Revision for the Attainment and Maintenance of the Ozone and Carbon Monoxide National Ambient Air Quality Standards; Meeting the Requirements of the Regional NO_X Cap Program and Transportation Conformity Budgets Related to the Attainment of the Ozone and Carbon Monoxide National Ambient Air Quality Standards; December 1, 1999,'' as a revision to the State of New Jersey Implementation Plan for ozone.

(B) Letter from State of New Jersey Department of Environmental Protection dated July 31, 2000, requesting EPA approval of the NO_X Budget Program as a revision to the New Jersey State Implementation Plan for ozone. This submittal also contains 2007 State-wide NO_X emissions budget information that is supplemental to the December 10, 1999 SIP submittal.

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3. Section 52.1605 is amended by revising the entry under Title 7, Chapter 27 for Subchapter 31 in the table to read as follows:

§ 52.1605 EPA-approved New Jersey regulations

State regulation	State effective date	EPA approved date	Comments
Title 7, Chapter 27			
* *	*	*	* *
Subchapter 31, NO_X Budget Program	Aug. 21, 2000 ...	5/22/01 66 FR 28066	Incorporates NO_X SIP Call and NO_X Budget Trading Program for 1999 through 2003 and thereafter.
* *	*	*	* *

[FR Doc. 01–12699 Filed 5–21–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 266

[FRL–6976–6]

RIN 2090–AA15

Project XL Site-Specific Rulemaking for US Filter Recovery Services Roseville, Minnesota and Generators and Transporters of USFRS XL Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule and final project agreement.

SUMMARY: The Environmental Protection Agency (EPA) will implement a project under its Project XL (which stands for eXcellence and Leadership) program that will provide regulatory flexibility under the Resource Conservation and Recovery Act (RCRA), as amended, for the US Filter Recovery Services (USFRS) facility located at 2430 Rose Place, Roseville, Minnesota, 55113 and approved Minnesota generators and transporters of electroplating waste waters. The purpose of the USFRS XL Project is to encourage the use of USFRS' waste water treatment ion exchange resin process and thereby increase the recycling of metals derived from the treatment of electroplating waste waters subjected to this process. It may also result in the reduction in the use of potable water and energy savings. To achieve these objectives, this rule once adopted by the State of Minnesota would replace existing RCRA hazardous waste requirements for the handling of the spent materials in the ion exchange resin process (i.e., the resins and filters) at approved generators and transporters with a comprehensive program designed and implemented by USFRS to properly treat, recycle, store and transport these wastes. The overall terms of this XL Project are contained in the Final Project Agreement (FPA) and the new rules adopted today. The FPA is available at the RCRA Docket in Washington D.C. in the EPA Region V library, at USFRS, and on the world wide web at http://www.epa.gov/projectxl/.

DATES: This final rule is effective November 23, 2001. For judicial review purposes, this rule is promulgated as of 1:00 p.m. (Eastern Daylight Time) on May 22, 2001.

ADDRESSES: A docket containing the rule, FPA and supporting materials is available for public inspection and copying at the RCRA Information Center Docket Clerk (5305G), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460—Docket Number F–2000–FRSP–FFFFF and the U.S. Environmental Protection Agency, Region V, Waste, Pesticides and Toxics Division, (DRP–8J), 77 West Jackson, Chicago, Illinois, 60604. Contact Mr. Robert Egan at (312) 886–6212.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Egan at EPA, Region V, Waste, Pesticides and Toxics Division (DRP–8J), 77 West Jackson, Chicago, Illinois 60604, (312) 886–6212. Further information on today's action may also be obtained on the world wide web at: http://www.epa.gov/projectxl/.

SUPPLEMENTARY INFORMATION: On August 17, 2000, the Environmental Protection Agency (EPA) proposed a site-specific rule (65 FR 50283) that set forth the mechanisms through which USFRS and participating generators and transporters can test the effectiveness of an integrated, flexible, performance-based approach for managing ion exchange filter resins (''resins'') and associated wastes to determine whether this approach promotes an increase in the recovery and recycling of metals from electroplating operations, a reduction in the amount of hazardous chemicals which are discharged to the local publicly owned treatment works (POTWs) and the amount of water used in the manufacturing process. The development and implementation of the USFRS XL Project will be piloted at USFRS and at approved generators and transporters of USFRS resin wastes. The approved generators and transporters will handle, store and transport the resin wastes in accordance with specific standards contained in new part 266, subpart O of Title 40 of the Code of Federal Regulations (''subpart O''). These requirements would operate in lieu of the requirements imposed under parts 261–265, 268, 270, 273 and 279 of Title 40 of the Code of Federal Regulations. As a result, it is anticipated that there will be an increase in the recovery and recycling of metals from the electroplating waste waters and that the generators will reduce their discharge of process waste waters to local POTWs. USFRS will handle the resin wastes as hazardous waste and in accordance with subpart O and its RCRA hazardous waste permit. The rule imposes on USFRS additional reporting and handling requirements in exchange for the regulatory flexibility provided to the generators and transporters.

Today's final rule promulgates regulations that are identical to the proposed rule, except where otherwise noted below. Today's rule will facilitate implementation of the FPA that has been developed and signed by USFRS, EPA, the Minnesota Pollution Control Agency (MPCA), the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington in Minnesota, Pioneer Tank Lines.[1] As generators and transporters are approved for participation they too will sign the FPA. The FPA is available in the docket for today's action and on the world wide web at http://www.epa.gov/projectxl/. The FPA addresses the nine project XL criteria, and the expectation of EPA that this XL project will meet those criteria. Those criteria are: (1) Environmental results superior to what would be achieved through compliance with current and reasonably anticipated future regulations; (2) economic opportunity; (3) stakeholder involvement, support and capacity for community participation; (4) test of innovative, multi-media, pollution prevention strategies for achieving environmental results; (5) approaches that could be evaluated for future broader application (transferability); (6) technical and administrative feasibility; (7) mechanisms for monitoring, reporting and evaluation; (8) consistency with Executive Order 12898 on Environmental Justice (avoidance of shifting of risk burden); and (9) community planning. The FPA specifically addresses the manner in which the project is expected to produce superior environmental benefits.

Today's rule is one of the required legal mechanisms necessary to implement the provisions of the USFRS XL Project. However, Minnesota has an authorized hazardous waste program. Therefore, the requirements outlined in today's rule will not take effect until Minnesota either receives from EPA authorization for an equivalent legal mechanism to implement this rule or the State uses an existing authorized mechanism to implement this rule. EPA will not be the primary regulatory agency responsible for implementing the requirements of today's rule. The State of Minnesota and, in certain areas, the County Agencies will be the primary regulatory agency. For the sake of simplicity, however, the remainder of this preamble refers to the effects of this rule, although it will be the corresponding State and local law and permits by which it will be implemented.

The information presented in this preamble is organized as follows:

I. Authority

EPA is publishing this final regulation under the authority of sections 2002, 3001, 3002, 3003, 3006, 3010, and 7004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6912, 6921, 6922, 6923, 6926, 6930, and 6974).

II. Overview of Project XL

The FPA sets forth the intentions of EPA, MPCA, Pioneer Tank Lines the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington,[2] Minnesota and USFRS with regard to the USFRS XL Project. Project XL is an EPA initiative to allow regulated entities an opportunity to achieve better environmental results at less cost.

EPA announced Project XL—''eXcellence and Leadership''— on March 16, 1995. It is a central part of the National Performance Review and the EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Under Project XL EPA provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current and reasonably anticipated future regulations. These efforts are crucial to EPA's ability to test new strategies that reduce regulatory burden and promote economic growth while achieving better environmental and public health protection. EPA intends to evaluate the results of this and other Project XL projects to determine which specific elements of the project(s), if any, should be more broadly applied to other regulated entities for the benefit of both the environment and the economy.

Under Project XL, participants in four categories—facilities, industry sectors, governmental agencies and communities—are offered the flexibility to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements, on the condition that they produce and demonstrate superior environmental performance.

The XL program is intended to allow EPA to experiment with potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis.

Adoption of such alternative approaches or interpretations in the

[1] EPA mistakenly identified this company as Pioneer Transport in the proposed rules. EPA will revise its name in the final rules (section 266.301 and 266.303(c)) to reflect the correct name - Pioneer Tank Lines.

[2] These counties are identified signatories to the FPA since the State has given them certain responsibilities over hazardous waste generators, transporters and facilities within their jurisdiction.

context of a given XL project does not, however, signal EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether or not they are viable in practice and successful in the particular projects that embody them. Furthermore, as EPA indicated in announcing the XL program, EPA expects to adopt only a limited number of carefully selected projects. These pilot projects are not intended to be a means for piecemeal revision of entire programs. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative interpretation again, either generally or for other specific facilities.

EPA believes that adopting alternative policy approaches and interpretations, on a limited, site-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (provided that the Agency acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing re-evaluation of environmental programs, is reflected in a variety of statutory provisions, such as section 8001 of RCRA.

XL Criteria

To participate in Project XL, applicants must develop alternative pollution reduction strategies pursuant to eight criteria: superior environmental performance; cost savings and paperwork reduction; local stakeholder involvement and support; test of an innovative strategy; transferability; feasibility; identification of monitoring, reporting and evaluation methods; and avoidance of shifting risk burden. They must have full support of affected federal, state and tribal agencies to be selected.

For more information about the XL criteria, readers should refer to the two descriptive documents published in the **Federal Register** (60 FR 27282, May 23, 1995 and 62 FR 19872, April 23, 1997), and the December 1, 1995 ''Principles for Development of Project XL Final Project Agreements'' document. For further discussion as to how the USFRS XL Project addresses the XL criteria, readers should refer to the USFRS FPA available from the EPA RCRA docket or Region 5 library for this action (see **ADDRESSES** section of today's preamble).

