institutional direct funding contributions is strongly encouraged.

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals.

7. *Institution's Track Record/Ability:* The Agency will consider the past performance of prior grantees and the demonstrated potential new applicants.

8. *Follow-on Activities:* Preference will be given to projects that are part of a long-range program of exchanges with the partner country.

9. *Evaluation Plan:* Proposals should provide a plan for evaluation by the grantee institution of the participants' academic performance and adaptation to the host environment, as well as the success of the project in meeting the stated objectives.

10. *Selection Process:* Proposals should provide detailed criteria and procedures for selection of student participants and host families.

11. *Organizational Standing:* An organization submitting a proposal should be in good standing with USIA and the Council on Standards for International Educational Travel.

12. *Geographic Diversity:* The Agency will seek to achieve maximum geographic diversity in selection and placement of students through its award of grants.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about June 15, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: February 5, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93-3181 Filed 2-10-93; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: February 4, 1993.

By direction of the Secretary:

B. Michael Berger,

Director, Records Management Service.

Revision

1. Veteran's Application for Compensation or Pension, VA Form 21-526
2. The form is used to gather the information needed to determine eligibility for disability benefits.
3. Individuals or households
4. 372,426 hours
5. 90 minutes
6. On occasion
7. 248,284 respondents

[FR Doc. 93-3310 Filed 2-10-93; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 27
Thursday, February 11, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL HOUSING FINANCE BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 4202, January 13, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m., Friday, January 22, 1993.

CHANGES IN THE MEETING: The following topic was added to the agenda during the closed meeting.

- FHLBank System Appointive Directors Confirmation

The above matter is exempt under one or more of sections 552b(c) (6) and (9)(B) of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary of the Board, (202) 408–2837.

Philip L. Conover,

Managing Director.

[FR Doc. 93–3360 Filed 2–9–93; 10:25 am]

BILLING CODE 6725–01–M

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

Trustees Meeting

United States Capitol Building, Room EF–100—March 2, 1993, 5:00–6:30 p.m.

1. Call to order and welcome, Chairman Staats
2. Approval of minutes of June 1, 1992 Trustees Meeting
3. Report on activities of the Foundation
   Overview: Chairman Staats
   Status of 1993 Truman Competition: Mr. Blair
   1993 Summer Institute: Dr. Wholey
   1993 Truman Scholars Leadership Week: Ms. Castañeda
4. Selection of Vice-Chairman
5. Recognition of Trustee Emeritus E. Tom Coleman
6. Introduction of new Trustees of the Foundation
7. Introduction of Former Truman Scholars and other guests
8. Old business
9. New business
10. Establishing date for next meeting
11. Adjournment

Elmer B. Staats,

Chairman.

[FR Doc. 93–3395 Filed 2–9–93; 12:54 pm]

BILLING CODE 9500–01–M

Corrections

Federal Register
Vol. 58, No. 27
Thursday, February 11, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8465]

RIN 1545–AN83

Deduction of Amounts Owed to Related Foreign Persons

Correction

In rule document 92–31618 beginning on page 235 in the issue of Tuesday, January 5, 1993, make the following correction:

§ 1.163–12 [Corrected]

On page 237, in the 1st column, in § 1.163–12(b)(1), in the 14th line, "includible" was misspelled.

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8458]

RIN 1545–AJ35

Real Estate Mortgage Investment Conduits

Correction

In rule document 92–30944 beginning on page 61293 in the issue of Thursday, December 24, 1992, make the following corrections:

§ 1.860A–1 [Corrected]

1. On page 61301, in the first column, in § 1.860A–1(b)(2)(ii), in the sixth line, insert a comma following "However".

2. On the same page, in the same column, in § 1.860A–1(b)(2)(iii), in the ninth line, "§ 1.860E–(a)(1)" should read "§ 1.860E–1(a)(1)".

§ 1.860E–1 [Corrected]

3. On page 61303, in the first column, in § 1.860E–1(a)(1), in the fifth line, "income—$90" should read "income – $90".

§ 1.860F–2 [Corrected]

4. On page 61306, in the first column, in § 1.860F–2(c), the second and third lines should read "860G(a)(10) and § 1.860G–1(d)) of all regular and residual interests in the REMIC".

§ 1.860F–4 [Corrected]

5. On page 61306, in the first column, in § 1.860–4(f), in the first line, "*person*" should read "*persons*"; in the third line, "§ 1.6041–(b)(2)" should read "§ 1.6041–1(b)(2).

§ 1.860G–1 [Corrected]

6. On page 61308, in the 1st column, in § 1.860G–1(b)(2), in the 14th line, "REMIC'S" should read "REMIC's".

7. On the same page, in the second column, in § 1.860G–1(b)(5), in the second line, "*Principal* " was misspelled.

§ 1.860G–2 [Corrected]

8. On page 61309, in the 2d column, in § 1.860G–2(a)(5), in the 22d line, "25(e)(10) without" should read "25(e)(10) (without".

9. On the same page, in the 3d column, in § 1.860G–2(a)(6), in the 10th line, "860G(a)(2) is" should read "860G(a)(2)) is".

10. On the same page, in the same column, in § 1.860G–2(a)(9), in the sixth line, "1286(e)(1) from" should read "1286(e)(1)) from".

11. On page 61310, in the 3d column, in § 1.806G–2(d)(1), in the 10th line, "relates" was misspelled.

12. On page 61311, in the third column, in § 1.806G–2(g)(1)(ii)(A), in the last line, "action;" should read "section;".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–42–92]

RIN 1545–AQ77

Certain Cash or Deferred Arrangements Under Employee Plans

Correction

In proposed rule document 92–31188 beginning on page 43 in the issue of Monday, January 4, 1993, make the following corrections:

§ 1.401(k)–1 [Corrected]

1. On page 44, in the second column, § 1.401(k)–1(g)(11)(iii)(A) is correctly designated.

2. On the same page, in the same column, in the same section, in the 15th line, insert "collective" between "single" and "bargaining".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–189–84]

RIN 1545–AH46

Debt Instruments With Original Issue Discount; Imputed Interest on Deferred Payment Sales or Exchanges of Property

Correction

In proposed rule document 92–30431 beginning on page 60750 in the issue of Tuesday, December 22, 1992, make the following correction:

§ 1.1275–5 [Corrected]

On page 60775, in the second column, in § 1.1275–5(c)(1), in the sixth line, "section 109(d)(1)" should read "section 1092(d)(1)."

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 52

[PS–89–91]

RIN 1545–AQ23

Exports of Chemicals That Deplete the Ozone Layer; Special Rules for Certain Medical Uses of Chemicals That Deplete the Ozone Layer

Correction

In proposed rule document 93–814, beginning on page 4625 in the issue of Friday, January 15, 1993, make the following correction:

On page 4625, in the third column, in the fifth full paragraph, in the fifth line, "52.4682–2(f)(3)" should read "52.4682–5(f)(3)".

BILLING CODE 1505–01–D

federal register

Thursday
February 11, 1993

Part II

Environmental Protection Agency

40 CFR Parts 260 et al.
Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

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

[FRL-3982-3]

RIN 2050-AD19

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

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

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

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

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

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

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline toll free at (800) 424-9346. In the Washington, DC metropolitan area, call (703) 412-9810. For information regarding specific aspects of this notice, contact Charlotte Mooney, Office of Solid Waste (OS-332), U.S. EPA, 401 M Street SW., Washington, DC 20460, telephone (202) 260-6926.

SUPPLEMENTARY INFORMATION:

Outline of Today's Notice

I. Background
- A. Changing Awareness of Product Life Cycles
- B. RCRA Subtitle C Hazardous Waste Program
- C. RCRA Implementation Study
- D. Hazardous Waste Recycling Forum Meetings
- E. Overview of Special Collection System
- F. Special Collection System Program Goals
- 1. Encouraging Resource Conservation
- 2. Improving Implementation of the Hazardous Waste Program
- 3. Separation From the Municipal Waste Stream

II. Detailed Discussion of Proposed Special Collection System Regulations
- A. Overview of Proposed Regulations
- B. Scope
- 1. Recycling versus Recycling or Disposal—Option 1: Recycling Only; Option 2: Recycling or Disposal; Option 3: Hybrid of Options 1 and 2
- 2. Types of Wastes Subject to Special Collection System Regulations
- 3. Conditionally Exempt Small Quantity Generator Waste
- 4. Excluded Household Hazardous Waste
- C. Proposed Waste Management Requirements
- 1. Applicability of Part 273 Regulations
- a. Subpart B—Batteries that are Hazardous Wastes
- b. Subpart C—Suspended and/or Canceled Pesticides that are Recalled
- 2. Generator Requirements
- a. Waste Generation
- b. Condition of Wastes
- c. Storage
- d. Notification
- e. Prohibitions
- f. Waste Management
- g. Exports
- h. Other Generator Requirements Under Consideration
- 3. Transporter Requirements
- 4. Consolidation Point Requirements
- a. Specific Requirements for Consolidation Points
- b. Other Consolidation Point Requirements Under Consideration
- 5. Destination Facility Requirements
- 6. Exports
- 7. Land Disposal Restrictions
- 8. Release Response
- 9. Related Regulatory Changes

III. State Authority
- A. Applicability of Rules in Authorized States
- B. Effect on State Authorization

IV. Executive Order No. 12291—Regulatory Impacts

V. Paperwork Reduction Act

VI. Regulatory Flexibility Act

I. Background

A. Changing Awareness of Product Life Cycles

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

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

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

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

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

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

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

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

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

For those consumer products that are legally classified as "hazardous wastes" for the part of their life cycle when they are wastes, there is a federal law governing their management as hazardous wastes. This law, the Resource Conservation and Recovery Act (RCRA), regulates hazardous wastes when they are managed by the original producers of the waste ("generators,") and by those parties handling the wastes throughout the wastestream phase of the product's life cycle. The federal hazardous waste program that is authorized by RCRA's Subtitle C explicitly places the responsibility for initial management of hazardous wastes on the generator of those wastes, and places the responsibility for later management on those parties handling the waste at the later stages.

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

B. RCRA Subtitle C Hazardous Waste Program

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

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

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

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

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

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

[2] For example, the requirements for accumulating hazardous waste in tanks, and the requirement to file a biennial report.

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

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

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

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

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

Thus, to the extent that the approach suggested in today's proposal would support achieving the policy goals stated in RCRA, there is a sound basis for advancing the concept of special collection systems.

C. RCRA Implementation Study

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

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

D. Hazardous Waste Recycling Forum Meetings

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

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

E. Overview of Special Collection System

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

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

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

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

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

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

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

F. Special Collection System Program Goals

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

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

EPA is today proposing a set of special requirements for universal hazardous wastes, which are designed to accomplish three general goals. The first goal is to encourage resource conservation, while ensuring adequate protection of human health and the environment. The second broad goal is to improve implementation of the current subtitle C hazardous waste regulatory program. Third, by simplifying the requirements and encouraging collection of these hazardous wastes, EPA hopes to provide incentives for individuals and organizations to collect the unregulated portions of these universal waste streams (e.g., from households) and manage them using the same systems developed for the regulated portion, thereby removing these wastes from the municipal waste stream and minimizing their input of hazardous constituents to municipal landfills, combustors, and composting projects. Each of these goals is discussed below.

1. Encouraging Resource Conservation

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

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

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

2. Improving Implementation of the Hazardous Waste Program

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

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

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

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

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

3. Separation From the Municipal Waste Stream

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

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

II. Detailed Discussion of Proposed Special Collection System Regulations

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

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

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

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

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

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

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

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

A. Overview of Proposed Regulations

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

EPA notes that parties claiming that they meet the terms of the special collection system conditional exemption bear the burden of proving that they are eligible for that exemption. See 40 CFR 261.2(f). Since the requirements currently in effect for many of these special collection system wastes are more strict than the requirements proposed today, parties claiming the benefits of an exception to the current regulatory scheme have the burden of proof to show that they meet the terms of the exception. Since parties claiming the exception have the knowledge of the facts supporting their claims, it is appropriate for them to bear the burden of proof of showing that they meet the terms of the exception. For example, the proposal would require a generator to send his or her waste to one of several specified kinds of facilities. The proposal does not include provisions requiring generators to use a manifest, which normally would accompany a hazardous waste shipment. Instead, the generator could simply keep a record of where the shipment was sent. For further discussion of this point, see 50 FR 642, January 4, 1985.

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

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

Destination facilities (generally, the permitted or interim status hazardous waste facility receiving the consolidated shipment) are required to comply with the full subtitle C regulations applicable to their operations.

B. Scope

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

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

(1) Whether to limit the part 273 regulations' coverage, based on potential resource recovery or energy recovery from the hazardous waste (i.e., will it be recycled or merely disposed);

(2) Which hazardous wastes to include in the part 273 regulations, and the criteria EPA will use to select them; and

(3) Whether to include hazardous wastes generated by conditionally exempt small quantity generators (CESQGs) in the proposed part 273 special collection system rules.

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

1. Recycling Versus Recycling or Disposal

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

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

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

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

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

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

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

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

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

There are two advantages to this approach. First, universal hazardous wastes that will be disposed rather than recycled[5] are likely to be directed away from subtitle D facilities (where they currently may be managed) toward subtitle C facilities that provide more environmentally protective controls.

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

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

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

EPA is proposing option two (recycling and disposal) in today's notice, for several reasons.[6] First, the

[5] For example, in cases where recycling technologies have not been developed, or recycling is not economically feasible.

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

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

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

2. Types of Wastes Subject to Special Collection System Regulations

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

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

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

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

Used antifreeze is generated when radiator coolant is drained and flushed from automobiles and other vehicles. The Agency has limited data, available in the docket for this notice, indicating that some used antifreeze may exhibit the characteristic of toxicity due to the presence of lead, tetrachloroethylene, and/or benzene. The Agency believes that used antifreeze is generally managed by disposal in municipal sewer systems, although private and municipal programs have begun recycling used antifreeze. This material then may be a good candidate for regulation under part 273. In developing special collection system regulations for used antifreeze, EPA could develop technical standards tailored for antifreeze-water mixtures, such as tank and container storage requirements, and possibly tracking and recordkeeping requirements. The Agency requests comment on whether used automobile antifreeze fits the criteria for regulation under part 273 that are proposed in today's notice (discussed below), and on specific management requirements that would be appropriate.

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

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

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

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

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

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

[9] Characterization of Products Containing Mercury in Municipal Solid Waste in the United States, 1970 to 2000; U.S. EPA; OSW # EPA530–R–92–013; NTIS # PB92–162569; April 1992.

[10] Ibid.

[11] Ibid.

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

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

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

Persons could be limited to sending thermostats to other participants within the special collection system (consolidation points and destination facilities). Storage could be limited to one year, or to some other time period if more appropriate to allow collection of sufficient quantities of thermostats for proper management. Management requirements could include management in containers, a prohibition on removing the mercury containing vial from the thermostats, a prohibition on breaking the vials, and requirements for response to releases. As with batteries, requirements for the destination facility (treatment, recycling, or disposal facility) would remain the same as under the current subtitle C system.

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

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

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

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

1. Whether the waste, as generated by a wide variety of generators, is hazardous under the subtitle C regulations;
2. The presence and amount of the waste in commercial, agricultural, or community activity waste streams;
3. Whether the waste is generated by a large number of sources;
4. Characteristics of generation sites;
5. Potential risk posed by the presence of the waste in the municipal solid waste stream; and
6. Other relevant information.

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

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

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

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

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

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

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

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

Fifth, and closely related to the amount of the waste present in the municipal waste stream, is the risk posed by that waste's presence in the municipal waste stream. RCRA's primary objective, stated in section 1003, is protection of human health and the environment. When the risks posed by a hazardous waste are relatively high, even if the waste is generated in relatively small quantities, the total risk posed by the waste may be of special concern. Therefore, universal hazardous wastes that pose significant risks to human health and the environment, particularly in the municipal landfill and/or municipal combustor settings, will be considered for regulation under part 273. The Agency is particularly concerned about universal hazardous wastes that may pose significant risk potential; EPA is interested in focusing its resources on ensuring proper management of wastes that pose significant risks.

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

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

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

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

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

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

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

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

removal from the municipal waste stream.

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

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

Sixth, EPA may consider other factors that are appropriate.

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

Petitioners need not provide evidence on all of the factors and criteria discussed above. Rather, depending on the characteristics of the particular waste described in the petition, EPA would evaluate the candidate waste for each criterion as appropriate given the type and quality of the data submitted. However, EPA will consider the weight of evidence for all applicable criteria regarding whether the regulations are appropriate for the universal hazardous waste and whether the special collection system regulations will accomplish the desired results EPA has identified for the proposed part 273 regulations.

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

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

3. Conditionally Exempt Small Quantity Generator Waste

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

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

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

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

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

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

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

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

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

4. Excluded Household Hazardous Waste

Hazardous wastes generated by households are currently excluded from the definition of hazardous waste (40 CFR 261.4(b)(1)). Therefore, universal hazardous wastes generated by individual citizens at their households are not subject to the proposed part 273 regulations, provided an establishment managing the household-generated universal hazardous wastes collects and stores them separately from other regulated hazardous wastes. However, EPA believes that by proposing today's simplified special collection system regulations, a person or establishment collecting universal hazardous wastes generated by households may be encouraged to manage all of these wastes in accordance with the proposed part 273 regulations (and thus avoid the need to manage household wastes separately from other regulated universal wastes in order to retain their exempt status).

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

C. Proposed Waste Management Requirements

1. Applicability of Part 273 Regulations

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

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

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

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

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

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

The proposed part 273 regulations are applicable to all types of hazardous waste batteries except lead acid batteries, as discussed above. No distinctions are made based on the battery's size or the composition of the electrode or electrolyte materials. This result is intended to greatly simplify hazardous waste battery management, since there currently are a number of exemptions that may apply, and determining the regulatory status of a given battery can be a complex procedure.

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

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

EPA currently does not have information on the percentage of the battery types discussed above that exhibit hazardous waste characteristics, or on other types of batteries that may exhibit hazardous waste characteristics. The Agency may conduct a sampling and analysis project to obtain more information on the types and quantities of waste batteries that exhibit characteristics. EPA welcomes comments and data on what types of batteries are hazardous wastes and therefore, may be regulated under part 273.

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

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

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

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

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

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

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

The Agency will shortly propose regulations under FIFRA governing suspended and canceled pesticides, including requirements for a recall program. Under those regulations, the Agency would establish requirements for voluntary and mandatory recall programs, including responsibilities of registrants, others in the distribution chain, and holders of suspended and canceled pesticides.

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

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

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

2. Generator Requirements

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

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

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

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

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

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

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

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

Continued

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

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

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

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

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

b. Condition of wastes. Today's proposal includes packaging and physical condition requirements that recalled pesticides must meet to qualify for the conditional exemption of part 273. (However, hazardous wastes that do not meet these physical condition requirements may still be managed under the parts 260 through 272 full hazardous waste management requirements that currently apply.) There are no analogous packaging or physical condition requirements included in the proposal for batteries.

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

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

EPA is today proposing this range of containment options in order to allow flexibility in choice of packaging and tank storage. However, there is a significant issue associated with the pesticide containment provisions. The stationary tanks that were used to hold the pesticide when it came down the distribution chain as a product may not be available to hold the pesticide once it is a hazardous waste and is being recalled. When the pesticide is being distributed for sale, there are significant incentives to contain the pesticide carefully and use only tanks that are structurally sound and not leaking. Once the pesticide becomes a hazardous waste, however, the same incentives no longer exist. In a recall situation, the hazardous waste pesticides that are consolidated at dealers' and distributors' locations may need to be placed in tanks (although they could also be stored in portable containers such as 55-gallon drums, or in transport vehicles or vessels). The dealers' or distributors' tanks may already be filled with other pesticides, that are not subject to the recall, and there may be few available tanks in which to store the recalled pesticide. EPA is concerned that the available tanks may not be structurally sound, may not be compatible with the chemical composition of the recalled pesticide, or for other reasons would not be appropriate to use for storing the hazardous waste pesticide for a period of up to one year. EPA believes that storage in tanks that were used to contain that same pesticide when it was being distributed for sale would be adequate. (This option is found in the proposed regulations at § 273.21(b)(1)(i).) As noted above, the generator also has other storage options available, and thus EPA believes the proposed requirement in its entirety is practical. EPA requests comment specifically on this provision, and on whether there are other options that would also be environmentally protective. In addition, EPA requests comment on whether the second packaging option (packaged in original packaging and overpacked in a larger container) should be expanded to include any repackaging technique. In other words, should the regulations allow recalled pesticide handlers to repackage hazardous waste pesticides from original packaging into other, different containers (physically transferring the pesticide from its original packaging into a different container)? Would allowing this practice create potential pesticide spillage problems?

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

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

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

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

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

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

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

Currently, generators of more than 100 kilograms of hazardous wastes per month are required to obtain an EPA Identification Number (a twelve-digit number that EPA or state agencies assign to hazardous waste handlers). Generally, generators and other hazardous waste handlers obtain the identification number by submitting a form which includes basic information about the facility and waste management activities. Thus, the notification requirement proposed today is similar to the existing requirement, but would apply to an extremely small fraction of the generators who are currently required to notify and obtain an EPA Identification Number.

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

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

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

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

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

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

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

[19] Alternately, the generator could complete EPA Form 8700–12, "Notification of Regulated Waste Activity," by checking the box indicating that he or she is a hazardous waste generator.

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

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

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

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

f. Waste management. Today's proposal contains certain specific provisions for hazardous waste battery management, and general release response and employee training requirements that are common for generators of all special collection system hazardous wastes.

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

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

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

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

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

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

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

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

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

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

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

Under today's proposed regulations, generators of special collection system hazardous wastes are not subject to any recordkeeping requirements for knowing their wastes' destination. This is a significant reduction of the current recordkeeping burden placed on these generators. For instance, generators of all batteries that are hazardous wastes (except lead-acid batteries being reclaimed and used batteries sent for regeneration) are currently subject to the uniform hazardous waste manifest requirements. These generators would no longer be required to comply with the hazardous waste manifesting requirements if they are in compliance with the part 273 regulations. EPA is proposing this reduction in paperwork to encourage participation in part 273 collection programs. As collection programs are established and expanded, participation may come to include parties currently managing their waste in the municipal waste stream. Thus, the overall effect of the reduced requirements may lead to larger numbers of generators sending their waste into protective systems.

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

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

Thus, EPA is not proposing technical storage standards today, but instead intends to wait until after promulgation of the final special collection system rules in order to allow collection systems to develop, and in order for waste handlers to develop common-sense, practical management techniques that would minimize potential safety and environmental hazards. At that point, EPA would review the need for imposing technical storage requirements, and, if requirements are necessary, would propose and then promulgate them. Since many universal wastes are not currently managed together in large amounts (and instead are dispersed throughout the municipal waste stream, or are managed in other ways, such as in public sewer systems), it is difficult to predict what specific technical management requirements would be necessary. EPA is considering awarding a grant to one of the first RCRA-authorized state agencies that adopt the final special collection system rules, in order for that agency to encourage the development of state-wide special collection systems, obtain practical implementation experience, and then make recommendations to EPA about the need for specific technical requirements for the various special collection system wastes. (In addition, it may be possible for the state to recommend modifications to the special collection system administrative requirements.)

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

[21] Also known as the Comprehensive Emergency Response, Compensation and Liability Act.

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

3.Transporter Requirements

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

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

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

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

The prohibitions and waste management requirements proposed today are also the same as those proposed for generators. Transporters would be prohibited from diluting or disposing of special collection system wastes, in order to meet the substantive land disposal restrictions requirements. They would also be required to transport the wastes only to a consolidation point or destination facility. Treatment would be allowed only if it occurs in response to a release. In the event of a release of a special collection system hazardous waste, the transporter would be required to manage the waste under all requirements that currently apply. In addition, transporters of hazardous waste batteries would be required to minimize releases of battery components.

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

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

- *From Generator to Consolidation Point A, to Consolidation Point B, to Destination Facility C.* The shipment from the generator to Consolidation Point A is not manifested; likewise, the shipment from Consolidation Point A to Consolidation Point B is not manifested. The shipment from Consolidation Point B to Destination Facility C is manifested.
- *From Generator to Destination Facility D.* This shipment is not manifested.
- *From Generator to Destination Facility E, to Destination Facility F.* The shipment from the generator to Destination Facility E is not manifested; the shipment from Destination Facility E to Destination Facility F is manifested.
- *From Generator to Consolidation Point G, to Destination Facility H, to Destination Facility I.* The shipment from the generator to Consolidation Point G is not manifested. The shipment from Consolidation Point G to Destination Facility H is manifested, as is the shipment from Destination Facility H to Destination Facility I.

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

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

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

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

[22] It would not be possible for a destination facility to ship to any facility other than another destination facility.

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

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

4. Consolidation Point Requirements

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

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

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

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

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

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

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

Although today's proposal would generally require notifications only from those consolidation points storing very large quantities of special collection system batteries, EPA nonetheless believes that this notification requirement is essential to identify parties storing large quantities of waste batteries, in order to ensure their compliance with the regulatory requirements proposed today. In addition, as the quantity of these wastes managed at any one location increases, the potential for releases may also increase, as may public concern about management practices.

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

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

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

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

[23] Except for lead-acid batteries and used batteries sent for regeneration.

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

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

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

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

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

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

5. Destination Facility Requirements

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

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

6. Exports

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

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

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

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

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

7. Land Disposal Restrictions

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

Accordingly, generators, transporters, owners/operators of consolidation points, and owners/operators of treatment, storage, and disposal facilities (and facilities who do not store prior to recycling) managing special collection hazardous wastes under part 273 are currently subject to the full land disposal restrictions program. However, EPA believes that application of the full land disposal restrictions program to special collection system hazardous wastes at all steps in the collection sequence could result in overly burdensome regulation. This regulation could discourage generators, transporters, and consolidation points from entering the collection system, thereby discouraging both recycling and removal of the waste from the municipal waste stream, and ultimately leading to unsafe land disposal, contravening the ultimate aim of the land disposal restrictions provisions. To resolve this problem, the Agency is proposing to require that managers of special collection system hazardous wastes comply with all of the substantive land disposal restrictions requirements, but not the administrative requirements. These substantive requirements include: (1) A prohibition on storing prohibited wastes directly on the land (land disposal); (2) a requirement to treat wastes to meet treatment standards prior to land disposal; (3) a prohibition on dilution; and (4) a prohibition on waste storage except for purposes of accumulating quantities sufficient for proper recovery, treatment or disposal.

