring data under § 265.94(a)(2)(ii) and (iii), and (b)(2) to be submitted as part of the biennial report; however, these data elements are not collected on EPA’s current biennial reporting form 8700–13.<sup>118</sup> Thus, EPA believes removing this

<sup>118</sup> Closure cost estimates must be submitted in accordance with § 264.142 or 265.142 which requires owners or operators using the financial test or corporate guarantee to update closure costs for inflation within 30 days after the close of the firm’s fiscal year and before submission of updated information to the Regional Administrator under § 264.143(f)(3) or 265.143(e)(3), respectively. Additionally, disposal facilities must submit the most recent post-closure cost estimate under § 264.144 or 265.144, which requires owners or operators using the financial test or corporate guarantee to update for inflation within 30 days

<sup>117</sup> EPA is proposing to move these provisions as a part of the reorganization of the generator regulations. They can be found in the proposed regulatory text at the following citations: SAAs—§ 262.15(a)(1)(iv); SQGs—§ 262.16(b)(6)(i); and LQGs—§ 262.17(a)(5).

list from the regulations will help TSDFs understand what EPA currently requires to be submitted as part of the biennial report. This approach eliminates the need to update the list of specific required data elements through rulemaking and reduces duplication with review and approval processes established under the PRA.

EPA does not believe this change in any way affects the enforceability of the biennial report regulations. Owners and operators must complete and submit EPA form 8700–13.

EPA also notes that some states develop their own state biennial report forms. EPA does not believe this proposed change would impact a state's ability to use their own biennial report forms or to collect more information than is required by the federal forms. Authorized states that use a different form for collecting biennial report information would simply refer to their authorized state form in their state regulations. Additionally, EPA is aware that some states use their state biennial report form as a vehicle for collecting closure cost data, required to be submitted under § 264.142, and groundwater monitoring data, required to be submitted under § 264.97(j). Because the existing federal regulations already specify collection of this information, EPA would not consider states that continue collecting this data using their state authorized biennial report form to be more stringent than the federal program.

Additionally, as discussed in section VIII.L of this preamble, EPA is proposing to modify the phrase “prepare and submit,” which is the existing language in §§ 264.75 and 265.75, to “complete and submit” because the Agency believes that “complete and submit” more accurately reflects that facilities must complete all applicable elements of the biennial report forms.

The Agency requests comment on these proposed changes to §§ 264.75 and 265.75. EPA also specifically requests whether commenters believe the proposed change to eliminate the specific data elements in these regulations will ease compliance and understanding of the current biennial reporting procedures.

after the close of the firm's fiscal year and before the submission of updated information to the Regional Administrator. Groundwater monitoring data must be submitted in accordance with § 265.94(b)(2), which requires the owner or operator to submit annually, until final closure of the facility, to the Regional Administrator a report containing the results of the groundwater quality assessment program no later than March 1 following each calendar year.

*Effect of the Proposed Reorganization:* This section is not affected by the proposed reorganization.

#### *B. Special Requirements for Ignitable and Reactive Wastes*

Sections 262.34(a)(1)(i) and 262.34(d)(2) contain conditions for exemptions for LQGs and SQGs that accumulate hazardous waste on site for up to 90 or 180 days without a permit. These regulations both reference part 265 subpart I, which contains regulations for owners and operators of interim status hazardous waste facilities that store hazardous waste in containers.

The LQG conditions in § 262.34(a)(1)(i) reference § 265.176. Section 265.176 states that containers holding ignitable or reactive waste must be located at least 15 meters (50 feet) from the facility's property line. SQGs are not required to comply with this provision.

In some cases, to comply with this standard for ignitable and reactive wastes, LQGs may modify their production feedstocks or production processes to generate a waste that is not an ignitable or reactive hazardous waste or reexamine the site's layout to identify alternative accumulation areas. However, there are some cases where it may not be physically possible to meet this standard, particularly if the width of the site is 100 feet or less or when the generator's operations have expanded such that it no longer has the ability to accumulate ignitable or reactive waste at least 15 meters (50 feet) from the site's property line. Insurance companies and local fire departments often assist hazardous waste generators in minimizing their environmental hazards and liabilities, but site dimensions may sometimes physically prevent a facility from complying with this condition.

Therefore, the Agency is proposing to modify the regulatory text for generators to allow LQGs to apply for a site-specific waiver from their local fire department if they are unable to meet the hazardous waste accumulation property line condition.<sup>119</sup> The proposed change would require LQGs to obtain a waiver from this provision, in writing, from local fire departments. LQGs would then be required to keep the written waiver in their records. In addition, as part of the reorganization of the generator regulations, discussed in section XIII of the preamble, we are also

<sup>119</sup>The Agency is not proposing to modify § 265.176 to allow interim status facilities to apply for a site-specific waiver from their local fire department if they are unable to meet the hazardous waste accumulation property line condition.

including this provision directly in the LQG accumulation regulations.

Because it is the local fire department that has the expertise to address this problem when it arises, EPA is relying on those local fire departments to work with the generators on any waivers that may be requested and on finding the most appropriate place on site to accumulate this hazardous waste.

Section 265.176 contains a comment that references § 265.17(a) and states that there are additional requirements in that section, which also contains provisions for ignitable, reactive, and incompatible wastes. The Agency is also proposing to incorporate the language from existing § 265.17(a) into § 262.17(a)(1)(vi)(B) of the generator regulations. EPA is proposing to replace the words “owner and operator” with “large quantity generator” as part of this revision. By eliminating the cross-references, generators should be able to more easily discern what provisions are applicable and therefore should be better able to properly manage any ignitable or reactive hazardous waste.

The Agency seeks comment on the proposed addition of this language to the generator conditions for exemption, as well as the change to allow LQGs to seek a waiver from the provision that containers holding hazardous waste must be located at least 15 meters (50 feet) from the property line. Specifically, EPA requests comment on whether this waiver option provides a sufficient level of protection for the facility and the surrounding community and whether generators would benefit from the increased flexibility. Additionally, EPA requests comment on whether it is appropriate to delegate the responsibility for issuing waivers in this case to the fire department and whether EPA should promulgate criteria that must be met as a condition of the waiver as part of this provision. For example, conditions may include a limit on the amount of ignitable or reactive hazardous waste that could be accumulated at any time or a requirement that the facility have certain technical controls, such as fire suppression devices or walls that meet a certain fire-resistance rating. Furthermore, EPA requests comment on whether the insertion of the language from § 265.17(a) in this section is helpful.

Finally, EPA requests comment on whether including a waiver to the provision for ignitable and reactive wastes would also be appropriate for interim status facilities or for permitted facilities in §§ 264.176 and 265.176.

*Effect of the Proposed Reorganization:* This section is affected by the proposed

reorganization. The revised language would appear directly in § 262.17(a)(1)(vi) as a condition for exemption for LQGs, rather than being located in 40 CFR part 265 subpart I and referenced from the generator regulations. The reorganization is discussed in section XIII of this preamble.

## **XII. Proposed Revisions to 40 CFR Part 268—Land Disposal Restrictions**

The Agency is proposing to change the regulations on marking and labeling of containers by the owner/operator of a hazardous waste TSDF in § 268.50 to be consistent with the proposed marking and labeling changes for LQGs, for SQGs, for SAAs, and for transfer facilities.<sup>120</sup> EPA is also proposing to require that containers be labeled with the applicable EPA hazardous waste number(s) (EPA hazardous waste codes), which help the TSDF comply with the LDR regulations. More specifically, the Agency is proposing to modify § 268.50(a)(2)(i), which states that one of the requirements for storing hazardous wastes restricted from land disposal is that each container is clearly marked to identify its contents and the date each period of accumulation begins.

Consistent with the other proposed changes that clarify the contents and hazards posed by the contents of hazardous waste in containers, the Agency is proposing to modify this language to state that each container must be clearly marked with (1) the words “Hazardous Waste”; (2) the applicable EPA hazardous waste number(s) (EPA hazardous waste codes) in subparts C and D of part 261; (3) other words that identify the contents of the containers—examples may include, but are not limited to the name of the chemical(s), such as, “acetone” or “methylene dichloride”; or the type or class of chemical, such as “organic solvents” or “halogenated organic solvents” or, as applicable, the proper shipping name and technical name markings used to comply with DOT requirements at 49 CFR part 172 subpart D; (4) an indication of the hazards of the contents of the container (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.*, ignitable, corrosive, reactive, toxic); a hazard class label consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling); a label

consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1920.1200; a chemical hazard label consistent with the National Fire Protection Association code 704; or a hazard pictogram consistent with the United Nations’ Globally Harmonized System); or any other marking or labeling commonly used nationwide in commerce that would alert workers and emergency responders to the nature of the hazards associated with the contents of the containers. The Agency will continue to require each container to be clearly marked with the date each period of accumulation begins.

The Agency believes this proposed change will not adversely impact facility operations. In fact, because these are consistent with the requirements for marking and labeling that are proposed elsewhere in the regulations, we believe it will be easier for all those who manage the hazardous waste to know and comply with the consistent system of marking and labeling. In addition, a clear description of what material is in each container makes the facility safer for employees, first responders, and the public. The Agency requests comment on this proposed change.

*Effect of the Proposed Reorganization:* This section is not affected by the proposed reorganization.

## **XIII. Proposed Reorganization of Hazardous Waste Generator Regulations**

EPA is proposing to reorganize the hazardous waste generator regulations to make them more user-friendly, which should facilitate better generator compliance. As part of the Agency’s 2004 Program Evaluation of the hazardous waste generator program, the most frequent comment by stakeholders was to improve the user-friendliness of the regulations.

Although many existing generators are familiar with the current regulations, every year many generators either enter the hazardous waste generator program or switch their generator category and therefore need to become familiar with their obligations. Similarly, an existing generator may need to examine a particular regulatory citation to ensure it is complying with the regulations correctly. The Agency believes that providing these generators with a user-friendly regulatory framework is an effective way to make the regulations easier to understand for those who need to comply with them.

Therefore, in response to these concerns, EPA is proposing the following organizational changes:

(1) Integrate the generator regulations in § 261.5 into the generator regulations at part 262 by moving § 261.5 (which contains the regulations applicable to CESQGs, counting of hazardous waste, and mixing of hazardous wastes with non-hazardous wastes);

(2) Move the existing regulations at § 262.34 for SQGs and LQGs into three new sections:

(a) Satellite accumulation areas regulations for small and large quantity generators,

(b) Conditions for exemption for an SQG that accumulates hazardous waste; and

(c) Conditions for exemption for an LQG that accumulates hazardous waste;

(3) Use subtitles in these new sections; and

(4) Where reasonable, incorporate regulations that currently cross reference part 265 into these new sections.

### *A. Moving and Integrating Regulations from 40 CFR 261.5 into 40 CFR Part 262*

Currently, certain hazardous waste generator regulations are located in a different part of the regulations (40 CFR 261.5) from the rest of the generator regulations (40 CFR part 262).

Stakeholders have stated that this current organization is confusing and not user friendly and have asked EPA to move the CESQG regulations in § 261.5 into part 262 so that all the generator regulations are in the same place. The Agency believes this reorganization would alleviate much confusion in the regulated community and, in the process, would foster greater compliance with the regulations.

Specifically, EPA is proposing to move the definition of a CESQG that generates non-acute hazardous waste at § 261.5(a) into the CESQG definition at § 260.10, move § 261.5(c) through (e) to a new section at § 262.13 titled “Generator category determination” and move § 261.5(b) and (f) through (j) to a new section at § 262.14 titled “Conditions for exemption for a very small quantity generator.”<sup>121</sup>

### **1. Hazardous Waste Generation Quantity Limits for CESQGs (40 CFR 261.5(a) and (e))**

Currently § 261.5(a) sets forth the non-acute hazardous waste quantity limits for a CESQG and § 261.5(e) provides quantity limits for generating acute hazardous waste and any residue or contaminated soil, waste, or other debris resulting from the cleanup of a spill of

<sup>120</sup> EPA is proposing to move some of these provisions as a part of the reorganization of the generator regulations. They can be found in the proposed regulatory text at the following citations: SAAs—§ 262.15(a)(1)(iv); SQGs—§ 262.16(b)(6)(i); and LQGs—§ 262.17(a)(5)(i).

<sup>121</sup> EPA is proposing to rename CESQGs to VSQGs (very small quantity generators). For a detailed discussion on this proposed change see section VLB of this preamble.



acute hazardous waste. As mentioned previously, EPA is now proposing to define each category of generator at § 260.10, and, thus, under the reorganization, § 261.5(a) and (e) will be incorporated into those definitions.

2. Determining Generator Category (40 CFR 261.5(c) and (d))

Section 261.5(c) and (d) set forth the provisions for a hazardous waste generator to use in making its generator category determination. Every hazardous waste generator must

determine its generator category so it knows what regulations are applicable to it. Since these regulations are applicable to all hazardous waste generators, it makes sense to move them into 40 CFR part 262 along with the other hazardous waste generator regulations. To further aid in making the regulations more user friendly, the Agency is proposing to make a new section for generator category determination at § 262.13, titled “Generator category determination.”

This new section is appropriate because, after a generator of a solid waste determines it has generated a hazardous waste (§ 262.11), the generator must then determine its hazardous waste generator category for the calendar month. Table 3—Crosswalk of Existing Citations to Proposed Citations for Determining Generator Category provides a summary of the crosswalk between the existing and proposed regulatory citations for determining a generator’s category.

TABLE 3—CROSSWALK OF EXISTING CITATIONS TO PROPOSED CITATIONS FOR DETERMINING GENERATOR CATEGORY

Regulation	Existing citation	Proposed citation	Comment
Definitions of Generator Categories .....	§§ 260.10, 261.5 and 262.34.	§ 260.10 .....	Current definition of SQG in § 260.10 is outdated. Current usage of generator categories is based on §§ 261.5 and 262.34.
Hazardous Waste Limits for CESQGs .....	§ 261.5(a) and (e) .....	§ 260.10 .....	Not moved, but expanded significantly.
Purpose, Scope, and Applicability .....	§ 262.10 .....	§ 262.10 .....	
Hazardous Waste Determination and Recordkeeping ....	§§ 262.11 and 262.40(c) ...	§ 262.11 .....	Content in § 262.11 is expanded and § 262.40(c) is incorporated.
Generator Category Determination .....	§ 261.5(c)–(e) .....	§ 262.13 .....	

3. CESQG Conditions for Exemption (40 CFR 261.5(b) and (f) through (j))

Sections 261.5(b) and (f) through (j) establish a CESQG’s conditions for exemption from regulation as an SQG or LQG. More specifically, these conditions for exemption establish the regulations for accumulating acute and non-acute hazardous waste, where the acute and non-acute hazardous waste may be managed off-site, and what the implications are when hazardous waste

is mixed with solid waste or used oil. Since these regulations set forth conditions for exemption for CESQGs, just as the regulations found in existing § 262.34 set forth conditions for exemption for SQGs and LQGs, EPA is proposing to move § 261.5(b) and (f) through (j) to the newly created § 262.14 titled, “Conditions for exemption for a very small quantity generator.” All these regulations would then be located parallel to one another in part 262. Section 262.14 would also include the

CESQG landfill ban for liquids. In addition, CESQGs who episodically generate higher amounts of hazardous waste could follow the newly proposed standards for episodic generation in part 262 subpart L in order to maintain their CESQG status while managing these higher amounts of hazardous waste. Table 4—Crosswalk of Existing Citations to Proposed Citations for CESQGs provides a crosswalk between the existing and proposed CESQG conditions for exemption.

TABLE 4—CROSSWALK OF EXISTING CITATIONS TO PROPOSED CITATIONS FOR CESQGS

Regulation	Existing citation	Proposed citation	Comment
CESQG Definition .....	§ 261.5(a) .....	§ 260.10 .....	
Conditions for Exemption for a Very Small Quantity Generator.	§ 261.5(b) and (f) through (j).	§ 262.14 .....	
CESQG Consolidation by LQGs Within the Same Company.	N/A .....	§ 262.14(a)(3)(viii) .....	Proposed new provision.
Landfill Ban for Liquids .....	§ 258.28 .....	§ 262.14(d) .....	Proposed new provision.
Episodic Generation .....	N/A .....	Part 262 subpart L .....	

B. SQG and LQG Conditions for Exemption (40 CFR 262.34)

SQGs and LQGs may accumulate their hazardous waste on site without a permit or without having interim status provided they follow all of the conditions for exemption established in § 262.34. Section 262.34 can be difficult to navigate because the SQG and LQG conditions for exemption are

intertwined and there are many references to sections in 40 CFR part 265. Therefore the Agency is proposing to break § 262.34 into three new sections at §§ 262.15, 262.16 and 262.17. Section 262.15 would establish the conditions for exemption for SQGs and LQGs who wish to operate an SAA, § 262.16 would establish conditions for exemption for

SQGs, and § 262.17 would establish the conditions for exemption for LQGs.

1. Satellite Accumulation Area Conditions for Exemption for SQGs and LQGs (40 CFR 262.15)

Many generators use an SAA at their sites. These areas allow generators to accumulate hazardous waste near the point of generation, which provides for

efficiencies and greater safety in the handling of hazardous waste. When the generator has accumulated 55 gallons of hazardous waste (or one quart of acutely hazardous waste) in the SAA, the generator must then move the hazardous waste to the 90- or 180-day central accumulation area within three days. Currently the conditions for exemption for operating an SAA are located at § 262.34(c). The location of this provision in the regulations creates

confusion as to whether it applies to LQGs only or both SQGs and LQGs because it is located between the hazardous waste accumulation conditions for LQGs and those for SQGs. Therefore, the Agency is proposing to move 40 CFR 262.34(c) into its own section at § 262.15 titled, “Satellite accumulation area regulations for small and large quantity generators.” Additionally, the Agency is proposing to duplicate §§ 265.171, 265.172 and

265.173(a) (which are currently referenced from § 262.34(c)(1)(i)) into § 262.15 in order to eliminate cross-referencing and improve the user friendliness of the regulations. Table 5—Crosswalk of Existing Citations to Proposed Citations for SAAs provides a summary of the crosswalk between existing and proposed regulations for SAAs.

TABLE 5—CROSSWALK OF EXISTING CITATIONS TO PROPOSED CITATIONS FOR SAAS

Regulation	Existing citation	Proposed citation
Satellite Accumulation Area Provisions .....	§ 262.34(c) .....	§ 262.15.
Selected Part 265 Subpart I Provisions .....	§ 265.171 .....	§ 262.15(a)(1)(i).
Selected Part 265 Subpart I Provisions .....	§ 265.172 .....	§ 262.15(a)(1)(ii).
Selected Part 265 Subpart I Provisions .....	§ 265.173(a) .....	§ 262.15(a)(1)(iii).