XL Program Phases

Development of a Project has four basic phases: the initial pre-proposal phase where the project sponsor comes up with an innovative concept that it would like EPA to consider as an XL pilot; the second phase where the project sponsor works with EPA and interested stakeholders in developing its XL proposal; the third phase where EPA, local regulatory agencies, and other interested stakeholders review the XL proposal; and the fourth phase where the project sponsor works with EPA, local regulatory agencies, and interested stakeholders in developing the FPA and legal mechanisms. The XL pilot proceeds into the implementation phase and evaluation phase after promulgation of the required federal, state and local legal mechanisms and after the designated participants sign the FPA.

Final Project Agreement

The FPA is a written agreement between the project sponsor, participants and regulatory agencies. The FPA contains a detailed description of the proposed pilot project. It addresses the eight Project XL criteria, and the expectation of EPA that this XL Project will meet those criteria. The FPA identifies performance goals and indicators (monitoring schedules) which will enable USFRS to clearly illustrate the baseline quantities and compare them to quantities derived after implementation of the pilot. The FPA specifically addresses the manner in which the project is expected to produce superior environmental benefits. The FPA also discusses the administration of the agreement, including dispute resolution and termination. The FPA for the USFRS XL Project is available for review in the docket for today's action, and also is available on the world wide web at *http://www.epa.gov/projectxl/.*

III. Overview of the USFRS XL Project

Today's new rules will facilitate implementation of the FPA and the USFRS XL Project. The regulatory relief provided in the final rules promulgated today, however, will not be federally effective in Minnesota until the state has made similar changes to its hazardous waste management program and, as necessary, EPA has approved of those changes as part of the State's authorized hazardous waste program. See the preamble to the August 17, 2000, **Federal Register** for a more detailed discussion of the manner in which the state may make such changes and the consequences of such actions.

A. Scope of the USFRS XL Project

The USFRS XL Project is limited in scope to the USFRS facility located in Roseville, Minnesota and to approved generators and transporters located within the State of Minnesota. It is further limited to waste specifically defined as USFRS XL wastes from the approved generators.

This XL Project is limited to USFRS ion exchange resin canisters, the USFRS resin process filters used prior to and after waste water treatment in the resin canisters (''pre- and postfilters'') and the contents of the resin canisters and filter containers after use by an approved generator. The wastes include the resins, the wastes contained on or within the resins, the pre- and post-resin filters and any other wastes contained within the canisters or the filter containers. The wastes include only those wastes which are generated from processes subject to the RCRA F006 hazardous waste listing from approved generators.

EPA and MPCA must approve of each generator or transporter prior to it being added to this XL Project as a participant. If the generator's principal place of business is located within the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington, Minnesota then the environmental agencies located within these counties (''county environmental agencies'' or ''county agencies'') must also approve of the generator. EPA's review of a proposed participant will focus primarily on its compliance and enforcement history. Before USFRS proposes to EPA to add a company to this project USFRS will conduct a preliminary evaluation of the company to ensure that it qualifies.

USFRS' preliminary evaluation of a proposed generator will ensure that the proposed generator is within the electroplating, metal working and circuit board manufacturing industrial sectors, has a complete USFRS application form, and has a storage area which meets the standards specified in subpart O. Only generators who generate or may generate waste water treatment sludges from electroplating operations may participate in the USFRS XL Project since it is limited in scope to RCRA F006 hazardous waste.

USFRS' preliminary evaluation of a proposed transporter will consist of determining whether the transporter has a current satisfactory safety rating from the United States Department of Transportation (USDOT), an EPA hazardous waste identification number, and a Minnesota Uniform Hazardous Materials Registration (Minnesota

registration). This USFRS XL Project is limited to transporters who have a current satisfactory rating from the USDOT. They do not need an EPA identification number or Minnesota registration to participate.

The federal procedures for approving a company as a participant in the USFRS XL Project as a generator or transporter are detailed in the final rule. In summary, if a company passes USFRS' preliminary evaluation, USFRS will notify EPA in writing of its desire to add the company to the USFRS XL Project. EPA will have twenty one days to veto such company's participation in the USFRS XL Project. If USFRS does not receive a written disapproval from EPA within the twenty one days, the company is deemed to have EPA approval. USFRS must also obtain the approval of the MPCA and appropriate county agency. After USFRS has received the approval of EPA, MPCA and the appropriate county agency it will notify the potential generator or transporter that it has received the required agency approvals. At that time, USFRS will obtain the company's signature to the FPA and a certification that it has received the appropriate training. Upon request, USFRS will forward a copy of the signed documents to EPA, MPCA and the appropriate county agency.

On the date USFRS receives the signed FPA and certification, the potential generator or transporter is considered part of this USFRS XL Project. This date may be referred to as the generator or transporter ''effective date.'' Only generators or transporters who signed the FPA and certification after receiving EPA's approval may participate in the USFRS XL Project. The generator or transporter must handle its USFRS XL waste generated on or after the effective date in accordance with the requirements of part 266, subpart O. The generator or transporter must handle USFRS XL waste generated prior to the effective date according to the RCRA regulations applicable at that time. New subpart O does not apply retroactively to these wastes.

The USFRS Roseville facility will handle the USFRS XL wastes as a hazardous waste and consistent with its hazardous waste permit.[3] USFRS' treatment of the wastes will consist of treatment to regenerate the resins and make them amenable for reuse in another canister. USFRS will handle any residual wastes from the resin regeneration process and the filters from the pre- and post-filtration process according to the RCRA hazardous waste code designation they would have had if they were not subject to the XL001 designation (i.e., F006 and any other appropriate waste codes). USFRS will ensure that this hazardous waste is legitimately recycled through metal recovery.

B. What Problems Has USFRS Identified?

USFRS has stated that the present RCRA regulatory structure may act as a disincentive for certain manufacturers to use the ion exchange resin process. This in turn may act as a disincentive for them to reduce the amount of metals being discharged to a water body; to increase the recycling of metals from electroplating processes and reduce the consumption of potable water.

Electroplaters, metal finishers and other similar industries use large volumes of water to wash and rinse materials during the manufacturing process. In most manufacturing processes today, wash and rinse water is used once, then discarded. This ''single-use'' waste water is usually directed to an on-site waste water treatment plant where it is treated to levels required by the Clean Water Act prior to discharge to a POTW or surface waters. This single-use of water is very wasteful. A great amount of effort and cost is expended to produce potable water for this single use. Additional costs are incurred in treating these waste waters prior to discharge.

To minimize single water use and to encourage recycling of rinse waters, USFRS has developed an ion exchange resin treatment process (''resin process''). The resin process consists of three separate but integrally linked components—pre-filter, resin filter and post-filter components. The manufacturing waste waters are directed to the pre-filter components first. The pre-filter components consist of a polypropylene wound particle cartridge(s) contained in a plastic container. The pre-filters collect a certain size particulate from the waste water. They are essential to the proper operation of the resin filter since they collect particles which may plug or foul the resin filter. The pre-filters collect particles which contain metals such as copper, zinc, chrome and nickel from the manufacturing waste waters. The waste waters are directed from the pre-filters by hose to the resin filters. The resin filter consists of a cylindrical canister which contains the ion exchange resin. The waste waters are directed to the resins which further collect metals onto themselves. After treatment in the resin canisters the waste waters are directed to the post-filters via hose. The post-filters also consist of a polypropylene wound particle cartridge(s) contained within a plastic canister. The post-filters function as a final polishing step and fail-safe mechanism should the ion exchange resin leak from the resin canister. The waste waters entering the post-filter container(s) generally meet final discharge limits under the Clean Water Act. The water that exits the post-filters (''regenerated water'') can then be discharged to the local publicly owned treatment works (POTW) or directed back to the manufacturing process and reused. If the regenerated water is directed back to the manufacturing process this would reduce the amount of potable water that is needed in the manufacturing process.

The use of water reuse systems such as USFRS's ion exchange system by electroplaters, metal finishers and similar industries often results in the resins, filters, canisters and associated containers being considered a listed hazardous waste (F006) once the resins and filters have been spent at the manufacturing plant. However, these resins and the canisters can be regenerated at USFRS' Roseville, Minnesota facility. This regeneration process produces a regenerated resin and residual wastes containing metals, such as copper, nickel and zinc (''sludges''). The regenerated resin may be reused again in other water treatment systems. The residual wastes from USFRS's regeneration process along with the pre- and post-filters may be recycled to recover the metals contained within them. However, since the resins, filters, canisters and associated containers may be a RCRA hazardous waste, the manufacturer incurs additional obligations under RCRA that it would not necessarily incur if it had not implemented the water reuse system. The additional regulatory obligations may act as a disincentive to a company's use of a water reuse system and thus increases the use of potable water.

USFRS suggested that the use of its water reuse system would lower the amount of metals ultimately discharged to a local water body. Collecting and recycling of sludges and filters will result in less wastes being land filled. Furthermore, USFRS suggests that the metals that are recovered may reduce the energy and environmental impacts

[3] The conditions in new subpart O must be incorporated into USFRS' hazardous waste permit by the State of Minnesota. This must be accomplished in time to allow USFRS to have the revised permit before it installs the ion exchange resin process at its first generator approved by the agencies.

from mining and manufacturing of virgin ores.