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

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

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

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

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

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

[26] See RCRA section 3004(j).

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

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

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

The Agency requests comment on whether the requirements described above ensure that special collection system hazardous wastes will be managed in compliance with the substantive requirements of the land disposal restrictions program. EPA also requests comment on alternative mechanisms that would achieve the same goal. Further, comment is requested on whether any or all parties of the special collection system should be subject to the full part 268 land disposal restrictions regulations.

8. Release Response

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

9. Related Regulatory Changes

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

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

The changes made to 40 CFR 261.5(c), the provision governing generator counting of hazardous wastes (i.e., counting to determine whether the generator is a conditionally exempt small quantity generator, small quantity generator, or fully regulated generator), are made for three reasons. First, the revised text indicates that generators are not required to include wastes managed in compliance with part 273 in the quantity calculations used to determine their generator status. Second, the revision is crafted to accomplish the same results as the existing regulation (i.e., wastes that are not counted under the current regulations continue not to be counted, and wastes that are counted under the current regulations would continue to be counted). Third, the revision is intended to simplify the existing language so that it is clear which wastes are to be counted and which are not.

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

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

[27] On the other hand, batteries that are recycled in other ways (e.g., resmelting to recover metal content) currently are either fully regulated or are partially exempt under another exemption at 40 CFR part 266, subpart G (depending on the battery's composition).

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

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

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

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

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

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

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

III. State Authority

A. Applicability of Rules in Authorized States

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

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

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

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

B. Effect on State Authorization

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

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

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

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

IV. Executive Order No. 12291—Regulatory Impacts

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

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

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

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

V. Paperwork Reduction Act

The information collection requirements in today's proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1597.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch, U.S. Environmental Protection Agency, 401 M Street, SW. (PM–223Y); Washington, DC 20460 or by calling (202) 260–2740.

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

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

VI. Regulatory Flexibility Act

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

List of Subjects

40 CFR Part 260

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

40 CFR Part 261

Hazardous materials, Recycling, Waste treatment and disposal.

40 CFR Part 262

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

40 CFR Parts 264 and 265

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

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 270

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

40 CFR Part 273

Hazardous materials, Packaging and containers.

Dated: January 20, 1993.

William K. Reilly,

Administrator.

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

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

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

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

Subpart B—Definitions

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

§ 260.10 Definitions.

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

* * * * *

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

* * * * *

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

* * * * *

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

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

* * * * *

Subpart C—Rulemaking Petitions

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

§ 260.20 General.

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

* * * * *

4. Section 260.34 is added to read as follows:

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

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

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

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

Subpart A—General

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

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

* * * * *

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

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

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

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

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

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

* * * * *

(f) * * *

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

(i) Permitted under part 270 of this chapter;

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

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

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

(v) A facility which:

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

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

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

(g) * * *

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

(i) Permitted under part 270 of this chapter;

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

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

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

(v) A facility which:

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

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

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

* * * * *

7. Section 261.9 is added to read as follows:

§ 261.9 Requirements for special collection system wastes.

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

(a) Batteries that are hazardous wastes; and

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

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

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

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

Subpart A—General

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

§ 262.11 Hazardous waste determination.

* * * * *

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

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

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

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

Subpart A—General

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

§ 264.1 Purpose, scope and applicability.

* * * * *

(g) * * *

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

(i) Batteries that are hazardous wastes; and

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

* * * * *

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

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

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

Subpart A—General

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

§ 265.1 Purpose, scope and applicability.

* * * * *

(c) * * *

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

(i) Batteries that are hazardous wastes; and

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

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

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

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

Subpart A—General

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

§ 268.1 Purpose, scope and applicability.

* * * * *

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

(1) Batteries that are hazardous wastes; and

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

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

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

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

Subpart A—General Information

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

§ 270.1 Purpose and scope of these regulations.

* * * * *

(c) * * *

(2) * * *

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

(A) Batteries that are hazardous wastes;

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

* * * * *

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

PART 273—STANDARDS FOR SPECIAL COLLECTION SYSTEM WASTES

Subpart A—General

Sec.

273.1 Applicability and scope.

273.2 Criteria.

273.3 Definitions.

Subpart B—Batteries That Are Hazardous Wastes

273.10 Applicability.

273.11 Generator requirements.

273.12 Transporter requirements.

273.13 Consolidation point requirements.

273.14 Destination facility requirements.

273.15 Export requirements.

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

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273.25 Export requirements.

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

Subpart A—General

§ 273.1 Applicability and scope.

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

(1) Batteries that are hazardous wastes; and

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

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

§ 273.2 Criteria.

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

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

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

(3) The number of generators, on a national basis, is greater than 1,000;

(4) Typical generation sites include:

(i) Isolated locations where no other hazardous wastes are generated;

(ii) Locations where the hazardous waste is typically the only hazardous waste generated;

(iii) Locations where the hazardous waste is generated only sporadically or infrequently; or

(iv) Locations where there are small quantities generated per month;

(5) The risk posed by management of the hazardous waste in the municipal waste stream (i.e., in municipal combustors or landfills) is relatively high; and/or

(6) Other appropriate information.

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

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

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

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

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

(6) Such other factors as may be appropriate.

§ 273.3 Definitions.

For the purposes of this part:

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

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

(c) *Destination facility* means a hazardous waste treatment, storage, recycling, or disposal facility which: (1) Has received a permit (or interim status) in accordance with the requirements of parts 270 and 124 of this chapter, (2) Has received a permit (or interim status) from a state authorized in accordance with part 271 of this chapter, or (3) Is a recycler regulated under 40 CFR 261.6(c)(2). If a waste is destined to a facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste.

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

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

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

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

Subpart B—Batteries That Are Hazardous Wastes

§ 273.10 Applicability.

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

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

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

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

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

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

§ 273.11 Generator requirements.

(a) *Generation of hazardous waste batteries.*

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

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

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

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

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

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

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

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

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

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

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

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

(2) This notification must include:

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

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

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

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

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

(1) Prohibited from diluting or disposing of them;

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

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

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

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

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

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

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

§ 273.12 Transporter requirements.

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

(2) A transporter of hazardous waste batteries is:

(i) Prohibited from diluting or disposing of them;

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

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

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

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

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

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

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

§ 273.13 Consolidation point requirements.

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

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

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

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

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

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

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

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

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

(1) Prohibited from diluting or disposing of them;

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

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

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

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

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

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

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

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

(ii) This notification must include:

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

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

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

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

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

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

(ii) This notification must include:

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

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

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

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

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

§ 273.14 Destination facility requirements.

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

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

§ 273.15 Export requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 273.20 Applicability.

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

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

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

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

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

(3) Hazardous waste pesticides managed by farmers in compliance with 40 CFR 262.70 are not subject to the requirements of this part. 40 CFR 262.70 addresses only pesticides disposed of on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with 40 CFR 261.7(b)(3).

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

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

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

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

§ 273.21 Generator requirements.

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

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

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

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

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

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

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

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

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

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

(ii) Kept closed and not leaking.

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

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

(4) Non-leaking transport vehicles or vessels.

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 273.22 Transporter requirements.

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

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

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

(ii) Kept closed and not leaking.

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

(3) Non-leaking transport vehicles or vessels.

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

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

(1) Prohibited from diluting or disposing of them;

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

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

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

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

§ 273.23 Consolidation point requirements.

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

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

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

(ii) Kept closed and not leaking.

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

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

(4) Non-leaking transport vehicles or vessels.

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

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

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

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

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

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

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

(1) Prohibited from diluting or disposing of them;

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

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

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

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

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

§ 273.24 Destination facility requirements.

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

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

§ 273.25 Export requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

[FR Doc. 93–2700 Filed 2–10–93; 8:45 am]

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February 11, 1993

Part III

Environmental Protection Agency

40 CFR Part 82
Protection of Stratospheric Ozone;
Labeling; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–4557–1]

RIN 2060–AD47

Protection of Stratospheric Ozone; Labeling

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule establishes labeling requirements for products manufactured with, containers of, and products containing specific ozone-depleting substances pursuant to section 611 of the Clean Air Act, as amended. Specifically, the regulations require products that are manufactured with a process using a class I substance currently defined as chlorofluorocarbons (CFCs), halons, carbon tetrachloride, methyl chloroform, products containing a class I substance and containers of a class I or class II substance (hydrochlorofluorocarbons (HCFCs)) or mixture to bear a "clearly legible and conspicuous" warning statement. The substances affected by today's final rule are class I substances and class II substances, as defined in 40 CFR part 82, appendix A to subpart A and in any later rulemaking.

EFFECTIVE DATE: The final regulation is effective on March 15, 1993. The information collection requirements contained in 40 CFR 82.122 have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them. An announcement of the effective date of 40 CFR 82.122 will be published in the **Federal Register.**

ADDRESSES: Comments and materials supporting this rulemaking are contained in Public Docket No. A–91–60 in room M–1500, Waterside Mall (Ground Floor), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Dockets may be inspected from 8:30 a.m. until 12 noon, and from 1:30 p.m. until 3 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Kate Van Slyck, Stratospheric Ozone Protection Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6202–J), 401 M Street, SW., Washington, DC 20460. (202) 233–9742. The Stratospheric Ozone Information Hotline at 1–800–296–1996 can also be contacted for further information.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

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I. Background

A. Ozone Depletion

The stratospheric ozone layer protects the earth from ultraviolet (UV–B) radiation. Research begun in the 1970s indicated that when certain industrially produced halocarbons (including chlorofluorocarbons (CFCs), halons, carbon tetrachloride and methyl chloroform) are released into the environment, they migrate into the stratosphere, where they contribute to the depletion of the ozone layer. To the extent depletion occurs, penetration of the atmosphere by UV–B radiation increases. Increased exposure to UV–B radiation produces health and environmental damage, including increased incidence of skin cancer and cataracts, suppression of the immune system, damage to crops and aquatic organisms, increased formation of ground-level ozone and increased weathering of outdoor plastics.

B. Montreal Protocol

In response to growing evidence that chlorine and bromine could destroy stratospheric ozone on a global basis and the discovery of the ozone hole over Antarctica, many members of the international community came to the conclusion that an international agreement to reduce global production of ozone-depleting substances was needed. Because releases of CFCs from all areas mix in the atmosphere to affect stratospheric ozone globally, efforts to reduce emissions from specific products by only a few nations could quickly be offset by increases in emissions from other nations, leaving the risks to the ozone layer unchanged. EPA evaluated the risks of ozone depletion in Assessing the Risks of Trace Gases That Can Modify the Stratosphere (1987) and concluded that an international approach was necessary to effectively safeguard the ozone layer.

EPA participated in negotiations organized by the United Nations Environment Programme (UNEP) to achieve an international agreement to protect the ozone layer. In September 1987, the United States and 22 other countries signed the Montreal Protocol on Substances that Deplete the Ozone Layer. The 1987 Protocol called for a freeze in the production and

consumption (defined as production plus imports minus exports of bulk chemicals) of CFC–11, –12, –113, –114, –115, and halon 1211, 1301 and 2402 at 1986 levels, and a phased reduction of the CFCs to 50 percent of 1986 levels by 1998. Currently, over 90 nations representing well over 90 percent of the world's consumption are parties to the Protocol.

In an August 12, 1988 final rulemaking (53 FR 30566) EPA promulgated regulations implementing the requirements of the 1987 Protocol through a system of tradable allowances. EPA apportioned these allowances to producers and importers of these "controlled substances" based on their 1986 levels. To monitor industry's compliance with the production and consumption limits, EPA required recordkeeping and quarterly reporting and conducted periodic compliance reviews and inspections.

C. Excise Tax

As part of the Omnibus Budget Reconciliation Act of 1989, Internal Revenue Code of Ozone-Depleting Substances, section 506A of Public Law 101–239, the United States Congress levied an excise tax on the sale of CFCs and other chemicals which deplete the ozone layer, with specific exemptions for exports and recycling. The tax went into effect on January 1, 1990, and increases annually. The original excise tax was amended by the Omnibus Budget Reconciliation Act of 1991 to include methyl chloroform, carbon tetrachloride and the other CFCs regulated by the amended Montreal Protocol and Title VI of the Clean Air Act, as amended in 1990. The Energy Policy Act of 1992, section 1931 of Public Law 102–486, revised and further increased the excise tax, effective January 1, 1993. By raising the cost of virgin controlled substances, the tax has created an additional incentive for industry to shift out of these substances and increase recycling activities, and it has encouraged the development of a market for alternative chemicals and processes.

D. London Amendments to the Montreal Protocol

Under Article 6 of the Montreal Protocol, the Parties are required to assess the science, economics and alternative technologies related to protection of the ozone layer every two years. In response to this requirement, the Parties issued their first scientific assessment in 1989 (Scientific Assessment of Ozone Depletion, which has been placed in the docket for this rulemaking.) During this assessment, scientists examined the data from land-based monitoring stations and the total ozone mapping spectometer (TOMS) satellite and found that there had been global ozone depletion over the northern hemisphere as well as over the southern hemisphere. The scientific assessment also reported that a three to five percent decrease in stratospheric ozone levels had occurred between 1969–1986 in the northern hemisphere in the winter months that could not be attributed to known natural processes.

At the Second Meeting of the Protocol Parties, held in London on June 29, 1990, the Parties responded to this new evidence by tightening the restrictions placed on these chemicals. The Parties to the Protocol passed amendments and adjustments which called for a full phaseout of the already regulated CFCs and halons by 2000, a phaseout of carbon tetrachloride and "other CFCs" by 2000 and a phaseout of methyl chloroform by 2004. The Parties also passed a non-binding resolution regarding the use of hydrochlorofluorocarbons (HCFCs) as interim substitutes for CFCs. Partially halogenated HCFCs add much less chlorine to the stratosphere than the fully halogenated CFCs, but still pose a significant threat to the ozone layer, (See 56 FR 2420 January 22, 1991 for more information on the relative effects of different ozone-depleting substances).

E. Clean Air Act Amendments of 1990, Title VI

On November 15, 1990, the Clean Air Act Amendments of 1990 were signed into law. The requirements in Title VI of the amended act include phaseout controls similar to those in the London Amendments, although the interim targets are more stringent and the phaseout date of methyl chloroform is earlier (section 604). Other Title VI provisions require EPA to promulgate additional controls pertaining to the protection of the stratospheric ozone. These provisions: (1) Restrict production and consumption of HCFCs (section 605); (2) restrict the uses of controlled ozone-depleting substances, including provisions to reduce emissions of controlled substances to the "lowest achievable level" in all use sectors (section 608); (3) require the recovery and recycling of refrigerant when servicing motor vehicle air conditioners (section 609); (4) ban nonessential products (section 610); (5) mandate warning labels (section 611); (6) establish a safe alternatives program (section 612); and (7) require revision of federal procurement policies to minimize government use of ozone-depleting substances. EPA has already promulgated regulations implementing the phaseout provisions contained in section 604 of the Act (57 FR 33754) and the section 610 ban on nonessential uses. EPA is currently in the process of promulgating regulations under several other sections of Title VI.

One of the provisions of the Act which complements the labeling requirement is the Significant New Alternatives Program (SNAP) established under section 612. The Advance Notice of Proposed Rulemaking for SNAP was published in the **Federal Register** on January 16, 1992 (57 FR 1984); the Notice of Proposed Rulemaking is currently being prepared for publication. The SNAP program has been established to evaluate the overall effects on human health and the environment of the potential substitutes for ozone-depleting substances. Rules promulgated under SNAP will render it unlawful to replace an ozone-depleting substance with a substitute chemical or technology that may present adverse effects to human health and the environment if the Administrator determines that some other alternative is commercially available and that this alternative poses a lower overall threat to human health and the environment. The SNAP program is a powerful tool for ensuring that "safe" alternatives are developed.

F. Requirements of Section 611

The rule being promulgated today implements section 611 which prohibits, effective May 15, 1993, the introduction into interstate commerce of any container containing class I and class II substances, product containing class I substances and product manufactured with class I substances, unless it bears a warning statement indicating that the product contains or is manufactured with ozone-depleting substance(s). The section extends the prohibition after May 15, 1993, and before January 1, 2015, to any products containing, or manufactured with class II substances if the Administrator determines that safe alternatives are available. Beginning January 1, 2015, all products containing or manufactured with class I or class II substances must also be labeled. While the label provisions have different effective dates for products containing and manufactured with class I substances, as compared to products containing and manufactured with class II substances, the requirements in the regulation are the same for products "manufactured with" and products "containing" such substances unless otherwise indicated. The term "controlled substance," defined in the regulation, will be used

to refer to both class I and class II substances where the labeling requirements apply to both substances.

II. The May 4, 1992 Notice of Proposed Rulemaking

In a notice of proposed rulemaking published on May 4, 1992 (57 FR 19166), EPA proposed regulations to implement section 611. (It should be noted that EPA considers section 611 to be self-implementing except for those prohibitions that require an EPA determination to be triggered (see, e.g., section 611(c)(1)). Consequently, products covered by section 611 would have to be labeled even if EPA did not promulgate implementing regulations. Specifically, EPA proposed that effective May 15, 1993, labels be required on containers of class I and class II substances and products containing or manufactured with class I substances. The proposal also called for labels on all products containing or manufactured with class I or class II substances, beginning on January 1, 2015.

EPA proposed definitions for the terms "class I substance and class II substance," "container," "containing or contains," "incidental uses," "manufactured with," "potentially available," "principal display panel," "product," "recoverable substance," "supplemental printed information," "transform," "ultimate consumer," "type size," and "warning label." While many of the proposed definitions were consistent with definitions in regulations under other sections of Title VI, the definitions also included some that apply only to the regulations promulgated pursuant to section 611. In describing these definitions, EPA discussed the legal and policy aspects of the options considered in the proposal.

With respect to products "manufactured with" ozone-depleting substances, EPA proposed that a product is "manufactured with" a class I or class II substance if a class I or class II substance is used in the product's manufacturing process, including the manufacture of component parts, but the class I or class II substance is not contained in the product at the point of sale to the ultimate consumer. Examples of products "manufactured with" under the proposed definition included products cleaned with solvents, products with adhesives or coatings using solvents, open celled flexible foam products, and certain food and tobacco products. Excluded from the definition were incidental uses, those uses where no physical contact occurs between the product and the controlled substance. Examples of incidental uses provided in the proposal were are produce stored in a warehouse that is refrigerated by a CFC system, or clothes that are manufactured by machinery which requires routine maintenance with a controlled substance like methyl chloroform, but that the clothes do not come into contact with the substance directly. Also excluded from the proposed definition of "manufactured with" were products manufactured with ozone-depleting substances that are transformed into non-ozone-depleting substances during the manufacturing process and therefore do not pose a threat to the ozone layer. Appendix A of the proposal, parts 1 and 2, consisted of a partial list of products that were considered "manufactured with" and those considered "containing."

In the proposal, EPA indicated that it would not narrow its definition of "manufactured with" through establishment of a "de minimis" level because though many CFCs and other ozone-depleting substances were typically used in small quantities by individual users, the aggregate use of these substances over an entire market segment was large.

Under the proposal, EPA defined "product containing" ozone-depleting substances to be products that hold a controlled substance within their structure, or that are intended to be charged with a controlled substance, at the point of sale to the ultimate consumer, consistent with Appendix B of the Montreal Protocol on Substances That Deplete the Ozone Layer (UNEP Memo June 21, 1991). (In the Appendix, the Protocol Parties listed "products containing" controlled substances for purposes of a trade provision in Article 4 of the Protocol.) Examples cited were truck air conditioning units, domestic and commercial refrigeration equipment, aerosol products and fire extinguishers.

The proposal contained a discussion regarding the appropriate placement of labels on products. The definition section of the proposed rule contained definitions of "principal display panel" (PDP) and "supplemental printed information" which were relevant to the discussion of label placement. Since section 611 requires that a label be "clearly legible and conspicuous," EPA proposed that the label appear on the product or its container/packaging, whichever the ultimate consumer would view first when making the purchase. EPA proposed that placement of the label on the PDP would be one way in which to ensure that the label was "clearly legible and conspicuous," since it is generally large enough to accommodate a label and it is usually where the consumer is likely to look for product information. However, the proposal also stated that placement of the label on another display panel that is normally viewed by the consumer at the time of purchase could also be "clearly legible and conspicuous."

In addition to display panels, the proposal discussed alternative label placement for those products that are not normally viewed at the time of the purchase decision. It suggested that for such products, manufacturers include the warning statement in supplemental printed materials. For products that are normally viewed at the time of the purchase decision, but are irregularly shaped or small and cannot therefore accommodate a label on a display panel, the proposed rule indicated that hang tags, cards, stickers, tape and other options of label placement could be used for placement of the label.

EPA also proposed that a product be considered to have been introduced into interstate commerce either at the warehouse from which the manufacturer releases the product for distribution or sale, or at the site of U.S. Customs clearance for imported products. EPA proposed that the warning statement be passed through the stream of commerce to the ultimate consumer in order to inform the ultimate consumer of any controlled substances used and thereby maximize manufacturers' incentive to switch to substitutes. Specifically, EPA proposed that for products incorporating other products as components the label information on the final product include any information regarding use of controlled substance(s) in the manufacturing of the component products. EPA indicated that under such requirements, a manufacturer could rely on its reasonable belief that the purchased component products were not manufactured with controlled substances if a label did not accompany the product and that independent investigations through the stream of commerce were unnecessary. Manufacturers could also employ contractual specifications which would declare to their suppliers their unwillingness to purchase products manufactured with any controlled substance.

For manufacturers in need of temporary exemptions from the labeling requirement (under section 611(e)(5), effective January 1, 2015, that all products containing or manufactured with a controlled substance must bear a label), EPA proposed a petition process with specific format and data requirements. Those manufacturers that demonstrated, to the satisfaction of the

Administrator, that no alternative substitutes were currently or potentially available for their specific use of class I substances could obtain an exemption. The proposed petition process sought to implement section 611(e)(1), which allows persons to request EPA to apply the labeling requirements to a product containing or manufactured with a class II substance earlier than the statute otherwise provided. The Agency also proposed a petition process for persons to request an exemption for their products manufactured with a class I substance. The Agency would have 180 days to review such petitions.

Also proposed was the application of a permanent label on products containing class I substances indicating how to recover the substances. The intent of the additional label was to provide clarification to servicers of the products and recyclers of the substances contained in the product to facilitate appropriate handling. Under section 608, EPA is required to promulgate regulations to maximize the recycling of such substances and to reduce emissions of such substances to the lowest possible levels.

EPA also requested comments on whether a symbol should accompany the warning text as a means of more effectively communicating the intent of the warning statement. However, EPA was concerned that the cost of such a symbol would outweigh the benefits of using the symbol. EPA did not propose a symbol.

In developing the rule, the Agency received guidance from a Subcommittee on Labeling of the Stratospheric Ozone Protection Advisory Committee (STOPAC) in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. section 9(c). Additionally, small "use-sector" groups convened to discuss application of the labeling requirement throughout various sectors of industry. The Agency wishes to acknowledge their valuable technical expertise and assistance in the development of the proposal.

III. Accelerated Phaseout

Based on new scientific evidence developed since the passage of section 611 and development of the proposed implementing regulations, the international community, led by the United States, has agreed to further accelerate the phaseout of already regulated ozone-depleting substances and control such substances pursuant to this agreement. Virtually all class I substances will be phased out in less than three (3) years and some of those with the highest ozone depletion factors will be phased out in less than one year. EPA believes that its decisions in this rulemaking should take into account the significantly shortened life span of ozone-depleting substances and the correspondingly diminished impact labeling would be expected to have. The following section describes the most recent scientific and international developments regarding ozone depletion to provide the relevant context for EPA decisions regarding the labeling rule.

1. New Scientific Data Regarding Ozone Depletion

Significant scientific advances have occurred since the 1989 Protocol assessments. Several subsequent reports since that time have indicated a more rapid rate of ozone depletion than previously believed. The most recent Montreal Protocol Scientific Assessment, issued December 17, 1991, contains information from ground-based monitoring instruments, as well as from satellite instruments, from the years 1979–1991. The data indicate significant decreases in total-column ozone have occurred in winter, and for the first time several similar decreases in spring and summer, in both the northern and southern hemispheres at middle and high latitudes. The data further show no significant depletion has occurred in the tropics. TOMS data indicate that for the period 1979 to 1991, decreases in total ozone at 45 degrees south latitude ranged between 4.4 percent in the fall to as much as 6.2 percent in the summer, while depletion at 45 degrees north latitude ranged between 1.7 percent in the fall to 5.6 percent in the winter. Data from the ground-based Dobson network confirm these losses in total column ozone during the thirteen-year period. These findings show almost twice as much depletion as the average rate measured by the ground-based network over a twenty-year period. Based on this new data, scientists have concluded that the ozone in the stratosphere during the 1980s disappeared at a much faster rate than experienced in the previous decade.

The recent UNEP Science Assessment also includes new data on the estimated ozone depletion potentials (ODPs) of ozone-depleting substances. The assessment places the ODP of methyl bromide, a chemical previously thought to have an insignificant effect on stratospheric ozone, at 0.6, with a range of uncertainty between 0.44–0.69. The Executive Summary of the Assessment states that, "if the anthropogenic sources of methyl bromide are significant and their emissions can be reduced, then each ten percent reduction in methyl bromide would rapidly result in a decrease in stratospheric bromine of 1.5 pptv (parts per trillion by volume), which is equivalent to a reduction in chlorine of 0.045 to 0.18 ppbv (parts per billion by volume). This gain is comparable to that of a three-year acceleration of the scheduled phaseout of the CFCs." On November 25, 1992, the Parties to the Montreal Protocol agreed to assign methyl bromide with an ODP of 0.7 and freeze its production and consumption at 1991 levels. See subsection 4 below in this section for further information regarding this issue.