2. Conditions for Exemption for an SQG Accumulating Hazardous Waste (§ 262.16)

As previously mentioned, the Agency is proposing to create 40 CFR 262.16 titled, “Conditions for exemption for a small quantity generator that accumulates hazardous waste.” This reorganization would move § 262.34(d) through (f) and (m) into § 262.16. Specifically, the Agency proposes to move the bulk of § 262.34(d) to § 262.16(b),<sup>122</sup> move § 262.34(e) to § 262.16(d), move § 262.34(f) to § 262.16(e) and move § 262.34(m) to § 262.16(f). Paragraph (c) of § 262.16, which covers the mixing of hazardous waste, is a new paragraph that EPA is proposing to add in this rulemaking.<sup>123</sup> EPA is also proposing to add subtitles and eliminate several cross-references to 40 CFR part 265 in order to make the regulations easier to navigate.

a. *Addition of subtitles.* EPA is proposing to add subtitles to § 262.16 to

highlight to the reader the topic of each section or paragraph. Every subtitle is italicized after the regulatory citation. For example § 262.16(b)(2) addresses “*Accumulation in Containers.*”

b. *Incorporating 40 CFR part 265 subpart I, § 265.201, and part 265 subpart C into 40 CFR 262.16.* EPA is proposing to integrate three sections of 40 CFR part 265—subpart I, § 265.201 and subpart C—into § 262.16. First, at § 262.34(d)(2), the regulations state an SQG must comply with subpart I of part 265 except for §§ 265.176 and 265.178. Therefore, EPA is proposing to incorporate the text of the appropriate subpart I regulations at § 262.16(b)(2). Second, at § 262.34(d)(3) the regulation states that an SQG must comply with § 265.201 in subpart J when using a tank. Thus, EPA is proposing to incorporate the text of all of § 265.201 except for paragraph (a) at § 262.16(b)(3). Paragraph (a) of § 265.201 is not necessary because it describes what is already stated in § 262.16—the

requirements for an SQG accumulating hazardous waste in a tank for less than 180 days and accumulating no more than 6,000 kg on site at any time. Third § 262.34(d)(4) states an SQG must comply with subpart C of part 265. Therefore, EPA is proposing to incorporate the text of subpart C—Preparedness and Prevention—at § 262.16(b)(8).

c. *Other part 262 provisions for SQGs.* In addition, part 262 subpart L would contain the newly proposed standards for SQGs who episodically generate higher amounts of hazardous waste to maintain their designation as SQGs during these episodic events. Also, § 262.35 would include the landfill ban for liquids that applies to SQGs and LQGs.

Table 6—Crosswalk of Existing Citations to Proposed Citations for SQGs provides a summary of changes between the existing and proposed citations for SQGs.

TABLE 6—CROSSWALK OF EXISTING CITATIONS TO PROPOSED CITATIONS FOR SQGS

Regulation	Existing citation	Proposed citation	Comment
Definition of Small Quantity Generator .....	§ 262.34(d) .....	§ 260.10 .....	
Accumulation Time Limit .....	§ 262.34(d) .....	§ 262.16(b) .....	
Accumulation Limit .....	§ 262.34(d)(1) and (f) .....	§ 262.16(a) and (e) .....	
Accumulation in Containers .....	§ 262.34(d)(2) references part 265 subpart I.	§ 262.16(b)(2) .....	
Accumulation in Tanks .....	§ 262.34(d)(3) references part 265 subpart J.	§ 262.16(b)(3) .....	
Marking of Tanks and Containers .....	§ 262.34(d)(4) references § 262.34(a)(2) and (3).	§ 262.16(b)(6) .....	
Preparedness and Prevention .....	§ 262.34(d)(4) references part 265 subpart C and § 262.34(d)(5).	§ 262.16(b)(8) and (9) .....	
Land Disposal Restrictions .....	§ 262.34(d)(4) references part 268.	§ 262.16(b)(7) .....	

<sup>122</sup> The portions of § 262.34(d) that state what the generation limits are for this category of generator

would be moved to the definition of “small quantity generator” in § 262.10.

<sup>123</sup> For a detailed discussion of this proposed addition please see section VII.B of this preamble.

TABLE 6—CROSSWALK OF EXISTING CITATIONS TO PROPOSED CITATIONS FOR SQGs—Continued

Regulation	Existing citation	Proposed citation	Comment
Transporting Over 200 Miles .....	§ 262.34(e) .....	§ 262.16(d) .....	Proposed new provision.
Accumulation Time Limit Extension .....	§ 262.34(f) .....	§ 262.16(e) .....	
Episodic Generation .....	N/A .....	Part 262 subpart L .....	
Landfill Ban for Liquids .....	§ 258.28 .....	§ 262.35 .....	

3. Conditions for Exemption for an LQG Accumulating Hazardous Waste (40 CFR 262.17)

As previously mentioned the Agency is proposing to create 40 CFR 262.17 titled, “Conditions for exemption for a large quantity generator that accumulates hazardous waste.” The Agency is proposing to move § 262.34(a), (b), (g) through (i) and (m) into § 262.17. Specifically, the Agency is proposing to move § 262.34(a) to § 262.17(a), move § 262.34(b) to § 262.17(b), move § 262.34(g) to § 262.17(c), move § 262.34(h) to § 262.17(d), move § 262.34(i) to § 262.17(e), and move § 262.34(m) to § 262.16(g). EPA is additionally proposing to delete paragraphs (j) through (l), which deal with Performance Track, since the program is no longer in operation.<sup>124</sup> Paragraph (f) of § 262.17, which deals with the mixing of hazardous waste, is a new paragraph being proposed in this rulemaking.<sup>125</sup> EPA is also proposing to add subtitles and eliminate some cross-references to part 265 in order to make the regulations easier to navigate.

*a. Addition of subtitles.* EPA is proposing to add subtitles to § 262.17 to highlight to the reader the central concept addressed by each section or paragraph. Every subtitle is italicized after the regulatory citation. For example § 262.17(a)(1) addresses “accumulation in containers.”

*b. Incorporating 40 CFR part 265 subpart I into 40 CFR 262.17.* EPA is proposing to incorporate the 40 CFR part 265 subpart I regulations, which are currently referenced at § 262.34(a)(1)(i), into the proposed § 262.17(a)(1). EPA also considered incorporating the text of other subparts of part 265 that contain technical standards for LQGs and that are currently referenced in § 262.34 into the new section § 262.17 (*i.e.*, part 265 subparts J, W, AA, BB, and CC), but ultimately decided not to incorporate these due to the length of these subparts.

Section 262.35 would also include the landfill ban for liquids that applies to SQGs and LQGs. EPA requests comment on the proposed changes.

*c. Emergency planning and procedures regulations for LQGs in part*

*265 subpart M.* EPA is proposing to remove the reference to part 265 subparts C and D for the preparedness, prevention, and emergency procedure regulations for LQGs and instead incorporate those regulations in part 262 with the other generator regulations. However, due to the length of these subparts, rather than copying the text of these subparts to § 262.17, EPA is proposing to copy these into a new subpart M in part 262. EPA believes that including these provisions in part 262, along with the rest of the generator regulations, will make the regulations easier to navigate. EPA requests comment on this proposed change.

*d. Other part 262 provisions for LQGs.* In addition, § 262.17(g) would contain the newly proposed standards for LQGs who accept and consolidate hazardous waste from CESQGs. Also, § 262.35 would include the landfill ban for liquids that applies to SQGs and LQGs.

Table 7—Crosswalk of Existing Citations to Proposed Citations for LQGs provides a summary of changes between the existing and proposed citations for LQGs.

TABLE 7—CROSSWALK OF EXISTING CITATIONS TO PROPOSED CITATIONS FOR LQGs

Regulation	Existing citation	Proposed citation	Comment
Definition of Large Quantity Generator .....	N/A .....	§ 260.10 .....	There is still a cross-reference to part 265 subparts AA, BB, and CC because of the length of these regulations.
Accumulation Time Limit .....	§ 262.34(a) .....	§ 262.17(a) .....	
Accumulation in Containers .....	§ 262.34(a)(1)(i) references part 265 subparts I, AA, BB, and CC.	§ 262.17(a)(1) (§ 262.17(a)(1) also references part 265 subparts AA, BB, CC).	
Accumulation in Tanks .....	§ 262.34(a)(1)(ii) references part 265 subparts J, AA, BB, and CC.	§ 262.17(a)(2) references part 265 subparts J, AA, BB, CC.	There is still a reference to part 265 because of the length of these regulations.
Accumulation on Drip Pads .....	§ 262.34(a)(1)(iii) (§ 262.34(a)(1)(iii) also references part 265 subpart W).	§ 262.17(a)(3) (§ 262.17(a)(3) also references part 265 subpart W).	Recordkeeping provisions move to part 262.17 and the extensive technical standards remain in part 265.
Accumulation in Containment Buildings .....	§ 262.34(a)(1)(iv) (§ 262.34(a)(1)(iv) also references part 265 subpart DD).	§ 262.17(a)(4) (§ 262.17(a)(4) also references part 265 subpart DD).	Recordkeeping provisions move to part 262.17 and the extensive technical standards remain in part 265.
Marking and Labeling .....	§ 262.34(a)(2) and (3) .....	§ 262.17(a)(5) .....	

<sup>124</sup> For a detailed discussion of this proposed deletion please see section VIII.K of this preamble.

<sup>125</sup> For a detailed discussion of this proposed addition please see section VII.A.2 of this preamble.

TABLE 7—CROSSWALK OF EXISTING CITATIONS TO PROPOSED CITATIONS FOR LQGs—Continued

Regulation	Existing citation	Proposed citation	Comment
Preparedness, Prevention, and Emergency Procedures	§ 262.34(a)(4) references part 265 subparts C and D.	§ 262.17(a)(6) references part 262 subpart M.	Cross-references remain but to a subpart of the generator regulations.
Personnel Training	§ 262.34(a)(4)	§ 262.17(a)(7)	
Land Disposal Restrictions	§ 262.34(a)(4) references applicable parts of part 268.	§ 262.17(a)(6)(ii)	Proposed new provision.
Extension of Accumulation Times	§ 262.34(b)	§ 262.17(b)	
Accumulation of F006	§ 262.34(g) through (i)	§ 262.17(c) through (e)	
Accepting waste from CESQGs to consolidate before sending to TSDF.	N/A	§ 262.17(g)	
Rejected Loads	§ 262.34(m)	§ 262.17(h)	
Landfill Ban for Liquids	§ 258.28	§ 262.35	

EPA requests comment on the proposed reorganization to the hazardous waste generator regulations and, in particular, on whether the proposed changes would improve the user friendliness and utility of the regulations.

*C. EPA Identification Number (40 CFR 262.12)*

In the interest in keeping the generator regulations in a logical order, EPA is proposing to move existing § 262.12—EPA identification number—to § 262.18. Section 262.12 would then be reserved. EPA believes this will improve the flow of the hazardous waste generator regulations as it places the section addressing EPA identification number after § 262.13, which addresses how a generator determines its generator category. This proposed sequence is appropriate because a hazardous waste generator must first determine what generator category it belongs to in order to determine which regulations—including the requirement to obtain an EPA ID number—it must comply with. (For example, SQGs and LQGs must obtain an EPA identification number, but a CESQG does not).

EPA is requesting comment on these proposed changes.

**XIV. Technical Corrections and Conforming Changes to 40 CFR Parts 260 through 265, 270, 273, and 279**

The Agency is also proposing a number of technical corrections and conforming changes to the hazardous waste generator regulations. This proposed rule eliminates the regulatory text for discontinued programs, identifies areas where conforming changes are necessary, updates existing regulatory text to account for new programs, improves the readability of certain paragraphs, and corrects typographical errors. Specifically, the Agency is proposing the following

changes, in order of the existing regulations:

(1) Revise § 260.3, which currently reads, “As used in parts 260 through 265 and 268 of this chapter.” This text fails to account for additional parts of the regulations that were promulgated after 1986, such as parts 266, 267, and 270 through 273. The Agency is proposing to revise this to read, “As used in parts 260 through 273 of this chapter.”

(2) Modify the definitions of “Treatability Study,” “Universal Waste Handler,” “Universal Waste Transporter” in § 260.10 to only capitalize the first word (e.g., “Universal”) in order to match the formatting in the rest of this section.

(3) Remove the closed parenthesis after “(e.g.)” from § 261.1(c)(6).

(4) Improve the readability of § 261.4(a)(7), which currently reads, “Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in § 261.1(c) of this chapter.” The Agency is proposing to revise the language to read “Spent sulfuric acid used to produce virgin sulfuric acid provided it is not accumulated speculatively as defined in § 261.1(c) of this chapter.”

(5) Make conforming changes to citations that reference § 261.5 to reflect EPA’s proposal to move these regulations. The citations where references to § 261.5 are to be revised include all the following: §§ 262.10(b), 262.10(l)(2), 262.201(b), 262.204(a), 262.210(b)(3), 262.210(d)(2), 262.211(e)(3), 262.213(a)(2), 262.213(a)(3), 262.213(b)(2), 262.216(b), 264.1(g)(1), 268.1(e)(1), 270.1(c)(2)(iii), and 279.10(b)(3). In § 261.33(e) and (f), EPA is proposing to altogether remove the references to §§ 261.5(e) and 261.5(a) and (g), respectively, because the quantity limits for hazardous wastes are contained in EPA’s proposed definitions for very small quantity

generator, small quantity generator, and large quantity generator.

(6) Replace the word “waste” with “water” in § 261.5(e)(2), which reads, “A total of 100 kg of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water. . . .” Prior to 1985, the word “waste” was “water” and the Agency is unable to determine why this change occurred. (In the proposed reorganization, this language is moved to § 260.10 and is contained in the definitions of large quantity generator, small quantity generator and very small quantity generator.)

(7) Revise § 261.420 to clarify that the requirement in § 261.411(c) that all employees be familiar with proper waste handling and emergency procedures relevant to their responsibilities applies to facilities that generate or accumulate more than 6,000 kg of hazardous materials as well as to facilities that generate or accumulate less than that amount.

(8) Remove Notes 1 and 2 from § 262.10. Note 1 states that the provisions of § 262.34 are applicable to the on-site accumulation of hazardous waste by generators. Therefore, the provisions of § 262.34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility. Note 2 states that a generator who treats, stores, or disposes of hazardous waste on site must comply with the applicable standards and permit requirements set forth in 40 CFR parts 264, 265, 266, 268, and 270. These notes are no longer necessary should EPA finalize the changes in this proposed rule, which include replacing § 262.34 with a new reorganization of the regulations that address Note 1 and proposing regulations in § 262.10 that address Note 2.

(9) Remove the extra period in the last line of the paragraph at § 262.10(l).

(10) Make conforming changes to sections that reference § 262.34 to reflect EPA's proposal to move these regulations. The citations where references to § 262.34 are to be revised include the following: §§ 262.10(l)(1), 262.201(a), 262.201(a), 262.216(a), 264.1(g)(3), 264.71(c), 264.1030(b)(2), 264.1050(b)(2), 265.1(c)(7), 265.71(c), 265.1030(b)(2) and (b)(3), 268.7(a)(5) and 270.1(c)(2)(i).

(11) Make conforming change to remove and reserve § 262.40(c) because this section (regarding records for waste determinations) is proposed to move to § 262.11.

(12) Correct the statutory citation at § 262.43 that currently refers to sections 2002(a) and 3002(6) of the Act. The reference to 3002(6) should be to 3002(a)(6). Additionally, the word "he" is removed in order to be gender neutral.

(13) Remove references to Project XL programs that have been discontinued. These include the New York State Public Utilities Project XL program at subpart I of 40 CFR part 262 and the University Laboratories Project XL program at subpart J of 40 CFR part 262. We have also removed and reserved the reference at § 262.10(j) to the University Laboratories Project XL.

(14) Make two conforming changes to the definition of "central accumulation area" in § 262.200 in subpart K. We are proposing to move this definition from this location to § 260.10 with the following revisions. First, because of the reorganization of the regulations in 40 CFR part 262, we are proposing to change the references to the applicable regulations for the central accumulation areas that are used in the definition of central accumulation area in § 262.200. For LQGs, we are proposing that the reference to § 262.34(a) be changed to § 262.17 and for SQGs, we are proposing that the reference to § 262.34(d) through (f) be changed to § 262.16. Second, we are proposing to remove the reference to Performance Track in the definition of "central accumulation area" in § 262.200 of subpart K because the Performance Track program has been terminated (74 FR 22741; May 14, 2009). Both of these conforming changes are reflected in the proposed definition of "central accumulation area" being added in § 260.10.

(15) Make conforming changes to citations that use the term "conditionally exempt small quantity generator" to reflect EPA's proposed change to the term "very small quantity generator." The citations where "conditionally exempt small quantity generator" is to be replaced with "very small quantity generator" include:

§§ 262.200, 262.201(b), 262.202(b), 262.203(a), 262.203(b)(2), 262.204(a), 262.209(b), 262.210(d)(2), 262.213(a)(3), 268.1(e)(1), 270.1(c)(2)(iii), 273.8, 273.8(a)(2), 273.81(b), 279.10(b)(3).

(16) Improve the readability of § 264.170, which currently reads, "The regulations in this subpart apply to owners and operators of all hazardous waste facilities that store containers of hazardous waste. . . ." The Agency is proposing to revise this language to read, "The regulations in this subpart apply to owners and operators of all hazardous waste facilities that store hazardous waste in containers. . . ."

(17) Improve the readability of the first sentence in § 264.191(a), which currently reads, "For each existing tank system. . . . the owner or operator must determine that the tank system is not leaking or is unfit for use." The Agency is proposing to revise this language to read, "For each existing tank system . . . the owner or operator must determine that the tank system is not leaking or is fit for use."

(18) Improve the readability of § 265.1(c)(7), which currently reads, "A generator accumulating waste on-site in compliance with § 262.34 of this chapter, except to the extent the requirements are included in § 262.34 of this chapter." The Agency is proposing to revise the sentence to read, "A generator accumulating waste on site except to the extent the requirements are included in §§ 262.16, and 262.17 of this chapter."

(19) Correct the list of **Federal Register** notices in § 265.54 to be consistent with the list of references in § 264.54. The reference to 53 FR 37935, September 28, 1988, is missing from § 265.54.

(20) Add to § 265.111(c) a missing regulatory citation to § 265.445 applicable to drip pads. Section 265.111(c) would then read, "Complies with the closure requirements of this subpart, including, but not limited to, the requirements of §§ 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, 265.404, 265.445, and 265.1102."

(21) Add to § 265.114 a missing regulatory citation to § 265.445 applicable to drip pads and § 265.1102 applicable to containment buildings. Section 265.114 would then read, "During the partial and final closure periods, all contaminated equipment, structures and soil must be properly disposed of, or decontaminated unless specified otherwise in § 265.197, 265.228, 265.445, 265.258, 265.280, 265.310 or 265.1102. . . ."

(22) Make a conforming change to remove and reserve § 265.201 (Special

requirements for generators of between 100 and 1,000 kg/mo that accumulate hazardous waste in tanks). EPA is proposing to move this section into proposed § 262.16.

(23) Add a missing reference to 40 CFR part 268 in § 270.1(a)(3), which currently reads, "The RCRA permit program. . . . in 40 CFR parts 264, 266, and 267." Therefore, the Agency is revising this to read, "The RCRA permit program . . . in 40 CFR parts 264, 266, 267, and 268."

#### **XV. Request for Comment on Use of Electronic Tools to Streamline Hazardous Waste Reporting and Recordkeeping Requirements**

As part of this proposed rule, the Agency is also exploring the feasibility of using electronic tools to streamline hazardous waste reporting and recordkeeping requirements. Two examples previously discussed include requesting comment on an electronic hazardous waste determination decision tool and development of an electronic application containing information from the executive summaries of contingency plans that emergency responders can use in responding to an emergency.

Information technology can be an important step toward improving RCRA implementation. Many aspects of our lives can currently be managed electronically. We bank from home, send pictures from phones, and track packages across the country from our desks. Yet, much of the information reported to EPA and states by generators is still submitted on paper, which requires government staff or contractors to manually enter the data into federal and state data systems. Delays in data processing can cause important information to go unnoticed. In addition, errors introduced through manual data entry can require aggravating and time-consuming correction processes by both regulated entities and the government.

Use of electronic tools can provide the regulated community, regulators, and the public with more accurate, complete, and timely information on regulated activities, pollution, and compliance. Software that allows for self-correction by flagging potential errors, as is done by EPA's Toxics Release Inventory—Made Easy web tool or the Greenhouse Gas Reporting system, can even help prevent mistakes before they happen, saving both regulated entities and regulators time and money. Electronic reporting also creates greater transparency as greater information accessibility can inspire better compliance by facilities.

Electronic reporting, in this context, is not simply emailing files to the government. Rather, it would be a system that begins with an electronic “smart” form or web tool to guide the regulated entity thru recordkeeping and reporting processes, such as waste determinations. The system would also include data standards, identity proofing, and a government database to receive data. Error prevention and compliance assistance could be integrated into the reporting tool. For example, forms can be configured to self-populate with data from prior forms (e.g., names and addresses), to question entries that appear erroneous (e.g., entries an order of magnitude or more above or below data from prior years or above or below reasonable levels) and to prevent submission before required data fields are completed.