C. What Solutions Will Be Implemented by the USFRS XL Project?

To encourage water and waste reduction and increased recycling new subpart O will temporarily defer from the RCRA regulatory requirements contained in 40 CFR parts 261–265, 268, 270, 273 and 279 the resins, filters, resin canisters and filter containers used in the USFRS ion exchange resin treatment process. This temporary deferral will be implemented through a new waste code designation which will be used while the waste is at the approved generator and during its transport to USFRS. This deferral is premised on the fulfillment of five general requirements. First, the generator would handle the waste in accordance with specific standards required by the new rule. Second, the waste is transported only to USFRS' Roseville, Minnesota facility and only by approved transporters. Third, the generators and transporters are limited to companies located in Minnesota who pass a preliminary evaluation by USFRS and are approved by EPA, MPCA and the appropriate county agencies. Fourth, USFRS handles the waste according to the waste code designation it would have had but for the temporary deferral contained in the new rule (i.e., F006 and any other appropriate waste code). Finally, USFRS will recycle, through metals recovery, any metals contained in these wastes. Presented in Section IV below is a more detailed discussion of these elements of the new rule and final FPA.

D. How Have Various Stakeholders Been Involved in This Project?

Nine public meetings were held to inform the general public and environmental groups about the project and to invite their comments and participation. EPA solicited comments on the draft FPA and proposed rule on August 17, 2000 and made them both available on its web page and in dockets established in Washington, D.C. and Chicago, Illinois.

USFRS may hold additional public meetings during implementation of the FPA based on public interest or as decided by direct participants. Stakeholder input and community goals have been and will continue to be considered throughout project implementation. USFRS shall report on a quarterly basis efforts to maintain stakeholder involvement and public access to information in accordance with the requirements of the new subpart O.

E. How Will This Project Result in Cost Savings and Paperwork Reduction?

EPA believes that this project has the potential for cost savings by making recycling of water and waste more cost competitive with traditional treatment/disposal options. Costs savings may include those associated with: purchase of additional potable water for single use; capital and operating costs to treat mildly contaminated waste waters so that they meet pretreatment standards prior to discharge; discharge fees associates with wastewater discharge (including permits, monitoring and sewer access charges); transport and disposal of hazardous waste sludges; and taxes paid to local authorities.[4] A cost comparison will be conducted during project implementation to evaluate the cost savings. EPA believes that the paperwork burden for the generator will be reduced as compared to current RCRA requirements. USFRS will be required to retain and submit certain reports which RCRA would normally require of its customers, and report ongoing environmental performance and success in meeting its targets. For further information about the impacts of this rule on paperwork reduction, please see section VI.E.

F. How Will EPA Ensure the Integrity of This XL Project?

EPA will ensure the integrity of this project through the regulations that it is finalizing today, its prior approval of the generators and transporters, its normal enforcement and oversight authority and coordination and cooperation with the State of Minnesota and appropriate county agencies.

The final rules will be the primary vehicle EPA will use to ensure that USFRS and all generators or transporters of USFRS XL waste handle the USFRS XL wastes in a manner which is acceptable to EPA.

G. How Will the Terms of the USFRS XL Project and Final Rule Be Enforced?

All XL projects must include a legally enforceable mechanism to ensure accountability and superior environmental performance. EPA retains its full range of enforcement options under the final rules. Thus, once there is a federally enforceable mechanism in place, if EPA determines that a company is not in compliance with it then EPA and, under certain conditions, private citizens may take enforcement action against that company and may terminate that person's continued participation in the project (section 3005(d), 3006(d) and 3008(a) of RCRA).

In addition to its enforcement options EPA retains its option to terminate a company's continued participation in this XL Project. In the event EPA terminates a person's continued participation in this XL Project, EPA will use the criteria and procedures identified in the final rules, not those contained in Minnesota's rules, statutes, permits or other implementing mechanisms.[5] (See proposed § 266.414–418).

The enforcement response on the part of EPA will depend upon the actual performance of each generator, transporter and USFRS, the mechanism the State uses to implement this XL Project and the severity of any violation.

EPA will enforce the existing Minnesota hazardous waste management regulations which are part of the Minnesota authorized hazardous waste program. The flexibility proposed in the final rule will not be available to USFRS, its generators and transporters until the State of Minnesota adopts equivalent flexibility which is federally applicable and enforceable. The instrument selected for the State's implementation of this XL Project must be one that is clearly federally enforceable.

Once all of the required federal and state legal authorities are in place, EPA will retain a role in evaluating this XL Project, USFRS and each generator and transporter. EPA will evaluate each generator and transporter prior to it being accepted into the program. Additionally, once this XL Project is effective EPA may routinely inspect any of the participants to determine their compliance. If EPA determines that a participant has violated a particular provision of the rules, then that participant may be subject to civil or criminal penalties pursuant to section 3008 of RCRA. Furthermore, EPA may terminate that company's continued participation in this XL Project.

In the event of a termination, the participant must remove the USFRS XL waste, take appropriate steps to decontaminate and return to compliance with RCRA.[6] The new rules specify a

[4] The counties each will decide whether to exempt the XL 001 waste from normal hazardous waste taxation.

[5] EPA expects that whatever mechanism the State elects to use to implement this XL Project it will clearly state that a company's continued participation may be terminated by EPA pursuant to its procedures contained in 40 CFR 266.414 through 266.418. Furthermore, such termination shall require the company to close its USFRS XL waste operations and comply with RCRA in accordance with 40 CFR 266.414 through 266.418.

[6] If a generator or transporter elects to terminate its participation prior to ever generating or transporting USFRS XL waste the rules provide a

time period for accomplishing this. USFRS XL waste transporters will have 30 days after receipt of EPA's notice of termination to complete the termination procedures required by the new rules and return to compliance with RCRA. USFRS XL waste generators will have 60 days and USFRS will have 120 days. During the 30, 60 and 120 transition periods, the provisions of new subpart O would continue to apply in full. At the conclusion of the transition periods, the applicable RCRA regulations would again apply to the participant.

The rationale for the transition period is to allow sufficient time for the participant to reinstate the operational and administrative infrastructure necessary for proper RCRA compliance. EPA selected different time frames for the transporters, generators and USFRS based on the complexity of the activities they may have to engage in to return to compliance with RCRA. The preamble to the August 17, 2000 **Federal Register** explained the rationale for the various time frames.

G. How Long Will This Project Last and When Will It Be Completed?

As with all XL projects testing alternative environmental protection strategies, the term of this XL Project is one of limited duration. Today's rules would set the term of the XL Project at five years after the date that Minnesota modifies USFRS' RCRA permit to incorporate the requirements imposed on USFRS under new subpart O.

Because Project XL is a voluntary and experimental program, today's rule contains provisions that allow the project to conclude prior to the end of the five years in the event that it is desirable or necessary to do so. For example, an early conclusion would be warranted if the project's environmental benefits do not meet the Project XL requirement for the achievement of superior environmental results. In addition, new laws or regulations may become applicable to the wastes during the project term which might render the project impractical, or might contain regulatory requirements that supersede the superior environmental benefits that are being achieved under this XL Project. Similarly, the participants may also ask to discontinue participation in this XL Project prior to the five years if the experimental project does not provide sufficient benefits for them to justify continued participation.

IV. Description of the New Rules

A. XL Waste and Other Terms Defined

A definition of ''USFRS XL waste'' is contained in new 40 CFR 266.401. Based on its review of the public comments EPA has modified the definition contained in the proposed rule in two ways. First, EPA has included within the definition of USFRS XL waste, and thus in this XL Project, the USFRS pre- and post-filters and their containers used as part of the ion exchange resin process. Second, EPA has eliminated the requirement that the treated waste waters must be reused in the manufacturing process. EPA discusses the rationale for these changes and their anticipated impact on the project's environmental performance in section V below.

''USFRS XL waste'' will consist of the USFRS used water treatment resin canisters, the USFRS required pre- and post-resin filters and their containers and the contents of the canisters and filter containers. It is limited to approved USFRS generators located within the State of Minnesota. The USFRS XL wastes are limited to wastes which result from processes which would be subject to the RCRA F006 hazardous waste designation at the point of generation (i.e. waste water treatment sludges from specified electroplating operations). These wastes may also exhibit a characteristic of hazardous waste as a result of the operations of a particular company. Spills of USFRS XL wastes by the generator or transporter are considered USFRS XL waste provided the generator or transporter handles the spill in accordance with the spill requirements of proposed 40 CFR 266.408(e) and 266.411. This definition does not include wastes that were generated prior to the date a generator is added to this USFRS XL Project. The definition states that USFRS XL waste while at an approved generator and during transport will be identified by the waste code XL001. It further states that the XL001 waste designation applies only to USFRS XL wastes generated by approved USFRS XL waste generators.

Section 266.400 contains a definition for an ''approved USFRS XL waste generator.'' It is a company located in Minnesota who: has properly identified its wastes and processes; has passed a preliminary evaluation by USFRS; has not been excluded by EPA, MPCA and appropriate county agencies; has received notice of approval from USFRS; and has signed the FPA, and a certification that it has taken and understood the specific training required by subpart O.

Section 266.400 contains definitions for other terms used in subpart O, such as County Environmental Agencies, USFRS, USFRS XL waste application form, USFRS XL waste approved customer, USFRS waste approved transporter, USFRS XL waste facility, USFRS XL waste final project agreement, USFRS XL waste generator, USFRS XL waste project, USFRS XL waste training module, USFRS XL waste transportation tracking document and USFRS XL waste transporter. Except as noted in section V below, EPA has not changed these definitions from those it proposed on August 17, 2000.

B. Waste Identification and Characterization

Pursuant to § 266.406, prior to being accepted into this XL Project, the customer/potential generator company will properly identify its processes and chemicals contributing to the water proposed for treatment in the USFRS ion exchange resin treatment process. It may only identify those waste streams which meet the F006 listing. The company will complete and submit the USFRS XL waste application form to USFRS. After being accepted into this XL Project, the company shall provide USFRS with prior notification of any changes in its processes.