On February 3, 1992, NASA released preliminary data acquired by the ongoing Arctic Airborne Stratospheric Experiment–II (AASE–II), a series of high-altitude instrument-laden plane flights over the northern hemisphere (see Interim Findings: Second Airborne Arctic Stratospheric Expedition). Additional data were also obtained from the initial observations by NASA's Upper Atmosphere Research Satellite (UARS), launched in September 1991. The measurements show higher levels of chlorine monoxide (ClO) (the key agent responsible for stratospheric ozone depletion) over Canada and New England than were observed during any previous series of aircraft flights. In fact, the ClO levels over the United States and Canada and as far south as the Caribbean were many times greater than gas phase models had predicted. These levels are only partially explainable by enhanced aerosol surface reactions due to emissions from the volcanic eruptions of Mount Pinatubo. The expedition also found that the levels of hydrogen chloride (HCl), a chemical species that stores atmospheric chlorine, to be low, providing new evidence for the existence of chemical processes that convert stable forms of chlorine into ozone-destroying species. The Montreal Protocol Scientific Assessment document includes studies on the Antarctic ozone hole which implicate chlorine as the main cause of ozone depletion over the Antarctic, and link high chlorine concentrations to CFCs and other chlorinated and brominated compounds. The high ClO and bromine monoxide (BrO) levels observed in these studies indicate that human-induced rates of ozone destruction were as high as one to two percent per day for short periods of time beginning in late January.

In addition, the levels of nitrogen oxides (NO_x) were also observed to be low, providing evidence of reactions that take place on the surface of aerosols that diminish the ability of the atmosphere to control the buildup of chlorine radicals. New observations of

HCl and nitrogen oxide (NO) imply that chlorine and bromine are more effective in destroying ozone than previously believed.

The NASA findings indicate that in late January of 1992, the Arctic air was chemically "primed" for the potential formation of a springtime ozone "hole" similar to that formed each spring over Antarctica. These findings also are consistent with theories that ozone depletion may occur at an accelerated rate on aerosol surfaces in the stratosphere anywhere around the globe, and not only on polar stratospheric clouds as was previously believed.

After collecting more data, NASA released an April 30, 1992 "End of Mission Statement," which indicated that while a rise in stratospheric temperatures in late January apparently prevented severe ozone depletion from occurring in the Arctic this year, observed ozone levels were nonetheless lower than had previously been recorded for this time of year. This information has further increased the Agency's concern that significant ozone loss may occur over populated regions of the earth, thus exposing humans, plants and animals to harmful levels of UV-B radiation, and adds support to the need for further efforts to limit emissions of anthropogenic chlorine and bromine.

In response to these findings, President Bush announced on February 11, 1992, that the United States would unilaterally accelerate the phaseout schedule for ozone-depleting substances, and he called upon other nations to agree to an accelerated phaseout schedule as well. The President also asked U.S. producers to voluntarily reduce 1992 output of class I substances to half of the 1986 baseline levels. In addition, the President directed EPA to re-evaluate the phaseout schedule for HCFCs, and to consider the phaseout of methyl bromide.

The Agency has also received two petitions to accelerate the phaseout of these chemicals. One petition was submitted by three environmental groups, the Natural Resources Defense Council (NRDC), the Environmental Defense Fund (EDF), and Friends of the Earth (FOE). This petition further requested that EPA add methyl bromide to the list of class I substances. The other petition was submitted by the Alliance for Responsible CFC Policy, an industry group of producers and users of the chemicals.

2. Copenhagen Revisions to the Montreal Protocol

On November 25, 1992, the Fourth Meeting of the Montreal Protocol was convened.

In this meeting, the Parties took a number of actions, including accelerating the phaseout schedule of CFCs, halons, carbon tetrachloride, and methyl chloroform and added HCFCs and methyl bromide to the list of chemicals to be controlled under the Montreal Protocol.

The following changes to the previously proposed phaseout schedules were reached at the Copenhagen meeting:

(1) Adjusting the phaseout schedule for CFCs (class I, group I substances) to a 75% reduction in production and consumption (production plus imports minus exports) from 1986 baseline levels for 1994 and 1995, and a complete phaseout by 1996;

(2) Adjusting the schedule for Halons (class I, group II substances) to a complete phaseout in production and consumption by 1994:

(3) Adjusting the phaseout schedule for other fully halogenated CFCs (class I, group III substances) to a reduction from 1989 levels, 75% in 1994 and 1995, and a complete phaseout of production and consumption by 1996;

(4) Phasing out of carbon tetrachloride (class I, group IV) by a reduction from 1989 levels of 85% in 1995, and a complete phaseout in 1996;

(5) Adjusting the phaseout schedule for methyl chloroform (class I, group V) by reducing the production and consumption of 1989 levels by 50% in 1994, and phasing out completely by 1996.

(6) Establishing criteria for identifying essential uses and a process for excepting limited production and consumption of the above chemicals following their phaseout (see below).

These adjustments go into effect in approximately six months. In addition, the Parties adopted the following amendments to the Protocol:

(1) Freezing consumption of HCFCs (class II substances) beginning in 1996 to a baseline ceiling of: 100% of 1989 the ozone depletion potential (ODP) weighted level of HCFC consumption plus 3.1% of the ODP weighted 1989 CFC 2004, 65% by 2010, 90% by 2015, and 99.5% by 2020; and completely phasing out consumption by 2030;

(2) Adding Hydrobromoflourocarbons (HBFCs) to the list of class II controlled substances, specifying their ozone depletion potential, and phasing their consumption out completely by 1996;

(3) Listing methyl bromide as a controlled substance with an ozone depletion potential of 0.7, and freezing consumption beginning in 1995 to 1991 consumption levels; (the calculated levels of consumption shall not include quarantine and preshipment uses);

(4) Establishing a procedure for the approval by the Parties for continued production and consumption after phaseout to meet essential use requirements; essential uses are defined as those necessary for health or safety, or critical to the functioning of society, and where there are no available alternatives or existing stocks of banked or recycled material;

(5) Establishing reporting requirements for HCFCs, HBFCs, and methyl bromide;

(6) Establishing reporting requirements for imports and exports of controlled substances to and from non-parties to the Protocol;

The Amendments will enter into force under the Protocol following their ratification by at least twenty Parties. This is projected to be accomplished by January 1, 1994.

The Parties also made a number of procedural and definitional changes that affect implementation of the Protocol and that are included in the proposed accelerated phaseout regulation. The changes include:

(1) The approval of destruction technologies and the requirement that Parties that plan to operate destruction facilities do so in accordance with Good Housekeeping Procedures developed by the Parties or their equivalent;

(2) Clarification of the definition of controlled substances to exclude insignificant quantities under defined circumstances, and to encourage Parties to minimize emissions of such substances;

(3) Clarification of the reporting requirements and treatment of international transshipment;

(4) Modification of definition of controlled substance to exclude import and export of recycled and used controlled substances from the calculation of consumption, but to require reporting of data concerning these imports and exports.

The Parties also adopted a procedure under which the Parties can approve the continued production and consumption of ozone-depleting substances after the phaseout to meet essential uses. Such uses are defined as necessary for health, safety, or critical to the functioning of society, but are to be permitted only in cases when no alternatives exist or when existing stocks of banked or recycled material are not available. The definition of "controlled substance" was also clarified to exclude insignificant

quantities resulting from inadvertent production and unreacted feedstock.

3. The Proposed Accelerated Phaseout Regulation

In July 1992, EPA issued its final rule and regulatory program implementing section 604 of the Clean Air Act Amendments. The section limits the production and consumption of ozone-depleting chemicals. EPA controls production and consumption by issuing allowances or permits that are expended in the production or importation of these chemicals. Trading of these allowances is permitted.

The regulation requires producers of class I substances to gradually reduce their production of these chemicals and to phase them out completely as of January 1, 2000 (2002 for methyl chloroform). In addition to the production limits, the rule requires a similar reduction in consumption.

In February 1992, the President requested that U.S. producers voluntarily reduce their production by half of the baseline year levels. He also announced that the U.S. would revisit the phaseout schedule for HCFCs and progress towards an accelerated phaseout of class I substances from 2000 to the end of 1995.

At the same time, EPA received a petition from the Natural Resources Defence Council (NRDC), the Environmental Defense Fund (EDF) and Friends of the Earth (FOE), requesting that EPA add methyl bromide to the list of class I substances. Another petition was submitted by the Alliance for Responsible CFC Policy. The Fourth Meeting of the Parties to the Protocol, discussed above, further supported the movement towards an agreed upon accelerated phaseout by the Parties.

Based on these new developments, EPA is proposing to accelerate the phaseout of CFCs, methyl chloroform, carbon tetrachloride, halons, HCFC–141b, HCFC–142b, and HCFC–22. The Agency is also proposing to add methyl bromide and HBFCs to the list of major class I substances. In addition to these new listings, the proposal implements various trade provisions required by the Montreal Protocol to encourage countries to join the Protocol by prohibiting the trade of bulk substances and products containing controlled substances with non-parties.

4. Effect of Accelerated Phaseout on the Labeling Regulation

The accelerated phaseout will have a significant impact upon manufacturing processes that use class I substances affected by today's rulemaking. The combined effects of the excise tax and the original phaseout schedule have already created strong economic incentives for industry to find substitutes for class I substances. In fact, according to EPA's database on producers of these chemicals, current U.S. production of CFCs are about 50 percent below the 1986 baseline levels set by the Montreal Protocol. The accelerated phaseout will significantly increase the economic incentives for all class I substance users to switch to alternatives. Consequently, even where a particular process that uses a class I substance is exempted from the labeling requirement through the petition process outlined below, the substance in question will rapidly become scarce and expensive, and industry will be encouraged to find alternative chemicals or processes.

When Congress passed the Clean Air Act Amendments of 1990, it required the production and consumption of class I substances to be phased out by the year 2000 (2002 for methyl chloroform (MCF)) and warning labels to be applied to containers containing class I and class II substances, and products containing and manufactured with class I substances beginning on May 15, 1993. The section 611 labeling provisions related to class I substances thus had six and a half years (eight and a half years for MCF) to have an effect on the use of class I substances before they were phased out. However, the decision to end production of class I substances by January 1, 1996 (January 1, 1994 in the case of halons) means that the labeling of products manufactured with class I substances per section 611(d) and products containing and containers containing class I substances per section 611(b) will be in effect for less than three years before the complete phaseout takes effect. As a result, EPA has streamlined some of the proposed requirements related to class I substances in recognition that manufacturers will be phasing out their uses of these substances at a much earlier date. This is further addressed below in the Response to Significant Comments section (V).

IV. Summary of Public Participation

A hearing on the proposed labeling rule was held on May 18, 1992. Nine groups presented oral comments to the proposed requirements and submitted written testimony to the Agency. A transcript of the testimony is contained in the public, No. A–91–60.

The Agency received a total of 162 comments on the proposed rule. Six commenters supported the proposal that labels supply ultimate consumers with information at the point of purchase decision. Other commenters recognized the impact that labeling will have as a market incentive for elimination of class I substances and in the development of alternative substances and processes that use such substances.

Many comments addressed EPA's proposal that manufacturers that do not manufacture with a process using a class I substance, but use component products which were manufactured using a class I substance, would have to label their products (the "pass-through requirement"). Commenters requested that EPA consider the significant financial and administrative burden on manufacturers who may have well over 1,500 suppliers of components. Many commenters also addressed the issue of products manufactured and stored in inventory prior to the effective date of the rule. Commenters stated that the burden of pulling back all such products from inventories, warehouses, distributors and retailers for purposes of applying a label would be an onerous task with little, if any, environmental benefit. The issue of products manufactured for export only was discussed by many commenters who were concerned that U.S. manufacturers would be at an economic disadvantage in a global market if American-made products for export were required to bear a warning statement, because other countries do not have similar requirements.

Other comments addressed the use of a symbol with the warning statement. Most commenters argued against the symbol, indicating that it could distract consumers from the warning statement itself, as well as from other important information on a product's label. Another issue raised frequently in comments concerned the recoverable substances label. Many commenters did not support the label since section 608 covers such products containing recoverable substances and promotes training for servicers handling and disposing of such substances. Many commenters requested clarification of the alternative label placement options. They indicated that there was no clear distinction among the proposed options. Finally, the Agency received numerous comments regarding the definition of incidental uses of class I substances and the need for a de minimis exemption.

EPA addresses the significant comments that it received in section V. below. EPA addresses other comments received in a separate Response to Comments document available in the docket.

V. Response to Significant Comments

A. Definition of Interstate Commerce and Introduction Into Interstate Commerce

Some of the commenters indicated that EPA should include a definition of interstate commerce in the final rule and specify at which point a product enters into interstate commerce. EPA defines interstate commerce as the distribution or transportation of any product or container between one state, territory, possession or the District of Columbia and another state, territory, possession, or the District of Columbia. It is further defined as the sale, use or manufacture of any product in more than one state, territory, possession or the District of Columbia. For a product or container in the United States to avoid coverage as being in intrastate commerce, an affected party must provide adequate documentation that the product not only was or will be manufactured, distributed, sold or used without ever crossing state lines, but that none of the components that went into, or will go into, the manufacture, distribution, sale or use of such product originated, or will originate, in another state.

A product is first introduced into interstate commerce either when it is released from the facility in which it was manufactured, when it enters the warehouse from which a domestic manufacturer releases the product or container for shipment, or for imported products, when they are at the site of U.S. Customs clearance. The inclusion of the facility in which a product was manufactured as a point of introduction responds to comments indicating that some manufacturers do not inventory their products, but sell them directly to separate warehouse facilities. In this case, the manufacturer of the product is required to apply the label before the product leaves its facility. A manufacturer that stores its product in its own warehouse introduces that product into interstate commerce when the product enters its warehouse. The manufacturer in this case is required to apply the label prior to or contemporaneous with, the product's entrance into the warehouse. This provision differs from the proposal in that the introduction of a product into interstate commerce occurs when the product enters the warehouse, not when the product leaves the warehouse. As discussed below in part V.B., several commenters stated that manufacturers often store products at warehouses for extended periods of time before the products finally leave the warehouse. This change to the regulation will ease enforcement by requiring that all products that are stored in warehouses be labeled by the time they enter storage. This revision also allows manufacturers to avoid having to label products manufactured prior to May 15, 1993 but still in inventory on that date.

Containers containing ozone-depleting substances become subject to these regulations at the time they are charged with an ozone-depleting substance. At the point of charge, they are defined as containers containing ozone-depleting substances which have been introduced into interstate commerce. Application of a warning statement therefore would be required upon completion of the charging activity.

B. Products Manufactured Before May 15, 1993

Many commenters addressed the impact of the labeling rule on products in inventory and in production up until the effective date. The commenters all expressed concern that requiring a label on products that were manufactured before the effective date, but are still in the manufacturer's inventory as of the effective date, would impose significant economic and logistic burdens on the affected manufacturers, distributors, wholesalers and retailers. Consequently, the commenters argued that EPA should not require a label on products manufactured before May 15, 1993, even if the products have not left the warehouse from where the manufacturer releases the product for distribution or sale. Some comments indicated that EPA should allow a grace period for those products that are manufactured and warehoused prior to the effective date, if an exemption of such products from labeling altogether is not possible.

EPA agrees with these commenters that requiring a label on products already manufactured prior to the effective date would adversely affect a number of businesses without providing any appreciable environmental benefits. There are many manufacturers that maintain large stocks of products to support high or conditional consumer demand. If EPA were to apply these regulations to such products, manufacturers would be required to retain those products, remove their packaging in order to label them appropriately, and resume normal commercial distribution. An additional problem for some products is that the stream of commerce for such products is strictly regulated (e.g., limited shelf life of metered dose inhalers) in which case any deviation from a product's regulated commercial mobility would require regulatory complications and delays in the distribution of such products. Other manufacturers may have products stored in warehouses across the United States and on foreign territory, in which case labeling such products according to the proposed requirements would require significant time and expense. One major electronics company indicated that it currently has approximately 2,500 suppliers world-wide and purchases about 70,000 component products from these suppliers. For this company, labeling all of its inventoried products prior to the effective date would involve tremendous costs and time. In addition, manufacturing processes for many products manufactured with class I substances prior to May 15, 1993 would have already released the substance during manufacture except for those processes where recovery and recycling occur. Therefore, the final product poses no further threat to the stratospheric ozone layer when it is inventoried or later sold.

EPA believes that its clarification of the term "introduction into interstate commerce" (see section V.A.) should ease most of the concern of commenters on this point. If a product has been introduced into interstate commerce before May 15, 1993, then it is not subject to these regulations. Only a small number of products will have been manufactured before May 15, 1993 but will not have left the facility of manufacture or have entered the manufacturer's warehouse by the effective date. Therefore, for the vast majority of products manufactured before May 15, 1993, the rulemaking is inapplicable on its face, given EPA's definition of the term "introduction into interstate commerce."

For those small number of products that are manufactured before May 15, 1993, but which have not left the place of manufacture or have not entered the manufacturer's warehouse before May 15, 1993, or that are manufactured in foreign countries before May 15, 1993, EPA is allowing such products to be "grandfathered." EPA believes that requiring manufacturers to label these products would adversely affect numerous businesses, because the labeling process for many manufacturers occurs during the actual manufacturing process. Thus, if EPA did not grandfather these products, manufacturers would have to undergo a onetime cost to retrieve and label products already manufactured but not yet introduced into interstate commerce before May 15, 1993. EPA believes that little if any appreciable environmental benefits would be gained from requiring such products to be labeled.

EPA believes that sufficient precedent exists for this decision. The United States Court of Appeals for the District of Columbia Circuit has established a four-part test to judge the appropriateness of Agency grandfathering (*see Sierra Club* v. *EPA*, 719 F.2d 436 (D.C. Cir. 1983)). This test involves balancing the result of four analyses, including whether the new rule represents an abrupt departure from previously established practice, the extent to which a party relied on the previous rule, the degree of burden that application of the new rule would impose on the regulated parties, and the statutory interest in applying the new rule immediately.

EPA believes that the labeling requirements represent an abrupt departure from previous practice. Prior to the effective date of the labeling requirements, manufacturers in general were not required to provide any labeling information regarding whether controlled substances were contained in, or used in the manufacture of, a product; moreover, until today's publication of these regulations, manufacturers could not know for certain the specific labeling provisions that they would be required to implement. As discussed above, requiring labeling on products manufactured before May 15, 1993 would impose an unreasonable burden on numerous affected parties while providing no significant environmental benefits. For these reasons, EPA believes that its grandfathering of products manufactured before May 15, 1993 is consistent with the requirements of *Sierra Club* v. *EPA*.

Today's final rule also provides for grandfathering products containing class I or class II substances. Such products face problems like these described above for products "manufactured with," in that they can be stored for distribution throughout the world. To require them to be labeled before distribution in order to apply the warning statement would result in significant costs with little or no environmental benefit.

Therefore, given the large onetime cost to label inventoried products, and limited environmental benefit of labeling these products, this regulation provides that all products manufactured before May 15, 1993 are not subject to the requirements of section 611(d). This decision is also based on the fact that industry will have significantly less time to implement the labeling requirement than the statute envisioned because the Agency did not promulgate implementing regulations within eighteen months following enactment of the Act's amendments, as required by the statute. Had EPA promulgated such regulation at the proper time, manufacturers would have had one year from the time of publication of the regulation to the law's effective date to comply. Because of these delays, manufacturers have substantially less time to comply after the promulgation of these regulations. Therefore, EPA acknowledges the difficulty that manufacturers with inventories of products would have without such a "grandfathering" exemption.

EPA is requiring that for products manufactured before the effective date to be exempt from the labeling requirement, manufacturers must be able to show within twenty-four (24) hours of receiving a request by EPA that such products were manufactured prior to May 15, 1993. Although EPA is not requiring new recordkeeping requirements or specific tracking systems today, manufacturers must have an accountable system in place on site so that EPA can verify that unlabeled products were manufactured or containers were filled prior to the effective date. The burden thus falls upon the manufacturer to show that unlabeled products are exempt from the labeling provision. If a manufacturer is unable to verify such information, then that person will be deemed out of compliance and subject to penalties, pursuant to Title I, section 113 of the Clean Air Act. Importers of products that can show at the site of U.S. Customs (Customs) clearance that such products were manufactured prior to the effective date are also exempted from the labeling requirement. In the absence of such proof, products containing or manufactured with a class I substance will need to bear the appropriate label, regardless of the manufacture date.

C. Products Manufactured With Controlled Substances[1]

1. Changes to the Label Pass-Through Requirement

In the proposed rule, EPA required that products manufactured with and containing controlled substances be labeled throughout the stream of commerce. Its definition of "manufactured with" exempted transformation and non-contact uses of controlled substances. The proposal indicated that by allowing these exemptions, the requirements would not result in universal labeling. Additionally, EPA indicated that the labeling requirements should apply across all use sectors since Congress did not restrict applicability of the law.

EPA further proposed that in order to inform the ultimate consumer that a controlled substance had been used in the manufacture of any part of a finished product, any manufacturer that incorporates a labeled component into its product, would be required to label its product, even if no ozone-depleting substances are used by the manufacturer in the subsequent manufacturing process. EPA stated in the proposal that manufacturers could rely on the label information they received from their suppliers, as long as they reasonably believed that the information was accurate. EPA suggested that manufacturers could show reasonable belief by using contract provisions requiring accurate labeling by their suppliers.

One commenter supported EPA's definition of "manufactured with," stating that it would not necessarily culminate in universal labeling, and that EPA's proposal to pass the label through the stream of commerce to the ultimate consumer is fair and appropriate, as long as there are clear penalties to discourage noncompliance. However, many responded that EPA's proposed definition of "manufactured with" was extremely broad, covering a significant number of products, including component products, and that such a requirement would in fact result in universal labeling with an onerous and expensive tracking burden. These commenters argued that tracking components was unavoidable and that all products would have to be labeled. Such universal labeling, it was argued, would reduce the effectiveness of the requirement, with little environmental benefit and possible confusion for consumers. Other comments expressed doubt as to whether the proposal reflected congressional intent.

Several also commented that the proposal would disadvantage downstream manufacturers that do not use controlled substances in their own manufacturing processes, but that depend upon a multitude of suppliers who may use controlled substances in their manufacturing processes.

According to these commenters some manufacturers may have more than 1,500 suppliers for a given manufacturing process. As a result, tracking the source of supply, determining whether that source used a controlled substance, and determining

[1] This labeling regulation applies to products manufactured with class I and class II substances. However, it should be noted that products manufactured with class II substances are not regulated by this regulation until January 1, 2015, or until the Administrator finds, after notice and opportunity for comment, that for a particular product substitute products or processes are potentially or currently available.

whether that source's component was used in a specific final product, could be extremely difficult and prohibitively costly to implement. As discussed below, the commenters also stated that manufacturers cannot use contract provisions to ensure accurate labeling for all their components.

The difficulties in tracking the use of controlled substances throughout the stream of commerce are illustrated by the case of a major electronics manufacturer. This firm purchases about 70,000 component products from about 2,500 domestic and foreign suppliers. The company has phased out completely its use of class I substances in its own manufacturing processes, but because it buys from suppliers it must determine and track their use of class I substances. To do so, it has undertaken an outreach program to learn the extent to which class I substances are being used throughout its supply chain. The company contends, however, that surveys, letters, follow-up letters, data entry of the information received, data analysis and subsequent outreach to those vendors using class I substances are time-consuming and cannot assume the degree of certainty required by the approach outlined in the proposal.

Tracking is made more difficult by the fact that many products, especially electronic products, are comprised of thousands of components that may come into contact with ozone-depleting substances. Therefore, a manufacturer would have to label its products unless it has a reasonable belief that all of its component products in a final product were not manufactured with ozone-depleting substances. Moreover, as the proposed warning statement would have to list every controlled substance used by any manufacturer's suppliers, a manufacturer would have to have a reasonable belief regarding the uses of controlled substances by any of its suppliers. The company discussed above learned that tracking by their suppliers of their uses of class I substances was very poor overall. Of its 2,500 world-wide suppliers, only one was found to have an outreach program that targeted more than one level of suppliers. Therefore, it would be extremely difficult for this manufacturer to be reasonably confident that the products it purchases are free of ozone-depleting substances, because the vendors throughout its supply chain lack the necessary information about their own products, as well as the components that they purchase from their suppliers. In addition, regulations vary among countries and tracking of class I substance use abroad is poor. Thus, many commenters stated that it would be impossible to be reasonably confident that a purchased product does not require a warning statement. According to commenters, this would lead to universal labeling of all final products in several industries, especially the electronics industry. Universal labeling, these commenters agreed, would not fulfill the intent of the law, since ultimate consumers would be unable to distinguish among any of these products on the basis of controlled substance use.

While the proposed rule did not require a company to conduct independent investigations throughout its stream of commerce in order to form a reasonable belief, subsequent to the proposal, many manufacturers and their suppliers initiated such investigations in order to be assured that their final products did not require the warning statement. Several commenters stated that a manufacturer must perform investigations in order to satisfy the reasonable belief requirement that their suppliers are accurately labeling. They explained that EPA's suggestion that contract provisions be used to establish a reasonable belief was not practical. As discussed above, many products rely on numerous parts manufactured by many suppliers and that revisions of all the contracts involved, where they exist, would be an enormous undertaking. These commenters indicated that many of the components incorporated into their products are purchased without contracts. Such products are either purchased "off the shelf" or from various suppliers at different times, depending on one's inventory and the market situation. These commenters stated that they cannot control the manufacturing processes of these products through contract specification provisions. Thus, aside from using independent investigations, manufacturers have no way of ensuring that component manufacturers are not using ozone-depleting substances or are accurately labeling their products.