The Agency believes electronic tools have the potential to greatly assist generators in complying with the existing and proposed hazardous waste regulations. For example, EPA believes that electronic tools could help generators make more accurate hazardous waste determinations. As previously discussed, an app could be used as a decision support tool to help guide generators through the hazardous waste determination process for each waste stream they generate. This tool could walk generators through a series of question and answer steps, identify relevant sources in making the determination, electronically generate and store all of the associated data and records that generators may be required to maintain, and provide assistance on proper management of the identified wastes.

Other examples include using electronic tools to file notifications required under the rule, such as notifications for episodic generators, for LQGs that desire to take advantage of consolidating waste from CESQGs that are within the same company, and for generators that close a unit that accumulated hazardous waste. In this case, the electronic tools could be useful in submitting required reports, and in electronically generating, storing, and filing all reports.

Other areas of the RCRA regulations where electronic tools may assist with compliance include the following:

- Determining monthly generator category;
- Maintaining records of shipments;
- Maintaining contingency planning and emergency procedures recordkeeping and reporting requirements;
- Maintaining inventory logs for documenting accumulation time in

tanks, drip pads, and containment buildings; and

- Maintaining personnel training documents and records.

EPA believes the use of electronic tools would help hazardous waste generators improve and maintain compliance with the RCRA regulations, thereby reducing violations and increasing environmental benefits. EPA also believes the costs of receiving and evaluating reports from generators could be greatly reduced for EPA and state/tribal agencies. For example, when the Toxics Release inventory switched from paper reporting to e-reporting, costs of managing the data went down by 99% and accuracy was increased.

EPA is not aware of any existing electronic tools that would specifically assist generators with meeting the RCRA regulatory requirements. However, EPA did identify a variety of state and academic internet-based hazardous waste determination tools and workbooks (as discussed in section VIII.B.8.).

EPA is considering a range of electronic reporting options. The Agency may explore developing certain tools for use by the regulated community or may invite third-party vendors to provide such tools. The latter option could be similar to the Internal Revenue Service (IRS) model for electronic tax preparation. The IRS model uses third-party software providers for tax data collection and transmission (e.g., TurboTax, TaxACT, or others) from private citizens and businesses. Under this option, the Agency would not purchase services from any provider. All financial transactions would be between the providers and members of the regulated community. EPA would specify the required data for collection and the requirements necessary for exchanging data (e.g., data delivery protocols, standards, guidelines, and procedures compliant with EPA’s Cross-Media Electronic Reporting Regulation (CROMERR) (see 40 CFR part 3)).

EPA welcomes public comment on specific reports and data types that could be reported electronically if the Agency were to move forward with exploring electronic reporting, including what the quality assurance and quality control procedures should be with respect to data timeliness, accuracy, completeness, and consistency. EPA also asks for comment on which reports commenters think should be highest priority for electronic reporting. EPA solicits comment on the option of allowing software vendors to offer their clients federal electronic

reporting services compliant with the final rule and on potential methods for determining whether third-party software vendors meet the minimum federal electronic data requirements. EPA would need to certify or approve the methods used by the software to authenticate, encrypt, and possibly send compliance monitoring and other data. EPA would also like to hear from authorized RCRA programs that have experience in implementing electronic reporting, especially their experience with phasing in implementation. EPA also requests comment on whether electronic tools should be provided by EPA and/or states and tribes.

#### **XVI. Enforceability**

Persons that generate hazardous waste must comply with all the applicable independent requirements of the RCRA hazardous waste regulations, unless they obtain a conditional exemption from those requirements, provided by § 262.14 (formerly § 261.5), or by § 262.15, 262.16, or 262.17 (formerly all contained in § 262.34), or by § 262.70. If a person violates independent requirements or fails conditions for exemption, EPA may bring an enforcement action under section 3008 of RCRA for violations of the independent requirements. Where a generator does not comply with conditions for an exemption and is therefore no longer exempt, the enforcement action will allege violations of those independent requirements from which the generator was attempting to remain exempt. States may choose to enforce against violations of state hazardous waste requirements under state authorities.

As with any violation, EPA and authorized states have enforcement mechanisms available that range in severity. In addition, EPA and authorized states have flexibility in applying these mechanisms to the various responsible parties as appropriate to the specific circumstances. Some of the enforcement mechanisms include sending a notice of violation, ordering compliance, ordering that the operations cease, or assessing penalties as appropriate. Nothing in this proposal affects any of these enforcement mechanisms EPA or the states may utilize nor the manner in which enforcement cases will be initiated or pursued.

#### **XVII. State Authorization**

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

Under section 3006 of RCRA, EPA may authorize states to administer the

RCRA Subtitle C hazardous waste program. Following authorization, the authorized state program operates in lieu of the federal regulations. EPA retains enforcement authority to enforce the authorized state Subtitle C program, although authorized states have primary enforcement authority. EPA also retains its authority under RCRA sections 3007, 3008, 3013, and 7003. The standards and requirements for state authorizations are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. EPA did not issue permits for any facilities in that state, since the state was now authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new requirements did not take effect in an authorized state until the state adopted the equivalent state requirements.

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

Authorized states are required to modify their programs only when EPA promulgates federal requirements that are more stringent or broader in scope than existing federal requirements.<sup>126</sup> RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (see 40 CFR 271.1). Therefore, authorized states may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

#### *B. Effect on State Authorization of Proposed Rule*

This notice proposes regulations that amend certain sections of the hazardous

waste generator regulations in 40 CFR parts 260 through 265, 268, 270, 273, and 279. These regulations were promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3007, and 3010 of RCRA). This notice proposes changes to the RCRA Subtitle C program under non-HSWA authority.

Thus, the standards, if finalized, would be applicable on the effective date only in those states that do not have final authorization of their base RCRA programs. Moreover, authorized states are required to modify their programs only when EPA promulgates federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent, states are not required to modify their programs. This is a result of section 3009 of RCRA, which allows states to impose more stringent regulations than the federal program.

Several of the revisions to the proposed hazardous waste generator regulations are more stringent than those promulgated in various rules that went into effect when the RCRA hazardous waste Regulations were first initiated (e.g., 1980–1986). These include the following: (1) requiring both SQGs and LQGs to document their non-hazardous waste determinations when they have generated a solid waste (section VIII.B of this preamble); (2) requiring SQGs to re-notify every two years if they have not done so otherwise through an alternative process (section VIII.C of this preamble); (3) requiring SQGs and LQGs to better define the contents and associated risks of hazardous wastes accumulated in tanks, containers, drip pads, and containment buildings, as well as when hazardous waste is accumulated in satellite accumulation areas (sections VII.E., VIII.F and VIII.I of this preamble); (4) requiring LQGs to notify EPA or their authorized state when they plan to close either a hazardous waste accumulation unit or their generator site (section VIII.G of this preamble); (5) requiring new LQGs to prepare an executive summary of their contingency plans to assist responders in an emergency (section VIII.H of this preamble); (6) requiring LQGs to submit a biennial report that identifies all of the hazardous wastes generated in the calendar year, not just for the months the facility was an LQG (sections VIII.L of this preamble); (7) requiring transfer facilities to identify the contents and associated risks of containers that have been consolidated with other hazardous wastes (section X of this preamble); and (8) promulgating prohibitions on storage of restricted wastes (section XII of this

preamble). Therefore, states that have adopted the base RCRA program would be required to modify their hazardous waste programs to incorporate equivalent provisions if these standards are finalized.

On the other hand, three of the proposed revisions would be considered less stringent than the current hazardous waste regulations. These revisions include the following: (1) Allowing CESQGs to voluntarily send hazardous waste to LQGs under the control of the same person to facilitate the cost-effective management of hazardous wastes within the same company (section VII.C of this preamble); (2) allowing CESQGs and SQGs to voluntarily maintain their existing regulatory status if they have an episodic event that generates additional amounts of hazardous waste which would have resulted in them moving into a higher generator category for a short period of time, so long as they comply with specified conditions (section IX of this preamble); and (3) allowing LQGs to voluntarily apply for a waiver from their local fire department to accumulate ignitable and reactive wastes within the 50 foot facility boundary provision (section XI.B of this preamble). Thus, authorized states may, but would not be required to, adopt these changes.

This proposed rule also includes several revisions that are neither more nor less stringent, such as (1) mixing a non-hazardous waste with a hazardous waste (section VII.B of this preamble); (2) defining central accumulation area (section VI.C of this preamble); (3) prohibiting generators from sending hazardous liquids to landfills (section VIII.M of this preamble); (4) reorganizing the hazardous waste generator regulations to make them more user-friendly (section XIII of this preamble); (5) deleting the performance track regulations (section VIII.K of this preamble); (6) replacing the list of specific data elements with a requirement to complete and submit all data elements required in the biennial report form (section VIII.L of this preamble); and (7) technical corrections and conforming changes to various parts of the RCRA regulations (section XIV of this preamble). Thus, authorized states may, but would not be required to, adopt these changes.

<sup>126</sup> EPA notes that decisions regarding whether a state rule is more stringent or broader in scope than the federal program are made when the Agency authorizes state programs.

### XVIII. Statutory and Executive Order Reviews

#### A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a “significant regulatory action” in that it may raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in EPA’s Regulatory Impact Analysis (RIA) document titled “Assessment of the Potential Costs, Benefits, and other Impacts of the Improvements to the Hazardous Waste Generator Regulatory Program, As Proposed.” A copy of the analysis is available in the docket for this action and the analysis is briefly summarized here.

Based on the impact estimates presented in the RIA, EPA does not expect that this action will be “economically significant” because the estimated annualized cost for compliance with the proposed changes to the hazardous waste generator regulatory program is significantly less than the \$100 million annual effect threshold of Section 3(f)(1) of Executive Order 12866. The RIA estimates the affected universe is between 353,000 and 543,000 entities. Of this universe, between 293,000 and 469,000 CESQGs will only be affected if they choose to take advantage of two voluntary programs being proposed.

EPA estimates the future annualized cost to industry to comply with the requirements of this proposed action at between \$6.2 and \$17.4 million (at 7% discount rate). Similarly, the annualized net cost savings or benefits for facilities opting to take advantage of two voluntary programs in the rule (e.g., consolidation of CESQG waste by large quantity generators under the same ownership, and generators who would not be required to change generator status as a result of an episodic event) is between \$6.2 and \$12.2 million (at 7% discount rate) resulting in a net annualized cost of between \$0.1 million and \$5.2 million.

In addition to estimating the cost for this proposed rule, the RIA also provides both quantitative and qualitative (i.e., non-monetized) descriptions of future expected benefits for this action primarily consisting of improved industry environmental compliance.

#### B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2513.01. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

This proposed rule is necessary for EPA and authorized states to oversee the generation and management of hazardous waste. EPA is proposing the establishment of these information collection requirements under the authority of RCRA Subtitle C. There are several provisions to this rule that will require respondents to either submit information to EPA or authorized state, or maintain records at their facility. For example, generators will have to notify EPA or their authorized state they plan to take advantage of two voluntary provisions that will provide greater flexibility in how they manage hazardous waste (i.e., CESQG consolidation of their hazardous waste by a LQG under the same person or company; and episodic generation of hazardous waste resulting in a temporary change in regulatory status).

Similarly, SQGs will have to re-notify EPA or their authorized state every other year that they have not changed their regulatory category to support effective inspections and program management activities. In an effort to improve program compliance, both SQGs and LQGs will be required to maintain records supporting the basis for their non-hazardous waste determinations (i.e., a generator generated a solid waste but not a hazardous waste). Similarly, new LQGs will be required to develop and submit an executive summary of their emergency response plan to their Local Emergency Planning Committee to effectively assist emergency responders responding to an emergency.

EPA and state agencies will use the collected information to ensure that hazardous wastes are managed in a cost-effective manner that minimizes risks to human health and the environment. Local emergency response organizations will also use the collected information to prepare contingency plans to reduce

risks to emergency responders and bystanders. EPA does not expect confidentiality to be an issue in generators either providing information to EPA or an authorized state or in maintaining the necessary records supporting a non-hazardous waste determination. The statutory authority to collect the proposed information is found at RCRA 3002 (42 U.S.C. 6922) and RCRA 3003 (42 U.S.C. 6923).

*Respondents/Affected Entities:* Private sector.

*Respondent’s Obligation to Respond:* Mandatory per RCRA 3002 (42 U.S.C. 6922) and RCRA 3003 (42 U.S.C. 6923).

*Estimated Number of Respondents:* 96,375

*Frequency of Response:* On occasion.

*Total Estimated Burden:* 304,318 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total Estimated Cost:* \$16.8 million (per year), includes \$3.9 million annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency’s need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB’s Office of Information and Regulatory Affairs via email to [oria\\_submissions@omb.eop.gov](mailto:oria_submissions@omb.eop.gov), Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than October 26, 2015. The EPA will respond to any ICR-related comments in the final rule.

#### C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities directly regulated by this proposed rule include entities that generate hazardous waste across various industries, including, but not limited to, printing, petroleum refining, chemical manufacturing, plastics and resin manufacturing, pharmaceutical manufacturing, paint and coating, iron and steel mills, metal and metal product manufacturing, electroplating, printed circuit board manufacturing, semiconductor manufacturing, motor



vehicle parts manufacturing, research and development, hazardous waste treatment and disposal, academic institutions, and hospitals. We have determined that between 25,550 and 33,800 small entities impacted will experience an impact of less than 1% of annual sales for all affected small entities.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. Many of the changes in this proposed rulemaking come from outreach efforts to generators of hazardous waste, including small entities, and are designed to make the generator regulations more accessible and user friendly. As part of the proposal, EPA is including several provisions that would provide increased flexibility for small entities in managing hazardous waste, such as the ability for hazardous waste generators to use the episodic generator provisions if they have a distinct event that would otherwise cause them to have to bump up to a higher generator category. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

#### *D. Unfunded Mandates Reform Act*

This proposed rule does not contain an unfunded mandate of \$100 million as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The RIA estimates that the state government share of future average annualized direct costs for the proposed rule requirements to range between \$1.2 million and \$2.3 million per year. Thus, this proposed rule is not subject to the requirements of sections 202 or 205 of UMRA.

This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The rulemaking proposes clarifications and modifications to the hazardous waste generator regulations, which impacts only those entities that generate hazardous waste. Small governments would only be subject to the changes in the proposed rule if they generated hazardous waste subject to the RCRA hazardous waste requirements.

#### *E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national

government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule simply proposes clarifications and modifications to the existing hazardous waste generator regulations. Thus, Executive Order 13132 does not apply to this action. Although section 6 of Executive Order 13132 does not apply to this action, EPA did consult with state officials in developing this action.

#### *F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action may have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Under the RCRA statute, the federal government implements hazardous waste regulations directly in Indian Country. Thus, the proposed changes to the hazardous waste regulations would not impose any direct costs on tribal governments.

The EPA consulted with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing this regulation to permit them to have meaningful and timely input into its development. A summary of that consultation is provided in the docket for this action.

As required by section 7(a), the EPA's Tribal Consultation Official has certified that the requirements of the executive order have been met in a meaningful and timely manner. A copy of the certification is included in the docket for this action.

#### *G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The Agency does not believe that this action presents risks to the public. In fact, there are several components to this proposed rule that modify the existing hazardous waste generator regulations to enhance environmental protection in the local community. Examples include (1) requiring LQGs and SQGs to document and maintain records of their waste determinations, including determinations that a solid waste is a non-hazardous waste; (2) requiring

LQGs and SQGs to provide more detailed marking and labeling information for containers, tanks, drip pads, and containment buildings accumulating hazardous wastes; (3) requiring LQGs to notify EPA or an authorized state when they plan to close either a hazardous waste accumulation unit or their site; (4) requiring LQGs and SQGs to re-notify EPA or the authorized state on a periodic basis of their hazardous waste generator activities; and (5) improving emergency preparedness and response regulations on the part of SQGs and LQGs.

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

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This proposed rule does not involve the supply, distribution, or use of energy.

#### *I. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

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

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

EPA has determined that this proposed rule increases the level of environmental protection for all affected populations and thus will not have disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. Specifically, there are several components to this proposed rule that modify the existing hazardous waste generator regulations to assist generators in understanding and facilitating improved compliance with the hazardous waste regulations. Examples include modifying regulations regarding mixing of non-hazardous waste with a hazardous waste by a

generator, or when a hazardous waste generator generates both acute and non-acute hazardous waste in the same calendar month. Additionally, EPA is proposing to reorganize the hazardous waste generator rules to make them more user-friendly and therefore assist generators in understanding their responsibilities in managing the hazardous waste they generate safely, which support better environmental protection.

Still other components of this proposed rule enhance environmental protection in the local community, and therefore foster improved environmental protection, including for minority populations and low-income populations. They include, for example, (1) requiring LQGs and SQGs to document and maintain records of their waste determinations, including determinations that a solid waste is a non-hazardous waste; (2) requiring LQGs and SQGs to provide more detailed marking and labeling information for containers, tanks, drip pads, and containment buildings accumulating hazardous wastes; (3) requiring LQGs to notify EPA or an authorized state when they plan to close either a hazardous waste unit or their site; (4) requiring LQGs and SQGs to re-notify EPA or the authorized state on a periodic basis of their hazardous waste generator activities; and (5) improving emergency preparedness and response regulations on the part of SQGs and LQGs.

Furthermore, EPA is also proposing to allow CESQGs to ship their hazardous waste to an LQG under the control of the same person. As described in section VII.C of the preamble, this may increase environmental protection in the local community because hazardous waste generated by CESQGs would be subject to more stringent requirements upon receipt by the LQG, including ultimate management by a RCRA permitted TSD (as opposed to being managed possibly in a municipal solid waste landfill). Although this proposed change could result in an increase in traffic for certain communities, EPA believes the increase would not be significant given that CESQGs currently may send their hazardous waste to a number of destinations, including municipal and non-municipal solid waste management facilities.

Lastly, EPA is proposing alternative standards for CESQGs and SQGs that would allow these entities to maintain their generator category if generating hazardous waste from an episodic event. Although these generators would be allowed to temporarily manage a greater amount of hazardous waste than their

normal generator category allows, EPA is proposing conditions under which the hazardous waste generated from an episodic event must be managed in order to maintain protection of human health and the environment. Therefore, EPA does not anticipate disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations from these proposed alternative standards.

#### List of Subjects

##### 40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Incorporation by reference, Hazardous waste, Reporting and recordkeeping requirements.

##### 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

##### 40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

##### 40 CFR Part 263

Environmental protection, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements.

##### 40 CFR Part 264

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

##### 40 CFR Part 265

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

##### 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

##### 40 CFR Part 270

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and

recordkeeping requirements, Water pollution control, Water supply.

##### 40 CFR Part 273

Environmental protection, Hazardous materials transportation, Hazardous waste.

##### 40 CFR Part 279

Environmental protection, Petroleum, Recycling, Reporting and recordkeeping requirements.

Dated: August 31, 2015.

**Gina McCarthy,**  
Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

#### **PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL**

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

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

■ 2. Section 260.3 is amended by revising the introductory paragraph to read as follows:

##### **§ 260.3 Use of number and gender.**

As used in parts 260 through 273 of this chapter:

\* \* \* \* \*

■ 3. Amend § 260.10 by:

- a. Adding in alphabetical order the definitions of “Acute hazardous waste”, “Central accumulation area”, “Large quantity generator”, “Non-acute hazardous waste”;
- b. Removing the definition for “Performance Track member facility”;
- c. Revising the definition of “Small quantity generator”;
- d. Revising the heading of the definition “Treatability Study” to read “Treatability study”;
- e. Revising the heading of the definition “Universal Waste Handler” to read “Universal waste handler”; and
- f. Revising the heading of the definition “Universal Waste Transporter” to read “Universal waste transporter”; and
- g. Adding in alphabetical order the definition of “Very small quantity generator”.