USFRS will perform a chemical profile analysis, of the company's waste stream(s) and processes contributing to the water treated within the ion exchange resin treatment process. USFRS will conduct this analysis in accordance with the test methods identified in its waste analysis plan contained in its RCRA hazardous waste permit. This waste stream analysis will substitute for an analysis of the resins and filters after use in their canisters and containers. The analysis will also ensure that the waste waters are compatible with the ion exchange resin process and that the wastes are compatible with maintaining the integrity of the canisters and containers. USFRS will conduct the waste stream analysis once for each company prior to accepting it into this XL Project. Once a company is accepted into the USFRS XL Project, USFRS will repeat the analysis whenever a company provides it with notice that it has changed its processes contributing to the USFRS XL waste.

The USFRS XL waste designation will only apply to those water treatment resin canisters, the pre- and post-resin filter containers and their contents for processes identified by the customer,

truncated termination procedure. This procedure does not require removal or decontamination of USFRS XL waste since none have been generated or transported at that point in time. The rules also provide for a shorter time for notice to EPA, MPCA and the appropriate county agencies. (See proposed §§ 266.414 and 266.416).

evaluated by USFRS and approved by EPA, MPCA and appropriate county agencies.

C. Notification and Recording of Participation in the USFRS XL Project

The new rules relieve the approved generators and transporters from the RCRA requirements of submitting an EPA hazardous waste notification form and obtaining an EPA identification number. In lieu of these RCRA requirements USFRS and its generators and transporters will follow the notification requirements and processes contained new §§ 266.402, 403 and 406. The procedures for adding generators and transporters to this XL Project are contained in new §§ 266.402 and 266.403. Section 266.406 requires the generators to use and complete the USFRS XL waste application form. Additionally, it requires USFRS to assign a unique customer and process waste stream number to each approved generator and waste stream. The USFRS XL waste application form will contain information similar to that required on the EPA Hazardous Waste Notification Form, except that it will identify the wastes by the ''XL001'' designation in addition to the EPA waste codes.

Section 266.406 requires USFRS to assign to each approved generator a unique client number. The generator will use this number whenever it generates and transports off-site USFRS XL waste. USFRS will also assign to each approved waste stream from the generator a unique number known as a waste profile number.

Pursuant to new proposed § 266.419(c), USFRS will maintain a list of the approved customers and generators.[7] USFRS will include on that list the customer name, the USFRS client and waste profile numbers, a summary of the results of the USFRS profile analysis and the process waste streams approved for participation in the XL Project. USFRS will have that list available at its Roseville, Minnesota facility and will provide that list to EPA and MPCA on a quarterly basis.[8] If any of the customer information is claimed as confidential business information or trade secrets USFRS will indicate that fact and notify EPA and MPCA. EPA will treat such material in accordance with 40 CFR part 2.

D. Transportation and Tracking of USFRS XL Waste Shipments

The new rules ensure that USFRS XL waste reaches its destination by applying strict transportation routing and tracking requirements on the transportation of USFRS XL waste from the time it leaves the generator to the time it is received by USFRS. Subpart O accomplishes this by directly imposing these requirements on USFRS and its generators and transporters (proposed § 266.410). The requirements are summarized below.

USFRS will control the transportation and routing of the USFRS XL wastes from a generator and its transporters. All USFRS XL waste generators must use a USFRS XL waste approved transporter to transport the USFRS XL waste. The USFRS XL waste must be sent to USFRS' Roseville, Minnesota facility. The generator must contact USFRS when it wants to transport its USFRS XL waste. USFRS' Roseville facility has a dedicated shipping department. That department will arrange with a USFRS XL waste approved transporter to pick-up the generator's USFRS XL waste within the 90 days the generator is allowed to store the waste on site.[9] USFRS' shipping department will complete the USFRS Transportation Tracking Document and provide it to the generator with a copy to USFRS' lab analysis. USFRS will include on the Transportation Tracking Document information required by these new rules. USFRS will provide the generator with the Transportation Tracking Document by the time the transporter arrives at the generator's site to pick up the waste.[10]

USFRS's transporters must pick-up the USFRS XL waste at the generator within the 90 days the generator is allowed to store the waste on-site. The transporters are required to transport the USFRS XL waste to USFRS' Roseville, Minnesota facility within 30 days of picking up the waste at the generator. A USFRS transporter may store or arrange to store a shipment of USFRS XL waste during that 30 day period, provided however, it may only do so for a 10 day or less period without triggering the facility requirements in sections 264, 265, 268 and 270 of RCRA. This 10 day limitation on the storage of USFRS XL waste by the transporter mirrors the limitations on storage by transfer facilities contained in section 263.12.

If the shipment is not received by USFRS within 30 days of the USFRS transporter picking it up at the USFRS generator, USFRS will contact the transporter to determine the disposition of the load. If USFRS does not receive the shipment within 5 days of its scheduled arrival date, it will notify EPA, MPCA and appropriate county agencies. USFRS will send a copy of the Transportation Tracking Document to the USFRS generator within 10 days of USFRS' receipt of the XL001 waste from the transporter.[11]

USFRS will use its own trucks or those of approved transporters to transport USFRS XL waste to USFRS's Roseville facility. USFRS may use any transporter provided it conducts a preliminary evaluation of the transporter; the transporter has a current satisfactory safety rating from USDOT; the transporter has been approved by EPA, MPCA, and, as appropriate the County Agencies; it has completed the USFRS XL waste training; and it has signed the FPA. New § 266.403 requires USFRS to include in its preliminary evaluation information on the current USDOT safety rating for the transporter, its EPA identification number and the status of its Minnesota registration to transport hazardous waste. USFRS will assign to each approved transporter a unique USFRS client identification number. This number will be used on the Transportation Tracking Document.

In lieu of the manifest, the new rules require USFRS, its transporters and generators to use the USFRS Transportation Tracking Document when transporting the USFRS XL waste from the generator to USFRS's Roseville facility. New rule § 266.410 and the definition of the USFRS XL Waste Transportation Tracking Document contained in proposed § 266.401 requires that USFRS obtain EPA approval of the Transportation Tracking Document prior to using the Transportation Tracking Document and whenever it proposes to revise it. With this rule EPA approves of the Transportation Tracking Document provided by USFRS and included in the docket for this rule. Pursuant to

[7] A distinction is made in the rules between an approved customer and an approved generator. They are essentially the same with the only difference being that a customer is not automatically a generator. A customer becomes a generator when if first generates or causes to be regulated USFRS XL waste.

[8] USFRS will also have a list of the approved transporters, see proposed § 266.419(c).

[9] EPA has changed the time period based on its review of the public comments it received. See section V below for a summary of the changes and EPA's rationale for such changes.

[10] Section 266.410(a) requires USFRS to provide the Transportation Tracking Document to the generator at the time the transporter arrives at the generator. This is a slight revision of proposed 266.410(a) which required USFRS to provide the provide the Transportation Tracking Document prior to the transporter arriving at the generator. See Section V below for a discussion of the reason for this change.

[11] Based on a review of the public comments EPA increased the time period from 5 days to 10 days. See section V below for a summary of EPA's support for such a change.

proposed §§ 266.419(d), 420 and 421 USFRS, the transporter and the generator(s) will retain a copy of the Transportation Tracking Document for three years for each shipment of XL wastes that is shipped off-site to the Roseville, Minnesota facility.

Section 266.410(a), requires USFRS, not the generator, to complete and submit any exception reports. USFRS will use a shorter time period—five days—to gauge whether it is necessary to take further steps to locate a shipment. If USFRS is unable to locate the shipment within five days it will then notify EPA, MPCA and appropriate county agencies of that fact.

E. Pre-Transport and Transportation Requirements

The new rules specify that only USFRS or an approved USFRS transporter will transport the USFRS XL wastes from the generator to the USFRS Roseville, Minnesota facility.[12] USFRS has an EPA identification number and a hazardous waste permit. USFRS approved transporters will have a current satisfactory safety rating from USDOT and a unique USFRS customer identification. All transporters will use the USFRS Transportation Tracking Document when transporting USFRS XL waste. Pursuant to §§ 266.408(c) and 409 the transporters and generators will ensure the USFRS XL wastes have affixed to the ion exchange resin canisters and the filter containers the following warning statement which will be provided by USFRS:

XL001 wastes—USFRS ion exchange resin process wastes—Federal Law Prohibits Improper Disposal. This is USFRS XL waste from (insert XL waste generator's name). Handle as a hazardous waste and ship only to USFRS located at 2430 Rose Place, Roseville, MN. This waste was placed in this container on (date) and placed in storage at (insert USFRS XL waste generator's name) on (insert date). *If found, contact USFRS and the nearest police, public safety authority, EPA or MPCA. The USFRS telephone number is (insert phone number). USFRS Transportation Tracking Document Number_____'' If spilled immediately contain the spill and prevent it from going into any water body; collect the spilled material and place in an appropriately sized polycontainer; contact USFRS and the nearest police, public safety authority, EPA or MPCA.*[13]

[12] The rule names USFRS and Pioneer Tank Lines as transporters. Both entities will be approved for participation when they sign the FPA.

[13] Based on the public comments EPA made two modifications to the warning statement. First, EPA changed the statement to indicate that it will be placed on the filter containers, not just the resin canisters. Second, EPA indicated that spills are to be placed in appropriately sized polypropylene containers, not 55 gallon steel drums. See section V below for a summary of the public comments and the reasons for these changes.

USFRS will supply these labels to the generator at the same time that it provides the generator with the USFRS Transportation Tracking Document. The transporters will ensure that these labels are affixed to the containers during transport and that the XL wastes are within an approved container.