Commenters further explain that the problem is further exacerbated by the fact that many components are purchased with little lead time between purchase and incorporation into a new product. As a result, the packaging information for the final product, including any labeling information, is often completed before the components are purchased. Under such circumstances it is impossible for manufacturers to know whether to label the package. If EPA requires labeling of a product based on a component manufacturer's use of ozone-depleting substances, then the manufacturer of the final product may have to expend significant costs to restructure its packaging and labeling processes in order to account for incorporation of last minute information.

It is evident to EPA that given the difficulty of tracking the use of controlled substances throughout the stream of commerce, the "reasonable belief" provision as proposed was too vague to define or determine liability and was therefore unworkable.

For products manufactured with controlled substances, EPA has given considerable thought to the concerns raised in the comments on passing labels through the stream of commerce. As a result, EPA is revising its definition of "manufactured with" to state that a product is "manufactured with" an ozone-depleting substance if the manufacturer of the product itself used an ozone-depleting substance in manufacturing that product. Thus, the inclusion of component products manufactured using controlled substances in the manufacture of another product, that does not otherwise involve the use of controlled substances does not constitute "manufacturing with an ozone-depleting substance." Each item manufactured and introduced into interstate commerce is considered a product, necessitating a label if manufactured with a controlled substance. The incorporation of that product into another, however, does not necessitate a label.

EPA believes that the revision to the label pass-through requirement for products "manufactured with" ozone-depleting substances is consistent with the statute. EPA believes that the phrase "manufactured with a process that uses" an ozone-depleting substance can reasonably be interpreted to refer only to the manufacturing process of the company that introduces the product into commerce and not also to the manufacturing of any component parts made by another company. Thus, a product "manufactured with a process that uses" an ozone-depleting substance means only a product that was manufactured using such substances by the company that introduces the product into commerce (i.e., the manufacturer of the final product). To illustrate, a television would be a product manufactured with a process using ozone-depleting substances only if the manufacturer of the final product used such substances in *its* manufacturing process. Use of component parts made by a supplier using ozone-depleting substances would not constitute "manufacturing with a process" using those substances. Thus, the television would have to be labeled only if that company that introduces it

into commerce itself used ozone-depleting substances to make the television. The component parts, on the other hand, would be products "manufactured with a process using ozone-depleting substances" since their supplier made them using ozone-depleting substances in *its* manufacturing process. The labeling requirement would accordingly apply to the component parts, but the label would not have to be incorporated by the manufacturer of the final product.

Section 611 does not define "products manufactured with a process that uses" ozone-depleting substances. EPA believes that the approach it implicitly took to the phrase in its proposed rule is consistent with, but not compelled by, the statute. As a conceptual matter, it would advance the purpose of the labeling provision to require that any product be labeled through the stream of commerce so long as any part of it, no matter how small a fraction of the whole, was made using ozone-depleting substances. However, to the extent that such a requirement proved unworkable and resulted in inaccurate information, it could actually undermine the integrity and thus the effectiveness of the labeling program.

The purpose of the labeling provision is also served if the buyer of any product is made aware of whether the product's maker itself used ozone-depleting substances. Under the definition described above, wherever in the stream of commerce class I or class II substances are used, the buyer at the next point in the stream of commerce would be made aware of their use. While this approach would result in many labels reaching only other manufacturers, EPA believes that many manufacturers can be expected to have an incentive at least as great as that of downstream consumers to respond to the warning statement. Manufacturers that rely on component parts made by other companies can ill afford to rely on suppliers to use alternative substances or find other suppliers that do. Thus, labels attached to products as defined above would promote the switch to substitutes that Congress sought to encourage through the labeling provision.

While labeling products through the stream of commerce could add to the incentive effect of the program, EPA is persuaded by the comments summarized above that the proposed pass-through requirement is impracticable and would probably not result in accurate information reaching the retail consumers. The proposed "reasonable belief" standard for determining whether to label would also be difficult to enforce.

In addition, the recent decision of the Protocol Parties to significantly accelerate the phaseout of the listed ozone-depleting substances (a decision which EPA must implement under section 606(a)(3) of the CAA) reduces the importance of the labeling program. Congress enacted section 611 when class I substances were expected to be phased out by the year 2000. The labeling requirement thus provided an incentive for manufacturers to move away from their use of such substances before 2000 in order to avoid the negative market reaction. With the acceleration of the phaseout to 1996 for most class I substances (and 1994 for others), requiring products to be labeled is unlikely to significantly add to manufacturers' incentive to switch to alternative substances.

In light of the substantial burden and questionable effectiveness of the proposed pass-through requirement, EPA is not requiring it in today's rule for products manufactured with controlled substances. The Agency is instead adopting the definition of "products manufactured using" ozone-depleting substances described above so that a manufacturer need only label its product if the manufacturer itself used ozone-depleting substances in producing it.

For the purpose of applying the definition described above, divisions of a company, wholly-owned subsidiaries and parent corporations are considered to be a single manufacturer. Therefore, where one division of a company, for example, incorporates a component manufactured with an ozone-depleting substance and that component was manufactured by another division of the same company, the final product must contain a warning statement upon its introduction into interstate commerce, even where the product may be finished by other divisions without the use of ozone-depleting substances. If a manufacturing process of a product takes place in more than one facility, the label information must accompany the product, but not necessarily in the form of a label. Upon the final point of manufacture, a label must then be applied. EPA believes that this will facilitate the labeling process and reduce the burden in the overall manufacturing process of a product where the process involves more than one site of operation.

EPA believes that the tracking problems associated with the pass-through requirement are to a great extent eliminated if manufacturers are only required to track the use of ozone-depleting substances by the divisions within a subsidiary of the same company.

In contrast to manufacturers that use a component manufactured with a controlled substance, the rule promulgated today prohibits distributors, wholesalers and retailers that receive a product with a label indicating that it was manufactured with a process that uses a controlled substance from removing the label. They must leave the label on a product they purchase or distribute, including products they re-package,[2] and are subject to penalties. Since the purpose of the labeling program would obviously be frustrated if labels could be removed by downstream sellers, EPA is exercising its authority under section 301 of the CAA to establish the prohibitions described above.

Rules governing labeling by importers also differ from the general rules described above. Importers must have a "reasonable belief" that a "product manufactured" or "product containing" does not require a label at the time it enters the site of U.S. Customs clearance, or its introduction into interstate commerce. With no similar labeling requirements abroad, foreign manufacturers will not likely impart the information required of domestic products without an inquiry made by the U.S. importer of record. It is therefore the responsibility of the importer to investigate at least one step back into the manufacturing process of the product to determine whether it is manufactured with a class I substance. An importer may use specifications in its contracts with its suppliers under which the suppliers are required to certify whether the product being exported to the United States was or was not manufactured using a controlled substance, in order to show that the importer has a reasonable belief that the product was not manufactured using controlled substances. Importers are not required to investigate whether a component incorporated into the product they are importing was manufactured with a class I substance.

a. Resin producers and the use of one label. One commenter, noting the difficulty and cost of determining which class I substances are used in the manufacturing process of a product, stated that resin producers who

[2] EPA considers the assembly of component products to be a manufacturing process only when the assembly creates an entirely new product. Manufacturers, distributors, wholesalers and retailers that simply repackage a product and/or do not substantially change it, are not manufacturing a product and must pass the warning statement through the stream of commerce.

purchase one or more pigments manufactured with class I substances would have great difficulty in determining which and how many class I substances were used in the manufacturing process of the pigments. The commenter noted that several different labels for the same type of products would be required as a result. It suggested that EPA's final regulation enable resin producers to forego labeling since they do not use the class I substances themselves and would be unable to determine how many and which ones were used in the manufacturing of the pigments.

Under the definition of product "manufactured with" being adopted today, EPA would not require resin producers to label if they, in fact, do not use a controlled substance in their manufacturing process. If they do use such substances, they would be required to label their products. The label would have to list substances used in the producer's own manufacturing process. One label listing the substances by their standard chemical names could be used instead of multiple labels for a single product. EPA believes that by dropping the pass-through requirement for products manufactured with controlled substances, it is addressing the issue of liability for all manufacturers concerned with products they purchase upstream.

2. Incidental Uses

Many commenters supported EPA's determination in the proposed rulemaking that incidental uses of controlled substances should not trigger the labeling requirement. However, commenters argued that EPA's definition of incidental use was too narrow and should include "contact" incidental use as well. Some of the uses of controlled substances that commenters sought exemptions for as an "incidental use" were the following: use as reactive atoms that are not integral to the manufacturing process; use in making food packaging; use as incidental additives such as those found in the manufacturing of spices which are then added to other foods; use as cleaners of plates used to print product information and labels; use to clean reaction vessels in the manufacture of silicone products; use as degreasers in the production of industrial diamonds; and use as mold release agents used to prevent the adhesion of products to a mold. Other commenters recommended that EPA include "non-routine" and "unintentional physical contact" situations as incidental uses.

In the final rule, EPA expands incidental uses to include "contact" uses in which a class I or class II substance is used intermittently, on a non-routine basis, and not as an integral part of the manufacturing process of the product. Some examples would be an intermittent application of a controlled substance, such as methyl chloroform as a spot cleaner for textiles, or an occasional cleaning of an ink plate with a solvent as part of routine maintenance, as long as the use is not a part of the manufacturing process itself. Another example would be the infrequent performance of leak detection tests on a cooling system and condenser, using CFCs or substances containing CFCs. EPA believes that such incidental "contact" uses, though they potentially could involve a brief initial physical contact between the controlled substance and the product, occur so infrequently (e.g., typically as part of the maintenance process), that labeling would not be appropriate. This exemption would also likely cover most situations where a physical contact occurred unintentionally.

In contrast, mold release agents that are applied on a regular and systematic basis in a manufacture process would not be considered an incidental use of a class I substance. Further, the defluxing of printed circuit boards during a continuous production process would not be considered an incidental use. EPA also cannot exempt food processing applications in which a spice, for example, is manufactured with a controlled substance. However, where foods are prepared with such spices, such foods are not required to bear a label, based on the definition of a product "manufactured with" discussed above. Again, products that incorporate other products which were manufactured with controlled substances are not required to pass through the label unless both sets of products were manufactured by the same company.

One commenter argued that plasma etching in the manufacturing process of semiconductors is an incidental use of controlled substances. (Plasma etching uses controlled substances in a sealed chamber in which radio frequency energy is applied to excite the chemicals and break them down to create an "ion-plasma." The plasma is used to etch certain parts of a silicon wafer upon which semiconductors are created.) The manufacturer states that the use of a controlled substance to supply ions to the plasma is terminated once the chemicals are "broken down" in the sealed chamber. Another commenter indicated that a direct contact use that is closed-loop (the controlled substance is not emitted and/or destroyed) or employs recovery and recycling systems should be considered an incidental use. Finally, another commented that use of methyl chloroform as a solvent carrier which eventually evaporates (except for trace quantities) should be considered as an incidental use.

EPA does not consider the use of controlled substances in the process of plasma etching an incidental use since the controlled substances are integral to that process. However, as plasma etching falls under the transformation exemption discussed below, products involving this use would be exempt from the labeling requirements. The use of closed-loop or recovery and recycling systems as part of a process does not qualify that use as an incidental use. Finally, a process in which methyl chloroform serves as a solvent carrier cannot be considered incidental. The evaporated methyl chloroform could be emitted into the atmosphere, thus contributing to the destruction of the ozone layer.

3. Transformation

In the Notice of Proposed Rulemaking, EPA proposed exempting products that are manufactured with a process using a controlled substance in which that substance is not emitted but instead transformed (i.e., completely consumed into a non-ozone-depleting substance during the manufacturing process) and therefore no longer poses a threat to the ozone layer. EPA reasoned that since Congress exempted transformed controlled substances from the definition of production for purposes of the phaseout provisions, it would not have intended to require labels on products manufactured using a process that transforms controlled substances. Under the statute definition of production, after all, transformed controlled substances are treated as though they never existed. The definition of transformation, for purposes of section 611, was proposed to be "to use and entirely consume a controlled substance by changing it into one or more substances that are not subject to this subpart in the manufacturing process of a product or chemical" (57 FR 19166, 19198).

Several comments addressed the need for a clearer definition of transformation, especially one that took into account of the physical law that chemical reactions are never 100% efficient and thus leave "trace quantities" of controlled unreacted substances. One commenter requested that EPA exempt certain transformation processes, such as plasma etching (described above) from the labeling requirement.

EPA has promulgated regulations for the phaseout of production and consumption of class I substances by 2000 (57 FR 33754, July 30, 1992). Those regulations define, transformation as "to use and entirely consume (except for trace quantities) a controlled substance in the manufacture of other chemicals for commercial purposes." That definition reflects that transformation results in "trace quantities." Today, EPA adopts that definition for the labeling rule. The trace quantities exception acknowledges that transformation unavoidably leaves insignificant amounts of controlled substances that are not intended for commercial use. Plasma etching is considered a process that entails transformation, and thus products manufactured using plasma etching need not be labeled, unless they are otherwise subject to the regulations.

Several commenters urged that methyl chloroform (MCF) used as a source of chlorine molecules in an oxidation process of semiconductor manufacturing should be considered to be transformed during such manufacture, because the MCF breaks down to provide a source of chlorine and therefore does not contribute to ozone depletion. One large manufacturer indicated that at high temperatures and where there is an excess of oxygen, no MCF will remain or be emitted. If in the oxidation process of semiconductor manufacturing, MCF is transformed, except for trace quantities, EPA would not require that resulting product to be labeled.

One commenter suggested that a process in which a class I substance has been generated as a coincidental, unavoidable by-product (CUBP) be considered transformed and consequently exempted from the requirement[3]. EPA agrees that use of such a process should not require the resulting product to be labeled, but for different reasons than the comments give. CUBP does not entail the use of a controlled substance, rather it involves the unavoidable production of such a substance. Since a process that results in CUBP does not use controlled substances, it does not fall under the definition of "manufactured with a process using" ozone-depleting substances for purposes of triggering the labeling requirements. Since CUBP is unavoidable, moreover, little purpose would be served by requiring manufacturers using such a process to label their products. EPA therefore finds that the labeling requirements do not apply to products manufactured using a process EPA has determined meets the CUBP exemptions criteria under the regulations implementing section 604 (57 FR 33754–33765, July 30, 1992). Additionally, EPA addresses trace quantities of unintended residues or impurities below in section D.3.

It is important to note that the destruction of a controlled substance in a manufacturing process other than the process in which the product itself is manufactured is not regarded as transformation. For example, if in a production process a company uses a controlled substance and then removes it from the process for incineration in a separate destruction process within the same facility, that substance is not transformed; it is destroyed. Even though the destruction of the substance will prevent the risk of release into the stratosphere, it is not transformation and will not be dealt as such for the purposes of this rule.

4. Destruction

At the Fourth Meeting of the Parties to the Montreal Protocol (the Parties), which took place November 23–25, 1992 in Copenhagen, the Parties approved five destruction technologies to be used for destroying class I substances. Under the existing Protocol, "production" of controlled substances is defined as "the amount of controlled substances produced, minus the amount destroyed by technologies to be approved by the Parties." These approved five destruction technologies (liquid injection incineration, reactor cracking, gaseous/fume oxidation, rotary kiln incinerators, and cement kilns), enable the Parties to subtract from the definition of production that amount of ozone-depleting substance(s) which is destroyed by these means. EPA is currently revising its draft proposal of the regulation accelerating the phaseout of class I and class II substances to address this issue among others raised in Copenhagen.

EPA seeks comment on whether it could and should provide an exemption from the labeling requirements for the use of controlled substances that are destroyed using one of the above-mentioned approved technologies. The destruction technology procedures would have to be consistent with regulations under the Resource Conservation and Recovery Act and other applicable acts, and meet, at a minimum, standards set forth in Table 5–1 of the United Nations Environmental Programme (UNEP) report entitled, Ad-Hoc Technical Advisory Committee on ODS Destruction Technologies, and the code of Good Housekeeping Procedures for destruction setforth in section 5.5 of the UNEP Report. Destruction technologies would also have to be operated, at a minimum, in accordance with the UNEP report.

Since the ultimate goal of Title VI is to minimize depletion of stratospheric ozone, such an exemption that would recognize, and provide an incentive for, the elimination of emissions of controlled substances through the use of approved destruction technologies is one method of reducing risks of ozone depletion.

5. Use Reduction Exemption for CFC–113 and Methyl Chloroform Used as Solvents

In the proposed rulemaking, EPA did not propose excluding a "de minimis level" of use of a controlled substance from its definition of products "manufactured using," but requested comments on how a "de minimis" exemption could be implemented. EPA's rationale against such an exemption was that though an individual use of a controlled substance may be small, such uses in the aggregate over an entire use sector could pose a significant threat to the ozone in the upper atmosphere.

EPA received many comments regarding the Agency's decision not to propose a "de minimis" level, particularly in the case of products manufactured with class I substances. One commenter stated that EPA's proposed determination that aggregate use levels over an entire market segment can be large and thus pose a threat to the ozone layer should not preclude granting exemptions from the labeling requirement in cases where a company can show that its use of a class I substance is nonetheless de minimis. Many commenters provided options for an aggregate "de minimis" level. Some suggested that where a firm has achieved a 90% to 95% reduction in the use of class I substances from a specified baseline level, that EPA should find that manufacturer's remaining uses of class I substances to be "de minimis." Other commenters suggested defining a de minimis level as a specified amount of a class I substance that could be used per product on an annual basis. However, in evaluating this particular approach, the Agency has concluded that it cannot possibly investigate use of class I substances in the manufacture of all individual products.

Some commenters suggested a de minimis exemption for specific

[3] A CUBP is a coincidental unavoidable by-product of a manufacturing process that is immediately contained and destroyed by the producer, using a maximum available control technology with a destruction efficiency of 99.99%.

applications using "small quantities" of class I substances, including degreasers for steel products. Another proposal was simply to set a de minimis level for carbon tetrachloride (CCL4) at 0.1% by weight, or 1,000 ppm in a final product.

EPA does not find any of the proposals suggested above to be practical or lawful. However, EPA does recognize that manufacturers who are attempting to eliminate the use of ozone-depleting substances may be unable at this time to completely eliminate such use, because potential substitutes may not be available for all uses. The Clean Air Act provides exemptions from the labeling requirement for products manufactured with class I substances, if the "Administrator determines that there are no substitute products or manufacturing processes that: (a) Do not rely on the use of such class I substance, (b) reduce the overall risk to human health and the environment, and (c) are currently or potentially available." Given the wide range of uses of class I substances, EPA will not be able to assess the availability of substitutes for all substances and uses in all manufacturing processes in the short amount of time before the labeling regulation takes effect. The petition process, discussed in section V.P below, accommodates requests for specific exemptions, but exclusive reliance on this process would be administratively impractical in view of the relevant timeframe and EPA's limited resources.

The United Nations Environment Programme (UNEP) "Report of the Solvents, Coatings and Adhesives Technical Options Subcommittee, 1991 Assessment," states that potential substitutes other than HCFCs may not be available for approximately 2% to 8% of the current uses of class I substances as solvents in the solvent-cleaning, adhesives, coatings and inks end-use sectors across industry[4]. The class I substances used in these solvent sectors are CFC–113 and methyl chloroform (MCF). The specific HCFC alternatives are problematic because they are either relatively high in ozone depletion potential, less technologically feasible for the specific uses required, or not economically viable for many of these uses. EPA believes that those products "manufactured with" the uses of CFC–113 and MCF for which no long term adequate substitutes currently appear to be technologically or economically feasible would be eligible for the exemption described above. While the statute conditions the availability on a determination of a potentially available substitute, EPA notes that it must base its determination on currently available evidence. If current evidence indicates that potential substitutes are not technologically and economically feasible, EPA believes it should make the required determination and provide an exemption.

However, it is administratively impossible for EPA to identify and describe all uses or types of uses of CFC–113 and MCF in the solvent-cleaning, adhesives and coatings sector which may warrant an exemption. The UNEP report speaks to broad applications of CFC–113 and MCF in the solvent sector and does not attempt to identify the specific uses for which there are no technologically, environmentally and economically viable alternatives. Although it is possible to describe certain applications where it has been difficult to find substitutes, a comprehensive list of such applications would be extremely difficult to compile due to the many diverse and specialized uses for these ozone-depleting solvents.

One gains a better understanding of the difficulty of listing all the applications for CFC–113 and methyl chloroform by comparing some of their solvent uses to uses of CFCs as refrigerants. In refrigeration, an application is defined by the refrigerant (e.g., CFC–11 or CFC–12) and the equipment (e.g., centrifugal building chiller or household refrigerator). In contrast, solvent use itself is broken down into multiple use categories ranging from large uses such as solvent cleaning or aerosols to much smaller uses such as lubricant carriers or book preservation. Each of these use categories is then further defined by a variety of factors. Use of solvents as cleaning agents alone is defined by:

—Equipment—Cleaning equipment can vary in size and throughput capacity from a vapor degreasing system designed to clean airplane wings to a small spray can used for cleaning electrical locks

—Chemical—CFC–113 or methyl chloroform

—Geometry of the part—Part configurations range from high-performance instrumentation such as accelerometers and medical pacemakers to parts as simple as nuts and bolts

—Substrate—Parts can be made from materials varying from basic carbon steel to magnesium to ceramic to plastics for contact lenses

—Cleanliness—Even for the same part, cleanliness standards vary greatly so that, for instance, a transmitter in a fighter aircraft is cleaned to a different standard than one in a child's walkie-talkie.

These parameters turn the listing of substitutes for each application into a complex undertaking. If one of the variables changes even slightly, the substitute must change, too. For example, gyroscopes (instruments designed to detect movement) with silicon fill fluids are cleaned with different substitutes than those filled with fluorinated compounds.

Generating a list of all solvent applications for which substitution is difficult would involve splitting out innumerable sub-applications within the solvent use sector. While the Agency is aware that certain applications may have few satisfactory substitutes, it cannot in the time available compile a comprehensive list of solvent uses of CFC–113 and MCF for which no potential substitutions exist; nor can the Agency make such a determination for individual solvent uses without the data that it expects to receive under the petition process.

Under these circumstances, EPA believes that manufacturers who use CFC–113 or MCF as solvents should not be required to label their products where such manufacturers have made good faith efforts to eliminate their uses of such substances, but have been unable to completely eliminate them due to the remaining small uses for which substitution is particularly difficult. The Agency believes that it is therefore appropriate to exempt products "manufactured with" CFC–113 or MCF from the labeling provisions where the products' manufacturer can show that it has reduced its use to that percentage for which the UNEP report estimates substitutes are not available. Therefore, taking the mid-point of the UNEP estimate, or 5%, EPA believes that it is appropriate and consistent with the provisions of section 611(d)(2) to exempt a company from the labeling requirements if the company is able to prove that it has reduced its use of CFC–113 and MCF as solvents to 5% of its 1990 use.

This exemption applies only to products "manufactured with" CFC–113 and MCF used as solvents. The uses of these and other class I substances in products containing or in containers of such substances would not be covered by this provision. These categories constitute a much more limited number of applications and therefore do not entail the administrative burdens of

[4] In contrast, the UNEP reports covering other end-use sectors, such as refrigerated appliances, halon extinguishers, air conditioners and foams, do not indicate a similar difficulty in finding long-term substitutes.

evaluating the availability of substitutes across a wide array of small uses.

By allowing this exemption, EPA recognizes that where a company has reduced its use of CFC–113 and MCF as solvents for its products by 95% or greater since 1990, the remaining use of such substances is likely due to the lack of technologically and economically feasible long-term substitutes for such use as discussed in the 1991 UNEP Report. EPA is using 1990 as a baseline because it is the first full year of control on CFCs under the Montreal Protocol and the year in which the Clean Air Act Amendments were enacted. As a result, many companies began maintaining adequate records on their overall use levels of these compounds at that time.

EPA recognizes that this approach cannot exactly duplicate the usage results that would have occurred had EPA been able to make individual determinations as to which uses had no currently or potentially available alternatives and thus which specific uses should be exempt. This exemption may benefit certain manufacturers that would not have otherwise been able to take advantage of an exemption, and may not adequately cover those manufacturers who still require greater than 5% of their 1990 use for applications where there are no potentially available substitutes. These manufacturers can, however, still use the petition process to request an exemption for such uses. Nevertheless, EPA believes that given the extreme administrative difficulty of evaluating exemption requests for the many small uses of CFC–113 and MCF as solvents, and the likelihood that remaining solvent uses will require further research and development before satisfactory substitutes can be brought to market, its approach is an appropriate and workable surrogate. Such a provision will allow companies to focus their efforts on the search for substitutes, rather than face the burden of documenting their use and of petitioning EPA for such exemptions.

EPA believes that this approach will also encourage early reductions of class I substances by users seeking to reach the 95% level to avoid the labeling requirement. Such reductions could lead to significant early environmental benefits which would outweigh any environmental damage that may result from providing an exemption for products manufactured with the remaining 5%, for the limited period prior to the January 1, 1996 production phaseout. EPA believes that without this use reduction exemption, in some instances manufacturers would have less of an incentive to reduce their use of CFC–113 and MCF as solvents prior to the required production phaseout. Without this exemption, if a product is manufactured using any amount of CFC–113 or MCF as a solvent, it would have to be labeled. If the manufacturer is required to label its product because of a single remaining use in its manufacturing process, it would be less likely to reduce any other uses of CFC–113 or MCF because the product would still require a warning statement. However, if a manufacturer can avoid the labeling requirement by reducing its use by 95%, the manufacturer will be more likely to make such a reduction in order to avoid the labeling requirements.