The revisions and additions read as follows:

##### **§ 260.10 Definitions.**

\* \* \* \* \*

*Acute hazardous waste* means hazardous wastes that meet the listing criteria in § 261.11(a)(2) and therefore are either listed in § 261.31 of this chapter with the assigned hazard code

of (H) or are listed in § 261.33(e) of this chapter.

\* \* \* \* \*

*Central accumulation area* means any on-site hazardous waste accumulation area with hazardous waste accumulating in units subject to either § 262.16 (for small quantity generators) or § 262.17 (for large quantity generators). A central accumulation area at an eligible academic entity that chooses to be subject to part 262 subpart K must also comply with § 262.211 when accumulating unwanted material and/or hazardous waste.

\* \* \* \* \*

*Large quantity generator* is a generator who generates any of the following amounts in a calendar month:

(1) Greater than or equal to 1000 kilograms (2200 lbs) of non-acute hazardous waste;

(2) Greater than 1 kilogram (2.2 lbs) of acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter; or

(3) Greater than 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter.

\* \* \* \* \*

*Non-acute hazardous waste* means all hazardous wastes that are not acute hazardous waste, as defined in this section.

\* \* \* \* \*

*Small quantity generator* is a generator who generates the following amounts in a calendar month:

(1) Greater than 100 kilograms (220 lbs) but less than 1000 kilograms (2200 lbs) of non-acute hazardous waste;

(2) Less than or equal to 1 kilogram (2.2 lbs) of acute hazardous waste listed in §§ 261.31 or § 261.33(e) of this chapter; and

(3) Less than or equal to 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter.

\* \* \* \* \*

*Very small quantity generator* is a generator who generates less than or equal to the following amounts in a calendar month:

(1) 100 kilograms (220 lbs) of non-acute hazardous waste; and

(2) 1 kilogram (2.2 lbs) of acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter; and

(3) 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup

of a spill, into or on any land or water, of any acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter.

\* \* \* \* \*

■ 4. Section 260.11 is amended by revising the section heading and paragraph (d)(1) to read as follows:

**§ 260.11 Incorporation by reference.**

\* \* \* \* \*

(d) \* \* \*

(1) “Flammable and Combustible Liquids Code” (1977 or 1981), IBR approved for §§ 262.16, 264.198, 265.198, 267.202(b).

\* \* \* \* \*

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

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

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

**§ 261.1 [Amended]**

■ 6. Section 261.1, paragraph (c)(6) is amended by removing “(e.g.)” and inserting “(e.g.,” in its place.

■ 7. Section 261.4 is amended by revising paragraph (a)(7) to read as follows:

**§ 261.4 Exclusions.**

(a) \* \* \*

(7) Spent sulfuric acid used to produce virgin sulfuric acid provided it is not accumulated speculatively as defined in § 261.1(c) of this chapter.

\* \* \* \* \*

**§ 261.5 [Removed and reserved]**

■ 8. Remove and reserve § 261.5.

■ 9. Section 261.6 is amended by adding paragraph (c)(2)(iv) to read as follows:

**§ 261.6 Requirements for recyclable materials.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(iv) Section 265.75 of this chapter (biennial reporting requirements).

\* \* \* \* \*

■ 10. Section 261.33 is amended by revising paragraphs (e) introductory text and (f) introductory text to read as follows:

**§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.**

\* \* \* \* \*

(e) The commercial chemical products, manufacturing chemical intermediates or off-specification commercial chemical products or manufacturing chemical intermediates referred to in paragraphs (a) through (d)

of this section, are identified as acute hazardous wastes (H).

\* \* \* \* \*

(f) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in paragraphs (a) through (d) of this section, are identified as toxic wastes (T).

\* \* \* \* \*

■ 11. Section 261.420 is amended by adding paragraph (g) to read as follows:

**§ 261.420 Contingency planning and emergency procedures for facilities generating or accumulating more than 6000 kg of hazardous secondary material.**

\* \* \* \* \*

(g) *Personnel training.* All employees must be thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies.

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

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

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

**Subpart A—General**

■ 13. Section 262.1 is added to read as follows:

**§ 262.1 Terms used in this part.**

As used in this part:

*Independent requirement* means a requirement of part 262 that states an event, action, or standard that must occur or be met; and that applies without relation to, or irrespective of, the purpose of obtaining a conditional exemption from a permit or having interim status under §§ 262.14, 262.15, 262.16, or 262.17.

*Condition for exemption* means any requirement in §§ 262.14, 262.15, 262.16, or 262.17, that states an event, action, or standard that must occur or be met in order to obtain a conditional exemption from any requirement in parts 124, 262 through 268, or 270, or from any requirement for notification under section 3010 of RCRA.

■ 14. Section 262.10 is amended by:

■ a. Revising paragraphs (a) and (b);

■ b. Removing and reserving paragraph (c);

■ c. Revising paragraph (g);

■ d. Removing and reserving paragraphs (j);

■ e. Revising paragraph (l); and

■ f. Removing Notes 1 and 2.

The revisions and additions read as follows:

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

(a) The regulations in this part establish standards for generators of hazardous waste as defined by 40 CFR 260.10.

(1) A person who generates a hazardous waste as defined by 40 CFR part 261 is subject to all the applicable independent requirements in the subparts and sections listed below, unless the person is a very small quantity generator that meets the conditions for exemption in § 262.14.

(i) *Independent requirements of a small quantity generator.* (A) Section 262.11 Hazardous waste determination and recordkeeping;

(B) Section 262.13 Generator category determination;

(C) Section 262.18 EPA identification numbers and re-notification for large quantity generators and small quantity generators;

(D) Part 262 subpart B—The manifest;

(E) Part 262 subpart C—Pre-transport requirements;

(F) Section 262.40 Recordkeeping;

(G) Section 262.44 Special independent requirements for small quantity generators;

(H) Part 262 subpart E—subpart F—Imports and exports of hazardous waste;

(I) Part 262 subpart G—Farmers; and

(J) Part 262 subpart H—Transfrontier shipments of hazardous waste for recovery within the OECD.

(ii) *Independent requirements of a large quantity generator.* (A) Section 262.11 Hazardous waste determination and recordkeeping;

(B) Section 262.13 Generator category determination;

(C) Section 262.18 EPA identification numbers and re-notification for large quantity generators and small quantity generators;

(D) Part 262 subpart B—The manifest;

(E) Part 262 subpart C—Pre-transport requirements;

(F) Part 262 subpart D—Recordkeeping and reporting, except § 262.44;

(G) Part 262 subpart E—subpart F—Imports and exports of hazardous waste;

(H) Part 262 subpart G—Farmers; and

(I) Part 262 subpart H—Transfrontier shipments of hazardous waste for recovery within the OECD.

(2) A generator that accumulates hazardous waste on site is a facility that stores hazardous waste and is subject to the applicable requirements of parts 124, 263 through 270, and section 3010 of RCRA, unless it is one of the following:

(i) A very small quantity generator that meets the conditions for exemption in § 262.14;

(ii) A small quantity generator that meets the conditions for exemption in §§ 262.15 and 262.16; or

(iii) A large quantity generator that meets the conditions for exemption in §§ 262.15 and 262.17.

(3) A generator shall not transport, offer its waste for transport, or otherwise cause its waste to be sent to a facility that is not a designated facility, as defined in § 260.10, or not otherwise authorized to receive the generator's waste.

(b) *Determining generator category.* A generator must use 40 CFR 262.13 to determine which provisions of this part are applicable to the generator based on the quantity of hazardous waste generated per calendar month.

\* \* \* \* \*

(g)(1) A generator's violation of an applicable requirement in 40 CFR part 124, 262 through 268, or 270, or of applicable notification requirements of section 3010 of RCRA, is subject to penalty and injunctive relief under section 3008 of RCRA.

(2) A generator's noncompliance with a condition for exemption in this part is not subject to penalty or injunctive relief under section 3008 of RCRA as a violation of a 40 CFR part 262 condition for exemption. Noncompliance with a condition for exemption in this part results in failure to obtain, or to maintain, such exemption. Failure to obtain or maintain the exemption results in a violation of one or more applicable independent requirements in 40 CFR part 124, 262 through 268, or 270, or of the notification requirements of section 3010 of RCRA. A generator's violation of an independent requirement is subject to penalty and injunctive relief under section 3008 of RCRA.

\* \* \* \* \*

(l) The laboratories owned by an eligible academic entity that chooses to be subject to the requirements of subpart K of this part are not subject to (for purposes of this paragraph, the terms "laboratory" and "eligible academic entity" shall have the meaning as defined in § 262.200 of subpart K of this part):

(1) The independent requirements of § 262.11 or the regulations in § 262.15 for large quantity generators and small quantity generators, except as provided in subpart K, and

(2) The conditions of § 262.14, for very small quantity generators, except as provided in subpart K.

■ 15. Revise § 262.11 and its section heading to read as follows:

**§ 262.11 Hazardous waste determination and recordkeeping.**

A person who generates a solid waste, as defined in 40 CFR 261.2, must make an accurate determination of whether that waste is a hazardous waste using the following steps:

(a) A hazardous waste determination for each solid waste must be made at the point of waste generation, before any dilution, mixing, or other alteration of the waste occurs, and at any time in the course of its management that it has, or may have, changed its properties as a result of exposure to the environment or other factors that may change the properties of the waste.

(b) A person must determine if the solid waste is excluded from regulation under 40 CFR 261.4.

(c) If the waste is not excluded under 40 CFR 261.4, the person must then use knowledge of the waste to determine if the waste meets any of the listing descriptions under subpart D of 40 CFR part 261. Acceptable knowledge that may be used in making an accurate determination as to whether the waste is listed includes, but is not limited to, waste origin, composition, the process producing the waste, feedstock, and other relevant information. If the waste is listed, the person may file a delisting petition under 40 CFR 260.20 and 260.22 to demonstrate to the Administrator that the waste from this particular site or operation is not a hazardous waste.

(d) If the waste is not listed in subpart D of 40 CFR part 261 or if it is a listed waste, which must meet the land disposal restrictions under 40 CFR part 268, the person then must also determine whether the waste exhibits one or more hazardous characteristics as identified in subpart C of 40 CFR part 261 by following the procedures in either paragraph (d)(1) or (2) of this section.

(1) The person must test the waste according to the methods set forth in subpart C of 40 CFR part 261 or according to an equivalent method approved by the Administrator under 40 CFR 260.21 and in accordance with the following:

(i) Persons testing their waste must obtain a representative sample of the waste for the testing, as defined at 40 CFR 260.10.

(ii) Where a test method is specified in the regulation, the results of the regulatory test, when properly performed, are definitive for determining the regulatory status of the waste.

(2) The person must apply knowledge of the hazard characteristic of the waste in light of the materials or the processes

used. Acceptable knowledge may include process knowledge (e.g., information about chemical feedstocks and other inputs to the production process); knowledge of products, by-products, and intermediates produced by the manufacturing process; chemical or physical characterization of wastes; information on the chemical and physical properties of the chemicals used or produced by the processor or otherwise contained in the waste; testing that illustrates the properties of the waste; or other reliable and relevant information about the properties of the waste or its constituents. A test other than a test method set forth in subpart C of 40 CFR part 261, or according to an equivalent method approved by the Administrator under 40 CFR 260.21, may be used as part of a person's knowledge to determine whether a solid waste exhibits a characteristic of hazardous waste. However, such tests do not, by themselves, provide definitive results.

(e) *Recordkeeping for small and large quantity generators.* A small or large quantity generator must maintain records supporting its solid and hazardous waste determinations, including records that identify a material as a solid waste, as defined by 40 CFR 261.2, and records identifying whether that solid waste is or is not also a hazardous waste, as defined by 40 CFR 261.3. Generators may wish to segregate any of their municipal solid waste from other solid and hazardous wastes to avoid potential co-mingling. Records must be maintained for at least three years from the date that the waste was last generated. These records must comprise the generator's knowledge of the waste and support the generator's determination, as described at 40 CFR

262.11(c) and (d). The records must include, but are not be limited to, the following types of information: The results of any tests, sampling, or waste analyses; records documenting the tests, sampling, and analytical methods used and demonstrating the validity and relevance of such tests; records consulted in order to determine the process by which the waste was generated, the composition of the waste, and the properties of the waste; and records which explain the knowledge basis for the generator's determination, as described at 40 CFR 262.11(d)(2). The periods of record 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.

(f) If the waste is determined to be hazardous, all applicable EPA hazardous waste numbers (EPA hazardous waste codes) in subparts C and D of part 261 must be identified.

(g) If the waste is determined to be hazardous, the generator must refer to parts 261, 264, 265, 266, 267, 268, and 273 of this chapter for other possible exclusions or restrictions pertaining to management of the specific waste.

**§ 262.12 [Removed and reserved]**

- 16. Remove and reserve § 262.12.
- 17. Add §§ 262.13 through 262.18 to subpart A to read as follows:

- \* \* \* \* \*
- Sec.
- 262.13 Generator category determination.
- 262.14 Conditions for exemption for a very small quantity generator.
- 262.15 Satellite accumulation area regulations for small and large quantity generators.
- 262.16 Conditions for exemption for a small quantity generator that accumulates hazardous waste.

- 262.17 Conditions for exemption for a large quantity generator that accumulates hazardous waste.
- 262.18 EPA identification numbers and re-notification for small quantity generators and large quantity generators.

**§ 262.13 Generator category determination.**

(a) *Monthly determination.* A generator's category is determined each month by the amount of hazardous waste it generates and may change from month to month. This section sets forth procedures to determine whether a generator is a very small quantity generator, a small quantity generator, or a large quantity generator for a particular month, as defined in § 260.10 of this chapter.

(b) *Generators of both acute and non-acute hazardous wastes.* A generator who generates both acute hazardous waste and non-acute hazardous waste in the same calendar month shall determine its generator category for that month by doing the following:

- (1) Counting separately the total amount of acute hazardous waste and the total amount of non-acute hazardous waste generated in the calendar month;
- (2) Subtracting from each total any amounts of waste exempt from counting as described in paragraphs (c) and (d) of this section;
- (3) Determining separately the resulting generator categories for the quantities of acute and non-acute hazardous waste generated; and
- (4) Comparing the resulting generator categories from paragraph (b)(3) of this section and applying the more stringent generator category to the accumulation and management of both non-acute hazardous waste and acute hazardous waste generated for that month.

TABLE 1 TO § 262.13—GENERATOR CATEGORIES BASED ON QUANTITY OF WASTE GENERATED IN A CALENDAR MONTH

#	Quantity of acute hazardous waste generated in a calendar month	Quantity of non-acute hazardous waste generated in a calendar month	Quantity of residues from a cleanup of acute hazardous waste generated in a calendar month	Generator category
1	> 1 kg	Any amount	Any amount	Large quantity generator.
2	Any amount	≥ 1,000 kg	Any amount	Large quantity generator.
3	Any amount	Any amount	> 100 kg	Large quantity generator.
4	≤ 1 kg	> 100 kg and < 1,000 kg	≤ 100 kg	Small quantity generator.
5	≤ 1 kg	≤ 100 kg	≤ 100 kg	Very small quantity generator.

(c) When making the monthly quantity-based determinations required by this part, the generator must include all hazardous waste that it generates, except hazardous waste that:

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

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

- (3) Is recycled, without prior storage or accumulation, only in an on-site

process subject to regulation under 40 CFR 261.6(c)(2);

(4) Is used oil managed under the requirements of 40 CFR 261.6(a)(4) and 40 CFR part 279;

- (5) Is spent lead-acid batteries managed under the requirements of 40 CFR part 266 subpart G;

(6) Is universal waste managed under 40 CFR 261.9 and 40 CFR part 273;

(7) Is a hazardous waste that is an unused commercial chemical product (listed in 40 CFR part 261 subpart D or exhibiting one or more characteristics in 40 CFR part 261 subpart C) that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity pursuant to § 262.213. For purposes of this provision, the term eligible academic entity shall have the meaning as defined in § 262.200; or

(8) Is managed under an episodic event in compliance with the conditions of subpart L of this part.

(d) In determining the quantity of hazardous waste generated in a calendar month, a generator need not include:

(1) Hazardous waste when it is removed from on-site accumulation; or

(2) Hazardous waste generated by on-site treatment (including reclamation) of the generator's hazardous waste, so long as the hazardous waste that is treated was previously counted once; or

(3) Spent materials that are generated, reclaimed, and subsequently reused on site, so long as such spent materials have been previously counted once.

**§ 262.14 Conditions for exemption for a very small quantity generator.**

(a) Hazardous waste generated by a very small quantity generator is not subject to the independent requirements of this part, except the paragraphs of § 262.11 specified below or the requirements of parts 124, 264 through 268, and 270 of this chapter, and the notification requirements of section 3010 of RCRA. A very small quantity generator may accumulate hazardous waste on site without a permit or interim status, and without complying with all the independent requirements of the above-mentioned parts and the notification requirements of section 3010, provided that it meets all the conditions for exemption listed in this section:

(1) In a calendar month the very small quantity generator generates less than or equal to the amounts specified in the definition of "very small quantity generator" in § 260.10 of this chapter;

(2) The very small quantity generator complies with § 262.11(a) through (d) of this chapter;

(3) *Accumulation conditions for exemption*—(i) *Acute hazardous waste.* If the very small quantity generator accumulates at any time greater than 1 kilogram (2.2 lbs) of acute hazardous waste or 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water,

of any acute hazardous waste listed in §§ 261.31 or 261.33(e) of this chapter, all quantities of that acute hazardous waste are subject to full hazardous waste regulation under parts 124, 262 through 268, and 270 of this chapter, and the notification requirements of section 3010 of RCRA. The 90-day accumulation time limit of § 262.17 begins on the date when the accumulated wastes exceed the above waste quantity limits;

(ii) *Non-acute hazardous waste.* If the very small quantity generator accumulates at any time 1,000 kilograms (2,200 lbs) or greater of non-acute hazardous waste, all quantities of that hazardous waste are subject to full hazardous waste regulation under parts 124, 262 through 268, and 270 of this chapter, and the notification requirements of section 3010 of RCRA. The 180-day and 270-day accumulation time limits of § 262.16 begin on the date when the accumulated wastes equal or exceed 1000 kilograms (2,200 lbs).

(4) A very small quantity generator that accumulates hazardous waste within the limits in paragraphs (a)(3)(i) and (ii) of this section must either treat or dispose of its hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under part 270 of this chapter;

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

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

(iv) Permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to part 258 of this chapter;

(v) Permitted, licensed, or registered by a state to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit, is subject to the requirements in §§ 257.5 through 257.30 of this chapter;

(vi) A facility which:

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

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

(vii) For universal waste managed under part 273 of this chapter, a universal waste handler or destination facility subject to the requirements of part 273 of this chapter;

(viii) A large quantity generator under the control of the same person as the

very small quantity generator, provided the following conditions are met:

(A) The very small quantity generator and the large quantity generator are under the control of the same person as defined in § 260.10 of this chapter. "Control," for the purposes of this section, means the power to direct the policies of the generator site, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator sites on behalf of a different person as defined in § 260.10 of this chapter shall not be deemed to "control" such generator sites.

(B) The very small quantity generator marks its container(s) of hazardous waste with:

(1) The words "Very Small Quantity Generator Hazardous Waste";

(2) Other words that identify the contents of the containers (examples may include, but are not limited to, the name of the chemical(s), such as "acetone" or "methylene dichloride" or the type or class of chemical, such as "organic solvents" or "halogenated organic solvents" or, as applicable, the proper shipping name and technical name markings used to comply with Department of Transportation requirements at 49 CFR part 172 subpart D);

(3) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.*, ignitable, corrosive, reactive, toxic); a hazard class label consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling); a label consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1920.1200; a chemical hazard label consistent with the National Fire Protection Association code 704; a hazard pictogram consistent with the United Nations' Globally Harmonized System; or any other marking or labeling commonly used nationwide in commerce that identifies the nature of the hazards associated with the contents of the waste accumulation unit); and

(4) The applicable EPA hazardous waste number(s) (hazardous waste codes) in part 261 subparts C and D.