F. Accumulation and Storage Prior to Shipment

The accumulation and storage requirements are contained in § 266.408. The new rule requires the generator to store its USFRS XL waste on an impervious surface. Pursuant to § 266.402(c), prior to accepting a customer into this XL Project, USFRS will obtain from its customers the waste application form. This form will provide information on the location and condition of the proposed storage area. This information will be supplied on a site engineering form which USFRS developed and submitted as part of the waste application form. The generator will indicate on the site engineering form the location and construction of the storage area for the USFRS XL waste. Prior to accepting a generator into this XL Project, USFRS will review the site engineering form and inspect the company's storage area to determine if it is impervious. USFRS will only propose to EPA for this XL Project persons who, among other things, have an impervious storage area. Upon request, USFRS will provide a copy of the customer's site engineering form and the results of USFRS' evaluation of the customer to EPA, MPCA and appropriate county agencies.

The rule limits the generator to 90 days for the on-site storage of its USFRS XL waste. The generator must store the USFRS XL wastes in the water treatment resin canisters and filter containers and must store them separately from its other wastes or materials, including explosive or ignitable wastes or materials. The generator will ensure that the canisters and containers are closed and disconnected from the manufacturing process(es). It will place on the resin canisters and filter containers a label which indicates the company's name, location, contents of the resin canister and filter container and the date they were placed in storage. The generator will ensure that there is adequate aisle space to determine the condition of the canisters and containers and to respond to any leaks from them during their storage. The generator will inspect the condition of the canisters or containers weekly while they are stored on-site. The generator will maintain a log of these inspections. The log will indicate the date the canister and containers were placed in storage, the condition of the canisters and containers, the date of the inspection, the person conducting the inspection and the condition of the canisters and containers and the storage area at the time of the inspection.

Pursuant to § 266.413, the generator will retain the ability to legally treat or dispose of its wastes contributing to its USFRS XL waste stream in the event that it is no longer a participant in this XL Project. In most cases this will mean that the generator would have to make arrangements with its local POTW whereby the POTW would agree to take the generators' wastewater on 60 days notice. The POTW serving the Counties of Anoka, Hennepin, Ramsey, Washington, Dakota, Carver and Scott, known as the Metropolitan Council of Environmental Services (MCES) has advised EPA that it will be able to accept the wastewater of those generators who participate in this XL Project in its district on 60 days notice.

Generators will comply with tailored closure requirements contained in § 266.412. If and when a generator's participation is terminated in this XL Project, USFRS will pick up all of the generator's canisters and containers. Generally, § 266.415 provides USFRS and the generator sixty days to complete the closure activities required by proposed § 266.412. USFRS will collect the generator's USFRS XL waste within thirty days of notice of the company's termination in the program. The generator will remove from the storage area any USFRS XL wastes and clean any related contamination. The generator will retain records of all activities it has undertaken to decontaminate its storage area and equipment.

Within the same sixty days, the generator will provide USFRS with access to visit the generator. The purpose of this access is to allow USFRS to determine if all of the USFRS XL waste has been removed. USFRS has developed a systems discontinuation form that it will use to document its visual observations during this visit. Pursuant to § 266.412(b) USFRS will provide a summary of its observations at the generator of the condition of the storage area and the removal of all USFRS XL Waste. USFRS may use its systems discontinuation form. USFRS will provide the summary to the customer to EPA, MPCA and appropriate county agencies. Pursuant to §§ 266.419(d) and 266.420 USFRS and the USFRS XL waste generator will

maintain records of their compliance with the requirements of § 266.412, including a copy of the systems discontinuation form or its EPA approved equivalent summary.

Abbreviated closure requirements are specified in § 266.414 for those companies who have not generated USFRS XL wastes at the time their participation is terminated. All that is required of these companies is that notice of their termination is provided and that they implement the alternative treatment or disposal required by § 266.413. This truncated closure is appropriate for these companies (i.e., USFRS XL waste approved customers) because at the time of their termination they will not have generated any USFRS XL waste. Consequently, the requirements related to decontamination and off-site shipment contained in § 266.412 are not appropriate.

Section 266.408(e) specifies the generator's responsibilities for spilled or leaked USFRS XL waste on-site. If there is a leak or spill of USFRS XL waste in the generator's storage area, then the generator will immediately contain and collect the wastes. It is anticipated that the spilled or leaked materials may consist of water and/or resins. The generator will place spilled or leaked resins in a polycontainer of sufficient size to contain the spilled or leaked resins.[14] When allowed by the local POTW, the generator will direct water spilled from the canisters or filters to its drainage system for permitted discharge to the local POTW, and notify the POTW. Otherwise, the generator will place the spilled or leaked water and resin from the canister(s) in a polycontainer of sufficient size to contain the spilled or leaked water and resin. The generator will store and label the spilled or leaked USFRS XL wastes in accordance with the requirements for USFRS XL wastes. The generator will notify USFRS and MPCA of the spill or leak and arrange with USFRS for the transport of any such spilled or leaked USFRS XL wastes with the next scheduled shipment of USFRS XL wastes.

This XL Project and the new rule do not impose on the generator a requirement for an internal communication device. It eliminates the need for fire extinguishers, water or foam. It also eliminates the need for a written contingency plan and an emergency coordinator at the generator. Instead, § 266.408(i) requires the generator to have an external communication device, such as a telephone. It also requires in §§ 266.408(a) and (b) that the generator store the wastes in a manner which should all but eliminate the potential for a release to the environment or an emergency. In particular, it requires the generator to segregate the USFRS XL wastes from other wastes and to store it on an impervious surface. Section 266.408(d) and (e) require the generator to inspect the storage area on a weekly basis and to immediately respond to spills or leaks of the USFRS XL waste.

Prior to generating any USFRS XL waste, pursuant to § 266.408(h), the generator must designate a contact person responsible for handling the USFRS XL wastes and responding to any releases of the wastes. It also requires USFRS to provide that person with adequate training on how to handle the USFRS XL waste and any releases. USFRS is required to provide each company (generators and transporters) with adequate training through the use of a training module (''USFRS training module''). USFRS may use any recorded communication media that it believes is appropriate for the training module (e.g., printed brochures, videos, etc.) Pursuant to proposed § 266.404 USFRS will submit this training module to EPA, MPCA and the appropriate county agency early enough such that it may obtain the necessary approvals prior to accepting the first shipment of USFRS XL waste. Further, pursuant to the new rule, the USFRS training module will, at a minimum, identify the hazards presented by the USFRS XL waste, the steps needed to install and replace the ion exchange resin canisters and filter containers, the requirements imposed by these rules, the procedures to follow in the event of a release of the USFRS XL wastes and the proper procedures to decontaminate equipment, structures and material in the event that the generator no longer participates in the XL Project. Prior to approving a person as a participant into the USFRS XL Project, USFRS will obtain a signed certification from that person. The certification will state that the person has reviewed, viewed or read the training materials and agrees to follow it. As part of this certification the potential generator will identify the individual responsible for its compliance with the conditions of these rules, the individual's job title and a description of his or her duties.

Pursuant to new § 266.405, USFRS will provide every potential generator with a material safety data sheet (''USFRS XL waste MSDS'') for the USFRS XL waste. USFRS will provide this at the time the company applies to USFRS for participation in this XL Project. The USFRS XL waste MSDS will provide sufficient information for a person to respond safely to a spill or release of USFRS XL waste.[15] Pursuant to § 266.408(h) the generator will maintain and exhibit in a prominent location a copy of the USFRS XL waste MSDS on its property and will provide a copy of it to local police and fire departments and to the local hospital. USFRS will ensure that the USFRS XL waste MSDS prominently instructs individuals in the proper emergency response procedures for handling spills or leaks of the USFRS XL wastes at the generator or while in transit to USFRS. The USFRS XL waste MSDS will also accompany each shipment of USFRS XL wastes.

If an imminent or actual emergency occurs which threatens the release of USFRS XL waste at the generator site, then the generator will notify the EPA, MPCA, USFRS and the appropriate local emergency responders and county agencies. The generator will take actions to ensure the releases do not occur, recur or spread; contact USFRS to arrange for the transport and disposal of the USFRS XL wastes; and make a written recording of the event and its actions in response to such event.

G. Reporting and Recordkeeping Requirements

Sections 266.419, 420 and 421 present the recordkeeping and reporting requirements for USFRS, the generators and transporters. Pursuant to these rules, the generator will not be required to retain copies of the waste analysis or annual reports. Instead the burden will shift to USFRS to retain equivalent information to that contained within these reports. In particular, USFRS will retain for three years a copy of all approval letters to its approved customers and generators of USFRS XL wastes; any correspondence with its approved customers or generators relevant to their participation in this XL Project; a copy of the approved customer's and generator's XL Waste application form, site engineering form, summary of its generator closure review

[14] EPA changed this requirement from a 55 gallon drum to the appropriately sized polypropylene container based on its review of the public comments. See section V below for a summary of the public comments and the reason for this change.

[15] Based on a review of the public comments EPA modified this requirement to clarify that the USFRS XL waste MSDS must be sufficient to identify the hazards associated with and steps needed to respond to a spill or release of USFRS wastes. EPA also eliminated the requirement that the USFRS XL waste MSDS meet the OSHA requirements for an MSDS and allowed for USFRS to use either an MSDS or an equivalent document. See section V below for summary of the public comments and the reasons for this modification.

pursuant to § 266.412; waste analysis; its analyses of the approved customer's or generator's storage area; and the Transportation Tracking Document for each shipment of USFRS XL waste.

Each generator will be required to retain for three years records of any spill or emergency notifications and other duties imposed pursuant to § 266.408(e); the signed FPA and its certification; its weekly inspection log required by § 266.408(d); its compliance with the training requirements of § 266.408(h); a copy of the signed Transportation Tracking Document for USFRS XL wastes it generated; and its records of compliance with the decontamination requirements of § 266.412.