To utilize this reduced use exemption, a company must certify in writing to EPA that it (including its divisions, branches or facilities) has achieved a reduction in its total use of CFC–113 and MCF as solvents by 95% or greater from its calendar year 1990 use of such substances as solvents. The company must show that it has reduced its use from its 1990 levels by 95% during a twelve-month period which can be calculated either as the twelve-month period ending within sixty (60) days of the date the certification was received, or as the most recent calendar year.

The Agency is limiting this exemption to those companies that can certify their reduction by May 15, 1994 in order to encourage early reductions of such substances. There would be negligible environmental benefit to allowing certification beyond May 15, 1994, given the January 1996 phaseout date. Companies unable to meet this deadline may still petition EPA for an individual exemption, although the petition process is likely to be time-consuming. Once a company has received an exemption from labeling, the exemption from labeling is assured beyond May 15, 1994; however, if at any time a company increases its use of CFC–113 or MCF as solvents such that its use is greater over a twelve-month period than 5% of its 1990 usage, it must notify the EPA within thirty (30) days and must begin labeling.

In calculating the baseline, a company may subtract from both the baseline and total use calculations uses of CFC–113 or MCF where the chemicals were transformed, because such uses are themselves the basis for an exemption (described above). If purchase orders of MCF or CFC–113 are used as the basis for calculating the baseline or reduction levels, adjustments for changes in inventories must be made to reflect actual use.

Records (or legible copies) supporting a company's assertion that it has reduced its use must be maintained at a single facility within the company. The certification to EPA must specify the facility where the records supporting a company's reduction are located. The certification must include a description of the records (purchase orders, inventoried stock records) maintained at that location, and the type of system used to track company-wide use. All certifications must provide the name of a contact person, address and telephone number for that contact person. Certifications should be sent to the Labeling Program Manager, Stratospheric Protection Division, Office of Atmospheric Programs, U.S. Environmental Protection Agency, 6202–J, 401 M Street, SW., Washington, DC 20460. One copy should be submitted to the Agency and one must be retained by the company.

During a field inspection, EPA may require verification of a company's use in 1990 of CFC–113 and MCF as solvents that year and of its 95% reduced use during a subsequent twelve month period. A company must therefore make the appropriate adjustments to its records to account for the use of inventoried CFC–113 and MCF solvents in 1990 and in the subsequent twelve month period showing the 95% reduced use. If a company subtracts use associated with transformation in its formulation, data showing a clear association of quantities of use with provable transformation must also be accessible with the above records upon request by EPA.

The Agency understands that many companies have available the information outlined above for tracking company-wide use of CFC–113 and MCF, as well as its use of other class I substances. The pending acceleration of the phaseout and the Clean Air Act regulations have prompted many companies to track their uses of class I substances in their efforts to comply and to anticipate elimination of the substances. Other companies may have to upgrade their tracking systems in order to utilize the reduced use exemption provision.

Companies seeking to qualify for this exemption by the time the labeling regulations take effect on May 15, 1993, must certify to EPA by May 15, 1993 that they have met the reduction requirements outlined above, in order for the Agency to review such certifications. Companies seeking to qualify for this exemption following the effective date of the labeling requirement must certify to EPA their total reduced use of CFC–113 and MCF

as solvents for a twelve month period ending within sixty (60) days of the date the certification was received, or the last calendar year. A company may then cease to label its products fourteen (14) days following the Agency's receipt of the certification. If a company decides not to label its products manufactured with CFC–113 or MCF based on this reduced use exemption, the burden of proof is on the company to show, upon request by EPA, adequate data outlined above demonstrating that it is legally eligible to use this provision.

D. "Products Containing" and "Containers Containing"

1. Distinction Between "Products Containing" and "Containers Containing" and Label Requirement

In the proposed rule, EPA defined containers of class I or class II substances as "the immediate vessel of any size in which that substance is stored or transported." EPA further stated that this definition included cans, drums, trucks and isotanks of class I or class II substances alone or in mixtures" (57 FR 19166–19167).

One commenter inquired whether containers such as degreasing units or large empty tanks, which may be used to hold such substances, should be labeled at the time of manufacture. Another commenter stated that confusion existed between when a product was a controlled substance contained in a container and when it was a product containing a controlled substance.

To further clarify the distinction between a controlled substance in a container and a product containing a controlled substance, EPA is incorporating in its final rule today a further elaboration of what would be covered by the requirement to label containers of class I or class II substances. This clarification is drawn from EPA's existing definition of bulk controlled substance in its current phaseout regulations (July 30, 1992, 57 FR 33754, 33788). This definition states that, "If a listed substance or mixture must first be transferred from a bulk container to another container, vessel, or piece of equipment in order to realize the intended use, the listed substances or mixture is a controlled substance."

Drawing from this definition of what constitutes a "bulk" controlled substance, EPA is revising the definition of "container containing" for section 611 to limit the phrase to containers holding a controlled substance: "If a class I or class II substance that is intended to be transferred to another container, vessel or piece of equipment in order to realize its intended use. If the controlled substance is used in a container, vessel or piece of equipment without being transferred, then that container would be deemed a "product containing" and would be labeled accordingly.

For example, CFCs in a small can sold to recharge refrigeration equipment would be used only after being transferred to an air conditioning system. The can would thus be labeled as a "container containing." A large tank of halon attached to a total flooding fire protection system on the other hand, would be labeled as a "product containing," because the halon is used directly from the tank itself.

In the case of a tank holding a solvent which is used as degreasing equipment, the equipment itself is typically sold without the controlled substance and therefore would not qualify as either a container or a product containing for purposes of this rule. This would hold true even though, at a later point in time, a class I or class II substance was contained in the tank during the use of this equipment. Thus, for equipment from which a controlled substance is used without being transferred, the applicable criteria is whether the equipment contains the controlled substance at the time of sale. It would not be logical to require labeling after the point of sale when consumer decisions are made. At the same time, to require labeling of all products that could be "used with" a controlled substance would be overly broad and discourage the sale of equipment that could be used with either a controlled substance or an alternative. However, for containers containing controlled substances, the container must be labeled whenever it contains a controlled substance, whether or not it contained a controlled substance at the time it was originally purchased.

2. Label Pass-Through Requirement for "Products Containing" and "Containers Containing"

As discussed in section V.C. above, if a component product that was "manufactured with" a controlled substance is incorporated into another product, these regulations do not require the manufacturer of the final product to pass the labeling information accompanying the component product through the stream of commerce. However, EPA is requiring that a warning statement for products and containers containing controlled substances be passed through the stream of commerce. There are several significant distinctions between "products and containers containing" and "products manufactured with" that indicate that the pass-through requirement should be retained for "products and containers containing." First, whereas a manufacturing process can be reasonably defined as not including the manufacture of components, the term "product containing" cannot be read to exclude components that are themselves contained within the structure of the product. If a component part contains controlled substances, the final product still contains the controlled substance at the point of sale.

Moreover, unlike products manufactured with controlled substances, it is much less onerous for a manufacturer to determine whether or not a product or container purchased from a supplier contains an ozone-depleting substance since the substance is held within the product's physical structure. Also, because the controlled substance is held within a product or container's structure, the release of the controlled substance into the atmosphere has not yet occurred. The consumer will generally release the substance through the use of the product, since the substance is likely an active ingredient of the product itself or a propellant. Informed by a label that indicates the controlled substances' effect on the ozone layer, the consumer may, in many cases where possible, take precautions to minimize or avoid the release of the substance into the environment. A manufacturer that purchases products without a label must have a reasonable belief that the product does not in fact contain a controlled substance before incorporating it into its final product. Manufacturers must also have a reasonable belief that a "container containing" is accurately labeled. Finally, importers must have a reasonable belief that information about "products containing" or "containers containing" is accurate, as the importer is required to ensure proper labeling at the site of U.S. Customs clearance.

3. Containers of Recaptured Substances and Waste

One commenter suggested that EPA should not require a label on containers for storing and transporting recaptured class I and class II substances, since such containers are reused and may contain a number of different substances at different times. In addition, the commenter stated that a label on such containers has no legitimate role in that it does not assist consumers in making purchase decisions.

EPA disagrees with this comment; a person handling such containers would benefit from the specific chemical

information on the label and the label would, in such case, act as a precaution for handling procedures. Though the label does not specifically address handling practices of such substances, it would inform those handling these containers of the chemicals contained in them and would encourage them to dispose of them or recycle them correctly.

Another commenter indicated that containers of class I or class II substance waste or waste containing trace amounts of such substances, intended for incineration, should not require a label since the substances will be destroyed. EPA believes that such containers require a label, since the waste contains a class I or class II substance which will require handling and proper precautions prior to its incineration, and since the waste enters into interstate commerce. Further, EPA believes that containers of class I or class II substances to be recycled or reclaimed must bear the warning statement, to ensure that the technician of a reclamation facility is aware of the substances contained in order to exercise the proper caution. Reclaimed substances are also resold by the reclaimer, and thus should be labeled upon introduction into interstate commerce.

Some commenters suggested that containers that once contained an ozone-depleting substance but are later recycled through melt down or scrapping and incorporated into another product, should not require a label. EPA agrees that if the new product no longer contains a class I or class II substance, it does not require a label.

One commenter argued that for containers in which military products "manufactured with" or "containing" class I or class II substances are transported and then returned empty to the originator, the label should be permitted to be "covered" by the originator of the products so that the container may be reused for other purposes. EPA accepts that at the point of their return, as long as the containers are emptied of their contents of the class I or class II substances, the label may be covered or removed. If such container subsequently is charged with a class I or class II substance, a label would be required at that time. EPA also would not require that a container or vessel for transport of a "product containing" or "container containing" be labeled; only the immediate container that holds the ozone-depleting substance must be labeled.

4. Trace Quantities of Unintended Residues or Impurities

One commenter raised the issue whether any chlorination process in which carbon tetrachloride (CCL4) is inadvertently produced would require a label under the proposed rulemaking, including such processes as the chlorination of drinking water. The comment is based on the fact that EPA made no exception in the proposed rulemaking for products containing unintended residual amounts of trace quantities of a controlled substance. Such trace quantities are not introduced intentionally into the manufacturing process; they are the result of a chemical reaction by which impurities are produced and retained in the final product. They may also be the remainder of a controlled substance that has been added and then removed, either, for example, as a solvent or explosion suppressant. Another commenter offered the example of the production of chlorine. Water and brine are combined in the process in which the hydrocarbons contained in the water are chlorinated during the chlorine production process. As a result, trace quantities of CCL4 are created. Most of these trace quantities remain in the chlorine, which is then used in the production of other products.

Upon reviewing numerous comments on this issue and discussions with various segments of industry, EPA has determined that products with trace quantities of unintended residues or impurities resulting from a chemical reaction in its manufacturing process, are exempt from coverage under this rule. In these cases, the residual controlled substance is neither intended nor serves a function in the final product itself, and therefore EPA does not consider the product to be a product "containing" a class I substance. Therefore, the product falls outside these labeling requirements for "products containing."

This position is further supported by the recent Fourth Meeting of the Montreal Protocol Parties in Copenhagen. The Parties approved a decision stating that insignificant quantities of controlled substances derived from inadvertent production in a manufacturing process or from an unreacted feedstock, or used as a process agent, such as an explosion suppressant, which is present in a substance as trace residues or impurities, may be excluded from the definition of "controlled substance" under the Protocol. EPA will soon be proposing to modify its regulations for the phaseout of class I and class II substances to reflect this clarification of the definition of controlled substances.

In the 2000 phaseout rule implementing section 604 (57 FR 33754), the Agency determined that where CCL4 of a controlled substance is produced as a coincidental unintended by-product (CUBP) of a manufacturing process and then immediately contained or destroyed, that process need not be considered "product" of a controlled substance. The Agency exempted CUBP production of controlled substances listed in Groups IV and V from the production restrictions. Because the Protocol's proposed change to the definition of controlled substance adopted in Copenhagen encompasses situations also covered by the CUBP, EPA will soon be proposing to eliminate this provision from its existing regulations. The adoption of the Protocol's recent interpretation of controlled substance further supports the exemption from the labeling requirements outlined in the trace quantities exemption in the paragraph above. Those products containing insignificant quantities, or trace quantities, of controlled substances present as unreacted feedstock, from incidental or inadvertent production, or used as a process agent, are exempted from the labeling provision.

Despite some comments on exemption of specific uses of CCL4, the Agency believes that a product containing a controlled substance cannot be exempt from the labeling rule where the controlled substance is essential to the manufacture of that product, such as with CCL4 as an explosion prevention measure in the manufacture of chlorine. Where such substance is intentionally introduced to the manufacturing process, it is not inadvertent and uncontrollable. Only those trace quantities associated with the inadvertent production or unintended residues are exempted from today's rule. However, the use of CCL4 as an explosion prevention measure does not result in the product "containing" the controlled substance, rather it is considered by EPA to be a product "manufactured with" a controlled substance and would require a warning statement. Furthermore, evaporation of a controlled substance is an emission and cannot therefore be exempt from the requirement.

E. Use of Controlled Substances for Repairs and Used Products

In the proposed rulemaking, EPA did not discuss the use of class I substances in the repair of products or in the reuse of products. Comments regarding these uses indicated that class I substances

may be used as solvents in the repair of a product. EPA believes that a product undergoing repair is not being introduced into interstate commerce. The ultimate consumer already owns the product and therefore, the warning statement is unwarranted.

In a similar manner, products that are resold for reuse are products that have already been introduced into interstate commerce. Subsequent use or sale is not covered by today's rulemaking (except for the prohibition on the removal of labels by distributors, wholesalers and retailers, discussed earlier) and therefore the labeling requirements do not apply. In contrast, products "manufactured with" or "containing" controlled substances that are used by service technicians for repair or recycling purposes should be labeled according to the label requirements applicable to their manufacture. Such products or containers may be manufactured solely for use in repair or recycling applications, but are required to be labeled pursuant to section 611.

However, EPA believes that recycled or reclaimed products containing controlled substances, such as some solvent-cleaning and adhesive products, are introduced into interstate commerce as new products when they are recycled or reclaimed. Such products must be labeled accordingly. On the other hand, EPA is aware that some recycled products, such as packaging materials or chemicals may inadvertently come into physical contact with a controlled substance in which it is possible for trace quantities to remain in the products themselves. Consistent with the exemption in today's final rule for unintended trace quantities of residues or impurities, EPA does not require such products where the manufacturers are not intentionally introducing a controlled substance into a recycling or reclamation process to be labeled.

F. Label Placement and Alternative Labeling Options

1. Label Placement

a. *Clearly legible and conspicuous.* In the Notice of Proposed Rulemaking, EPA proposed to require that the warning statement be placed on any display panel on the product's surface or packaging where the label will be "clearly legible and conspicuous." EPA did not propose that the label appear on a product's principle display panel (PDP), though EPA did request comments regarding whether such a requirement would be appropriate. EPA also proposed to allow alternative placement of the warning label (for example, on hang tags, cards, or stickers) where placement on a display panel is not feasible. One commenter supported EPA's proposed use of hang tags, cards or stickers as alternative labeling options. Two commenters stated that the warning statement should appear on the product's display panel when available and, in particular, on the PDP, where one exists, because the PDP is conspicuous to the ultimate consumer. One of these commenters indicated that this approach would promote equality among companies in label placement and would satisfy the requirement that the label be "clearly legible and conspicuous." In contrast, several commenters indicated that the Congress did not mandate that the label be applied to the product's PDP and that EPA should therefore not specify the meaning of "clearly legible and conspicuous" in terms of prescribed label placement. Another commenter contended that the back and side panels of a container or product could satisfy the requirement. One commenter requested clarification on what EPA meant by its suggestion that the label be placed where "normally" viewed by the consumer, as opposed to where the label is "easily or readily viewed."

After considering the comments received on label placement, EPA has decided that the warning statement may appear on a display panel other than the PDP as long as that label can be readily seen and understood by the consumer at the time of purchase. Although requiring all labels to appear on the PDP would promote uniformity among manufacturers' labeling practices, uniformity would come at the expense of the manufacturers' flexibility. In view of the broad diversity of products, potentially affected by the labeling requirements, EPA believes manufacturers will need some latitude as to where to place the labels. If a manufacturer includes the warning statement on a product's PDP, this would satisfy the requirement that the label be "clearly legible and conspicuous," but placement in this manner is not required. The label may be placed on any display panel as long as it is conspicuous and clearly legible. A display panel may include any side of a product, package or container, excluding any location where the warning label would not be "conspicuous and clearly legible." A display panel may include the bottom side of a product package or container where the bottom side is normally used to convey consumer information and is likely to be viewed by the consumer at the time of purchase. For example, a label on the bottom of a refrigerator or its shipping carton would not be readily available to the ultimate consumer; however, a label on the bottom of a portable radio would be appropriately placed because a purchaser is likely to examine the whole product prior to buying the product and additional information regarding the radio telephone would normally be found on its underside. Products that are sold in containers should be labeled directly on the container or display, rather than on the product itself, such as an electronic game. Finally, EPA is also permitting a number of alternative labeling options as discussed below.

2. Alternative labeling options

a. *Alternative labels.* The proposed rule indicated that for products that are irregularly shaped or small, alternative labeling, such as hang tags, tape, cards, stickers or similar overlabeling could be used so long as the label or warning statement was securely attached to the container, product, outer packaging or display case. These alternatives are included in the final rule. An alternative label must be clearly legible and conspicuous. As long as the warning statement is at least as conspicuous on an alternative label as it would be on a product itself, the manufacturer has the discretion as to which of these labeling methods is used for irregularly shaped or small products. Such alternative labels must themselves be clearly legible and conspicuous.

b. *Supplemental printed material.* While EPA prefers that manufacturers place the warning label on a display panel on the product or its outer packaging, or use overlabeling where alternative labeling is necessary, labeling using supplemental printed material could also satisfy the section 611 requirement. EPA defines supplemental printed material as information which accompanies a product and which the consumer is likely to read at the time of purchase. (Supplemental printed material that is only available to the consumer after the time of purchase of the product would not satisfy the labeling requirements.) Examples of these options include, but are not limited to, warnings included on invoices, bills of lading, package inserts and Material Safety Data Sheets (MSDS), so long as they are likely to be read before the purchase is completed. Supplemental printed material would be most appropriate if a product has no PDP or display panel area, or if the warning statement would be as conspicuous to the consumer on such printed material as it would be on the product. It would also be appropriate to include a warning statement on

supplemental printed material such as an invoice, for a shipment of products sold in large quantities (e.g., nuts and bolts), rather than labeling individual items. Where supplemental printed material is used, the warning statement would have to be clearly legible and conspicuous to the consumer at the time of purchase.

Two commenters asked EPA to clarify that additional labeling (on a product or in advertising about the product) is not required when the label appears on supplemental printed material. In response, EPA confirms that should a manufacturer choose to implement the labeling requirement using supplemental printed information, additional labeling is not required. Again, the governing principle is that the purchaser be able to read and understand the label at the time of purchase.

Another example of where supplemental printed material would be appropriate is in the case of medical devices that are purchased directly by a hospital or clinic and not by the patient. For example, EPA realizes that some medical products are administered directly by hospital or clinic personnel to a patient, without necessarily informing that patient of whether the medication or medical device was made with a controlled substance. The patient is less likely to be adequately informed about the product or to make a choice regarding the product due to hospital procedures and the circumstances under which the patient receives treatment. In such cases, EPA believes that the ultimate consumer is the person making the immediate purchasing decision of that product on behalf of and for the use by a patient. Supplemental information must accompany the products to the point at which the purchaser accepts the products and need not be communicated directly to the patient.

Labeling of supplemental printed material may also be appropriate for prescription drug products containing controlled substances that are deemed "essential" by the Food and Drug Administration (FDA), such as metered dose inhalers. (See discussion on medical products in section V.I. below.)

While supplemental printed material may be a label placement option for most products, containers of class I or class II substances that are smaller than 55 gallon drums must be labeled directly on their PDPs or display panel areas. Containers of controlled substances that are larger than 55 gallon drums may apply the warning statement on supplemental printed information to convey the warning statement, as long as it is clearly legible and conspicuous to the purchaser either at the time of purchase or time of delivery provided the purchase is not complete until delivery is accepted. EPA believes that containers larger than 55 gallon drums, such as railcars, trucks and aircraft need not bear a label directly on them since they carry other containers and products as well, and information regarding the contents is usually viewed in supplemental information by the consumer upon delivery.

c. *Products not viewed by the purchaser prior to or at the same time of purchase.* Several commenters stated that some products are typically sold over the phone or through the mail, so that labeling the product itself would not provide the information to the purchaser until after the point of purchase.

In the NPRM, EPA discussed the use of supplemental printed material as an alternative to placing the labels directly on the a product, its display or packaging. Supplemental printed material was defined in terms of printed or graphic informational or promotional material. In order to address the issues described above, EPA has distinguished between supplemental and promotional printed material in the rule promulgated today. Supplemental material accompanies the product and is available for the consumer to read at the time of purchase. Promotional printed material, by contrast, does not accompany a product and is available prior to the point of purchase by appearing in or on newspapers, journals, catalogues and displays, for example.

Congress' purpose in requiring products to be labeled was to provide consumers with information regarding the use of ozone-depleting substances so that they can use the information in making their purchasing decisions. To accomplish this purpose in the case of products normally purchased sight-unseen, manufacturers or sellers may use either of two approaches. First, promotional printed material may be used to inform consumers of the use of ozone-depleting substances. The required information must appear on the promotional printed material in a clearly legible and conspicuous manner.

Second, a company may place the label on a product or its packaging, or use alternative labeling as described above, so that the requisite information is clearly legible and conspicuous to the purchaser at the time of product delivery. However, this option requires that either the purchase not be completed until delivery is accepted (e.g., COD orders) or the purchaser be permitted to return the product following its delivery. For the labeling requirement to serve Congress' purpose, where information is not made available when the purchase order is placed, customers must at least be allowed to refuse delivery or to return the product after that information is made available.

d. *Competing information.* Several commenters argued that the label would compete with other labeling information on restricted package space and that overcrowding the existing PDP would make the information difficult to read and inhibit the consumer from reading it. EPA does not agree, especially given EPA's acceptance of alternative label placement options which provide manufacturers with flexibility to address circumstances where applying a label directly on a product may not be appropriate or viable. In addition, EPA is not directing companies to increase the size of their products' packaging to accommodate the label bearing the warning statement, as some commenters inferred. In any case, section 611 specifically requires that the label be "clearly legible and conspicuous."

e. *Parallel to existing information.* EPA proposed that the warning statement must appear parallel to any base on which the product or container is being displayed. Some commenters recommended that EPA instead prescribe that the label be parallel and aligned with all other labeling information on the product. EPA agrees with this recommendation. Further, if the warning statement is on supplemental printed material, the statement must also be parallel and aligned with other labeling information in the printed material.

G. Products Manufactured for Export Only

The proposed rule did not specifically address the issue of whether labeling is required for products manufactured for export only. Several commenters urged EPA not to require that products manufactured for export meet the labeling requirements. Commenters indicated that a requirement for labels bearing the warning statement on exports would put products manufactured in the United States at a competitive disadvantage in the world marketplace, compared to products manufactured in countries where labeling is not required. Moreover, commenters noted that EPA could not enforce the labeling requirement beyond U.S. boundaries; therefore, labels on exported products could be removed after they leave United States territory but before they reach consumers.

EPA does not believe that products manufactured for export only should be

subject to section 611's labeling requirements. Section 611 applies to products that are "introduced into interstate commerce," but makes no reference to foreign commerce. The Clean Air Act does not define "interstate commerce." However, EPA believes that section 611's use of interstate commerce does not include "foreign commerce" (*i.e.* commerce outside the United States). *See Border Pipe Line* v. *Federal Power Commission*, 171 F.2d 149 (D.C. Cir. 1948) (interstate commerce does not generally include foreign commerce); *Distrigas Corporation* v. *Federal Power Commission*, 495 F.2d 1057 (D.C. Cir. 1974). See, also *e.g.*, 18 U.S.C. 10, which defines interstate commerce and foreign commerce separately.

Exports primarily affect foreign commerce. Although it may be argued that exports are introduced into interstate commerce when they are transported from the manufacturer within the United States to the place of export, EPA does not believe that products manufactured for export only should be covered by section 611. EPA has considerable discretion in determining the scope of the term "introduced into interstate commerce" for purposes of these regulations. As the Supreme Court noted, the term "interstate commerce" cannot be subjected to any single definition for every federal statute regulating commerce.[5] Court decisions have not been uniform regarding the point at which a product destined for foreign commerce should be considered as being in "foreign commerce" when it is traveling to port.[6] Courts have looked to the essential purpose of statutory provisions in determining the scope of the term "interstate commerce."[7] EPA therefore believes that its determination of whether exports should be included within the scope of the labeling requirement should be based on the intent of section 611 and EPA's ability to pursue its enforcement responsibilities under section 611. Based on this analysis, EPA does not believe that the term "introduced into interstate commerce" should be extended to include products manufactured for export only.

As discussed above, the labeling requirements are designed to alert consumers to the fact that ozone-depleting substances are contained in a product or were used to manufacture it. However, during the period that the exports are traveling to port, they can have no effect on the purchasing decisions of consumers, as no consumers will see the product until after it has left the United States. Moreover, as the labels will be in English, many of the products that are labeled will be sent to countries where the labels will not be understood. In addition, once a product has left the United States, EPA cannot prevent labels from being removed from the product. Therefore, EPA cannot ensure that products exported from the United States will be labeled when they are viewed by the consumer, which would defeat the purpose of the labeling requirement.

Unlike products sold in the United States, products produced and sold abroad do not have to meet the labeling requirements of section 611. EPA recognizes the competitive disadvantage that U.S. manufacturers would have in the foreign marketplace as a result of having to label. Consumers in the foreign marketplace, when faced with two otherwise identical products, one which is labeled and the other which is not, would likely choose the unlabeled product even though the unlabeled product may also contain or be manufactured with ozone-depleting substances. If U.S. regulations were to require domestic products manufactured only for export to be labeled while products manufactured and sold in other countries were not, U.S. products would be placed at an unfair disadvantage in the foreign marketplace with no compensating benefit to consumer choice, since foreign consumers would incorrectly infer that non-U.S. products did not contain or involve the use of ozone-depleting substances.