(b) *Mixing hazardous waste with non-hazardous waste.* A very small quantity generator may mix listed or characteristic hazardous waste with non-hazardous waste and remain eligible for the conditional exemption applicable to a very small quantity generator provided that either paragraph (b)(1) or (2) of this section is met:

(1) The mixture does not exhibit any of the characteristics of hazardous waste

identified in subpart C of part 261 of this chapter; or

(2) If the mixture does exhibit one or more characteristics of a hazardous waste identified in subpart C of part 261 of this chapter, the mixture does not cause the generator to exceed the very small quantity generator calendar month quantity limits identified in the definition of very small quantity generator at § 260.10 of this chapter. If the mixture does exceed the quantity limit for a very small quantity generator, the very small quantity generator, to remain exempt from the permitting and interim status standards, must meet the conditions for exemption applicable to either a small quantity generator or large quantity generator according to the quantity of the hazardous waste it generated in a calendar month, including the resultant mixture and the total quantity the very small quantity generator accumulated on site.

(c) If a very small quantity generator's wastes are mixed with used oil, the mixture is subject to 40 CFR part 279. Any material produced from such a mixture by processing, blending, or other treatment is also regulated under 40 CFR part 279.

(d) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

(e) A very small quantity generator experiencing an episodic event may accumulate hazardous waste in accordance with subpart L of this part in lieu of §§ 262.15, 262.16, and 262.17.

**§ 262.15 Satellite accumulation area regulations for small and large quantity generators.**

(a) A generator may accumulate as much as 55 gallons of non-acute hazardous waste and/or one quart or 1 kg (2.2 lbs) of acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with § 262.16(b) or § 262.17(a) provided the generator complies with the following conditions for exemption:

(1) If a container holding hazardous waste is not in good condition, or if it begins to leak, the generator must transfer the hazardous waste from this container to a container that is in good condition and does not leak, or transfer and manage the waste in a central accumulation area.

(2) The generator must use a container made of or lined with materials that will

not react with, and are otherwise compatible with, the hazardous waste to be accumulated, so that the ability of the container to contain the waste is not impaired.

(3) Special standards for incompatible wastes.

(i) Incompatible wastes, or incompatible wastes and materials, (see appendix V of part 265 for examples) must not be placed in the same container, unless § 265.17(b) of this chapter is complied with.

(ii) Hazardous waste must not be placed in an unwashed container that previously held an incompatible waste or material (see appendix V of part 265 for examples), unless § 265.17(b) of this chapter is complied with.

(iii) A container holding a hazardous waste that is incompatible with any waste or other materials accumulated nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

(4) A container holding hazardous waste must be closed at all times during accumulation, except:

(i) When adding, removing, or consolidating waste, or

(ii) When venting of a container is necessary

(A) For the proper operation of equipment, or

(B) To prevent dangerous situations, such as build-up of extreme pressure.

(5) A generator must mark its container with the following:

(i) The words "Hazardous Waste," and

(ii) Other words that identify the contents of the containers (examples may include, but are not limited to the name of the chemical(s), such as "acetone" or "methylene dichloride"; or the type or class of chemical, such as "organic solvents" or "halogenated organic solvents" or, as applicable, the proper shipping name and technical name markings used to comply with Department of Transportation requirements at 49 CFR part 172 subpart D); and

(iii) An indication of the hazards of the contents. (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.*, ignitable, corrosive, reactive, toxic); a hazard class label consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling); a label consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1920.1200; a chemical hazard label consistent with the National Fire Protection Association code 704; or a

hazard pictogram consistent with the United Nations' Globally Harmonized System; or any other marking or labeling commonly used nationwide in commerce that identifies the nature of the hazards associated with the contents of the waste accumulation unit).

(6) A generator who accumulates either non-acute hazardous waste or acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter in excess of the amounts listed in paragraph (a) of this section at or near any point of generation must do the following:

(i) Remove the excess from the satellite accumulation area within three calendar days to either

(A) A central accumulation area;

(B) An on-site interim status or permitted treatment, storage, or disposal facility, or

(C) An off-site designated facility.

(ii) During the three-calendar-day period the generator must continue to comply with paragraphs (a)(1) through (5) of this section. The generator must mark the container(s) holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

**§ 262.16 Conditions for exemption for a small quantity generator that accumulates hazardous waste.**

A small quantity generator may accumulate hazardous waste on-site without a permit or interim status, and without complying with the independent requirements of parts 124, 264 through 268, and 270 of this chapter, provided that all the conditions for exemption listed in this section are met:

(a) *Generation.* The generator generates in a calendar month no more than the amounts specified in the definition of "small quantity generator" in § 260.10 of this chapter.

(b) *Accumulation.* The generator accumulates hazardous waste on site for no more than 180 days, unless in compliance with the conditions for exemption for longer accumulation in paragraphs (c) and (d) of this section. The following accumulation conditions also apply:

(1) *Accumulation limit.* The quantity of hazardous waste accumulated on site never exceeds 6,000 kilograms (13,200 pounds);

(2) *Accumulation in containers—(i) Condition of containers.* If a container holding hazardous waste is not in good condition, or if it begins to leak, the small quantity generator must transfer the hazardous waste from this container to a container that is in good condition, or manage the waste in some other way that complies with the conditions for exemption of this section.

(ii) *Compatibility of waste with container.* The small quantity generator must use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be accumulated, so that the ability of the container to contain the waste is not impaired.

(iii) *Management of containers.* (A) A container holding hazardous waste must always be closed during accumulation, except when it is necessary to add or remove waste.

(B) A container holding hazardous waste must not be opened, handled, or accumulated in a manner that may rupture the container or cause it to leak.

(iv) *Inspections.* At least weekly, the small quantity generator must inspect central accumulation areas. The small quantity generator must look for leaking containers and for deterioration of containers caused by corrosion or other factors. See paragraph (a)(2)(i) of this section for remedial action required if deterioration or leaks are detected.

(v) *Special conditions for accumulation of incompatible wastes.*

(A) Incompatible wastes, or incompatible wastes and materials, (see appendix V of part 265 for examples) must not be placed in the same container, unless § 265.17(b) of this chapter is complied with.

(B) Hazardous waste must not be placed in an unwashed container that previously held an incompatible waste or material (see appendix V of part 265 for examples), unless § 265.17(b) of this chapter is complied with.

(C) A container accumulating hazardous waste that is incompatible with any waste or other materials accumulated or stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

(3) *Accumulation in tanks.*

(i) [Reserved]

(ii) A small quantity generator of hazardous waste must comply with the following general operating conditions:

(A) Treatment or accumulation of hazardous waste in tanks must comply with § 265.17(b) of this chapter.

(B) Hazardous wastes or treatment reagents must not be placed in a tank if they could cause the tank or its inner liner to rupture, leak, corrode, or otherwise fail before the end of its intended life.

(C) Uncovered tanks must be operated to ensure at least 60 centimeters (2 feet) of freeboard, unless the tank is equipped with a containment structure (e.g., dike or trench), a drainage control system, or a diversion structure (e.g., standby tank)

with a capacity that equals or exceeds the volume of the top 60 centimeters (2 feet) of the tank.

(D) Where hazardous waste is continuously fed into a tank, the tank must be equipped with a means to stop this inflow (e.g., waste feed cutoff system or by-pass system to a stand-by tank).

(iii) Except as noted in paragraph (a)(3)(iv) of this section, a small quantity generator that accumulates hazardous waste in tanks must inspect, where present:

(A) Discharge control equipment (e.g., waste feed cutoff systems, by-pass systems, and drainage systems) at least once each operating day, to ensure that it is in good working order;

(B) Data gathered from monitoring equipment (e.g., pressure and temperature gauges) at least once each operating day to ensure that the tank is being operated according to its design;

(C) The level of waste in the tank at least once each operating day to ensure compliance with paragraph (a)(3)(ii)(C) of this section;

(D) The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and

(E) The construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes) at least weekly to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation). As required by § 265.15(c) of this chapter, the small quantity generator must remedy any deterioration or malfunction it finds.

(iv) A small quantity generator accumulating hazardous waste in tanks or tank systems that have full secondary containment and that either use leak detection equipment to alert personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly, where applicable, the areas identified in paragraphs (a)(3)(iii)(A) through (E) of this section. Use of the alternate inspection schedule must be documented in the site's operating record. This documentation must include a description of the established workplace practices at the site.

(v) [Reserved.]

(vi) A small quantity generator accumulating hazardous waste in tanks must, upon closure of the site, remove all hazardous waste from tanks, discharge control equipment, and discharge confinement structures. At closure, as throughout the operating period, unless the small quantity generator can demonstrate, in accordance with § 261.3(c) or (d) of this chapter, that any solid waste removed

from its tank is not a hazardous waste, then it must manage such waste in accordance with all applicable provisions of parts 262, 263, and 265 of this chapter.

(vii) A small quantity generator must comply with the following special conditions for accumulation of ignitable or reactive waste:

(A) Ignitable or reactive waste must not be placed in a tank, unless:

(1) The waste is treated, rendered, or mixed before or immediately after placement in a tank so that the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under § 261.21 or 261.23 of this chapter and § 265.17(b) of this chapter is complied with; or

(2) The waste is accumulated or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(3) The tank is used solely for emergencies.

(B) A small quantity generator which treats or accumulates ignitable or reactive waste in covered tanks must comply with the buffer zone requirements for tanks contained in Tables 2–1 through 2–6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code," (1977 or 1981) (incorporated by reference, see § 260.11).

(C) A small quantity generator must comply with the following special conditions for incompatible wastes:

(1) Incompatible wastes, or incompatible wastes and materials, (see part 265 appendix V for examples) must not be placed in the same tank, unless § 265.17(b) of this chapter is complied with.

(2) Hazardous waste must not be placed in an unwashed tank that previously held an incompatible waste or material, unless § 265.17(b) of this chapter is complied with.

(4) *Accumulation of hazardous waste on drip pads.* A small quantity generator may accumulate hazardous waste on drip pads for 90 days or less without a permit or without having interim status provided that it complies with 40 CFR part 265 subpart W. The generator must maintain at the facility the following records by use of inventory logs, monitoring equipment, or any other effective means:

(i) A written description of procedures that will identify the date hazardous waste first entered the drip pad and ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and



(ii) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

(5) *Accumulation of hazardous waste in containment buildings.* A small quantity generator may accumulate hazardous waste in containment buildings for 90 days or less without a permit or without having interim status provided that it complies with 40 CFR part 265 subpart DD. The generator must also maintain the following records by use of inventory logs, monitoring equipment records, or any other effective means:

(i) The professional engineer certification that the building complies with the design standards specified in 40 CFR 265.1101. This certification must be in the facility's operating record prior to operation of the unit; and

(ii) A written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the site showing that they are consistent with maintaining the 90 day limit, and documentation that the procedures are complied with; or

(iii) Documentation that the unit is emptied at least once every 90 days.

(6) *Labeling and marking of containers, tanks, drip pads, and containment buildings.* (i) A small quantity generator must mark its containers with the following:

(A) The words "Hazardous Waste";

(B) Other words that identify the contents of the containers (examples may include, but are not limited to, the name of the chemical(s), such as "acetone" or "methylene dichloride"; or the type or class of chemical, such as "organic solvents" or "halogenated organic solvents" or, as applicable, the proper shipping name and technical name markings used to comply with Department of Transportation requirements at 49 CFR part 172 subpart D);

(C) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.*, ignitable, corrosive, reactive, toxic); a hazard class label consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling); a label consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1920.1200; a chemical hazard label consistent with the National Fire Protection Association code 704; a hazard pictogram consistent with the United Nations' Globally Harmonized

System; or any other marking or labeling commonly used nationwide in commerce that identifies the nature of the hazards associated with the contents of the waste accumulation unit); and

(D) The date upon which each period of accumulation begins clearly visible for inspection on each container.

(ii) A small quantity generator accumulating hazardous waste in tanks, drip pads and containment buildings must do the following:

(A) Mark or label its waste accumulation units with the words "Hazardous Wastes." In the case of hazardous wastes accumulated in drip pads and containment buildings, generators must label their drip pads and containment buildings with the words "Hazardous Wastes" in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, or other persons on site;

(B) Use inventory logs, monitoring equipment, or records to identify the contents of the tank, drip pad or containment building and its associated hazards;

(C) Use inventory logs, monitoring equipment or records to identify the date upon which each period of accumulation begins; and

(D) Keep inventory logs or records with the above information in close proximity to the tank, drip pad, or containment building.

(7) *Land disposal restrictions.* The generator complies with all the applicable requirements under 40 CFR part 268.

(8) *Preparedness and prevention—(i) Maintenance and operation of site.* A small quantity generator must maintain and operate its site to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

(ii) *Required equipment.* All areas where hazardous waste is either generated or accumulated must be equipped with the items in paragraphs (b)(8)(ii)(A) through (D) of this section (*unless* none of the hazards posed by waste handled at the site could require a particular kind of equipment specified below or the actual waste generation or accumulation area does not lend itself for safety reasons to have a particular kind of equipment specified below). A small quantity generator may determine the most appropriate locations within its generator site to locate equipment necessary to prepare for and respond to emergencies.

(A) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to site personnel;

(B) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

(C) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and

(D) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(iii) *Testing and maintenance of equipment.* All communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

(iv) *Access to communications or alarm system.* (A) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access (*e.g.*, direct or unimpeded access) to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, *unless* such a device is not required under paragraph (a)(8)(ii) of this section.

(B) In the event there is just one employee on the premises while the site is operating, the employee must have immediate access (*e.g.*, direct or unimpeded access) to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, *unless* such a device is not required under paragraph (a)(8)(ii) of this section.

(v) *Required aisle space.* The small quantity generator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of site operation in an emergency, unless aisle space is not needed for any of these purposes.

(vi) *Arrangements with local authorities.* (A) The small quantity generator must make arrangements with the Local Emergency Planning Committee for the types and quantities of hazardous waste handled at the site, as well as the potential need for the

services of the local police department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals. Should there be no Local Emergency Planning Committee, should it not respond, or should the Local Emergency Planning Committee determine that it is not the appropriate organization to make arrangements with, then the small quantity generator must make arrangements with the local fire department and other relevant emergency responders, (e.g., police and hospitals).

(1) A small quantity generator that must make arrangements with its local fire department must determine the potential need for the services of the local police department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals.

(2) As part of this coordination, the small quantity generator shall make arrangements, as necessary, to familiarize the above organizations with the layout of the site, the properties of hazardous waste handled at the site and associated hazards, places where site personnel would normally be working, entrances to roads inside the site, and possible evacuation routes as well as the types of injuries or illnesses that could result from fires, explosions, or releases at the site.

(3) Where more than one police or fire department might respond to an emergency, the small quantity generator shall enter into agreements designating primary emergency authority to a specific fire or police department, and agreements with any others to provide support to the primary emergency authority.

(B) A small quantity generator shall maintain records documenting the arrangements with the Local Emergency Planning Committee, or if appropriate, with the local fire department as well as any other organization necessary to respond to an emergency. This documentation must include a certified letter or any other documentation that confirms such arrangements actively exist.

(9) *Emergency procedures.* The small quantity generator complies with the following conditions for those areas of the generator site where hazardous waste is generated and accumulated:

(i) At all times there must be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the site within a short period of time) with the responsibility for coordinating all emergency response measures specified in paragraph (b)(9)(iv) of this section.

This employee is the emergency coordinator.

(ii) The small quantity generator must post the following information next to telephones or in areas directly involved in the generation and accumulation of hazardous waste:

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

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

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

(iii) The small quantity generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal site operations and emergencies;

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

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

(B) In the event of a spill, the small quantity generator is responsible for containing the flow of hazardous waste to the extent possible, and as soon as is practicable, cleaning up the hazardous waste and any contaminated materials or soil. Such containment and cleanup can be conducted either by the small quantity generator or by a contractor on behalf of the small quantity generator;

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

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

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

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

(4) Extent of injuries, if any; and

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

(c) *Mixing hazardous waste with non-hazardous waste.* A small quantity generator may mix its hazardous waste with non-hazardous waste and remain eligible for the conditional exemption provided that either paragraph (c)(1) or (2) of this section is met.

(1) The mixture is not a hazardous waste according to the mixture rules in

§§ 261.3(a)(2)(iv), (b)(2) and (3), and (g)(2)(i); or

(2) If the mixture is a hazardous waste, the mixture does not cause the generator to exceed the small quantity generator quantity limits for a calendar month, as identified in the definition of small quantity generator at § 260.10 of this chapter. If the mixture does exceed the small quantity generator quantity limits, a small quantity generator, to remain exempt from the permitting and interim status standards, must meet the conditions for exemption applicable to a large quantity generator.

(d) *Transporting over 200 miles.* A small quantity generator who must transport its waste, or offer its waste for transportation, over a distance of 200 miles or more for off-site treatment, storage or disposal may accumulate hazardous waste on site for 270 days or less without a permit or without having interim status provided that the generator complies with the conditions of paragraph (a) of this section.

(e) *Accumulation time limit extension.* A small quantity generator who accumulates hazardous waste for more than 180 days (or for more than 270 days if it must transport its waste, or offer its waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264, 265, 267, 268, and 270 and the permit requirements of 40 CFR part 270 unless it has been granted an extension to the 180-day (or 270-day if applicable) period. Such extension may be granted by EPA if hazardous wastes must remain on site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis.

(f) *Rejected load.* A small quantity generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of § 264.72 or 265.72 of this chapter may accumulate the returned waste on site in accordance with paragraphs (a), (c), and (d) of this section. Upon receipt of the returned shipment, the generator must:

(i) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(ii) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

(g) A small quantity generator experiencing an episodic event may accumulate hazardous waste in accordance with subpart L of this part in lieu of § 262.17.

**§ 262.17 Conditions for exemption for a large quantity generator that accumulates hazardous waste.**

A large quantity generator may accumulate hazardous waste on-site without a permit or interim status, and without complying with the independent requirements of parts 124, 264 through 268, and 270 of this chapter, provided that all of the conditions for exemption listed in this section are met:

(a) *Accumulation.* A large quantity generator accumulates hazardous waste on site for no more than 90 days, unless in compliance with the accumulation time limit extension or F006 accumulation conditions for exemption in § 262.17(b) through (e). The following accumulation conditions also apply:

(1) *Accumulation in containers.* If the hazardous waste is placed in containers, the large quantity generator must comply with the following:

(i) *Air emission standards.* The applicable requirements of subparts AA, BB, and CC of 40 CFR part 265;

(ii) *Condition of containers.* If a container holding hazardous waste is not in good condition, or if it begins to leak, the large quantity generator must transfer the hazardous waste from this container to a container that is in good condition, or manage the waste in some other way that complies with the conditions for exemption of this section;

(iii) *Compatibility of waste with container.* The large quantity generator must use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired;

(iv) *Management of containers.* (A) A container holding hazardous waste must always be closed during accumulation, except when it is necessary to add or remove waste.

(B) A container holding hazardous waste must not be opened, handled, or stored in a manner that may rupture the container or cause it to leak.

(v) *Inspections.* At least weekly, the large quantity generator must inspect central accumulation areas. The large quantity generator must look for leaking containers and for deterioration of containers caused by corrosion or other factors. See paragraph (a)(1)(ii) of this section for remedial action required if deterioration or leaks are detected.

(vi) *Special conditions for accumulation of ignitable and reactive wastes.* (A) Containers holding ignitable or reactive waste must be located at least 15 meters (50 feet) from the site's property line unless a written waiver is obtained from the local fire department allowing hazardous waste accumulation to occur within this restricted area. Record of this approval must be maintained as long as ignitable or reactive hazardous waste is accumulated in this area.