Each transporter will retain for three years a copy of the USFRS XL Waste FPA and its certification; a copy of the signed Transportation Tracking Document for USFRS XL waste it transported; and its record of any notification of spills or leaks of USFRS XL wastes required by § 266.411.

In addition to the records listed above, USFRS will develop and submit certain additional reports, lists and documents. Many of these reports and documents are in lieu of requiring the same or similar information from its generators (e.g., annual reports or contingency plan). The reporting requirements are presented in § 266.419 according to their frequency: annual reports (§ 266.419(a)), semi-annual reports (§ 266.419(b)) and quarterly reports (§ 266.419(c)). A summary of each report is presented below.

Quarterly reports are presented in § 266.419(c) and consist of status reports on generator and transporter participation in the XL Project. Separate lists, with similar information, will be reported for each. The generator list is summarized in this paragraph. USFRS will identify on the XL participant list information on its preliminary evaluation of the transporters and generators, the dates of EPA, MPCA and appropriate county approvals, the effective date of a company being added to the USFRS XL Project and any termination date. For the generators, USFRS will also include a summary of USFRS's profile analysis, the generator's process waste streams approved for participation in the XL Project and the condition of the customer's storage area at the time of its application to USFRS. For generators who discontinue participation in this XL Project, USFRS will include on the XL generator list the date of the notice of termination of its participation, the date USFRS removed the last ion exchange canister and filter container, and the date of the USFRS review of the generator's decontamination efforts. USFRS will update the XL participant list as persons are added to or eliminated from this XL Project. USFRS will have the XL generator list available for review by EPA or MPCA at its Roseville, Minnesota facility. USFRS will send a copy of the XL generator list to EPA, MPCA and appropriate county agencies on a quarterly basis.

The annual report requirements are presented in § 266.419(a) and are intended to provide a substitute for the hazardous waste biennial report. USFRS will provide an annual report on all USFRS XL wastes. USFRS will include in the annual report, at a minimum, each USFRS XL waste generator, the quantity of USFRS XL waste that USFRS received from each generator during the calendar year and a certification by USFRS that those wastes were treated at USFRS in accordance with the requirements imposed by new part 266, subpart O. USFRS will include information on the amount of metals it reclaimed and recycled from the resins.

USFRS will develop and track certain information that will be used to determine the environmental benefits derived from the USFRS XL Project. From the generators USFRS will report on an annual basis the following information: the amount of water recycled by the generators, the pretreatment chemicals and energy the generators did not use as a result of participating in this USFRS XL Project, the amount of water discharged to the local POTW before and during this project, the amount of sludge recovered by USFRS before and during this project, the amount of sludge recovered instead of being disposed by a generator (if the generator disposed of the sludge prior to participating in this project), the quantity of material (ion exchange resins, filters, other wastewater treatment sludge, residues) collected from each facility (monthly), the frequency of canister and container replacement in terms of process volume, the constituents in the material (ion exchange resins, filters, wastewater treatment sludge, residues) collected at each facility (e.g., recoverable metals, contaminants/non-recoverable materials), and constituents in the material (ion exchange resins, filters, wastewater treatment sludge, residues) disposed by each facility (e.g., contaminants/non-recoverable material).

USFRS will report on an annual basis the following information from its facility: quantity of material (ion exchange resins, filter media, wastewater treatment sludge, residues) to be processed, quantity of metals recovered, the constituents of the recovered material (ion exchange resins, filter media, wastewater treatment sludge, residues), quantity and constituents of the non-recoverable material (ion exchange resins, filter media, wastewater treatment sludge, residues) and how it was disposed.

USFRS shall report on an annual basis the following information from the metal reclamation facility it uses to recycle sludges: the quantity of each metal recovered.

Pursuant to § 266.419(b), USFRS will collect and report on a semi-annual basis financial information related to the costs and savings realized as a result of implementation of this project and sufficient information for EPA to determine the amount of superior environmental benefit resulting from this project. Pursuant to § 266.419(b)(1), the report will contain information which includes, but is not limited to: 1. The volume of waste collected and recycled, 2. The amount of metals recycled, 3. The volume of recycled material sold to others, 4. Data regarding the management of the ion exchange canisters and filter containers, 5. The constituents of the sludge and 6. Information regarding how the sludge and residues are managed.

Additionally, § 266.419(b)(2) requires USFRS to report certain financial information related to implementation of this XL Project. It specifies that USFRS will collect baseline and XL costs. The baseline costs shall be calculated using two scenarios: (1) Typical charges (prior to the XL Project) for pretreating and disposing effluent wastewater under the applicable Clean Water Act requirements and the costs for manifesting, transporting and disposing of F006 sludges; and (2) typical charges that would be incurred if wastes were recycled in compliance with RCRA and requirements for manifesting and transporting those hazardous wastes (including tax obligations under both scenarios). The XL costs will include the current costs to the generator for completing transportation tracking documents, the current transportation costs for XL wastes, the generator's cost to install the ion exchange resin process, and the cost to USFRS of metals reclamation off-site (including costs associated with transportation and disposal). USFRS will compare the baseline costs to the XL costs and provide an analysis of whether the project is resulting in cost savings for the generators and which aspects of the XL Project produce these savings.

H. Additional Requirements Imposed on USFRS

USFRS has a RCRA permit which allows it to receive the USFRS XL wastes. Pursuant to § 266.407 once USFRS receives the USFRS XL waste at its Roseville, Minnesota facility, the waste will lose its USFRS XL waste designation (XL001) and must be handled as a fully regulated hazardous waste (i.e, as F006 and any other applicable hazardous waste code designation). USFRS will determine the appropriate designation of the waste based on its waste profile analysis and knowledge of the waste stream. USFRS will comply with all terms and conditions of its RCRA permit for handling these hazardous wastes. USFRS will also be responsible for the conditions and terms identified in items A–F above as applicable to USFRS—e.g., waste profiling, use of the Transportation Tracking Document, generator annual report, training module, MSDS, discontinuation review of the customer, and transportation of waste to the Roseville, Minnesota facility. USFRS will arrange for the recycling through metals recovery of the metals which are contained in the generator's USFRS XL wastes. Pursuant to § 266.407(b) USFRS may not accept any customers into this Project unless and until it has arranged for recycling of the metals contained in the XL001 wastes it receives. This rule further requires USFRS to recycle the metals contained in the XL001 waste it receives throughout the duration of the XL Project.

To ensure proper coordination of responses to spills, leaks or emergencies of USFRS XL waste at the generator or while in transit, § 266.407(c) requires USFRS to have a spill response coordinator. This person will receive all calls from generators and transporters regarding spills, leaks or emergencies related to the USFRS XL wastes. This person shall also be responsible for coordinating the proper response to such spills, leaks or emergencies.

V. Response to Significant Public Comments and Changes From the Proposed Rule

During the comment period provided for the proposed rule EPA received comments from USFRS, the State of Minnesota and a citizen representing an unidentified third party. A summary of the comments, EPA's responses and any changes from the proposed rule is contained within this section.

Comment. USFRS requested EPA to include ''pre'' and ''post'' filters as part of the XL project. USFRS pointed out that the pre and post filters are an integral part of the ion exchange filter process which is the subject of the USFRS XL project. USFRS will handle these filters in the same manner that it does the ion exchange resin canisters. Namely, it will collect them from the generators and send them to a third party for recovery of the metals along with the sludges in the resin canisters. If the pre and post filters, however, are not included as part of the USFRS XL project they would be considered F006 hazardous waste. A project participant thus would be subject to the USFRS XL project requirement for the ion exchange resin canisters and the RCRA hazardous waste requirements for the pre and post filters. This dual system would discourage generators from participating and thus would reduce the environmental benefits anticipated from this project.

Response. EPA agrees that the pre and post filters should be included as part of this XL project and subject to the same management standards as the ion exchange resin canisters. Consequently, EPA will modify the definition of USFRS XL waste contained in § 266.401.

According to USFRS the ion exchange treatment system consists of three components: (1) filtration of the waste water prior to ion exchange resin treatment (''pre-filter'' phase); (2) the ion exchange resin treatment; and (3) filtration of the waste water after it exits the ion exchange resin treatment (''post-filter'' phase). The pre and post filters consist of polypropylene wound particle cartridges contained in plastic canisters. The canisters are connected directly by hose to the ion exchange resin canisters. The pre-filters collect a certain size particulate in the waste water prior to it being introduced to the ion exchange resin canister for treatment. The pre-filters are essential to ensuring that the ion exchange resin canister are not plugged or fouled. According to USFRS, without the pre-filter the ion exchange resin canisters will not work as effectively. The post-filters receive the waste waters after they have been treated by the ion exchange resin canisters and prior to discharge or re-use of the treated waste water. According to USFRS, the post-filters will not usually receive as much or as large a particulate size as the pre-filters. They are used for final polishing and as a fail-safe mechanism should there be a leak of the treatment resins from the ion exchange resin canisters. The pre-filters will usually collect metals such as copper, nickel, zinc and chrome. The post-filters may collect some of these same metals but after the waste water has been treated to levels which would meet the water treatment discharge levels for these contaminants. Both filters would be considered F006 hazardous waste by operation of the RCRA derived from rule, regardless of the concentration of the metals, since the waste waters are electroplating waste waters.