Agencies have excluded exports from similar requirements on other occasions. For example, the Consumer Product Safety Commission has exempted products from requirements of the Consumer Product Safety Act, 15 U.S.C. 2015 *et. seq.*, where the products are never distributed in commerce for use in the United States, and exempted from the Federal Hazardous Substances Act, 15 U.S.C. 1261 *et. seq.*, where the products are never sold or offered in domestic commerce. See 16 CFR 1010.1 (b).

To avoid application of this rule, products manufactured solely for export may not be sold within the United States. EPA is requiring that products and containers manufactured for export be clearly identified as such at the warehouse or facility from where the export will be transported and that any additional documentation for such products or containers be readily available on site. This is to enable Federal enforcers to distinguish between products or containers for domestic sale, which require labels, and those intended only for export, which do not.

H. Imports

EPA proposed that imports be covered by the labeling requirements and regarded imports as having entered interstate commerce at the site of U.S. Customs (Customs) clearance.

Several commenters asked whether the Agency plans to inform Customs of the new labeling requirements. EPA has agreements with Customs under other existing regulations to inspect imports and will work further with Customs to ensure that products and containers entering the U.S. meet the requirements of section 611.

The definition of "import" in today's final rule is consistent with the definition promulgated under regulations implementing section 604 of the Act (57 FR 33754, 33788, July 30, 1992). There are two situations described in the section 604 rule that are excluded from the definition of "import" also adopted here. One pertains to the off-loading of class I or class II substances from ships during servicing. EPA believes that temporary

[5] *McLeod* v. *Threlkeld*, 319 U.S. 491, 495, 63 S. Ct. 1248, 1250 (1943); *see also United States* v. *Auguello*, 452 F.2d 1135, 1141 (2d Cir. 1971) (in determining the scope of the term interstate commerce in a criminal statute, the court noted that cases from other areas of the law are an unreliable guide to the interpretation of the statute at issue).

[6] *See, e.g., Japan line, Ltd.* v. *County of Los Angeles*, 441 U.S. 434, 437, 99 S. Ct. 1813, 1815 (containers are found to be instrumentalities of foreign commerce where they "engage in no intrastate or interstate transportation except as continuations of international voyages"); *Connell Rice & Sugar Co.* v. *County of Yalo*, 569 F.2d 514 (9th Cir. 1978) (products in storage that were bound for export were subject to local taxation because they had not actually entered the export stream); *Southern Pacific Transportation Co.* v. *I.C.C.*, 565 F.2d 625 (9th Cir. 1978)(whether transportation is interstate or intrastate "is determined by the essential character of the commerce, manifested by the shipper's fixed and persisting transportation intent at the time of shipment"); *Carson Petroleum* v. *Vial*, 279 U.S. 95, 107, 49 S.Ct. 292, 295 (1020) (the essential character of the commerce, not the various steps in its transportation, should determine whether it is interstate, intrastate, or foreign); *Wentz* v. *U.S.*, 244 F.2d 172, 176 (9th Cir. 1957) (court found that where telegram from California to Mexico was initially transmitted to Texas and then retransmitted to Mexico, the initial transmittal was in interstate commerce).

[7] See *United States* v. *Castro*, 837 F.2d 441 (11th Cir. 1988) (failure of Congress to specifically include imports in statute does not mean that imports are excluded where legislative history and essential purpose of the statute indicate that imports should be included); *Distrigas Corporation* v. *Federal Power Commission*, 495 F.2d 1057, 1064 (D.C. Cir. 1974) (legislative history of Natural Gas Act indicates that imports and exports were meant to be excluded; nonetheless, the court would include imports and exports within the scope if exclusion would be contrary to the purpose of the statute).

off-loading containers or products containing or manufactured with controlled substances should not be considered importation since the products are not being introduced into interstate commerce. Therefore, they should not fall under the labeling provision.

The other case involves products or containers introduced in bond at the Mexico border. Under the Maquiladora Agreement, the United States and Mexico established a free-trade zone along a segment of the U.S./Mexico border. Essentially, products are permitted to be transported across that zone without any U.S. Customs restrictions being imposed. Products manufactured with or containing controlled substances or containers charged with controlled substances within this zone established by the Maquiladora Agreement are not considered to be imported products. At the same time, such products or containers are being introduced into United States interstate commerce, and are therefore subject to the labeling requirements.

Some commenters argued that if they purchase foreign products manufactured with a class I substance from other companies and incorporate them into their own products, their final products should be exempt from the labeling requirement. As discussed above, the final rule eliminates the requirement that a manufacturer must label its product if a component product was manufactured with a controlled substance. Thus, if a manufacturer incorporates a component product manufactured with a controlled substance into its product without using a controlled substance in its own manufacturing process, under today's rule, its product is not required to bear a warning statement. Manufacturers incorporating component products into their products need not investigate whether such products were manufactured with a controlled substance. However, U.S. parent companies that purchase products manufactured with controlled substances from their foreign subsidiaries would be required to label their subsequent products in the same manner required of any U.S. company using components from a domestic subsidiary.

Importers of foreign products are still obligated to label foreign products if the manufacturer of that product used a controlled substance in its manufacturing process. If importers were not so obligated, then imported products would have an unfair competitive advantage over domestic products. However, consistent with EPA's decision to eliminate the label "pass-through" provision, an importer need only investigate whether the final product being imported was manufactured with a controlled substance in determining whether a warning statement is required. The importer is not required to investigate whether component parts of the final product were manufactured with controlled substances.

All imported products containing and containers containing controlled substances must be labeled at the site of U.S. Customs clearance and must remain labeled throughout the stream of commerce. As discussed above, manufacturers of "products and containers containing" controlled substances are not exempt from the requirements to pass information through the stream of commerce indicating that the product or container contains an ozone-depleting substance.

I. Medical Products

Several commenters argued that certain prescription products, such as some metered dose inhalers (MDIs), should be exempt from the labeling requirements because they are essential to the health of patients. These commenters feared that the warning statement could result in patients not using medication despite the advice of their physicians, because the patients would be concerned about damage to the ozone layer or would be alarmed by the inclusion of the words "warning" and "harms public health and environment" in the warning statement. These commenters, which included the Food and Drug Administration, voiced concern about the possible ill effects on the health of asthma patients if such patients discontinued the use of MDIs as a result of the warning statement. The commenters argued that the label should not appear on prescription drugs, since the decision to buy the drug is based on the physician's advice and, therefore, the physician should be considered the "ultimate consumer" in this case. Other commenters noted that pharmacists often receive medical products in bulk packaging and repackage the products for consumer purchase. In these cases, the patient would not see the package prior to purchase, negating the purpose of the label.

EPA understands the importance of medical products like MDIs to many patients' health and believes it appropriate to tailor the labeling requirement to avoid unduly alarming patients. At the same time, section 611 does not provide the Agency with authority to exempt any products containing class I substances from the labeling requirement, even if such products are considered essential. That section specifically provides that no product containing a class I or class II substance may be introduced into interstate commerce after the effective date without the warning statement. Congress clearly gave EPA authority to exempt production of class I substances needed for medical products from the phaseout requirements of section 604 of the Act and authority to exempt certain products "manufactured with" class I substances from the labeling requirements of section 611 if appropriate substitutes are available. By contrast, Congress gave the EPA no similar authority to exempt medical products containing class I substances from the labeling rule.

Contrary to the assertion of some commenters, there is no basis for believing that section 611 does not apply to medical products subject to FDA labeling rules. FDA's labeling regulations were in effect when the Clean Air Act Amendments were enacted, and Congress could have indicated that the labeling provisions of section 611 do not apply to the products covered by FDA regulations. It did not do so, however, and since section 611 was passed after FDA's rules and statute authorizing them, section 611 would govern in the case of any conflicts.

Within these legal constraints, however, EPA wishes to avoid any adverse impact labels might have. As detailed above, a number of commenters voiced concern that patients might not use medical products essential to their health if confronted by the required labeling information. The commenters presented no evidence supporting their concerns, however. EPA considers it highly unlikely that patients would not use a medical product vital to their health because it bore a label notifying them of the products' use of ozone-depleting substances. Patients would more likely react, if at all, by asking their physician or pharmacist what they should do in view of the label's information. Such inquiries could help create the kind of market pressure Congress sought as a means of prodding industry to find and use alternatives.

However, as discussed earlier, EPA does allow the warning statement to appear on supplemental printed material. In the case of prescription products deemed essential by FDA, such as MDIs, EPA believes that, given the concerns expressed by commenters, it is appropriate for the statutory warning statement to appear on supplemental printed material intended

for the prescribing physician, rather than for the patient, as long as the supplementary printed material intended for the patient contains language that informs the patient that the product contains an ozone-depleting substance. EPA agrees with commenters that the inclusion of the words "warning" and "harms public health" on the information provided to the patient might cause undue alarm. Therefore, if the statutory warning statement appears on the printed material intended for the physician, then the product or printed material intended for the patient need only state the following: "This product contains [name of substance], a substance which harms the environment by depleting ozone in the upper atmosphere." Manufacturers could supplement this information, if they wish, with instructions for the patient to consult with his or her physician before discontinuing use of the product. EPA expects that FDA will provide at a later date such additional language in the **Federal Register**.

EPA believes these provisions address the concerns regarding potential adverse health effects in a manner consistent with section 611(c), since the full warning statement will be provided to the prescribing physician and the information that the product contains an ozone-depleting substance will be provided to the patient. To the extent this approach represents a partial exemption from the statutory requirement, EPA may grant it as an exercise of the type of administrative authority described in *Alabama Power Co.* v. *Costle*, 636 F.2d 323 (D.C. Cir. 1979). The change to the statutory language is minimal and the environmental consequence is probably non-existent. Removing the words "warning" and "harms public health," however, avoids unduly and perhaps dangerously alarming patients.

EPA received other comments noting the impact of FDA's labeling regulations on the time needed for compliance with today's rulemaking. Based on discussions with FDA, there appear to be three ways to implement the changes in labeling for FDA-regulated medical products (21 CFR 314.70) manufactured with or containing class I substances in time to meet the statutory deadline of May 15, 1993: (1) Notify FDA through the company's annual report of the changes made to the label—such changes would be considered "minor or editorial;" (2) partake in a supplemental process that FDA uses to grant pre-approval for such modifications to the existing labeling; or, (3) through "supplemental changes being effected" or changes that may be made prior to FDA approval, make the necessary changes and inform FDA afterwards. FDA has informed EPA that companies should, to the extent possible, implement section 611 labeling changes using the third option, "supplemental changes being effected" (21 CFR 314.70 (c)2(i)). EPA believes that it is FDA's intention to provide at a later date specific additional language to accompany the warning statement for drug products containing class I substances, such as MDIs, which would inform the patient to further consult with his or her physician when considering the implications on their overall health of the section 611 warning statement.

One commenter also indicated that contact lenses that are manufactured with class I substances would be difficult to label, because consumers generally purchase contact lenses without packaging and the label obviously cannot be placed directly on the lenses themselves. Manufacturers of ophthalmic devices, such as contact lenses, may include the warning statement on supplemental information, as long as the label appears on information that the ultimate consumer receives by the time of purchase. In this context, FDA indicated that it may be notified of such changes to a company's existing labeling information through a manufacturer's annual report, thus requiring no pre-approval.

J. Packaging

Some commenters indicated that it would be misleading for the warning statement to appear on a wrapper or packaging that itself contains or is manufactured with controlled substances, when the product inside does not contain or was not manufactured with such substances. Packaging materials may be used for transportation or display purposes for products that do not contain or were not manufactured with a controlled substance. The commenters inquired as to whether this packaging would necessitate a label. Such labeling, the commenters argue, could mislead consumers into believing that the contents are themselves ozone-depleters.

In the final rule, EPA is requiring that packaging materials manufactured with a controlled substance be labeled to inform purchasers of such materials of the use of controlled substances in the manufacturing of those materials. EPA believes that packaging materials when sold as such are products in and of themselves and should therefore be subject to the labeling requirements. However, consistent with the pass-through discussion in V.C.1 above, purchasers of such packaging materials are not required to subsequently label their product based on the labeling information pertaining to the packaging materials.

Manufacturers that manufacture their own packaging materials using controlled substances, or that use controlled substances to attach the packaging to its contents, must label their product, even if the package contents were not made with ozone-depleting substances. In this case, the packaging is part of the product, and if the packaging is made with controlled substances, it must be labeled. Otherwise the anomalous result would be that all uses of ozone-depleting substances would require labeling except packaging. So long as the company introduces the product into commerce using ozone-depleting substances to make any aspect of it—including packaging—it must label the product.

K. Research and Development

In the proposed rulemaking, EPA did not specifically address whether research and development (R&D) activities, including R&D to find alternative substances for class I or class II substances, should be subject to the labeling requirements. A few commenters stated that R&D activities should be exempt from the labeling requirement since the products being developed are not being introduced into the stream of commerce. EPA agrees that a product undergoing research is not introduced into interstate commerce and, therefore, need not be labeled. Upon conclusion of R&D activities, any product containing or manufactured with a controlled substance will require a warning statement upon its introduction into interstate commerce.

L. Warning Statement Text and Requirement

Some commenters supported the text of the warning statement, bearing the standard chemical name. However, several commented that there was little environmental benefit to naming the specific chemicals used in a manufacturing process. Suggested alternatives to the chemical name included the terms "class I substances" and "CFCs and other substances." A commenter indicated that the Clean Air Act's reference to "class I," should be sufficient for the label. These commenters did not believe that stating the specific substances used on the label was valuable to consumers, who do not tend to differentiate between ozone-

depleting chemicals. Therefore, according to the commenters, simply the statement that an "ozone-depleting substance" was used in the manufacture of a product would be sufficient for purposes of informing consumers. Other commenters argued that the label would detract from other important warning hazard labels and requested that the Agency remove the word "WARNING" from the statement.

When Congress mandated the use of labels under section 611, it specified the exact language that should be used. This language includes the name of the substance that is subject to the labeling requirement and contained in or used to manufacture a product. EPA does not believe that the use of terms such as "class I substance" or "CFCs and other such substances" would be adequate to meet the requirements of section 611. Furthermore, such terms would not provide consumers with the ability to distinguish the ozone-depleting potential of one substance relative to another, which can vary by a factor of ten among class I substances. The ability to distinguish allows consumers to differentiate in making their purchasing decisions between substances with significantly different ozone depletion potentials. As an additional benefit, labels containing specific chemical names facilitate efforts related to handling, disposal, recovery and recycling under sections 608 and 609 of the Act. Such information is potentially beneficial to service technicians. Therefore, EPA is not amending its requirement that the exact name of the ozone-depleting substance be used in the warning statement.

Additionally, the final regulations continue to require that the word "warning" be used to begin the warning statement. EPA is not authorized to remove the word "warning" from the text of the statement, since that wording is prescribed by Congress in section 611. EPA also disagrees with the comment that the warning statement will discourage consumers from reading a product's PDP or other display panel area, especially given the options available for label placement.

Some commenters indicated that labeling relative to human health hazards and product use and handling should be regarded as more important and suggested eliminating the requirement for the section 611 label in the case of these products. The Clean Air Act mandates the warning statement and provides no such exceptions. EPA has an obligation to implement the law and to ensure compliance among the regulated community.

M. Recoverable Substances Label

Comments received stated that labels indicating that ozone-depleting substances are recoverable and not mandated under section 611 and that section 608 (recovery and recycling) does not itself require such labels. Some comments affirmed that many products containing class I and class II substances already have permanent labels identifying the relevant substances they contain. They claim that labeling for recovery purposes would add little value to current information provided on existing labels.

After consideration of the comments received, EPA believes that recycling and recovery of class I substances are sufficiently addressed under sections 608 and 609. Therefore, EPA is not requiring a separate labeling requirement under section 611 for recoverable substances; the warning statement as specified in that section will be the only required label for products and containers, as outlined in today's rulemaking.

N. Symbol

In the proposal, EPA stated that it was considering, but not proposing, the requirement of a symbol to accompany the warning statement. EPA requested comments on the appropriateness of such a symbol. One commenter strongly favored the use of a symbol as discussed in EPA's proposal. However, EPA also received numerous comments that indicated that warning statements without corresponding symbols have been as effective as those with symbols. These commenters further stated that symbols can be misleading to the consumer at times. Several commented that symbols do not provide consumers with any information in addition to what is communicated in the warning statement. Other commenters implied that a symbol can distract consumers from reading other important labels on a product or container.

Some commenters indicated that incorporating the graphic symbol would be costly, given inherent limitations in existing printing equipment. For example, some small businesses that print labels and supplemental information may be unable to replicate the graphic using existing equipment. Such businesses would be forced to invest in new printing equipment in order to comply. Other commenters indicated that to add the symbol would result in altering the colors used on existing labels on products. This could cause problems in the existing arrangement of other printed information on the products, therefore requiring the manufacturer to relabel all of its products. The subsequent cost could be up to $1,000 per product label. In addition to these economic concerns, commenters indicated that it made little sense to make such changes and investment for substances that will be phased out shortly.

EPA has decided to forego the use of a symbol. The Agency believes that the 1996 phaseout of class I substances (1994 for halons) diminishes the overall utility of a symbol thus substantially reducing the potential benefits from the use of a symbol without reducing costs. The Agency also agrees with commenters that the warning text would significantly increase the cost of labeling, with little or no environmental benefit.

O. Petition Process

Four commenters supported the petition process as described in the proposed rulemaking, citing that a process is necessary to exempt from the labeling requirement those products for which alternative substances and manufacturing processes are not available. Others supported EPA's proposed provision allowing "class action" petitions, claiming that petitions allowing one petition for multiple manufacturers of the same product or for similar products, would simplify the process for companies with the same end-uses of a class I substance.

Several commenters indicated that the rulemaking should shift the statutory prescription and exempt all products manufactured with class I substances *unless* the Agency makes a determination that substitutes are currently or potentially available. They argued that because of the accelerated phaseout date of 1996; EPA could determine now that substitutes are not currently available, they would also not be potentially available, since the timeframe from the effective date of this rule to the phaseout is considerably shorter than what it was at the time the law was written.

The language of section 611 clearly does not allow EPA to exempt products manufactured with class I substances from the labeling requirements unless EPA makes an affirmative determination. The law explicitly states that products manufactured with class I substances must be labeled, unless the Administrator makes an affirmative determination that no substitute chemicals or processes exist that do not rely on a class I substance, that reduce the overall risk to human health and the environment, and that are currently or potentially available. EPA continues to believe that the most appropriate way to

provide exemptions for specific products manufactured with class I substances is through case-by-case evaluation of specific products or manufacturing processes through the petition process described in the proposed rulemaking. This process allows EPA to make a sound decision whether to exempt a product or process from labeling based upon the specific facts provided by the petitioner. However, to avoid being overwhelmed with individual petitions reflecting the myriad MCF and CFC–113 used as solvents, EPA has adopted the "reduced use exemption" described above. This exemption does not, however, prevent any firm from applying for a specific exemption for a product, regardless of reductions in use made by that firm, if the criteria for an exemption contained in the regulations are satisfied.

One commenter stated that the Agency should grant temporary exemptions to those manufacturers that petition the Administrator until a determination on the petition has been made. However, EPA does not believe such an exemption is appropriate, because it would enable manufacturers who wanted to avoid or postpone complying with the labeling requirements to initiate the petition process with little or no likelihood of success on the merits of the petition. EPA wants to avoid creating such an incentive and, therefore, is requiring that products be labeled pending the Agency's decision on a petition.

Another commenter indicated that the EPA should expedite the review process for petitions whenever possible. EPA agrees and will make every possible effort to expedite the review process. The reduced use exemption, as well as the revised pass-through requirement and other provisions of this rule, should dramatically reduce the number of petitions received by EPA.

One commenter inquired about the treatment of confidential business information (CBI) included in a petition and inquired about the Agency's ability to guarantee confidentiality. Under the Clean Air Act, anyone submitting information for which CBI status is requested must assert a claim of confidentiality at the time of submission. Failure to assert a claim of confidentiality at the time of submission may result in the disclosure of the information by the Agency without further notice. Further, it should be noted that information which is publicly available (e.g., in journals, trade magazines, product literature, etc.) cannot be claimed as CBI. EPA will treat all claims of business confidentiality in a manner consistent with 40 CFR part 2, subpart B. These procedures offer petitioners significant protection from disclosure of CBI. Though the Agency cannot guarantee that it will be able in all circumstances to justify granting or denying a petition without public disclosure of confidential information, EPA will endeavor not to use confidential information in the public participation process wherever possible. There are situations in which the Agency has contractors "cleared" for handling confidential information. Before the Agency uses such contractors, it will notify any petitioner of the potential use of such a contractor in the petition review.

One commenter indicated that EPA's description of a substance as "currently available" did not indicate that the substitute is widely available. The commenter urged that a substance be considered currently available when it is marketed in "commercial quantities." EPA agrees with this point if commercial quantities means that they are available, but not necessarily in market-wide quantities, and affordable. An example of such a circumstance would be where a single company is producing and marketing an alternative for more than one end-use; because the product is not manufactured by more than one company, the product may not be considered "widely available." EPA, however, believes that substitutes that are commercially available are currently available.

One commenter indicated that the definition of potentially available should convey that a substitute is technologically feasible, environmentally acceptable, and economically viable "for a particular application," rather than for a sector-wide or end-use-wide application. EPA agrees that for the purpose of section 611, companies will be submitting petitions for their individual class I substance use and that its evaluation should, to the extent possible, be directed at that use and not at a sector-wide review.

VI. Summary of the Final Rule and Changes from the Proposed Rule

This section briefly describes the amendments to the proposed rule. Any changes made to the rule language as a result of the public comments are conveyed. A new section has been added to reflect that position adopted today regarding companies using, or importers introducing, products manufactured with a process using class I substances. Various changes to the final rule that have been made for purposes of clarification are also described herein. Labeling provisions discussed in the proposed rule that are not addressed or amended in today's final rule remain unchanged and are thus applicable in the final rulemaking.

A. Authority

The authority citation has been revised to reflect the most recent authority citation adopted by EPA for 40 CFR part 82.

B. Purpose (Section 82.100)

This section states that the purpose of the rulemaking is to require warning statements on containers of, and products containing or manufactured with, certain ozone-depleting substances.

C. Applicability (Section 82.102)

This section defines those products that are subject to the labeling requirements of 40 CFR part 82. Paragraph (c) of this section, pertaining to the recoverable substances label, is deleted to reflect the Agency's determination that the handling of recoverable and recyclable substances is sufficiently covered in sections 608 and 609 of the Act. Products and containers using such substances, however, are required to bear the warning statement under paragraph (a) or (b) of this section.

Paragraph (a) of this section has been revised to indicate that for substances added to the lists of controlled substances after the publication of this rulemaking, the labeling regulations shall apply to the listed products and containers one year after such addition or earlier, if indicated in the rulemaking for such listing. A new paragraph (c) is added to this section to indicate that "products manufactured with" and "products containing" class I substances that are products manufactured prior to May 15, 1993 do not need to be labeled.

D. Definitions (Section 82.104)

This section in the proposed rulemaking contains the definitions of the terms "class I substance," "class II substance," "container," "containing or contains," "controlled substance," "manufactured with," "potentially available," "principal display panel," "product," "recoverable substance," "supplemental printed material," "transform," "type size," "ultimate consumer," and "warning label." The final rule includes new definitions for "consumer," "containers containing," "distributor," "export," "import," "importer," "interstate commerce," "product containing," "promotional printed material," "retailer," and "wholesaler" in an effort to incorporate

the relevant comments into today's final rulemaking.

The definitions for a class I substance and class II substance remain unchanged. The definition of container also remains unchanged, but EPA duly notes a comment regarding the word "immediate" in the definition. A comment indicated that the proposed definition of container could imply that the label should be applied to the container before the introduction of a class I or class II substance. EPA requires that upon the point of filling a container with such a substance, the manufacturer in charge of filling the container must label the container, and not the manufacturer of the container itself.

The definition of "containing or contains" has been deleted; "containing or contains" is covered now in the new definitions of "product containing" and "container containing."

The term "controlled substance" is retained and refers to "class I" and "class II" substances. As discussed above, it is important to note that the effective date of specific provisions in today's rule varies between class I and class II substances.

The definition of "manufactured with" is amended to require manufacturers of products manufactured with controlled substances to label according to their direct manufacturing processes and not those related to products purchased upstream. Given this determination, EPA considers each manufactured good a product. EPA also changes the definition of "manufactured with" by expanding incidental uses to include contact use, a class I or class II substance is used intermittently in a manufacturing process; and by adding the exception for trace quantities in the definition of transformation. The expanded incidental use exemption was incorporated as a result of the several comments that explained numerous situations in which a class I or class II substance is applied for intermittent maintenance purposes and not routinely with the production of each product.

The definition for "potentially available" remains unchanged. The definition for "principal display panel" is amended to delete the guidance for determining the proper type size for the warning statement on a PDP. Placement of the warning statement on the PDP would clearly meet the requirements of section 611, but there are alternative options for label placement discussed below in part VI.F. (Section 82.108).

The definition of "product" is expanded to include products that incorporate component products. The term "recoverable substance" is deleted because EPA no longer is requiring a recoverable substances label on containers or products containing such substances. The "supplemental printed material" definition is amended to include "invoices" as a means for label placement. The revised definition also excludes the terms "written advertisements, brochures, circulars". Such terms are categorized as "promotional printed material" later in this section, defined as informational material that does not accompany a product to the consumer.

The definition of "transform" is amended to incorporate the phrase "except for trace quantities." The Agency received several comments that argued that the definition of transformation should remain consistent with that in the rule (57 FR 33754) implementing section 604 of the Act. The EPA agrees with those comments.