(B) The large quantity generator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction including but not limited to the following: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the large quantity generator must confine smoking and open flame to specially designated locations. "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(vii) *Special conditions for accumulation of incompatible wastes.* (A) Incompatible wastes, or incompatible wastes and materials, (see appendix V of part 265 for examples) must not be placed in the same container, unless § 265.17(b) of this chapter is complied with.

(B) Hazardous waste must not be placed in an unwashed container that previously held an incompatible waste or material (see appendix V of part 265 for examples), unless § 265.17(b) of this chapter is complied with.

(C) A container holding a hazardous waste that is incompatible with any waste or other materials accumulated or stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

(2) *Accumulation in tanks.* If the waste is placed in tanks, the large quantity generator must comply with the applicable requirements of subparts J, AA, BB, and CC of 40 CFR part 265 except § 265.197(c) of Closure and post-closure care and § 265.200—Waste analysis and trial tests.

(3) *Accumulation on drip pads.* If the waste is placed on drip pads, the large quantity generator must comply with subpart W of 40 CFR part 265 and maintain at the facility the following

records by use of inventory logs, monitoring equipment records, or any other effective means:

(i) A written description of procedures that will identify the date hazardous waste first entered the drip pad and ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(ii) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

(4) *Accumulation in Containment Buildings.* (i) If the waste is placed in containment buildings, the large quantity generator must comply with subpart DD of 40 CFR part 265 and must place its professional engineer certification that the building complies with the design standards specified in 40 CFR 265.1101 in the generator's files prior to operation of the unit.

(ii) The large quantity generator shall maintain the following records by use of inventory logs, monitoring equipment records, or any other effective means:

(A) A written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the site showing that they are consistent with respecting the 90 day limit, and documentation that the procedures are complied with; or

(B) Documentation that the unit is emptied at least once every 90 days.

(5) *Labeling and marking of containers, tanks, drip pads, and containment buildings—(i) Containers.* A large quantity generator must mark its containers with the following:

(A) The words "Hazardous Waste";

(B) Other words that identify the contents of the containers (examples may include, but are not limited to the name of the chemical(s), such as "acetone" or "methylene dichloride"; or the type or class of chemical, such as "organic solvents" or "halogenated organic solvents" or, as applicable, the proper shipping name and technical name markings used to comply with Department of Transportation requirements at 49 CFR part 172 subpart D)";

(C) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); a hazard class label consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling); a label consistent with the Occupational Safety and Health Administration Hazard

Communication Standard at 29 CFR 1920.1200; a chemical hazard label consistent with the National Fire Protection Association code 704; a hazard pictogram consistent with the United Nations' Globally Harmonized System; or any other marking or labeling commonly used nationwide in commerce that identifies the nature of the hazards associated with the contents of the waste accumulation unit); and

(D) The date upon which each period of accumulation begins clearly visible for inspection on each container.

(ii) *Tanks, drip pads, and containment buildings.* A large quantity generator accumulating hazardous waste in tanks, drip pads, and containment buildings must do the following:

(A) Mark or label its waste accumulation units with the words "Hazardous Waste." In the case of hazardous wastes accumulated in drip pads and containment buildings, generators must label their drip pads and containment buildings with the words "Hazardous Waste" in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, etc.

(B) Use inventory logs, monitoring equipment, or records to identify the contents of the tank, drip pad or containment building and its associated hazards.

(C) Use inventory logs, monitoring equipment or records to identify the date upon which each period of accumulation begins; and

(D) Keep inventory logs or records with the above information in close proximity to the tank, drip pad, or containment building.

(6) *Emergency procedures.* The large quantity generator complies with the standards in subpart M of this part, Preparedness, Prevention and Emergency Procedures for Large Quantity Generators.

(7) *Personnel training.* (i)(A) Site personnel must successfully complete a program of classroom instruction, online training, or on-the-job training that teaches them to perform their duties in a way that ensures compliance with this part. The large quantity generator must ensure that this program includes all the elements described in the document required under paragraph (a)(7)(iv) of this section.

(B) This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches site personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.

(C) At a minimum, the training program must be designed to ensure that site personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where applicable:

(1) Procedures for using, inspecting, repairing, and replacing site emergency and monitoring equipment;

(2) Key parameters for automatic waste feed cut-off systems;

(3) Communications or alarm systems;

(4) Response to fires or explosions;

(5) Response to ground-water contamination incidents; and

(6) Shutdown of operations.

(D) For site employees that receive emergency response training pursuant to Occupational Safety and Health Administration regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the large quantity generator is not required to provide separate emergency response training pursuant to this section, provided that the overall site training meets all the conditions of exemption in this section.

(ii) Site personnel must successfully complete the program required in paragraph (a)(7)(i) of this section within six months after the effective date of these regulations or six months after the date of their employment or assignment to the site, or to a new position at the site, whichever is later. Employees hired after the effective date of these regulations must not work in unsupervised positions until they have completed the training standards of paragraph (a)(7)(i) of this section.

(iii) Site personnel must take part in an annual review of the initial training required in paragraph (a)(7)(i) of this section.

(iv) The large quantity generator must maintain the following documents and records at the site:

(A) The job title for each position at the site related to hazardous waste management, and the name of the employee filling each job;

(B) A written job description for each position listed under paragraph (a)(7)(iv)(A) of this section. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of site personnel assigned to each position;

(C) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed

under paragraph (a)(7)(iv)(A) of this section;

(D) Records that document that the training or job experience, required under paragraphs (a)(7)(i), (ii), and (iii) of this section, has been given to, and completed by, site personnel.

(v) Training records on current personnel must be kept until closure of the site. Training records on former employees must be kept for at least three years from the date the employee last worked at the site. Personnel training records may accompany personnel transferred within the same company.

(8) *Closure.* A large quantity generator accumulating hazardous wastes in containers, tanks, drip pads, and containment buildings, prior to closing a unit that accumulates hazardous waste at the site or prior to closing the site must meet the following conditions:

(i) *Notification.* (A) Notify EPA no later than 30 days prior to closing a unit that accumulates hazardous waste at the site or prior to closing the site.

(B) Notify EPA within 90 days after closure of a unit that accumulates hazardous waste at the site or prior to closing the site that it has either clean closed (*e.g.*, complied with the applicable closure performance standards of § 262.17(a)(8)(ii)) or, if it cannot clean close, notify as a landfill under § 265.310 of this chapter.

(ii) *Closure performance standards.* (A) At closure, the generator must close the waste accumulation unit or site in a manner that:

(1) Minimizes the need for further maintenance by controlling, minimizing, or eliminating, to the extent necessary to protect human health and the environment, the post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere,

(2) Properly disposes of or decontaminates all contaminated equipment, structures and soil and any remaining hazardous waste residues from waste accumulation units including containment system components (pads, liners, etc.), contaminated soils and subsoils, bases, and structures and equipment contaminated with waste. Any hazardous waste residues remaining in the unit(s) being closed must be removed from the unit(s). Any leakage must also be decontaminated or removed and managed as a hazardous waste unless § 261.3(d) of this chapter applies.

(3) Any hazardous waste generated in the process of closing either the

generator's site or unit(s) accumulating hazardous waste must be managed in accordance with all applicable standards of parts 260 through 270 of this chapter, including removing any hazardous waste contained in these units within 90 days of generating it and managing these wastes in a RCRA Subtitle C hazardous waste permitted treatment, storage and disposal facility or interim status facility.

(4) If the generator demonstrates that any contaminated soils and wastes cannot be practicably removed or decontaminated as required in paragraph (a)(8)(ii)(A)(2) of this section, then the waste accumulation unit is considered to be a landfill and the generator must close the waste accumulation unit and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (§ 265.310 of this chapter). In addition, for the purposes of closure, post-closure, and financial responsibility, such a waste accumulation unit is then considered to be a landfill, and the generator must meet all of the requirements for landfills specified in subparts G and H of part 265 of this chapter.

(9) *Land disposal restrictions.* The large quantity generator complies with all applicable requirements under 40 CFR part 268.

(b) *Accumulation time limit extension.* A large quantity generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264, 265, 267, and 268, and the permit requirements of 40 CFR part 270 unless it has been granted an extension to the 90-day period. Such extension may be granted by EPA if hazardous wastes must remain on site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis.

(c) *Accumulation of F006.* A large quantity generator who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the EPA hazardous waste number F006, may accumulate F006 waste on site for more than 90 days, but not more than 180 days without a permit or without having interim status provided that it complies with all of the following conditions:

(1) The large quantity generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants entering F006 or

otherwise released to the environment prior to its recycling;

(2) The F006 waste is legitimately recycled through metals recovery;

(3) No more than 20,000 kilograms of F006 waste is accumulated on site at any one time; and

(4) The F006 waste is managed in accordance with the following:

(i)(A) If the F006 waste is placed in containers, the large quantity generator must comply with the applicable conditions for exemption in § 262.17(a)(1); and/or

(B) If the F006 is placed in tanks, the large quantity generator must comply with the applicable conditions for exemption of § 262.17(a)(2); and/or

(C) If the F006 is placed in containment buildings, the large quantity generator must comply with subpart DD of 40 CFR part 265, and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR 265.1101 in the site's files prior to operation of the unit. The large quantity generator must maintain the following records:

(1) A written description of procedures to ensure that the F006 waste remains in the unit for no more than 180 days, a written description of the waste generation and management practices for the site showing that they are consistent with the 180-day limit, and documentation that the large quantity generator is complying with the procedures; or

(2) Documentation that the unit is emptied at least once every 180 days.

(ii) The large quantity generator is exempt from all the requirements in subparts G and H of 40 CFR part 265, except for those referenced in § 262.17(a)(8).

(iii) The date upon which each period of accumulation begins is clearly marked and must be clearly visible for inspection on each container;

(iv) While being accumulated on site, each container and tank is labeled or marked clearly with:

(A) The words "Hazardous Waste";

(B) Other words that identify the contents of the container or tank; and

(C) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.*, ignitable, corrosive, reactive, toxic); a hazard class label consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling); a label consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1920.1200; a chemical hazard label consistent with the National Fire

Protection Association code 704; a hazard pictogram consistent with the United Nations' Globally Harmonized System; or any other marking or labeling commonly used nationwide in commerce that identifies the nature of the hazards associated with the contents of the waste accumulation unit); and

(v) The large quantity generator complies with the requirements in §§ 262.17(a)(6) and (7).

(d) *F006 transported over 200 miles.*

A large quantity generator who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the EPA hazardous waste number F006, and who must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more for off-site metals recovery, may accumulate F006 waste on site for more than 90 days, but not more than 270 days without a permit or without having interim status if the large quantity generator complies with all of the conditions for exemption of paragraphs (c)(1) through (4) of this section.

(e) *F006 accumulation time extension.*

A large quantity generator accumulating F006 in accordance with paragraphs (c) and (d) of this section who accumulates F006 waste on site for more than 180 days (or for more than 270 days if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more), or who accumulates more than 20,000 kilograms of F006 waste on site is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264, 265, and 267, and the permit requirements of 40 CFR part 270 unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by EPA if F006 waste must remain on site for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste must remain on site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the Regional Administrator on a case-by-case basis.

(f) *Mixing hazardous waste with non-hazardous waste.* Mixtures of hazardous waste with non-hazardous waste are subject to the mixture rule in §§ 261.3(a)(2)(iv), (b)(2) and (3), and (g)(2)(i).

(g) *Consolidation of hazardous waste received from very small quantity generators.* Large quantity generators may receive hazardous waste from very

small quantity generators under control of the same person (as defined in § 260.10), provided that they comply with the following conditions.

“Control,” for the purposes of this section, means the power to direct the policies of the generator site, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator sites on behalf of a different person shall not be deemed to “control” such generator sites.

(1) The large quantity generator notifies EPA thirty (30) days prior to receiving the first shipment from a very small quantity generator(s) using EPA form 8700–12; and

(i) Identifies on the form the name(s) and site address(es) for the very small quantity generator(s) as well as the name and business telephone number for a contact person for the very small quantity generator(s); and

(ii) Submits an updated Site ID form (EPA form 8700–12) within 30 days after a change in the name, site address, or contact information for the very small quantity generator.

(2) The large quantity generator maintains records of shipments for three years from the date the hazardous waste was received from the very small quantity generator. These records must identify the name, site address, and contact information for the very small quantity generator and include a description of the hazardous waste received, including the quantity, all applicable EPA hazardous waste number(s) (EPA hazardous waste codes) in subparts C and D of part 261 for the hazardous waste, and the date the waste was received.

(3) The large quantity generator manages all hazardous waste received from a very small quantity generator in compliance with the independent requirements in § 262.10(a)(1)(ii) and conditions for exemption in § 262.17 applicable to a large quantity generator. For purposes of the labeling and marking regulations in § 262.17(a)(5), the large quantity generator must label the container or unit with the date accumulation started (*i.e.*, the date the hazardous waste was received from the very small quantity generator). If the large quantity generator is consolidating incoming hazardous waste from a very small quantity generator with either its own hazardous waste or with hazardous waste from other very small quantity generators, the large quantity generator must label each container or unit with the earliest date any hazardous waste in the container was accumulated on site.

(h) *Rejected load.* A large quantity generator who sends a shipment of hazardous waste to a designated facility

with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of § 264.72 or 265.72 of this chapter may accumulate the returned waste on site in accordance with paragraphs (a) and (b) of this section. Upon receipt of the returned shipment, the generator must:

(1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

**§ 262.18 EPA identification numbers and re-notification for small quantity generators and large quantity generators.**

(a) A generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Administrator.

(b) A generator who has not received an EPA identification number may obtain one by applying to the Administrator using EPA form 8700–12. Upon receiving the request the Administrator will assign an EPA identification number to the generator.

(c) A generator must not offer its hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.

(d) *Re-notification.* (i) A small quantity generator must notify EPA by February 1 of each even-numbered year thereafter using EPA Form 8700–12.

(ii) A large quantity generator must notify EPA by March 1 of each even-numbered year thereafter using EPA Form 8700–12. A large quantity generator may submit this re-notification as part of its biennial report required under § 262.41.

■ 18. Revise the heading for subpart B to read as follows:

**Subpart B—Manifest Requirements Applicable to Small and Large Quantity Generators**

■ 19. Revise the heading for subpart C to read as follows:

**Subpart C—Pre-Transport Requirements Applicable to Small and Large Quantity Generators**

■ 20. Amend § 262.32 by adding paragraph (c) to read as follows:

**§ 262.32 Marking.**

\* \* \* \* \*

(c) Before transporting or offering hazardous waste for transportation off

site, a generator must mark each container with the applicable EPA hazardous waste numbers (EPA hazardous waste codes) in subparts C and D of part 261 of this chapter.

**§ 262.34 [Removed and reserved]**

■ 21. Remove and reserve § 262.34.

■ 22. Add § 262.35 to subpart C read as follows:

**§ 262.35 Liquids in landfills prohibition.**

The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

■ 23. Revise the heading for subpart D to read as follows:

**Subpart D—Recordkeeping and Reporting Applicable to Small and Large Quantity Generators**

**§ 262.40 [Amended]**

■ 24. Amend § 262.40 by removing and reserving paragraph (c).

■ 25. Section 262.41 and its section heading are revised to read as follows:

**§ 262.41 Biennial report for large quantity generators.**

(a) A generator who is a large quantity generator for at least one month of the reporting year must complete and submit EPA form 8700–13 to the Regional Administrator by March 1 of each even numbered year for all hazardous wastes generated during the previous calendar year. This requirement also applies to generators who treat, store, or dispose of hazardous waste on site in accordance with the provisions of 40 CFR parts 264, 265, 266, 267, and 270 and to large quantity generators that receive hazardous waste from very small quantity generators pursuant to § 262.17(g).

(b) Exports of hazardous waste to foreign countries are not required to be reported on the Biennial Report form. A separate annual report requirement is set forth at 40 CFR 262.56 for hazardous waste exporters.

■ 26. Section 262.43 is revised to read as follows:

**§ 262.43 Additional reporting.**

The Administrator, as deemed necessary under sections 2002(a) and 3002(a)(6) of the Act, may require generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in 40 CFR part 261.

■ 27. Section 262.44 is amended by revising the introductory paragraph and section heading to read as follows:

**§ 262.44 Recordkeeping for small quantity generators.**

A small quantity generator is subject only to the following independent requirements in this subpart:

\* \* \* \* \*

**Subparts I and J [Removed and Reserved]**

- 28. Remove and reserve subparts I and J.

**Subpart K—Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities**

- 29. Section 262.200 is amended by removing the definition of “Central accumulation area” and revising the definition of “Trained professional” to read as follows:

**§ 262.200 Definitions for this subpart.**

\* \* \* \* \*

*Trained professional* means a person who has completed the applicable RCRA training requirements of § 262.17 for large quantity generators, or is knowledgeable about normal operations and emergencies in accordance with § 262.16 for small quantity generators and very small quantity generators. A trained professional may be an employee of the eligible academic entity or may be a contractor or vendor who meets the requisite training requirements.

\* \* \* \* \*

- 30. Section 262.201 is revised to read as follows:

**§ 262.201 Applicability of this subpart.**

(a) *Large quantity generators and small quantity generators.* This subpart provides alternative requirements to the requirements in §§ 262.11 and 262.15 for the hazardous waste determination and accumulation of hazardous waste in laboratories owned by eligible academic entities that choose to be subject to this subpart, provided that they complete the notification requirements of § 262.203.

(b) *Very small quantity generators.* This subpart provides alternative requirements to the conditional exemption in § 262.14 for the accumulation of hazardous waste in laboratories owned by eligible academic entities that choose to be subject to this subpart, provided that they complete the notification requirements of § 262.203.

- 31. Section 262.202 is revised to read as follows:

**§ 262.202 This subpart is optional.**

(a) *Large quantity generators and small quantity generators.* Eligible academic entities have the option of complying with this subpart with respect to its laboratories, as an alternative to complying with the requirements of §§ 262.11 and 262.15.

(b) *Very small quantity generators.* Eligible academic entities have the option of complying with this subpart with respect to laboratories, as an alternative to complying with the conditional exemption of § 262.14.

- 32. Section 262.203 is amended by revising paragraphs (a) and (b)(2) to read as follows:

**§ 262.203 How an eligible academic entity indicates it will be subject to the requirements of this subpart.**

(a) An eligible academic entity must notify the appropriate EPA Regional Administrator in writing, using the RCRA Subtitle C Site Identification Form (EPA Form 8700–12), that it is electing to be subject to the requirements of this subpart for all the laboratories owned by the eligible academic entity under the same EPA Identification Number. An eligible academic entity that is a very small quantity generator and does not have an EPA Identification Number must notify that it is electing to be subject to the requirements of this subpart for all the laboratories owned by the eligible academic entity that are on site, as defined by § 260.10. An eligible academic entity must submit a separate notification (Site Identification Form) for each EPA Identification Number (or site, for very small quantity generators) that is electing to be subject to the requirements of this subpart, and must submit the Site Identification Form before it begins operating under this subpart.

(b) \* \* \*  
(2) Site EPA Identification Number (except for very small quantity generators).

\* \* \* \* \*

- 33. Section 262.204 is amended by revising paragraph (a) to read as follows:

**§ 262.204 How an eligible academic entity indicates it will withdraw from the requirements of this subpart.**

(a) An eligible academic entity must notify the appropriate EPA Regional Administrator in writing, using the RCRA Subtitle C Site Identification Form (EPA Form 8700–12), that it is electing to no longer be subject to the requirements of this subpart for all the laboratories owned by the eligible academic entity under the same EPA Identification Number and that it will

comply with the requirements of §§ 262.11 and 262.15 for small quantity generators and large quantity generators. An eligible academic entity that is a very small quantity generator and does not have an EPA Identification Number must notify that it is withdrawing from the requirements of this subpart for all the laboratories owned by the eligible academic entity that are on site and that it will comply with the conditional exemption in § 262.14. An eligible academic entity must submit a separate notification (Site Identification Form) for each EPA Identification Number (or site, for very small quantity generators) that is withdrawing from the requirements of this subpart and must submit the Site Identification Form before it begins operating under the standards in §§ 262.11 and 262.15 for small quantity generators or § 262.14 for very small quantity generators.