Neither the proposed rule nor the preamble to it mentions the pre and post filters. EPA was not aware of their existence and function in the ion exchange treatment system until USFRS raised the issue in its comments. Including these filters within the scope of this project is consistent with the goals of the USFRS XL Project. The preamble to the proposed rule stated that the primary purpose of the USFRS XL Project was to encourage the use of the ion exchange resin treatment system. USFRS suggested that if more companies used this system then there would be an increase in the recycling of the sludges which resulted from the process; a reduction in the use of potable water; and a reduction in the energy associated with the use of potable water in the production process. USFRS stated that generators were reluctant to use the ion exchange resin process because of the stigma and costs associated with the resins being identified as a RCRA hazardous waste. The resins would be considered an F006 hazardous waste by virtue of the electroplating process waste waters which came in contact with them. To reduce the stigma and the costs EPA proposed to identify the ion exchange resin canisters with a unique hazardous waste code (XL001) and to subject them to special management standards contained in new subpart O to part 266.

EPA agrees that if the pre and post filters were not included as part of this XL Project then they would be properly characterized as F006 hazardous waste by virtue of the ''derived from rule.'' The major contaminants on the filters and resin canisters are essentially the same—metals from electroplating waste waters. Regardless of whether they are identified as F006 or XL001 wastes the ion exchange resin canisters and pre and post filters would be subject to the same final disposition—metals recovery—under the USFRS XL Project. However, without making the change requested this would not occur. Additionally, there would be two separate management systems with some incompatibility between them. For example, if the pre and post filters are treated as F006 waste the generator will have to use the uniform hazardous waste manifest; can use any transporter; can arrange for the disposal of the filters

at any hazardous waste facility and depending on the volume of wastes it generates can store the filters up to 270 days. The same generator, however, under new subpart O would not be required to use the manifest for the ion exchange resin canisters but would have to use an approved transporter; would have to send the resin canisters to USFRS where USFRS would arrange for metals recovery; and would be limited to a 90 day storage time limit, regardless of the volume of wastes generated by the generator. Such a dual management system can work. However, if USFRS is correct (i.e., that it will act as a disincentive to certain generators) it may be counterproductive to the purpose and goal of this XL project. Conversely, it may be better to subject the filters to the special management standards of new subpart O because it requires metals recovery and for some generators, may place a shorter time period for the on-site storage of the filters. To the extent that it is administratively easier for a generator to have the same management system and requirements for essentially the same wastes it may result in more participants in this XL project. With more participants EPA would expect greater metal recovery amounts and greater reductions in the use of potable water and energy. For all of these reasons EPA believes that it is appropriate and may enhance the success of the USFRS XL project to include the pre and post filters in this XL Project. EPA believes it can do this by revising the definition of USFRS XL001 waste to include the pre-and post-filters and their containers. EPA will revise this definition accordingly and will make conforming changes in other parts of the rules where necessary. For example the MSDS required by § 266.405, the spill response requirements of §§ 266.408 and 411, the closure requirements of § 266.412 and the recycling requirements of § 266.407 will be revised to reflect this change.

Comment. USFRS requested EPA to clarify the definition of USFRS XL waste. USFRS questioned whether the requirement in the definition of ''USFRS XL waste'' that limited participation to generators who would reuse ''substantially all of the treated waste waters'' would include processes where up to 50% of the process waters require use of new water in order for the customer to operate its processes effectively. USFRS pointed out that in any water reuse system there is a percent of water that is discharged rather than being returned to the original process (referred to as ''bleed off''). Related to this issue USFRS suggested that the USFRS XL project be expanded to generators who use the ion exchange resin system regardless of whether they discharged the treated waste waters or reused them in their production process. USFRS felt that as long as the generators were required to send their resins to USFRS for metals recovery—a primary benefit of this project—there would be recovery of metals and a reduction in the disposal of these metals.

Response. USFRS projected that this project would benefit the environment by reducing the use of potable water in the manufacturing process and increasing the recycling of metals contained in the manufacturing waste waters. In the preamble to the proposed rule, EPA solicited comment on two related topics. First, EPA asked for data or comments on what would be an acceptable percent of ''bleed off.'' USFRS' proposal at that time was limited to those generators who reused their treated waste waters. EPA recognized that some bleed off would occur. However, without data it could not establish a numeric bench mark for water reuse. At that time EPA believed that a numeric benchmark would be useful to ensure that one of the goals of the project was obtained—i.e., reduction in the use of potable water. Second, EPA asked for comments on whether the reduction in the use of potable water was sufficient environmental benefit by itself to warrant proceeding with the USFRS XL project. EPA explained that although it proposed to require the recycling and recovery of the metals in the sludges [16] it was not confident that there were facilities available to complete this task. EPA was concerned that if USFRS was not able to find a recycler of this waste the project would not proceed. Consequently, there would not be any environmental benefit from the Project.

The USFRS XL project is a RCRA regulatory reform initiative. One of the major environmental benefit expected from the USFRS XL project is a reduction in the disposal of the electroplating waste water treatment sludges and an increase in the recovery of metals from the ion exchange resin and filters. An increase the recycling and recovery of metals from the resins and filters would increase the waste disposal environmental benefits derived from this project. During the comment period EPA did not receive any comment suggesting that it should eliminate the recycling requirement. On the contrary, the private citizen strongly encouraged EPA to retain this requirement. Consequently, if USFRS is correct, allowing generators who discharge their treated waters to participate in this project would satisfy this commenter and might enhance this project's ability to recover metals and reduce their disposal. One method of accomplishing this would be to revise the definition of USFRS XL waste to eliminate from the proposed rule the treated water reuse requirement—specifically, eliminate the phrase ''ion exchange resin canisters which result in reuse of substantially all of the treated waste waters.'' By doing this EPA, would also eliminate the need to identify a benchmark amount for bleed off and the requirement for any water re-use.

EPA recognizes that eliminating the water re-use requirement may have an impact on the amount of potable water used in the manufacturing process. This in turn may be less of an environmental benefit than EPA originally anticipated in the August 17, 2000 **Federal Register**. However, it is unclear, at this point, that such a negative impact will occur. It is possible that other factors, such as reduced local taxes for reduced water use or discharge, may work in concert with the rule and result in a net reduction in the use of potable water. To obtain an accurate assessment of the impact of this project on water use and re-use EPA will retain in the final rule the reporting requirements related to water reuse contained in the proposed rule. U.S. EPA believes that such information will be useful and valuable for it to more completely assess the overall environmental impact of this USFRS XL project.

Comment. USFRS wanted EPA to clarify that although its training manual will instruct participants on how to handle spills of USFRS XL waste it will not relieve them of the responsibility, if any, to have their own spill response plans and satisfy all federal, state and local requirements regarding training and how to handle spills.

Response. EPA agrees with USFRS. The applicability section of subpart O, § 266.400 clearly states that a participant in this XL project is relieved from compliance with specific RCRA requirements. All other federal, state and local requirements are applicable to the participants, including spill response and training requirements.

Comment. USFRS questioned the manner in which it will calculate the quantity of metals it recovers from its generators as required in new

[16] Section 266.407 conditions this project on USFRS finding a metals recovery facility and using such facility throughout this XL Project for all USFRS XL wastes.

§§ 266.419(a)(2) and (3). USFRS stated that it will calculate the metals collected/recovered for each generator based on the initial chemical profile analysis it performed on the generator's waste and the volume of resin received for regeneration during the relevant reporting period.

Response. EPA agrees with the method USFRS proposes and does not believe that a change in the rule is needed. The rule presently states that USFRS will report the quantity of metals it recovers at its facility. It does not specify a method for calculating that quantity. EPA recognizes that the method proposed by USFRS will provide it with an estimate of the actual amount of metals recovered not the actual amount recovered that it recovers. EPA believes that such an estimate is sufficient given the other data USFRS will report—amount of ion exchange resins, other wastewater treatment sludges and residues it recovers from each of its generators; the amount of water recycled by the generators and associated treatment costs saved by the generators; the amount of metals it recovers at its facility and the amount of metals actually recovered at off-site metals recovery facilities (see § 266.419(a)(4)).[17]

Comment. USFRS suggested that the rules be revised to allow for continued participation by a participant after it has changed ownership. USFRS stated that it was inappropriate to automatically terminate a participant given the efforts it has expended to enroll transporters and generators and the time it has taken to develop this Project. USFRS suggested that instead of an automatic termination there should be a review of the participant when there is a change in ownership.

Response. EPA agrees that new owners of generators or transporters may participate in this XL Project. EPA, however, does not believe it is appropriate or necessary to allow for a new owner of a generator or transporter to automatically continue participating in this Project pending a review and approval by EPA. EPA does believe that the new rules should be modified to allow for the substitution of a new owner of USFRS and to allow EPA to approve of a modified closure when there is new owner generator.

The August 17, 2000 **Federal Register** proposed that a company's continued participation in this XL Project would terminate when it changed owners. It did not require prior notice of the change in ownership.[18] The rules provided the prior owners with time to close and return to compliance with RCRA (see §§ 266.414–418) [19]. The time periods varied depending on whether the company was a generator, transporter or USFRS. If a generator changed owners the prior owner would have to discontinue generation of USFRS XL waste and complete the closure requirements contained in § 266.412. The prior owner would have 60 days from date of the change in ownership to disconnect its processes from the water treatment resin process, implement alternative treatment and disposal, remove all USFRS XL waste from its property and decontaminate the any contaminated areas.

The August 17, 2000, **Federal Register** proposed that generators and transporters may be added to this XL project at any time. Consequently, a new owner could be added before or after the change in ownership provided it met the criteria for such approval and the appropriate processes were completed. (See §§ 266.402 and 266.403). One of the criteria is prior approval of EPA. EPA's prior approval of XL participants is important to the success of EPA's XL projects and this XL Project in particular. A company must be knowledgeable of and committed to the XL project and the regulations promulgated thereunder. Additionally, it must have an exemplary environmental compliance history.