The definition of "type size" remains unchanged. "Ultimate consumer" remains unchanged. The definition of "warning label" is modified to exclude the reference to the symbol in 82.106 of the regulation.

The final rule adds the following definitions to this section: "consumer," "container containing," "distributor," "export," "import," "importer," "interstate commerce," "product containing," "promotional printed material," "retailer" and "wholesaler."

The definition for consumer is differentiated from "ultimate consumer," in that "consumer" merely means a purchaser of a product that has been introduced into interstate commerce. The definition of "container containing" is added to this final rule. As discussed in V.D.1 above, a "container containing" is a container that holds a controlled substance until the substance can be transferred into the "container, vessel, or piece of equipment" from which the use of the controlled substance will be realized. Examples of such "containers, vessels or pieces of equipment" are degreasing machines. These "containers, vessels, or pieces of equipment" are defined to be products containing as discussed earlier.

In addition, the definition of "container containing" does not reference the time of purchase by the consumer, because containers containing controlled substances must be labeled whenever they contain such substances, regardless of whether they contained such substances at the time of their original purchase.

The definitions for "export," "exporter" and "import" are consistent with the definitions in the regulations promulgated to implement section 604 (57 FR 33754, 33788, July 30, 1992). The term "import" excludes two situations. First, where ships temporarily off-load containers and products that would otherwise be subject to this rule, no import is considered to have occurred. Containers containing class I or class II substances that originate from the United States, are temporarily held in Mexico in bond and are returned to the United States are also not included in the definition of import. The term "importer" is consistent with the definition in the proposed rule for the accelerated phaseout of controlled substances, pursuant to section 606 of the Act, which is being published concurrently with this rulemaking. "Interstate commerce" is defined as the distribution, or transportation of any product between one state, territory, possession, territory or the District of Columbia and another state, territory, possession or the District of Columbia, or the sale, use or manufacture of any product in more than one state, territory, possession or the District of Columbia. The entry points into interstate commerce for products that are in interstate commerce or will enter into interstate commerce have been revised to include the manufacturer's facility (where a manufacturer has no warehouse) from which a product is released for distribution, sale or use. The definition is also revised to specify that the entry of a product into the warehouse owned by the manufacturer of that product is an "introduction into interstate commerce." EPA received extensive comments regarding the economic and logistical burden of labeling all products in inventory made prior to this date. EPA has revised its definition of "introduction into interstate commerce," for "products manufactured with" and "products containing" controlled substances, EPA defines "introduction into interstate commerce" to be either the entry of such products into the warehouse from which a domestic manufacturer releases the product for shipment, the release of such products or containers by the manufacturer from its manufacturing facility where the manufacturer does not own a warehouse, and in the case of imports, at the site of U.S. Customs clearance. This change in the definition of "introduction into interstate commerce" should significantly lessen the need to label products in inventory as of May 15, 1993. The reasons and justifications for this "grandfather" provision are discussed in section V.B above. Paragraph (a) of this section has

been revised to reflect the "grandfathering" of these products.

The definitions for "distributor," "wholesaler" and "retailer" below convey those commercial entities required to pass a warning statement on all such labeled products through the stream of commerce to the ultimate consumer. The proposed rule did not define these entities; however, they are covered under the regulation. The definition of "distributor" is consistent with the definition promulgated in regulations implementing section 610 of the Act. The definitions for "retailer" and "wholesaler" have been defined in order to clarify the entities responsible for compliance with the regulations promulgated in this rulemaking.

The term "product containing" has been added to the regulation to mean a product, which includes containers, vessels, and pieces of equipment, that physically holds a class I substance at the point of sale to the ultimate consumer remains within the product for its intended use.

As discussed above, EPA has defined a second category of printed information on products in addition to "supplemental printed material." The second category is "promotional printed materials," and includes brochures, flyers, written advertisements, catalogues, circulars, desk references, fact sheets, and similar materials. These materials typically do not accompany the product through to the sale to the consumer or ultimate consumer. Supplemental printed material was revised to exclude promotional printed materials from its definition; supplemental information is information that accompanies a product at the time of purchase. Promotional printed material is suggested as a final option in the case where the alternative labeling placement options discussed earlier are not appropriate because a product is available through ordering systems only. The options for placement in these circumstances are discussed further in § 82.108 of the regulation.

E. Warning Statement Requirements (Section 82.106)

This section contains the warning statement, which by law, must be applied to those products or containers identified in § 82.102 (a) or (b) of the regulation. It also emphasizes that the label must not detract from, interfere with or mar existing labels required on a product's PDP. This section is amended to exempt from the labeling requirements: (1) Products containing trace quantities of unintended residues or impurities of controlled substances; (2) products covered by the use reduction exemption; (3) products manufactured for export only; (4) products undergoing repair; and, (5) products or processes undergoing research and development.

F. Placement of Warning Statement (Section 82.108)

This section describes the various locations where the label may appear in order to satisfy the requirement. The options for labeling and label placement in the proposed rulemaking were unclear to many commenters. It is EPA's intention today to clarify the options for label placement. The overriding requirement is for the warning statement to be "conspicuous and clearly legible" by consumers at the time of purchase. A manufacturer may clearly comply with the requirement by placing the label on its product's principle display panel (PDP). Other means of complying would be to label the outer packaging of the product if the consumer could clearly view the label on such packaging. Alternative placement options such as alternative labels (hang tags, cards, tape, etc.) and supplemental printed materials (invoices, bills of lading, MSDS', etc.) may also fulfill the requirements. When a product is not viewed at the time of purchase, such as a product purchased through mail or telephone orders, use of promotional printed materials is another option. An alternative to using promotional printed information for products which are not viewed at the time of purchase is the direct labeling of a product or its accompanying printed information, defined as supplemental printed information above, so that the consumer views the warning statement at the time of product delivery. This alternative is only available where a product can be returned after delivery or if the purchase is not complete until the time of delivery.

In paragraph (a) of this section, EPA defines the PDP as a placement option that meets the requirements of the law; however, a company may choose to label the packaging on any display panel so long as the label is clearly legible and conspicuous at the time of purchase; to apply the label on outer packaging under paragraph (b) of this section; or to use the alternative labeling options indicated in paragraph (c) of this section. In paragraph (b) "Outer packaging" of this section, the regulatory text is amended to include "warning statement" rather than "warning label," due to the fact that some manufacturers may choose to have the warning text printed directly on the packaging rather than on a label.

Paragraph (c) "Alternative placement" of this section, is amended to include the term "supplemental printed material," which is information that accompanies the product and that the consumer, or ultimate consumer views at the time of purchase. The text is amended to read "warning statement" rather than "warning label," in recognition that manufacturers may choose to include the warning text in the product's literature with the other product information instead of applying an actual label. The addition of the phrase "or accompanies the product or container" enables companies to meet the requirements without having to attach the label to the product when options discussed in paragraph (c) of this section are used. Containers larger than 55 gallon drums are given the option of using supplemental printed material for label placement, since consumers usually view supplemental information rather than the actual vessel itself, at the time of purchase.

Finally, paragraph (d) of this section cites two new methods that companies may use if they are unable to meet the labeling requirements in the other paragraphs of § 82.108, because they distribute or sell their products through a phone or mail ordering system. Under the first option, a company may include the warning statement on promotional printed material. Under the second option, a company may place the warning statement such that it is conspicuous and clearly legible at the time of product delivery as long as the product may be returned after delivery or the purchase is not completed until delivery is accepted (e.g., COD orders). Under this option, the company may meet the requirement that the warning statement be conspicuous and clearly legible by placing the statement on a display panel, or outer packaging or by using the options for alternative placement as described in paragraphs (a), (b), or (c). This paragraph replaces the paragraph on "supplemental printed material," indicated in the proposed rulemaking.

G. Form of Label Bearing the Warning Statement (Section 82.110)

This section indicates the criteria by which a label is judged to be "clearly legible." EPA retains paragraphs (a)(1) and (a)(2) as they appeared in the proposed rulemaking. They specify the typography, layout, and color combination guidelines. Paragraph (b) "Name of Substance," remains unchanged. Paragraph (c) "Combined statement for multiple class I substances," also remains unchanged in this section.

In paragraph (d) "Format," the reference to the symbol, which was not proposed, is deleted. Also in this section, the appearance of the label text is amended so that the text appears parallel to the surrounding text on the product's PDP, display panel, or in the supplemental or promotional printed material, or on other alternative placements rather than parallel to the base on which the product rests. The remainder of this section is unchanged.

The proposed rulemaking defined, in Table 1, the type sizes in relation to the area of the PDP. In paragraph (f)(1) of this section, a minor change is made to include the display panel as the source upon which type size is based, which would include the PDP, rather than apply solely to the PDP.

H. Removal of Label Bearing the Warning Statement (Section 82.112)

Section 82.112 of the proposal prohibited the removal of a label bearing the warning statement except by the ultimate consumer. The proposed section required that the label follow a product through the stream of commerce and not be removed, unless a manufacturer incorporated the name of a substance from a label on a component product into the label for the manufacturer's final product. Paragraph (a) of this section remains unchanged except that it now references a new paragraph (c) in this section. Paragraph (b) is amended to clarify that a warning statement on a product that is being incorporated into another product may be removed by the purchasing manufacturer if that information is then incorporated into the warning statement accompanying the subsequent product or if the exemption under paragraph (c) applies. In a new paragraph (c) of this section, an exemption is permitted for a manufacturer who incorporates into its own product a labeled product manufactured by another company using controlled substances. If the manufacturer uses a controlled substance in the manufacturing of its final product or in the manufacturing of component parts it makes, a label must accompany the product reflecting those substances it used.

I. Compliance by Manufacturers and Importers With Requirements for Labeling of Containers of Controlled Substances, or Products Containing Controlled Substances (Section 82.114)

This section is added to the final rule to distinguish the revised pass-through requirement applicable to "products containing" controlled substances and "containers containing" controlled substances from that applicable to products manufactured with such substances. The proposed rule did not make a distinction because the warning statement was required to be passed through the stream of commerce to the ultimate consumer for all products manufactured with controlled substances, products containing controlled substances, or containers containing controlled substances. Labels on a product being incorporated into an final product were required to be incorporated into the new label accompanying the product to the ultimate consumer.

In today's final rule, this section requires that for all products containing controlled substances and containers containing controlled substances, a label must still be passed through the stream of commerce to the ultimate consumer. If a "product containing" a controlled substance is incorporated into another product, the final product must bear a new warning statement incorporating the information on the incorporated products' warning statement. Paragraph (b), "Reliance on Reasonable Belief," is changed to clarify the responsibilities of importers that import products that are incorporated into their own products. Importers that introduce foreign products into interstate commerce must have a reasonable belief that the import is properly labeled or does not require a warning statement at the site of Customs clearance. Under no circumstances may an importer remove a label from a container of a controlled substance or a product containing controlled substances, unless the container or product is incorporated into a new container or product and the label information accompanying the first container or product is then incorporated into a new label on the final product. Paragraph (c), "Contractual obligations," states that importers may use contractual obligations to show evidence of reasonable belief in determining whether the products manufactured abroad are accurately labeled.

J. Compliance by Manufacturers of Products Manufactured With Controlled Substances (Section 82.116)

This section has been changed to describe the revised pass-through requirement for products manufactured with controlled substances as discussed earlier. It also clarifies the treatment of imports. Any importer that introduces foreign products into interstate commerce must ensure that the product is properly labeled, unless the importer has a reasonable belief that the import does not require a warning statement pursuant to § 82.102 of the regulation at the site of Customs clearance. Products of foreign incorporated companies manufacturing products "manufactured with" controlled substances are subject to the requirements of this subpart if they are imported as defined above. Paragraph (c), "Contractual obligations," states that importers may use contractual obligations to show evidence of reasonable belief that the products manufactured by foreign manufacturers and suppliers are properly labeled.

K. Compliance by Wholesalers, Distributors and Retailers (Section 82.118)

This section describes the responsibilities of distributors, wholesalers and retailers who must pass the label through from their suppliers of products or containers containing or products manufactured with controlled substances to the ultimate consumer. The section remains unchanged.

L. Recoverable Substances Label (Section 82.120)

This section is deleted.

M. Petitions (Section 82.120)

This new § 82.120 describes in detail the process by which a petitioner may submit a petition to exempt a product manufactured with a class I substance from the labeling requirements, or to apply the labeling requirements to a product containing or manufactured with a class II substance. It also explains the procedures by which the Agency will review and evaluate the petitions and the criteria upon which the Agency will base its final determinations. The section remains unchanged.

N. Certification, Recordkeeping and Notice Requirements (Section 82.122)

This section has been added to indicate what procedures are required for persons wishing to claim an exemption from labeling of products manufactured with CFC–113 and methyl chloroform based on the "reduced use exemption," as provided in § 82.106(b)(2).

O. Prohibitions (Section 82.124)

Paragraph (a)(1)(i) of this section states that, effective May 15, 1993, no product or container identified in § 82.102(a) may enter into interstate commerce unless it bears a warning statement that is consistent with § 82.106, or unless the product is temporarily exempted from the labeling requirements as having no potential substitutes pursuant to § 82.120. Paragraph (a)(1)(i) has been amended to note that the following products or

containers do not require labeling: products manufactured before May 15, 1993, which are "grandfathered" under § 82.102(c); products containing only trace quantities of a controlled substance, which are exempted from the labeling requirements under § 82.106(b)(1); products that fall under the reduced use exemption of § 82.106(b)(2); products intended for export only, which are exempted under § 82.106(b)(3); products that are under repair, which are exempted under § 82.106(b)(4); products undergoing research and development, which are exempted under § 82.106(b)(5). This section has also been amended to indicate: (1) That manufacturers who incorporate products purchased from other manufacturers, where such incorporated products have been manufactured with controlled substances, are exempt from the prohibition on removal of the warning statement, under § 82.112(c); and (2) that manufacturers and importers are not required to pass through and incorporate the information that accompanies the incorporated products, pursuant to § 82.116(a).

The placement of the label for products identified in § 82.102(a) must comply with § 82.108, unless the product is temporarily exempted pursuant to § 82.120. Paragraph (a)(2)(1) has been amended to indicate the exclusions under §§ 82.102(c), 82.106(b), 82.112(c), and 82.116(a) discussed above. Such products must bear the warning statement pursuant to § 82.110, unless the label is temporarily exempted pursuant to § 82.120. Paragraph (a)(3)(i) has been amended to indicate that such labeling is not required if the product is not required to bear a label pursuant to §§ 82.102(c), 82.106(b), 82.112(c) or 82.116(a).

Similar provisions apply to products manufactured with or containing class II substances, as indicated in § 82.102(b), except that the effective date of the rules as they apply to such products is January 1, 2015, or at any time after May 15, 1993 that the Administrator finds for a certain product that substitute products or processes are potentially available. Also, the exclusions discussed above under §§ 82.102(c), 82.106(b)(2) and 82.120 are inapplicable to such products.

A new paragraph (a)(5) has been added to this section to indicate the effective date of these prohibitions for effected "products manufactured with" and "products and containers containing" newly listed substances.

Paragraph (b), which referred to the recoverable substances label, is deleted from this section, as that label is no longer required.

VII. Effective Date

The effective date for the labeling requirements in the final rule remains unchanged; section 611 of the Clean Air Act specifically states that the labeling requirements for products manufactured with class I substances, products containing class I substances, and containers containing class I or class II substances are effective 30 months following the enactment of the law, or May 15, 1993. The labeling of products "manufactured with" and "containing" class II substances is required beginning January 1, 2015. (Labeling of particular products manufactured with or containing class II substances may be required before January 1, 2015, if the Administrator determines, after notice and opportunity for comment, that adequate substitutes are available. This rulemaking does not include any such determinations.) EPA does not have the authority under section 611 to revise the effective dates.

EPA recognizes the practical problems the regulated community will have in meeting the May 15, 1993 deadline for labeling of products and containers containing class I substances, products manufactured with class I substances and containers of class II substances, given the late publication of this rule. The Agency recognizes that Congress intended in section 611 that there be one year between promulgation of these regulations and the effective date of the labeling requirements, and that these final regulations have been promulgated over eight months later than Congress intended. The Agency also realizes, based on the comments it has received and its own information relating to the complexity of implementing these labeling requirements, that most manufacturers will need as long as nine months after the date of publication of this rule to comply with these requirements. As a result of these concerns, it is the Agency's policy to take no enforcement action for matters occurring during the first nine months following the publication of these regulations.

The applicability section of the regulations also provides that the effective date of the labeling requirements as they apply to substances listed as class I or class II substances after the promulgation of the regulation will be as provided in the final rule listing the substances, but will in no case be longer than one year after listing. EPA believes that manufacturers will need some amount of lead time after a substance is newly listed before it can comply with the labeling regulations. However, section 611 appears to indicate that the labeling requirements must become applicable one year after listing, at the latest.

Section 611 does not, on its face, address the treatment of newly listed substances. However, its provision for one year of lead time between the date of promulgation of these regulations and the effective date of the labeling requirements, and in the case of products manufactured subject to the labeling requirements through the petition process indicates that Congress intended manufacturers to have some lead time before the requirements took effect. EPA will therefore determine the appropriate effective date for newly listed substances upon listing them.

VIII. Summary of Supporting Analyses

A. Regulatory Impact Analysis

Executive Order No. 12291 requires the preparation of a regulatory impact analysis for major rules, defined by the order as those likely to result in:

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

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

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

The Agency has determined that this regulation does not meet the definition of a major rule under E.O. 12291 and has therefore not prepared a formal regulatory impact analysis. EPA has instead prepared a detailed background economic analysis which estimates and compares the costs and benefits of the regulation, using the accelerated phaseout as a baseline. There is also a discussion of the latest developments of the Montreal Protocol based on the Fourth Meeting of the Parties in Copenhagen in November 1992.

Based on many revisions to the proposed rule, labeling costs have significantly been reduced, such as the revised label pass-through requirement, which greatly affects the solvent-cleaning sector, a broadening of label placement options, exemptions for expanded incidental uses of ozone-depleting substances and a 95% reduced use exemption provision.

In the background economic analysis document, the Agency provides estimates of the potential costs and benefits in monetary terms; however,

these may not represent all of the potential costs and benefits of the labeling regulation. The costs and benefits are expected to correspond relative to one another; in other words, the higher the benefits, the higher the costs. For example, if consumers choose not to purchase products with warning statements, there could be a corresponding decrease in the use of ozone-depleting substances. If manufacturers anticipate a significant decline in profits due to labeling, they may choose to reformulate or redesign their products in order to eliminate their use of ozone-depleting substances in their manufacturing processes. They would therefore avoid having to label their products. In this case, costs associated with reformulation or redesigning will increase, while costs of labeling will decrease. If manufacturers decide to label their products, only the costs of labeling will be incurred. Benefits will occur when companies reformulate their products or manufacturing processes to avoid labeling due to the reduction in use of ozone-depleting substances.

The Agency estimates that the total cost of labeling products to be $179.3 million per year (see docket, "Regulatory Impact Analysis of the Rule Requiring Labeling of Products Containing or Manufactured with Ozone-Depleting Substances," Chapter 5, "Comparison of Costs and Benefits"), based on 1992 dollars. It further estimated that the costs of reformulation or redesigning will total $292.8 million at a 7% discount rate, and $351.7 million at a 2% discount rate. The total costs in 1992 dollars, applying both discount rates, would be $472.1 million and $531 million respectively.

The total annualized costs at the 7% discount rate would total $180 million over three years and, $184 million at the 2% discount rate.

The benefits for labeling are based on a per kilogram value of $1.00 per year through the year 2075, as established in the Phaseout RIA for the regulation implementing section 604 of the Act (57 FR 33788, July 31, 1992). The benefits of reducing the emissions of methyl chloroform attributed to product reformulations are estimated to entail a value range of $27.2 million to $180.9 million, at a 7% discount rate, and $190.5 million to $720.2 million at a 2% discount rate. The annualized benefits associated with the reduced emissions of ozone-depleting substances as a result of decreased sales of labeled products are estimated, using both discount rates, at $41.55 million and $273.8 million respectively.

The total annualized benefits are estimated therefore to range from $5 million to $11 million over about 75 years at a 7% discount rate, and $12 million to $25 million over the same period of time at a 2% discount rate.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever the Agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial Regulatory Flexibility Analysis (RFA). Such an analysis is not required if the head of an Agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

The Agency believes that the regulation will not have a significant impact on a substantial number of small entities and has concluded, as a result, that a formal RFA is not necessary. Instead, EPA has prepared an informal analysis of the impact on small entities in the background economic document (see docket). The Agency considered an across-the-board exemption for small entities, but made the final determination that section 611 does not authorize an exemption since Congress made no indication of such. In addition, the Agency considered an extension of one year for small entities; however, the final determination was made that Congress prescribed an effective date of May 15, 1993 which is inflexible to extensions. Nevertheless, despite these decisions, EPA believes that all businesses will find the costs of the rule minimized due to several key amendments to the labeling requirements described above. The "grandfather" provision for inventory, the revised label pass-through requirement for products manufactured with class I substances, and several exemptions related to ozone-depleting substance use are some of the key changes to the proposed rule which will reduce the tracking, time and cost burdens associated with the proposal that small businesses would otherwise face.

EPA concludes that these changes to the labeling requirements do not warrant a formal regulatory flexibility analysis for the final rule. Similar to the draft RIA for the NPRM, this document analyzes the impacts on companies based on their size of annual sales.

C. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the Federal Register.

Public reporting burden for this collection of information is estimated to vary from 5 to 12 hours per response with an average of 8 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

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

IX. References

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United States Department of Health and Human Service, Food and Drug Administration. Compliance Costs of Food Labeling Regulations (1991).

United States Environmental Protection Agency. Manual of Practices to Reduce and Eliminate CFC–113 Use in the Electronics Industry (March, 1990).

List of Subjects in 40 CFR Part 82 Administrative practice and procedure

Air pollution control, Chemicals, Chloroflourocarbons, Exports, Imports, Interstate commerce, Pass-through requirement, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: January 19, 1993.

William K. Reilly,

Administrator.

Title 40, Code of Federal Regulations, part 82, is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1.The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671(q).

2.A new subpart E is added to read as follows:

Subpart E—The Labeling of Products Using Ozone-Depleting Substances

Sec.

82.100 Purpose.
82.102 Applicability.
82.104 Definitions.
82.106 Warning statement requirements.
82.108 Placement of warning statement.
82.110 Form of label bearing warning statement.
82.112 Removal of label bearing warning statement.
82.114 Compliance by manufacturers and importers with requirements for labeling of containers of controlled substances, or products containing, controlled substances.
82.116 Compliance by manufacturers or importers incorporating products manufactured with controlled substances.
82.118 Compliance by wholesalers, distributors and retailers.
82.120 Petitions.
82.122 Certification, recordkeeping, and notice requirements.
82.124 Prohibitions.

Subpart E—The Labeling of Products Using Ozone-Depleting Substances

§ 82.100 Purpose.

The purpose of this subpart is to require warning statements on containers of, and products containing or manufactured with, certain ozone-depleting substances, pursuant to section 611 of the Clean Air Act, as amended.

§ 82.102 Applicability.

(a) In the case of substances designated as class I or class II substances as of February 11, 1993, the requirements in this paragraph are applicable beginning on May 15, 1993. In the case of any substance designated as a class I or class II substance after February 11, 1993, the requirements in this paragraph of this section are applicable beginning either one year after the effective date of such designation or the date provided in the rulemaking designating such substance as a class I or class II substance, whichever comes first. On the applicability date indicated above, the requirements of this subpart shall apply to the following containers and products except as exempted under paragraph (c) of this section:

(1) All containers in which a class I or class II substance is stored or transported.

(2) All products containing a class I substance.

(3) All products directly manufactured with a process that uses a class I substance, unless otherwise exempted by this subpart or, unless the Administrator determines for a particular product that there are no substitute products or manufacturing processes for such product that do not rely on the use of a class I substance, that reduce overall risk to human health and the environment, and that are currently or potentially available. If the Administrator makes such a determination for a particular product, then the requirements of this subpart are applicable for such product no later than January 1, 2015.

(b) Beginning on January 1, 2015 in any case, or one year after any determination between May 15, 1993 and January 1, 2015, by the Administrator for a particular product that there are substitute products or manufacturing processes for such product that do not rely on the use of a class I or class II substance, that reduce the overall risk to human health and the environment, and that are currently or potentially available, the requirements of this subpart shall apply to the following:

(1) All products containing a class II substance.

(2) All products manufactured with a process that uses a class II substance.

(c) The requirements of this subpart shall not apply to products manufactured prior to May 15, 1993, provided that the manufacturer submits documentation to EPA upon request showing that the product was manufactured prior to that date.

§ 82.104 Definitions.

(a) *Class I substance* means any substance designated as class I in 40 CFR part 82, appendix A to subpart A, including chlorofluorocarbons, halons, carbon tetrachloride and methyl chloroform and any other substance so designated by the Agency at a later date.

(b) *Class II substance* means any substance designated as class II in 40 CFR part 82, appendix A to subpart A, including hydrochlorofluorocarbons and any other substance so designated by the Agency at a later date.

(c) *Consumer* means a commercial or non-commercial purchaser of a product or container that has been introduced into interstate commerce.

(d) *Container* means the immediate vessel in which a controlled substance is stored or transported.

(e) *Container containing* means a container that physically holds a controlled substance within its structure that is intended to be transferred to another container, vessel or piece of equipment in order to realize its intended use.

(f) *Controlled substance* means a class I or class II ozone-depleting substance.

(g) *Distributor* means a person to whom a product is delivered or sold for purposes of subsequent resale, delivery or export.

(h) *Export* means the transport of virgin, used, or recycled class I or class II substances or products manufactured or containing class I or class II substances from inside the United States or its territories to persons outside the United States or its territories, excluding United States military bases and ships for on-board use.