\* \* \* \* \*

**§ 262.206 [Amended]**

- 34. Amend § 262.206 in paragraph (b)(3)(iii) by removing the period at the end of the sentence and inserting “:” in its place.

- 35. Section 262.207 is amended by revising paragraph (d)(2) to read as follows:

**§ 262.207 Training.**

\* \* \* \* \*

(d) \* \* \*  
(2) Make the hazardous waste determination, pursuant to § 262.11(a) through (d), for unwanted material.

- 36. Section 262.208 is amended by revising paragraphs (a)(1) and (2) to read as follows:

**§ 262.208 Removing containers of unwanted material from the laboratory.**

(a) \* \* \*  
(1) Remove all containers of unwanted material from each laboratory on a regular interval, not to exceed 12 months; or

(2) Remove containers of unwanted material from each laboratory within 12 months of each container’s accumulation start date.

\* \* \* \* \*

- 37. Section 262.209 is amended by revising paragraph (b) to read as follows:

**§ 262.209 Where and when to make the hazardous waste determination and where to send containers of unwanted material upon removal from the laboratory.**

\* \* \* \* \*

(b) *Very small quantity generators.* An eligible academic entity must ensure that a trained professional makes a hazardous waste determination,

pursuant to § 262.11(a) through (d), for unwanted material in the laboratory before the unwanted material is removed from the laboratory, in accordance with § 262.210.

■ 38. Section 262.210 is amended by revising paragraphs (a), (b)(3), and (d)(2) to read as follows:

**§ 262.210 Making the hazardous waste determination in the laboratory before the unwanted material is removed from the laboratory.**

\* \* \* \* \*

(a) A trained professional must make the hazardous waste determination, pursuant to § 262.11(a) through (d), before the unwanted material is removed from the laboratory.

(b) \* \* \*

(3) Count the hazardous waste toward the eligible academic entity's generator category, pursuant to § 262.13, in the calendar month that the hazardous waste determination was made.

\* \* \* \* \*

(d) \* \* \*

(2) Very small quantity generators must ensure it is taken directly from the laboratory(ies) to any of the types of facilities listed in § 262.14.

\* \* \* \* \*

■ 39. Section 262.211 is amended by revising paragraphs (c), (d), and (e)(3) to read as follows:

**§ 262.211 Making the hazardous waste determination at an on-site central accumulation area.**

\* \* \* \* \*

(c) The unwanted material becomes subject to the generator accumulation regulations of § 262.16 for small quantity generators or § 262.17 for large quantity generators as soon as it arrives in the central accumulation area, except for the "hazardous waste" labeling conditions of § 262.16(b)(6) and § 262.17(a)(5).

(d) A trained professional must determine, pursuant to § 262.11(a) through (d), if the unwanted material is a hazardous waste within 4 calendar days of the unwanted materials' arrival at the on-site central accumulation area.

(e) \* \* \*

(3) Count the hazardous waste toward the eligible academic entity's generator category, pursuant to § 262.13 in the calendar month that the hazardous waste determination was made, and

\* \* \* \* \*

■ 40. Section 262.212 is amended by revising paragraph (d) to read as follows:

**§ 262.212 Making the hazardous waste determination at an on-site interim status or permitted treatment, storage, or disposal facility.**

\* \* \* \* \*

(d) A trained professional must determine, pursuant to § 262.11(a) through (d), if the unwanted material is a hazardous waste within 4 calendar days of the unwanted materials' arrival at an on-site interim status or permitted treatment, storage, or disposal facility.

\* \* \* \* \*

■ 41. Section 262.213 is amended by revising paragraphs (a)(2) and (3) and (b)(2) to read as follows:

**§ 262.213 Laboratory clean-outs.**

(a) \* \* \*

(2) For the purposes of on-site accumulation, an eligible academic entity is not required to count a hazardous waste that is an unused commercial chemical product (listed in 40 CFR part 261, subpart D or exhibiting one or more characteristics in 40 CFR part 261, subpart C) generated solely during the laboratory clean-out toward its hazardous waste generator category, pursuant to § 262.13. An unwanted material that is generated prior to the beginning of the laboratory clean-out and is still in the laboratory at the time the laboratory clean-out commences must be counted toward hazardous waste generator category, pursuant to § 262.13, if it is determined to be hazardous waste; and

(3) For the purposes of off-site management, an eligible academic entity must count all its hazardous waste, regardless of whether the hazardous waste was counted toward generator category under paragraph (a)(2) of this section, and if it generates more than 1 kg/month of acute hazardous waste or more than 100 kg/month of non-acute hazardous waste (i.e., the very small quantity generator limits as defined in § 260.10), the hazardous waste is subject to all applicable hazardous waste regulations when it is transported off site; and

\* \* \* \* \*

(b) \* \* \*

(2) The requirement to count all hazardous waste, including unused hazardous waste, generated during the laboratory clean-out toward its hazardous waste generator category, pursuant to § 262.13.

■ 42. Section 262.214 is amended by revising paragraph (b)(5) to read as follows:

**§ 262.214 Laboratory management plan.**

\* \* \* \* \*

(b) \* \* \*

(5) Describe its intended best practices for making hazardous waste determinations, including specifying the duties of the individuals involved in the process (see the required standards at § 262.11(a) through (d) and §§ 262.209 through 262.212).

\* \* \* \* \*

■ 43. Section 262.216 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 262.216 Non-laboratory hazardous waste generated at an eligible academic entity.**

\* \* \* \* \*

(a) Remains subject to the generator requirements of §§ 262.11 and 262.15 for large quantity generators and small quantity generators (if the hazardous waste is managed in a satellite accumulation area), and all other applicable generator requirements of 40 CFR part 262, with respect to that hazardous waste; or

(b) Remains subject to the conditional exemption of § 262.14 for very small quantity generators, with respect to that hazardous waste.

■ 44. Subpart L is added to read as follows:

**Subpart L—Alternative Standards for Episodic Generation**

Sec.

- 262.230 Applicability.
- 262.231 Definition of an episodic event.
- 262.232 Conditions for a generator managing hazardous waste from an episodic event.
- 262.233 Petition to manage one additional episodic event per calendar year.
- 262.234 Petition for a 30-day extension to an episodic event.

**Subpart L—Alternative Standards for Episodic Generation**

**§ 262.230 Applicability.**

This subpart is applicable to very small quantity generators and small quantity generators as defined in § 260.10.

**§ 262.231 Definition of an episodic event.**

An episodic event is an activity or activities, either planned or unplanned, that does not normally occur during generator operations, resulting in an increase in the generation of hazardous wastes that exceeds the calendar month quantity limits for the generator's usual category.

**§ 262.232 Conditions for a generator managing hazardous waste from an episodic event.**

(a) *Very small quantity generator.* A very small quantity generator may maintain its existing generator category during an episodic event provided that



the generator complies with the following conditions:

(1) The very small quantity generator is limited to one episodic event per calendar year unless a petition is granted under § 262.233;

(2) The very small quantity generator must notify EPA no later than thirty (30) calendar days prior to initiating a planned episodic event using EPA form 8700–12. In the event of an unplanned episodic event, the generator must notify EPA within 24 hours of the unplanned event or as soon as possible via phone or email and subsequently submit EPA form 8700–12. The generator shall include the start date of the episodic event, the reason(s) for the event, types and estimated quantities of hazardous waste expected to be generated as a result of the episodic event, and shall identify a facility contact and emergency coordinator with 24-hour telephone access to discuss the notification submittal or respond to an emergency;

(3) The very small quantity generator must have an EPA identification number or obtain an EPA identification number using EPA form 8700–12;

(4) *Accumulation.* A very small quantity generator is prohibited from accumulating hazardous waste generated from an episodic event on drip pads and in containment buildings. When accumulating hazardous waste in containers and tanks the following conditions apply:

(i) *Containers.* A very small quantity generator accumulating in containers must mark its containers with the following:

(A) The words “Episodic Hazardous Waste;”

(B) Other words that identify the contents of the containers (examples may include, but are not limited to the name of the chemical(s), such as “acetone” or “methylene dichloride”; or the type or class of chemical, such as “organic solvents” or “halogenated organic solvents” or, as applicable, the proper shipping name and technical name markings used to comply with Department of Transportation requirements at 49 CFR part 172 subpart D);

(C) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.*, ignitable, corrosive, reactive, toxic); a hazard class label consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling); a label consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1920.1200; a chemical hazard label

consistent with the National Fire Protection Association code 704; or a hazard pictogram consistent with the United Nations’ Globally Harmonized System; or any other marking or labeling commonly used nationwide in commerce that identifies the nature of the hazards associated with the contents of the waste accumulation unit); and

(D) The date upon which the episodic event began, clearly visible for inspection on each container.

(ii) *Tanks.* A very small quantity generator accumulating episodic hazardous waste in tanks must do the following:

(A) Mark or label the tank with the words “Episodic Hazardous Waste;”

(B) Use inventory logs, monitoring equipment, or records to identify the contents of the tank and its associated hazards;

(C) Use inventory logs, monitoring equipment or records to identify the date upon which each episodic event begins; and

(D) Keep inventory logs or records with the above information in close proximity to the tank.

(iii) Hazardous waste must be managed in a manner that minimizes the possibility of a fire, explosion, or release of hazardous waste or hazardous waste constituents to the air, soil, or water;

(A) Containers must be in good condition and compatible with the hazardous waste being accumulated therein. Containers must be kept closed except to add or remove waste.

(B) Tanks must be in good condition and compatible with the hazardous waste accumulated therein. Tanks must have procedures in place to prevent the overflow (*e.g.*, be equipped with a means to stop inflow with systems such as a waste feed cutoff system or bypass system to a standby tank when hazardous waste is continuously fed into the tank). Tanks must be inspected at least once each operating day to ensure all applicable discharge control equipment, such as waste feed cutoff systems, bypass systems, and drainage systems are in good working order and to ensure the tank is operated according to its design by reviewing the data gathered from monitoring equipment such as pressure and temperature gauges from the inspection.

(5) The very small quantity generator must comply with the hazardous waste manifest provisions of 40 CFR part 262 subpart B when it sends its episodic event hazardous waste off site to a RCRA-designated facility.

(6) The very small quantity generator has up to forty-five (45) calendar days from the start of the episodic event to

manifest and send its hazardous waste generated from the episodic event to a RCRA-designated facility unless an extension is granted pursuant to § 262.233.

(7) Very small quantity generators must maintain the following records for three (3) years from the end date of the episodic event:

(i) Beginning and end dates of the episodic event;

(ii) A description of the episodic event;

(iii) A description of the types and quantities of hazardous wastes generated during the event;

(iv) A description of how the hazardous waste was managed as well as the name of the RCRA designated facility that received the hazardous waste;

(v) Name(s) of hazardous waste transporters;

(vi) An approval letter from EPA if the generator petitioned to conduct one additional episodic event per calendar year; and

(vii) An approval letter from EPA if the generator petitioned for an additional thirty (30) calendar day extension.

(b) *Small quantity generators.* A small quantity generator may maintain its existing generator category during an episodic event provided that the generator complies with the following conditions:

(1) The small generator is limited to one episodic event per calendar year unless a petition is granted under § 262.233;

(2) The small quantity generator must notify EPA no later than thirty (30) calendar days prior to initiating a planned episodic event using EPA form 8700–12. In the event of an unplanned episodic event, the small quantity generator must notify EPA within 24 hours of the unplanned event or as soon as possible via phone or email and subsequently submit EPA form 8700–12. The small quantity generator shall include the start date of the episodic event and the reason(s) for the event, types and estimated quantities of hazardous wastes expected to be generated as a result of the episodic event, and identify a facility contact and emergency coordinator with 24-hour telephone access to discuss the notification submittal or respond to emergency;

(3) The small quantity generator must have an EPA identification number or obtain an EPA identification number using EPA form 8700–12.

(4) *Accumulation by small quantity generators.* A small quantity generator is prohibited from accumulating

hazardous wastes generated from an episodic event waste on drip pads and in containment buildings. When accumulating hazardous waste generated from an episodic event in containers and tanks, the following conditions apply:

(i) *Containers.* A small quantity generator accumulating episodic hazardous waste in containers that meet the standards at part 265 subpart I of this chapter, except §§ 265.176 and 265.178 of this chapter, must mark its containers with the following:

(A) The words “Episodic Hazardous Waste”;

(B) Other words that identify the contents of the containers (examples may include, but are not limited to the name of the chemical(s), such as “acetone” or “methylene dichloride”; or the type or class of chemical, such as “organic solvents” or halogenated organic solvents” or, as applicable, the proper shipping name and technical name markings used to comply with Department of Transportation requirements at 49 CFR part 172 subpart D);

(C) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.*, ignitable, corrosive, reactive, toxic); a hazard class label consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling); a label consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1920.1200; a chemical hazard label consistent with the National Fire Protection Association code 704; or a hazard pictogram consistent with the United Nations’ Globally Harmonized System; or any other marking or labeling commonly used nationwide in commerce that identifies the nature of the hazards associated with the contents of the waste accumulation unit); and

(D) The date upon which the episodic event began, clearly visible for inspection on each container.

(ii) *Tanks.* A small quantity generator accumulating episodic hazardous waste in tanks that meet the standards at § 265.201 in subpart J must do the following:

(A) Mark or label its tank with the words “Episodic Hazardous Waste;”

(B) Use inventory logs, monitoring equipment, or records to identify the contents of the tank and its associated hazards;

(C) Use inventory logs, monitoring equipment or records to identify the date upon which each period of accumulation begins and ends; and

(D) Keep inventory logs or records with the above information immediately accessible.

(iii) Comply with the applicable conditions listed in § 262.16.

(5) The small quantity generator must treat hazardous waste generated from an episodic event on site or manifest and ship such hazardous waste off site to a RCRA-designated facility within forty-five (45) calendar days from the start of the episodic event, unless an extension is granted pursuant to § 262.233.

(6) The small quantity generator must maintain the following records for three (3) years from the end date of the episodic event:

(i) Beginning and end dates of the episodic event;

(ii) A description of the episodic event;

(iii) A description of the types and quantities of hazardous wastes generated during the event;

(iv) A description of how the hazardous waste was managed as well as the name of the RCRA designated facility that received the hazardous waste;

(v) Name(s) of hazardous waste transporters;

(vi) An approval letter from EPA if the generator petitioned to conduct one additional episodic event per calendar year; and

(vii) An approval letter from EPA if the generator petitioned for an additional thirty (30) calendar day extension.

**§ 262.233 Petition to manage one additional episodic event per calendar year.**

(a) A very small quantity generator or a small quantity generator may petition EPA for one additional episodic event per calendar year without it impacting its generator category. The petition must include the following:

(1) The reason(s) why an additional episodic event is needed and the nature of the episodic event;

(2) The estimated amount of hazardous waste to be managed from the event;

(3) How the hazardous waste is to be managed;

(4) The estimated length of time needed to complete management of the hazardous waste generated from the episodic event—not to exceed 45 days; and

(5) Information regarding the previous episodic event managed by the generator, including the nature of the event and whether it was a planned or unplanned event.

(b) The petition must be made via fax, email, or letter.

(c) The generator cannot manage the hazardous waste generated from an

additional episodic event under subpart L until written approval by EPA, including email, has been received.

(d) The generator must retain written approval in its records for three years from the date the episodic event ended.

**§ 262.234 Petition for a 30-day extension to an episodic event.**

(a) The very small quantity generator or a small quantity generator may petition EPA for a thirty (30) calendar day extension to complete the management of hazardous waste generated by an episodic event. The petition must include the following:

(1) The nature of the episodic event;

(2) The estimated amount of additional hazardous waste to be managed from the episodic event if the extension is granted; and

(3) The generator’s rationale for needing an extension of an additional 30 days beyond the 45-day limit to complete management of the hazardous waste generated from the episodic event.

(b) The generator must petition EPA via fax, email, or letter within fifteen (15) calendar days of the event ending.

(c) The generator cannot go beyond the 45-day limit unless written approval from EPA has been received.

(d) The generator must retain written approval in its records for three years from the date the episodic event ended.

■ 45. Subpart M is added to read as follows:

**Subpart M—Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators**

Sec.

262.250 Applicability.

262.251 Maintenance and operation of facility.

262.252 Required equipment.

262.253 Testing and maintenance of equipment.

262.254 Access to communications or alarm system.

262.255 Required aisle space.

262.256 Arrangements with local authorities.

262.260 Purpose and implementation of contingency plan.

262.261 Content of contingency plan.

262.262 Copies of contingency plan.

262.263 Amendment of contingency plan.

262.264 Emergency coordinator.

262.265 Emergency procedures.

**Subpart M—Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators**

**§ 262.250 Applicability.**

The regulations of this subpart apply to those areas of a large quantity generator where hazardous waste is generated or accumulated on site in

accordance with the conditions in § 262.17.

**§ 262.251 Maintenance and operation of facility.**

A large quantity generator must maintain and operate its site to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

**§ 262.252 Required equipment.**

All areas where hazardous waste is being either generated or accumulated must be equipped with the items in paragraphs (a) through (d) of this section (unless none of the hazards posed by waste handled at the site could require a particular kind of equipment specified below or the actual waste generation or accumulation area does not lend itself for safety reasons to have a particular kind of equipment specified below). A large quantity generator may determine the most appropriate locations within its generator site to locate equipment necessary to prepare for and respond to emergencies:

(a) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to site personnel;

(b) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;

(c) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and

(d) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

**§ 262.253 Testing and maintenance of equipment.**

All communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

**§ 262.254 Access to communications or alarm system.**

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel

involved in the operation must have immediate access (*e.g.*, direct or unimpeded access) to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, *unless* such a device is not required under § 265.252 of this chapter.

(b) In the event there is just one employee on the premises while the site is operating, the employee must have immediate access (*e.g.*, direct or unimpeded access) to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, *unless* such a device is not required under § 265.252 of this chapter.

**§ 262.255 Required aisle space.**

The large quantity generator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of site operation in an emergency, unless aisle space is not needed for any of these purposes.

**§ 262.256 Arrangements with local authorities.**

(a) The large quantity generator must make arrangements with the Local Emergency Planning Committee for the types and quantities of hazardous waste handled at the site, as well as the potential need for the services of the local police department, other emergency response teams, emergency response contractors, equipment suppliers, and local hospitals. Should there be no Local Emergency Planning Committee, should it not respond, or should the Local Emergency Planning Committee determine that it is not the appropriate organization to make arrangements with, then the large quantity generator must make arrangements with the local fire department and other relevant emergency responders (*e.g.*, police and hospitals).

(1) A large quantity generator that must make arrangements with its local fire department must determine the potential need for the services of the local police department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals.

(2) As part of this coordination, the large quantity generator shall make arrangements, as necessary, to familiarize the above organizations with the layout of the site, the properties of the hazardous waste handled at the site and associated hazards, places where personnel would normally be working,

entrances to roads inside the site, and possible evacuation routes as well as the types of injuries or illnesses which could result from fires, explosions, or releases at the site.

(3) Where more than one police or fire department might respond to an emergency, the large quantity generator shall enter into agreements designating primary emergency authority to a specific fire or police department, and agreements with any others to provide support to the primary emergency authority.

(b) The large quantity generator shall maintain records documenting the arrangements with the Local Emergency Planning Committee, or if appropriate, with the local fire department as well as any other organization necessary to respond to an emergency. This documentation must include a certified letter or any other documentation that confirms such arrangements actively exist.

**§ 262.260 Purpose and implementation of contingency plan.**

(a) A large quantity generator must have a contingency plan for the site. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

(b) The provisions of the plan must be carried out immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

**§ 262.261 Content of contingency plan.**

(a) The contingency plan must describe the actions site personnel must take to comply with §§ 262.260 and 262.265 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the site.

(b) If the generator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with part 112 of this chapter, or some other emergency or contingency plan, it need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the standards of this part. The generator may develop one contingency plan that meets all regulatory standards. EPA recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan").

(c) The plan must describe arrangements agreed to with the Local Emergency Planning Committee. Should there be no Local Emergency Planning Committee, should it not respond, or should the Local Emergency Planning Committee determine that it is not the appropriate organization to make arrangements with, then the plan must describe arrangements agreed to by local fire departments and other relevant emergency responders (e.g., police and hospitals) to coordinate emergency services, pursuant to § 262.256.

(d) The plan must list names and emergency telephone numbers of all persons qualified to act as emergency coordinator (see § 262.264), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates. In situations where the generator site has an emergency coordinator continuously on duty because it operates 24 hours per day, every day of the year, the plan may list the staffed position (e.g., operations manager, shift coordinator, shift operations supervisor) as well as an emergency telephone number that can be guaranteed to be answered at all times.

(e) The plan must include a list of all emergency equipment at the site (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(f) The plan must include an evacuation plan for generator personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

#### § 262.262 Copies of contingency plan.

A copy of the contingency plan and all revisions to the plan must be maintained at the large quantity generator's site and—

(a) The large quantity generator must submit a copy of the contingency plan to the Local Emergency Planning Committee. Should there be no Local Emergency Planning Committee, should it not respond, or should the Local Emergency Planning Committee

determine that it is not the appropriate organization to make arrangements with, the large quantity generator must submit the copy to the local emergency responders.

(b) A generator that first becomes subject to these provisions after [date 6 months after the date of publication of the final rule in the **Federal Register**] must submit an executive summary of the contingency plan to the Local Emergency Planning Committee. Should there be no Local Emergency Planning Committee, should it not respond, or should the Local Emergency Planning Committee determine that it is not the appropriate organization to make arrangements with, the generator must submit the copy to the local emergency responders. The executive summary must include the following elements:

(1) The types/names of hazardous wastes in layman's terms and the associated hazard associated with each waste present at any one time (e.g., toxic paint wastes, spent ignitable solvent, corrosive acid);

(2) The estimated maximum amount of each hazardous waste that may be present at any one time;

(3) The identification of any hazardous wastes where exposure would require unique or special treatment by medical or hospital staff;

(4) A map of the site showing where hazardous wastes are generated and accumulated and routes for accessing these wastes;

(5) A street map of the site in relation to surrounding businesses, schools and residential areas to understand how best to get to the facility and also evacuate citizens and workers;

(6) The locations of water supply (e.g., fire hydrant and its flow rate);

(7) The identification of on-site notification systems (e.g., a fire alarm that rings off site, smoke alarms); and

(8) The name of the emergency coordinator and 7/24-hour emergency telephone number.

#### § 262.263 Amendment of contingency plan.

The contingency plan must be reviewed, and immediately amended, if necessary, whenever:

(a) Applicable regulations are revised;

(b) The plan fails in an emergency;

(c) The generator site changes—in its design, construction, operation, maintenance, or other circumstances—in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency;

(d) The list of emergency coordinators changes; or

(e) The list of emergency equipment changes.

#### § 262.264 Emergency coordinator.

At all times, there must be at least one employee either on the generator's premises or on call (i.e., available to respond to an emergency by reaching the site within a short period of time) with the responsibility for coordinating all emergency response measures and implementing the necessary emergency procedures outlined in § 262.265. This emergency coordinator must be thoroughly familiar with all aspects of the generator's contingency plan, all operations and activities at the site, the location and characteristics of waste handled, the location of all records within the site, and the site's layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

#### § 262.265 Emergency procedures.

(a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) must immediately:

(1) Activate internal site alarms or communication systems, where applicable, to notify all site personnel; and

(2) Notify appropriate state or local agencies with designated response roles if their help is needed.

(b) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and areal extent of any released materials. The emergency coordinator may do this by observation or review of the site records or manifests and, if necessary, by chemical analysis.

(c) Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions).

(d) If the emergency coordinator determines that the site has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, the emergency coordinator must report the findings as follows:

(1) If the assessment indicates that evacuation of local areas may be

advisable, the emergency coordinator must immediately notify appropriate local authorities. The emergency coordinator must be available to help appropriate officials decide whether local areas should be evacuated; and

(2) The emergency coordinator must immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll free number 800/424-8802). The report must include:

(i) Name and telephone number of reporter;

(ii) Name and address of the generator;

(iii) Time and type of incident (e.g., release, fire);

(iv) Name and quantity of material(s) involved, to the extent known;

(v) The extent of injuries, if any; and

(vi) The possible hazards to human health, or the environment, outside the site.

(e) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the generator's site. These measures must include, where applicable, stopping processes and operations, collecting and containing released waste, and removing or isolating containers.

(f) If the generator's site stops operations in response to a fire, explosion or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(g) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility. Unless the generator can demonstrate, in accordance with § 261.3(c) or (d) of this chapter, that the recovered material is not a hazardous waste, then it is a newly generated hazardous waste that must be managed in accordance with all the applicable independent requirements and conditions for exemption in parts 262, 263, and 265 of this chapter.

(h) The emergency coordinator must ensure that, in the affected area(s) of the site:

(1) No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

(2) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(i) The generator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, the generator must submit a written report on the incident to the Regional Administrator. The report must include:

(1) Name, address, and telephone number of the generator;

(2) Date, time, and type of incident (e.g., fire, explosion);

(3) Name and quantity of material(s) involved;

(4) The extent of injuries, if any;

(5) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(6) Estimated quantity and disposition of recovered material that resulted from the incident.

#### **PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE**

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

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

■ 47. Section 263.12 is revised to read as follows:

##### **§ 263.12 Transfer facility requirements.**

(a) A transporter who stores manifested shipments of hazardous waste in containers meeting the independent requirements of § 262.30 of this chapter at a transfer facility for a period of ten days or less is not subject to regulation under parts 264, 265, 267, 268, and 270 of this chapter with respect to the storage of those wastes.

(b) The transporter must hold hazardous wastes that are stored at transfer facilities in containers marked with the following information:

(1) The words “Hazardous Waste;”

(2) The applicable EPA hazardous waste number(s) (EPA hazardous waste codes) in subparts C and D of part 261 of this chapter;

(3) Other words that identify the contents of the containers (examples may include, but are not limited to the name of the chemical(s), such as “acetone” or “methylene dichloride”; or the type or class of chemical, such as “organic solvents” or “halogenated organic solvents” or, as applicable, the proper shipping name and technical name markings used to comply with Department of Transportation requirements at 49 CFR part 172 subpart D); and

(4) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); a hazard class label consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling); a label consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1920.1200; a chemical hazard label consistent with the National Fire Protection Association code 704; a hazard pictogram consistent with the United Nations' Globally Harmonized System; or any other marking and labeling commonly used nationwide in commerce that identifies the nature of the hazards associated with the contents of the waste accumulation unit).

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

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

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

■ 49. Section 264.1 is amended by revising paragraphs (g)(1) and (3) to read as follows:

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

\* \* \* \* \*

(g) \* \* \*

(1) The owner or operator of a facility permitted, licensed, or registered by a state to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under this part by § 262.14 of this chapter;

\* \* \* \* \*

(3) A generator accumulating waste on site in compliance with § 262.14, 262.15, 262.16, or 262.17 of this chapter.

\* \* \* \* \*

■ 50. Section 264.15 is amended by revising paragraph (b)(4) and removing the comment to paragraph (b)(4) and paragraph (b)(5).

The revision reads as follows:

##### **§ 264.15 General inspection requirements.**

\* \* \* \* \*

(b) \* \* \*

(4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or operator error goes undetected between inspections. Areas

subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 264.174, 264.193, 264.195, 264.226, 264.254, 264.278, 264.303, 264.347, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, and 264.1083 through 264.1089, where applicable. Part 270 of this chapter requires the inspection schedule to be submitted with part B of the permit application. EPA will evaluate the schedule along with the rest of the application to ensure that it adequately protects human health and the environment. As part of this review, EPA may modify or amend the schedule as may be necessary.

\* \* \* \* \*

■ 51. Section 264.71 is amended by revising paragraph (c) and removing the comment following paragraph (c).

The revision reads as follows:

§ 264.71 Use of manifest system.

\* \* \* \* \*

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of part 262 of this chapter. The provisions of §§ 262.15, 262.16, and 262.17 of this chapter are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of §§ 262.15, 262.16, and 262.17 of this chapter only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

\* \* \* \* \*

■ 52. Section 264.75 is revised to read as follows:

§ 264.75 Biennial report.

The owner or operator must complete and submit EPA form 8700-13 to the Regional Administrator by March 1 of each even numbered year for facility activities during the previous calendar year.

■ 53. Section 264.170 is revised to read as follows:

§ 264.170 Applicability.

The regulations in this subpart apply to owners and operators of all hazardous waste facilities that store hazardous waste in containers, except as § 264.1 provides otherwise.

■ 54. Section 264.174 is revised to read as follows:

§ 264.174 Inspections.

At least weekly, the owner or operator must inspect areas where containers are stored. The owner or operator must look for leaking containers and for

deterioration of containers and the containment system cause by corrosion or other factors. See §§ 264.15(c) and 264.171 for remedial action required if deterioration or leaks are detected.

■ 55. Section 264.191 is amended by revising paragraph (a) to read as follows:

§ 264.191 Assessment of existing tank system's integrity.

(a) For each existing tank system that does not have secondary containment meeting the requirements of § 264.193, the owner or operator must determine that the tank system is not leaking or is fit for use. Except as provided in paragraph (c) of this section, the owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by a qualified Professional Engineer, in accordance with § 270.11(d) of this chapter, that attests to the tank system's integrity by January 12, 1988.

\* \* \* \* \*

§ 264.195 [Amended]

■ 56. Section 264.195 is amended by removing and reserving paragraph (e).

■ 57. Section 264.1030 is amended by revising paragraph (b)(2) to read as follows:

§ 264.1030 Applicability.

\* \* \* \* \*

(b) \* \* \*

(2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of 40 CFR 262.17 (i.e., a hazardous waste recycling unit that is not a 90-day tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of 40 CFR part 270; or

\* \* \* \* \*

■ 58. Section 264.1050 is amended by revising paragraph (b)(3) to read as follows:

§ 264.1050 Applicability.

\* \* \* \* \*

(b) \* \* \*

(3) A unit that is exempt from permitting under the provisions of 40 CFR 262.17 (i.e., a "90-day" tank or container) and is not a recycling unit under the provisions of 40 CFR 261.6.

\* \* \* \* \*

■ 59. Section 264.1101 is amended by revising paragraph (c)(4) to read as follows:

§ 264.1101 Design and operating standards.

\* \* \* \* \*

(c) \* \* \*

(4) Inspect and record in the facility operating record, at least once every

seven days, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

\* \* \* \* \*

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

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

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

■ 61. Section 265.1 is amended by revising paragraphs (c)(5) and (7) to read as follows:

§ 265.1 Purpose, scope, and applicability.

\* \* \* \* \*

(c) \* \* \*

(5) The owner or operator of a facility permitted, licensed, or registered by a State to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under this part by § 262.14 of this chapter;

\* \* \* \* \*

(7) A generator accumulating waste on

site in compliance with §§ 262.15, 262.16, and 262.17 of this chapter, except to the extent the provisions are included in § 262.15, 262.16, or 262.17 of this chapter;

\* \* \* \* \*

■ 62. Section 265.15 is amended by revising paragraph (b)(4) and removing paragraph (b)(5).

The revision reads as follows:

§ 265.15 General inspection requirements.

\* \* \* \* \*

(b) \* \* \*

(4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 265.174, 265.193, 265.195, 265.226, 265.260, 265.278, 265.304, 265.347, 265.377, 265.403, 265.1033, 265.1052,

265.1053, 265.1058, and 265.1084 through 265.1090, where applicable.

\* \* \* \* \*

■ 63. Section 265.71 is amended by revising paragraph (c) to read as follows:

**§ 265.71 Use of manifest system.**

\* \* \* \* \*

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of part 262 of this chapter. The provisions of §§ 262.15, 262.16, and 262.17 of this chapter are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of §§ 262.15, 262.16, and 262.17 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

\* \* \* \* \*

■ 64. Section 265.75 is revised to read as follows:

**§ 265.75 Biennial report.**

The owner or operator must complete and submit EPA form 8700–13 to the Regional Administrator by March 1 of each even numbered year for facility activities during the previous calendar year.

■ 65. Section 265.111 is amended by revising paragraph (c) to read as follows:

**§ 265.111 Closure performance standard.**

\* \* \* \* \*

(c) Complies with the closure requirements of this subpart, including, but not limited to, the requirements of §§ 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, 265.404, 265.445, and 265.1102.

■ 66. Section 265.114 is revised to read as follows:

**§ 265.114 Disposal or decontamination of equipment, structures and soils.**

During the partial and final closure periods, all contaminated equipment, structures and soil must be properly disposed of, or decontaminated unless specified otherwise in § 265.197, 265.228, 265.445, 265.258, 265.280, 265.310, or 265.1102. By removing all hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that hazardous waste in accordance with all applicable requirements of part 262 of this chapter.

■ 67. Section 265.174 is revised to read as follows:

**§ 265.174 Inspections.**

At least weekly, the owner or operator must inspect areas where containers are stored. The owner or operator must look

for leaking containers and for deterioration of containers caused by corrosion or other factors. See § 265.171 for remedial action required if deterioration or leaks are detected.

**§ 265.195 [Amended]**

■ 68. Section 265.195 is amended by removing and reserving paragraph (d).

**§ 265.201 [Removed and reserved]**

■ 69. Remove and reserve § 265.201.

■ 70. Section 265.1030 is amended by revising paragraphs (b)(2) and (3) and removing the Note to (b)(3).

The revisions read as follows:

**§ 265.1030 Applicability.**

\* \* \* \* \*

(b) \* \* \*

(2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of 40 CFR 262.17 (*i.e.*, a hazardous waste recycling unit that is not a 90-day tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of 40 CFR part 270, or

(3) A unit that is exempt from permitting under the provisions of 40 CFR 262.17 (*i.e.*, a “90-day” tank or container) and is not a recycling unit under the requirements of 40 CFR 261.6.

\* \* \* \* \*

■ 71. Section 265.1101 is amended by revising paragraph (c)(4) to read as follows:

**§ 265.1101 Design and operating standards.**

\* \* \* \* \*

(c) \* \* \*

(4) Inspect and record in the facility’s operating record at least once every seven days data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

\* \* \* \* \*

**PART 268—LAND DISPOSAL RESTRICTIONS**

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

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

■ 73. Section 268.1 is amended by revising paragraph (e)(1) to read as follows:

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

\* \* \* \* \*

(e) \* \* \*

(1) Waste generated by very small quantity generators, as defined in § 260.10 of this chapter;

\* \* \* \* \*

■ 74. Section 268.7 is amended by revising paragraph (a)(5) introductory paragraph to read as follows:

**§ 268.7 Testing, tracking, and recordkeeping requirements for generators, treaters, and disposal facilities.**

(a) \* \* \*

(5) If a generator is managing and treating prohibited waste or contaminated soil in tanks, containers, or containment buildings regulated under 40 CFR 262.15, 262.16, and 262.17 to meet applicable LDR treatment standards found at § 268.40, the generator must develop and follow a written waste analysis plan which describes the procedures they will carry out to comply with the treatment standards. (Generators treating hazardous debris under the alternative treatment standards of Table 1 to § 268.45, however, are not subject to these waste analysis requirements.) The plan must be kept on site in the generator’s records, and the following requirements must be met:

\* \* \* \* \*

■ 75. Section 268.50 is amended by revising paragraph (a)(2)(i) to read as follows:

**§ 268.50 Prohibitions on storage of restricted waste.**

(a) \* \* \*

(2) \* \* \*

(i) Each container is clearly marked with:

(A) The words “Hazardous Waste;”

(B) The applicable EPA hazardous waste number(s) (EPA hazardous waste codes) in subparts C and D of part 261 of this chapter;

(C) Other words that identify the contents of the containers (examples may include, but are not limited to the name of the chemical(s), such as “acetone” or “methylene dichloride”; or the type or class of chemical, such as “organic solvents” or “halogenated organic solvents” or, as applicable, the proper shipping name and technical name markings used to comply with Department of Transportation requirements at 49 CFR part 172 subpart D); and

(D) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.*, ignitable, corrosive, reactive, toxic); a hazard class label consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling); a label consistent with the Occupational Safety

and Health Administration Hazard Communication Standard at 29 CFR 1920.1200; a chemical hazard label consistent with the National Fire Protection Association code 704; a hazard pictogram consistent with the United Nations' Globally Harmonized System; or any other marking and labeling commonly used nationwide in commerce that identifies the nature of the hazards associated with the contents of the waste accumulation unit); and

(E) The date each period of accumulation begins.

\* \* \* \* \*

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

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

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

■ 77. Section 270.1 is amended by revising paragraphs (a)(3), (c)(2) introductory text, (c)(2)(i), and (c)(2)(iii) to read as follows:

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

(a) \* \* \*

(3) *Technical regulations.* The RCRA permit program has separate additional regulations that contain technical requirements. These separate regulations are used by permit issuing authorities to determine what requirements must be placed in permits if they are issued. These separate regulations are located in 40 CFR parts 264, 266, 267, and 268.

\* \* \* \* \*

(c) \* \* \*

(2) *Specific exclusions and exemptions.* The following persons are among those who are not required to obtain a RCRA permit:

(i) Generators who accumulate hazardous waste on site in compliance with all of the conditions for exemption provided in 40 CFR 262.14, 262.15, 262.16, and 262.17.

\* \* \* \* \*

(iii) Persons who own or operate facilities solely for the treatment, storage, or disposal of hazardous waste excluded from regulations under this part by 40 CFR 261.4.

\* \* \* \* \*

**§ 270.42 [Amended]**

■ 78. Section 270.42 is amended by removing and reserving paragraph (l) and the entries under O.1. in the table of appendix I to § 270.42.

**PART 273—STANDARDS FOR UNIVERSAL WASTE MANAGEMENT**

■ 79. The authority citation for part 273 continues to read as follows:

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

■ 80. Section 273.8 is amended by revising the section heading and paragraph (a)(2) to read as follows:

**§ 273.8 Applicability—household and very small quantity generator waste.**

(a) \* \* \*

(2) Very small quantity generator wastes that are exempt under § 262.14 of this chapter and are also of the same type as the universal wastes defined at § 273.9.

\* \* \* \* \*

■ 81. Section 273.81 is amended by revising paragraph (b) to read as follows:

**§ 273.81 Factors for petitions to include other wastes under 40 CFR part 273.**

\* \* \* \* \*

(b) The waste or category of waste is not exclusive to a specific industry or group of industries, is commonly generated by a wide variety of types of establishments (including, for example, households, retail and commercial businesses, office complexes, very small quantity generators, small businesses, government organizations, as well as large industrial facilities);

\* \* \* \* \*

**PART 279—STANDARDS FOR MANAGEMENT OF USED OIL**

■ 82. The authority citation for part 279 continues to read as follows:

**Authority:** Sections 1006, 2002(a), 3001 through 3007, 3010, 3014, and 7004 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, and 6974) ; and sections 101(37) and 144(c) of CERCLA (42 U.S.C. 9601(37) and 9614(c)).

■ 83. Section 279.10 is amended by revising paragraph (b)(3) to read as follows:

**§ 279.10 Applicability.**

\* \* \* \* \*

(b) \* \* \*

(3) *Very small quantity generator hazardous waste.* Mixtures of used oil and very small quantity generator hazardous waste regulated under § 262.14 of this chapter are subject to regulation as used oil under this part.

\* \* \* \* \*

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