(i) *Exporter* means the person who contracts to sell class I or class II substances or products manufactured with or containing class I or class II substances for export or transfers such substances or products to his affiliate in another country.

(j) *Import* means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States, with the following exceptions:

(1) Temporary off-loading of products manufactured with or containers containing class I or class II substances

from a ship are used for servicing of that ship, and

(2) Bringing containers of class I or class II substances or products containing or manufactured with class I or class II substances into the U.S. from Mexico where the class I or class II substance or container or product had been admitted into Mexico in bond and is of U.S. origin.

(k) *Importer* means any person who imports a controlled substance, a product containing a controlled substance, or any other chemical substance (including a chemical substance shipped as part of a mixture or article), into the United States. "Importer" includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term also includes, as appropriate:

(1) The consignee,

(2) The importer of record listed on U.S. Customs Service forms for the import,

(3) The actual owner if an actual owner's declaration and superseding bond has been filed; or

(4) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred.

(l) *Interstate commerce* means the distribution or transportation of any product between one state, territory, possession or the District of Columbia, and another state, territory, possession or the District of Columbia, or the sale, use or manufacture of any product in more than one state, territory, possession or District of Columbia. The entry points for which a product is introduced into interstate commerce are the release of a product from the facility in which the product was manufactured, the entry into a warehouse from which the domestic manufacturer releases the product for sale or distribution, and at the site of United States Customs clearance.

(m) *Manufactured with a controlled substance* means that the manufacturer of the product itself used a controlled substance directly in the product's manufacturing, but the product itself does not contain the controlled substance at the point of introduction into interstate commerce. The following situations are excluded from the meaning of the phrase "manufactured with" a controlled substance:

(1) Where a product has not had physical contact with the controlled substance; or

(2) Where the manufacturing equipment has had physical contact with a controlled substance in an intermittent manner, not as a routine part of the direct manufacturing process; or

(3) Where the controlled substance has been transformed, except for trace quantities.

(n) *Potentially available* means that adequate information exists to make a determination that the substitute is technologically feasible, environmentally acceptable and economically viable.

(o) *Principal display panel (PDP)* means the entire portion of the surface of a product, container or its outer packaging that is most likely to be displayed, shown, presented, or examined under customary conditions of retail sale. The area of the PDP is not limited to the portion of the surface covered with existing labeling; rather it includes the entire surface, excluding flanges, shoulders, handles, or necks.

(p) *Product* means an item or category of items manufactured from raw or recycled materials, or other products, which is used to perform a function or task.

(q) *Product containing* means a product including, but not limited to, containers, vessels, or pieces of equipment, that physically holds a controlled substance at the point of sale to the ultimate consumer which remains within the product.

(r) *Promotional printed material* means any informational or advertising material (including, but not limited to, written advertisements, brochures, circulars, desk references and fact sheets) that is prepared by the manufacturer for display or promotion concerning a product or container, and that does not accompany the product to the consumer.

(s) *Retailer* means a person to whom a product is delivered or sold, if such delivery or sale is for purposes of sale or distribution in commerce to consumers who buy such product for purposes other than resale.

(t) *Supplemental printed material* means any informational material (including, but not limited to, package inserts, fact sheets, invoices, material safety data sheets, procurement and specification sheets, or other material) which accompanies a product or container to the consumer at the time of purchase.

(u) *Transform* means to use and entirely consume a class I or class II substance, except for trace quantities, by changing it into one or more substances not subject to this subpart in the manufacturing process of a product or chemical.

(v) *Type size* means the actual height of the printed image of each capital letter as it appears on a label.

(w) *Ultimate consumer* means the first commercial or non-commercial purchaser of a container or product that is not intended for re-introduction into interstate commerce as a final product or as part of another product.

(x) *Warning label* means the warning statement required by section 611 of the Act. The term warning statement shall be synonymous with warning label for purposes of this subpart.

(y) *Wholesaler* means a person to whom a product is delivered or sold, if such delivery or sale is for purposes of sale or distribution to retailers who buy such product for purposes of resale.

§ 82.106 Warning statement requirements.

(a) *Required warning statements.* Unless otherwise exempted by this subpart, each container or product identified in § 82.102(a) or (b) shall bear the following warning statement, meeting the requirements of this subpart for placement and form:

WARNING: Contains [or Manufactured with, if applicable] [*insert name of substance*], a substance which harms public health and environment by destroying ozone in the upper atmosphere.

(b) *Exemptions from warning label requirement.* The following products need not bear a warning label:

(1) Products in which trace quantities of a controlled substance remain as a residue or impurity due to a chemical reaction, and where the controlled substance serves no useful purpose in or for the product itself.

(2) Products manufactured using methyl chloroform or CFC–113 by persons who can demonstrate and certify a 95% reduction in overall usage from their 1990 calendar year usage of methyl chloroform or CFC–113 as solvents during a twelve (12) month period ending within sixty (60) days of such certification or during the most recently completed calendar year. In calculating such reduction, persons may subtract from quantities used those quantities for which they possess accessible data that establishes the amount of methyl chloroform or CFC–113 transformed. Such subtraction must be performed for both the applicable twelve month period and the 1990 calendar year. If at any time future usage exceeds the 95% reduction, all products manufactured with methyl chloroform or CFC–113 as solvents by that person must be labeled immediately. No person may qualify for this exemption after May 15, 1994.

(3) Products intended only for export outside of the United States shall not be considered "products introduced into interstate commerce" provided such

products are clearly designated as intended for export only.

(4) Products that are otherwise not subject to the requirements of this subpart that are being repaired, using a process that uses a controlled substance.

(5) Products, processes, or substitute chemicals undergoing research and development, by which a controlled substance is used. Such products must be labeled when they are introduced into interstate commerce.

(c) *Interference with other required labeling information.* The warning statement shall not interfere with, detract from, or mar any labeling information required on the labeling by federal or state law.

§ 82.108 Placement of warning statement.

The warning statement shall be placed so as to satisfy the requirement of the Act that the warning statement be "clearly legible and conspicuous." The warning statement is clearly legible and conspicuous if it appears with such prominence and conspicuousness as to render it likely to be read and understood by consumers under normal conditions of purchase. Such placement includes, but is not limited to, the following:

(a) *Display panel placement.* For any affected product or container that has a display panel that is normally viewed by the purchaser at the time of the purchase, the warning statement described in § 82.106 may appear on any such display panel of the affected product or container such that it is "clearly legible and conspicuous" at the time of the purchase. If the warning statement appears on the principal display panel or outer packaging of any such affected product or container, the warning statement shall qualify as "clearly legible and conspicuous," as long as the label also fulfills all other requirements of this subpart and is not obscured by any outer packaging, as required by paragraph (b) of this section. The warning statement need not appear on such display panel if either:

(1) The warning statement appears on the outer packaging of the product or container, consistent with paragraph (b) of this section, and is clearly legible and conspicuous; or

(2) The warning statement is placed in a manner consistent with paragraph (c) of this section.

(b) *Outer packaging.* If the product or container is normally packaged, wrapped, or otherwise covered when viewed by the purchaser at the time of the purchase the warning statement described in § 82.106 shall appear on any outer packaging, wrapping or other covering used in the retail display of the product or container, such that the warning statement is clearly legible and conspicuous at the time of the purchase. If the outer packaging has a display panel that is normally viewed by the purchaser at the time of the purchase, the warning statement shall appear on such display panel. If the warning statement so appears on such product's or container's outer packaging, it need not appear on the surface of the product or container, as long as the statement also fulfills all other requirements of this subpart. The warning statement need not appear on such outer packaging if either:

(1) The warning statement appears on the surface of the product or container, consistent with paragraph (a) of this section, and is clearly legible and conspicuous through any outer packaging, wrapping or other covering used in display; or

(2) The warning statement is placed in a manner consistent with paragraph (c) of this section.

(c) *Alternative placement.* The warning statement may be placed on a hang tag, tape, card, sticker, invoice, bill of lading, supplemental printed material, or similar overlabeling that is securely attached to the container, product, outer packaging or display case, or accompanies the product containing or manufactured with a controlled substance or a container containing class I or class II substances larger than a 55 gallon drum through its sale to the consumer or ultimate consumer. For prescription medical products that have been found to be essential for patient health by the Food and Drug Administration, the warning statement may be placed in supplemental printed material intended to be read by the prescribing physician, as long as the following statement is placed on the product, its packaging, or supplemental printed material intended to be read by the patient: "This product contains [insert name of substance], a substance which harms the environment by depleting ozone in the upper atmosphere." In any case, the warning statement must be clearly legible and conspicuous at the time of the purchase.

(d) *Products not viewed by the purchaser at the time of purchase.* Where the purchaser of a product cannot view a product, its packaging or alternative labeling such that the warning statement is clearly legible and conspicuous at the time of purchase, as specified under paragraphs (a), (b), or (c) of this section, the warning statement may be placed in the following manner:

(1) Where promotional printed material is prepared for display or distribution, the warning statement may be placed on such promotional printed material such that it is clearly legible and conspicuous at the time of purchase; or

(2) The warning statement may be placed on the product, on its outer packaging, or on alternative labeling, consistent with paragraphs (a), (b), or (c) of this section, such that the warning statement is clearly legible and conspicuous at the time of product delivery, if the product may be returned by the purchaser at or after the time of delivery or if the purchase is not complete until the time of delivery (e.g., products delivered C.O.D.).

§ 82.110 Form of label bearing warning statement.

(a) *Conspicuousness and contrast.* (1) The warning statement shall appear in conspicuous and legible type by typography, layout, and color with other printed matter on the label. (2) The warning statement shall appear in sharp contrast to any background upon which it appears. Examples of combinations of colors which may not satisfy the proposed requirement for sharp contrast are: black letters on a dark blue or dark green background, dark red letters on a light red background, light red letters on a reflective silver background, and white letters on a light gray or tan background.

(b) *Name of substance.* The name of the class I or class II substance to be inserted into the warning statement shall be the standard chemical name of the substance as listed in 40 CFR part 82, appendix A to subpart A, except that:

(1) The acronym "CFC" may be substituted for "chlorofluorocarbon."

(2) The acronym "HCFC" may be substituted for "hydrochlorofluorocarbon."

(3) The term "1,1,1-trichloroethane" may be substituted for "methyl chloroform."

(c) *Combined statement for multiple class I substances.* If a container containing or a product contains or is manufactured with, more than one class I or class II substance, the warning statement may include the names of all of the substances in a single warning statement, provided that the combined statement clearly distinguishes which substances the container or product contains and which were used in the manufacturing process.

(d) *Format.* (1) The warning statement shall be blocked within a square or rectangular area, with or without a border.

(2) The warning statement shall appear in lines that are parallel to the surrounding text on the product's PDP,

display panel, supplemental printed material or promotional printed material.

(e) *Type style.* (1) The ratio of the height of a capital letter to its width shall be such that the height of the letter is no more than 3 times its width.

(2) The signal word "WARNING" shall appear in all capital letters.

(f) *Type size.* The warning statement shall appear at least as large as the type sizes prescribed by this paragraph. The type size refers to the height of the capital letters. A larger type size materially enhances the legibility of the statement and is desirable.

(1) Display panel or outer packaging. Minimum type size requirements for the warning statement are given in Table 1 and are based upon the area of the display panel of the product or container. Where the statement is on outer packaging, as well as the display panel area, the statement shall appear in the same minimum type size as on the display panel.

TABLE 1

Area of display panel (sq.in.)	0–2	>2–5	>5–10	>10–15	>15–30	>30
Type size (in.)[1]:						
Signal word	3/64	1/16	3/32	7/64	1/8	5/32
Statement	3/64	3/64	1/16	3/32	3/32	7/64

> means greater than
[1] minimum height of printed image of letters

(2) Alternative placement. The minimum type size for the warning statement on any alternative placement which meets the requirements of § 82.108(c) is 3/32 inches for the signal word and 1/16 of an inch for the statement.

(3) Promotional printed material. The minimum type size for the warning statement on promotional printed material is 3/32 inches for the signal word and 1/16 of an inch for the statement, or the type size of any surrounding text, whichever is larger.

§ 82.112 Removal of label bearing warning statement.

(a) *Prohibition on removal.* Except as described in paragraph (b) or (c) of this section, any warning statement that accompanies a product or container introduced into interstate commerce, as required by this subpart, must remain with the product or container and any product incorporating such product or container, up to and including the point of sale to the ultimate consumer.

(b) *Incorporation of warning statement by subsequent manufacturers.* A manufacturer of a product that incorporates a product that is accompanied by a label bearing the warning statement may remove such label from the incorporated product if the information on such label is incorporated into a warning statement accompanying the manufacturer's product, or if, pursuant to paragraph (c) of this section, the manufacturer of the product is not required to pass through the information contained on or incorporated in the product's label.

(c) *Manufacturers that incorporate products manufactured with controlled substances.* A manufacturer that incorporates into its own product a component product that:

(1) Was purchased from another manufacturer;

(2) Was manufactured with a process that uses a controlled substance(s); but

(3) Does not contain such substance(s), may remove such label from the incorporated product and need not apply a warning statement to its own product, if the manufacturer does not use a controlled substance in its own manufacturing process.

A manufacturer that uses controlled substances in its own manufacturing process, and is otherwise subject to the regulations of this subpart, must label pursuant to § 82.106, but need not include information regrading the incorporated product on the required label.

§ 82.114 Compliance by manufacturers and importers with requirements for labeling of containers of controlled substances, or products containing controlled substances.

(a) *Compliance by manufacturers and importers with requirements for labeling of containers of controlled substances, or products containing controlled substances.* Each manufacturer of a product incorporating another product or container containing a controlled substance, to which § 82.102 (a)(1), or, (a)(2) or (b)(1) applies, that is purchased or obtained from another manufacturer or supplier, is required to pass through and incorporate the labeling information that accompanies such incorporated product in a warning statement accompanying the manufacturer's finished product. Each importer of a product, or container containing a controlled substance, to which § 82.102 (a)(1), (a)(2), or (b)(1) applies, including a component product or container incorporated into the product, that is purchased from a foreign manufacturer or supplier, is required to apply a label, or to ensure that a label has been properly applied, at the site of U.S. Customs clearance.

(b) *Reliance on reasonable belief.* The manufacturer or importer of a product that incorporates another product containing from another manufacturer or supplier may rely on the labeling information (or lack thereof) that it receives with the product, and is not required to independently investigate whether the requirements of this subpart are applicable to such purchased product or container, as long as the manufacturer reasonably believes that the supplier or foreign manufacturer is reliably and accurately complying with the requirements of this subpart.

(c) *Contractual obligations.* A manufacturer's or importer's contractual relationship with its supplier under which the supplier is required to accurately label, consistent with the requirements of this subpart, any products containing a controlled substance or containers of a controlled substance that are supplied to the manufacturer or importer, is evidence of reasonable belief.

§ 82.116 Compliance by manufacturers or importers incorporating products manufactured with controlled substances.

(a) *Compliance by manufacturers or importers incorporating products manufactured with controlled substances, or importing products manufactured with controlled substances.* Each manufacturer or importer of a product incorporating another product to which § 82.102 (a)(3), or, (b)(2) applies, that is purchased from another manufacturer or supplier, is not required to pass through and incorporate the labeling information that accompanies such incorporated product in a warning statement

accompanying the manufacturer's or importer's finished product. Importers of products to which § 82.102 (a)(3) or (b)(2) applies are required to apply a label, or to ensure that a label has been properly applied at the site of U.S. Customs clearance.

(b) *Reliance on reasonable belief.* The importer of a product purchased or obtained from a foreign manufacturer or supplier, which product may have been manufactured with a controlled substance, may rely on the information that it receives with the purchased product, and is not required to independently investigate whether the requirements of this subpart are applicable to the purchased or obtained product, as long as the importer reasonably believes that there was no use of controlled substances by the final manufacturer of the product being imported.

(c) *Contractual obligations.* An importer's contractual relationship with its supplier under which the supplier is required to accurately label, consistent with the requirements of this subpart, any products manufactured with a controlled substance that are supplied to the importer, or to certify to the importer whether a product was or was not manufactured with a controlled substance is evidence of reasonable belief.

§ 82.118 Compliance by wholesalers, distributors and retailers.

(a) *Requirement of compliance by wholesalers, distributors and retailers.* All wholesalers, distributors and retailers of products or containers to which this subpart applies are required to pass through the labeling information that accompanies the product.

(b) *Reliance on reasonable belief.* The wholesaler, distributor or retailer of a product may rely on the labeling information that it receives with the product or container, and is not required to independently investigate whether the requirements of this subpart are applicable to the product or container, as long as the wholesaler, distributor or retailer reasonably believes that the supplier of the product or container is reliably and accurately complying with the requirements of this subpart.

(c) *Contractual obligations.* A wholesaler, distributor or retailer's contractual relationship with its supplier under which the supplier is required to accurately label, consistent with the requirements of this subpart, any products manufactured with a controlled substance that are supplied to the wholesaler, distributor or retailer is evidence of reasonable belief.

§ 82.120 Petitions.

(a) *Requirements for procedure and timing.* Persons seeking to apply the requirements of this regulation to a product containing a class II substance or a product manufactured with a class I or a class II substance which is not otherwise subject to the requirements, or to temporarily exempt a product manufactured with a class I substance, based on a showing of a lack of currently or potentially available alternatives, from the requirements of this regulation may submit petitions to: Labeling Program Manager, Stratospheric Protection Division, Office of Atmospheric Programs, U.S. Environmental Protection Agency, 6202–J, 401 M Street, SW., Washington, DC 20460. Such persons must label their products while such petitions are under review by the Agency.

(b) *Requirement for adequate data.* Any petition submitted under paragraph (a) of this section shall be accompanied by adequate data, as defined in § 82.120(c). If adequate data are not included by the petitioner, the Agency may return the petition and request specific additional information.

(c) *Adequate data.* A petition shall be considered by the Agency to be supported by adequate data if it includes all of the following:

(1) A part clearly labeled "Section I.A." which contains the petitioner's full name, company or organization name, address and telephone number, the product that is the subject of the petition, and, in the case of a petition to temporarily exempt a product manufactured with a class I substance from the labeling requirement, the manufacturer or manufacturers of that product.

(2) For petitions to temporarily exempt a product manufactured with a class I substance only, a part clearly labeled "Section I.A.T." which states the length of time for which an exemption is requested.

(3) A part clearly labeled "Section I.B." which includes the following statement, signed by the petitioner or an authorized representative:

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

(4) A part clearly labeled "Section I.C." which fully explains the basis for the petitioner's request that EPA add the labeling requirements to or remove them from the product which is the subject of the petition, based specifically upon the technical facility or laboratory tests, literature, or economic analysis described in paragraphs (c)(5), (6) and (7) of this section.

(5) A part clearly labeled "Section II.A." which fully describes any technical facility or laboratory tests used to support the petitioner's claim.

(6) A part clearly labeled "Section II.B." which fully explains any values taken from literature or estimated on the basis of known information that are used to support the petitioner's claim.

(7) A part clearly labeled "Section II.C." which fully explains any economic analysis used to support the petitioner's claim.

(d) *Criteria for evaluating petitions.* Adequate data in support of any petition to the Agency to add a product to the labeling requirement or temporarily remove a product from the labeling requirement will be evaluated based upon a showing of sufficient quality and scope by the petitioner of whether there are or are not substitute products or manufacturing processes for such product:

(1) That do not rely on the use of such class I or class II substance;

(2) That reduce the overall risk to human health and the environment; and

(3) That are currently or potentially available.

(e) *Procedure for acceptance or denial of petition.* (1) If a petition submitted under this section contains adequate data, as defined under paragraph (c) of this section, the Agency shall within 180 days after receiving the complete petition either accept the petition or deny the petition.

(2) If the Agency makes a decision to accept a petition to apply the requirements of this regulation to a product containing or manufactured with a class II substance, the Agency will notify the petitioner and publish a proposed rule in the **Federal Register** to apply the labeling requirements to the product.

(3) If the Agency makes a decision to deny a petition to apply the requirements of this regulation to a product containing or manufactured with a class II substance, the Agency will notify the petitioner and publish an explanation of the petition denial in the **Federal Register.**

(4) If the Agency makes a decision to accept a petition to temporarily exempt a product manufactured with a class I substance from the requirements of this regulation, the Agency will notify the petitioner and publish a proposed rule in the **Federal Register** to temporarily exempt the product from the labeling

requirements. Upon notification by the Agency, such manufacturer may immediately cease its labeling process for such exempted products.

(5) If the Agency makes a decision to deny a petition to temporarily exempt a product manufactured with a class I substance from the requirements of this regulation, the Agency will notify the petitioner and may, in appropriate circumstances, publish an explanation of the petition denial in the Federal Register.

§ 82.122 Certification, recordkeeping, and notice requirements.

(a) *Certification.* (1) Persons claiming the exemption provided in § 82.106 (b)(2) must submit a written certification to the following address:

Labeling Program Manager, Stratospheric Protection Division, Office of Atmospheric Programs, 6202–J, 401 M Street, SW., Washington, DC 20460

(2) The certification must contain the following information:

(i) The exact location of documents verifying calendar year 1990 usage and the 95% reduced usage during a twelve month period;

(ii) A description of the records maintained at that location;

(iii) A description of the type of system used to track usage;

(iv) An indication of which 12 month period reflects the 95% reduced usage; and

(v) Name, address, and telephone number of a contact person.

(3) Persons who submit certifications postmarked on or before May 15, 1993, need not place warning labels on their products manufactured using CFC–113 or methyl chloroform as a solvent. Persons who submit certifications postmarked after May 15, 1993, must label their products manufactured using CFC–113 or methyl chloroform as a solvent for 14 days following such submittal of the certification.

(4) Persons certifying must also include a statement that indicates that their future annual use will not at no time exceed 95% of their 1990 usage.

(5) Certifications must be signed by the owner or a responsible corporate officer.

(6) If the Administrator determines that a person's certification is incomplete or that information supporting the exemption is inadequate, then products manufactured using CFC–113 or methyl chloroform as a solvent by such person must be labeled pursuant to § 82.106(a).

(b) *Recordkeeping.* Persons claiming the exemption under § 82.106(b)(2) must retain supporting documentation at one of their facilities.

(c) Notice Requirements. Persons who claim an exemption under § 82.106(b)(2) must submit a notice to the address in paragraph (a)(1) of this section within 30 days of the end of any 12 month period in which their usage of CFC–113 or methyl chloroform used as a solvent exceeds the 95% reduction from calendar year 1990.

§ 82.124 Prohibitions.

(a) *Warning statement.* (1) *Absence or presence of warning statement.* (i) On or after May 15, 1993, except as indicated in paragraph (a)(5) of this section, no container or product identified in § 82.102(a) may be introduced into interstate commerce unless it bears a warning statement that complies with the requirements of § 82.106(a) of this subpart, unless such labeling is not required under § 82.102(c), § 82.106(b), § 82.112(c), § 82.116(a), or temporarily exempted pursuant to § 82.120.

(ii) On or after January 1, 2015, or any time between May 15, 1993 and January 1, 2015 that the Administrator determines for a particular product manufactured with or containing a class II substance that there are substitute products or manufacturing processes for such product that do not rely on the use of a class I or class II substance, that reduce the overall risk to human health and the environment, and that are currently or potentially available, no product identified in § 82.102(b) may be introduced into interstate commerce unless it bears a warning statement that complies with the requirements of § 82.106 of this subpart, unless such labeling is not required under § 82.106(b), § 82.112(c) or § 82.116(a).

(2) *Placement of warning statement.* (i) On or after May 15, 1993, except as indicated in paragraph (a)(5) of this section, no container or product identified in § 82.102(a) may be introduced into interstate commerce unless it bears a warning statement that complies with the requirements of § 82.108 of this subpart, unless such labeling is not required under § 82.102(c), § 82.106(b), § 82.112(c), § 82.116(a), or temporarily exempted pursuant to § 82.120.

(ii) On or after January 1, 2015, or any time between May 15, 1993 and January 1, 2015 that the Administrator determines for a particular product manufactured with or containing a class II substance that there are substitute products or manufacturing processes for such product that do not rely on the use of a class I or class II substance, that reduce the overall risk to human health and the environment, and that are currently or potentially available, no product identified in § 82.102(b) may be introduced into interstate commerce unless it bears a warning statement that complies with the requirements of § 82.108 of this subpart, unless such labeling is not required under § 82.106(b), § 82.112 (c), or § 82.116 (a).

(3) *Form of label bearing warning statement.* (i) On or after May 15, 1993, except as indicated in paragraph (a)(5) of this section, no container or product identified in § 82.102(a) may be introduced into interstate commerce unless it bears a warning statement that complies with the requirements of § 82.110 of this subpart, unless such labeling is not required pursuant to § 82.102(c), § 82.106(b), § 82.112(c), § 82.116(a), or temporarily exempted pursuant to § 82.120.

(ii) On or after January 1, 2015, or any time between May 15, 1993 and January 1, 2015 that the Agency determines for a particular product manufactured with or containing a class II substance, that there are substitute products or manufacturing processes that do not rely on the use of a class I or class II substance, that reduce the overall risk to human health and the environment, and that are currently or potentially available, no product identified in § 82.102(b) may be introduced into interstate commerce unless it bears a warning statement that complies with the requirements of § 82.110 of this subpart, unless such labeling is not required pursuant to § 82.106(b), § 82.112(c), or § 82.116(a).

(4) On or after May 15, 1993, no person may modify, remove or interfere with any warning statement required by this subpart, except as described in § 82.112 of this subpart.

(5) In the case of any substance designated as a class I or class II substance after [insert date of publication], the prohibitions in paragraphs (a)(1)(i), (a)(2)(i), and (a)(3)(i) of this section shall be applicable beginning one year after the effective date of designation of such substance as a class I or class II substance or shall be applicable beginning on the date provided in the rulemaking designating such substance as a class I or class II substance, whichever comes first.

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