EPA believes that USFRS suggestion of allowing a new owner to continue without prior EPA approval may allow for a company which does not meet these criteria and does not qualify to participate. When a company changes ownership it is unknown whether the new owners meet these criteria. Additionally, a number of practical problems are presented. The new owners may decide not to participate in the XL project; they may decide to change personnel, operations or generate waste streams different from their predecessor; or they may have to clean-up wastes that the prior owner left. EPA believes that these issues should be resolved before a new owner is added to this XL project and generates USFRS XL waste. In instances where these issues are quickly resolved—e.g., everything stays the same but for the name of the owner—USFRS should be able to expedite the addition of the new owner to this XL project. Since the rules allow for the addition of a new generator or transporter at any time, a new owner could apply to participate prior to the change in ownership. This would minimize the disruption in any continuing operations. The advantage of terminating the prior owner's participation is that it clearly delineates the responsibility for any previously generated USFRS XL waste. The prior owner is responsible for closure.

EPA believes, however, that the termination procedures should be modified in one instance.[20] According to § 266.415(d) once there has been a change in ownership of a generator the prior generator has 60 days to complete the closure requirements of § 266.412. EPA is concerned that the rule as proposed would not allow a new owner to assume the prior generator's closure responsibilities or continue the pre-existing ion exchange resin process. This may be appropriate in certain instances—e.g., where the new owner is not approved or does not want to assume those responsibilities. However, there are other instances where it may be environmentally better to allow the new owner to continue the previous process without disruption or to assume the clean up responsibilities of the prior owner. To strike the proper balance between these two interests and to provide some flexibility EPA will change section 266.415(d) to require the prior owner to complete closure within 60 days of the change in ownership unless, within that time period, EPA has approved of the new owner and EPA has approved of any modifications the new owner proposes to the prior owner's closure responsibilities. If these approvals are not received within this

[17] EPA, expects that the facility USFRS uses to recycle its sludges will be able to provide actual amounts of metals recovered. Consequently, EPA has not changed section 266.419(a)(4).

[18] EPA established the post-notice and termination process in the proposed rules in part to avoid a concern frequently raised on an alternative—prior notice of ownership change and prior EPA approval. Frequently, for business purposes, companies want to keep these changes private until after they have occurred. Requiring prior notice appeared to be impractical.

[19] If a generator or transporter elects to terminate its participation prior to ever generating or transporting USFRS XL waste the rules provide a truncated termination procedure. This procedure does not require removal or decontamination of USFRS XL waste since none have been generated or transported. (See §§ 266.414 and 266.416).

[20] EPA does not believe it is necessary or appropriate to modify the procedures in section 266.414(b), 266.416(b) or 266.417(d), termination of an approved customer, approved transporter and transporter as a result of a change in ownership. For an approved customer and approved transporter there are no closure requirements specified since by definition they will never had handled USFRS XL waste. For the transporter the ''closure'' would consist merely of transporting the USFRS XL wastes it has to USFRS within 30 days of the change in ownership. This was inadvertently left out of section 266.417(d) but is consistent with 266.417(a), (b) and (c) and the general requirement to transport USFRS XL wastes to USFRS within 30 days of there receipt. (See section 266.410(a)). EPA will add this to section 266.417(d).

time period the prior owner is still responsible for completing the closure within the 60 days.

The change in ownership of USFRS presents a problem not previously contemplated by EPA when it developed the proposed rule. The rules do not provide a mechanism or procedure to add the new owner of USFRS. Instead, they required USFRS to notify EPA of the change in ownership within 30 days of it happening and then within 90 days to arrange for the transition of all the USFRS XL waste project participants to return to compliance with RCRA. (See § 266.418(b)). Consequently, if USFRS were to change ownership then this XL Project would automatically terminate. This would set into motion the termination of the continued participation of all of the generator and transporters approved for participation in this project. The automatic termination of USFRS could potentially have a significant economic and environmental impact as a large number of companies attempt to switch from the ion exchange resin filter system to some other system within the same time. Such a consequence may be unavoidable where there are substantive reasons for terminating USFRS continued participation or this XL project—e.g. USFRS continuously violates its permit or the project does not demonstrate any environmental benefit. However, in the case of a change in ownership this is not necessarily true. Consequently, EPA believes that some procedure should be established to allow for the new owner of USFRS to continue operating this XL Project. This would be consistent with the RCRA permit rules which allow for the continued operation of a permitted facility after a change in ownership, provided the Agency has approved of the change in ownership. Consequently, EPA has modified § 266.418(b) to require USFRS to provide EPA with 90 days advance notice of any change in ownership and to provide EPA with its proposed revisions to the FPA if the new owner wishes to continue this XL Project. If EPA and the new owner are able to agree upon and sign the proposed revisions to the FPA within that 90 day time frame then the new owner may continue this XL Project. If an agreement and signature is not obtained within that time frame then procedures presently in the rules for automatic termination apply.

Comment. USFRS and MPCA requested that EPA extend the duration of the project to account for the time that it will take to obtain the necessary State, county and federal approvals. Both entities were concerned that it may take up to a year to obtain all of the necessary governmental approvals. This time will erode the five years that were given for the duration of the project.

Response. EPA agrees that sufficient time should be allowed for the project. Proposed § 266.422 stated that the new federal rules would be effective for five years from the effective date of the final rules. However, the preamble to the proposed rules clearly stated that USFRS may not implement the program outlined in the rules until the State of Minnesota either: (1) Receives federal authorization for similar state rules, (2) issues variances under its existing federally authorized hazardous waste program or (3) receives federal authorization for permits it issues to participating generators, transporters and USFRS pursuant to the Minnesota XL statute. Each of these options can easily take six months, at a minimum, to complete.

Minnesota has indicated a preference for the latter option-using its XL statute to develop general permits for the generators and transporters and modifying the existing hazardous waste permit for USFRS. Minnesota most likely will work on the XL permits in a sequential manner. It will develop the generator and transporter general permits first and then make the changes needed to USFRS RCRA hazardous waste permit. It will not issue the modifications to the USFRS RCRA hazardous waste permit until the generator and transporter general permits are completed and Minnesota has received authorization for these permits.[21] In this process the modified USFRS RCRA hazardous waste permit is the last element needed to make this XL project effective in the State.

EPA anticipates that Minnesota will need up to year to complete all the steps needed to implement its preferred option. Consequently, without providing an extension to the effective date of the proposed rule the project will last for only four years, at most, not the five years proposed.

Providing more time may also act as an incentive for more generators to participate in the USFRS XL project. This in turn may provide USFRS and EPA with more reliable information on the environmental benefits derived from the project. It may also provide EPA with additional time to evaluate whether the project can and should be expanded. Consequently, EPA has modified § 266.422 in the following two ways to provide the full five years for the duration of the project. EPA has changed the effective date of subpart O to six months after publication of the final rule in conformance with section 6930(b) of RCRA. Second, EPA has changed § 266.422 to indicate that the project will run for five years from the date that Minnesota issues a modification to the USFRS RCRA permit to implement this XL project. Since the modified RCRA permit is the last step anticipated in Minnesota's implementation process for this project it is reasonable that the duration of the project be measured from that date.

Comment. USFRS requested EPA to amend the rules to allow it more than 30 days to pick up a generator's XL waste. USFRS indicated that this requirement would effectively reduce the 90 day storage allowed for generators of the USFRS XL waste to 30 days. This in turn would have the greatest impact on USFRS being able to attract new customers located outside the Minneapolis-St. Paul area. Generators outside of the metropolitan area would be most sensitive to transportation costs. The 30 day time limit would increase those transportation costs since USFRS expected that there would be more frequent pick-ups with smaller loads. If the time period were extended USFRS felt that some of the expenses could be reduced. USFRS suggested that the rule allow it to pick-up the XL waste within the 90 days allowed for the generator to store the XL waste. USFRS further suggested that it would agree that the rule state that at no time would the XL wastes be allowed to remain on-site for greater than 90 days.

Response. EPA agrees with USFRS' request and will revise § 266.410(a) and (c) to allow it and its transporter to pick up a generator's USFRS XL waste within the 90 days allowed the generator to store the waste. The changes suggested by USFRS are consistent with the goal of the project and the rule and may result in a rule which works better than the proposed rule.

One of the goals of this project is to increase the recycling of F006 waste. It is reasonable to expect that the more participants in this project the greater the chance that this goal will be met. Consequently, if USFRS is correct, then USFRS may be able to maximize the number of participants with EPA providing a longer time period for USFRS to pick up the wastes. EPA selected the 30 day time period in the proposed rule because it appeared that

[21] Although Minnesota has indicated a preference for issuing general permits under its XL statute, it might later decide to promulgate new state RCRA regulations and submit those to EPA for authorization or to issue variances under its approved RCRA program. In any case, USFRS' RCRA permit will need to be modified.

USFRS could meet this time period. The ultimate goal of the rule was to ensure that there was adequate cooperation between the project participants to accomplish the same goal—i.e., remove the XL waste from the generator's storage area prior to the expiration of the 90 day storage limit. This goal can be met by revising § 266.410(a) and (c) to specify that USFRS and its transporters will pick up a generator's XL waste before the 90 day storage time limit expires on the waste.[22]

Comment. USFRS requested EPA to change § 266.410(a) to allow it more time to send a copy of the Transportation Tracking document it received with the shipment of XL waste to the generator. USFRS stated that 5 days was inconsistent with its present practice approved by the State. Namely, USFRS mails copies of the hazardous waste manifests to the state and the generators once per week.

Response. EPA agrees to extend the time from 5 days to 10 days. This is more stringent than the 30 days allowed under RCRA but should allow USFRS to continue its existing practice which the State has approved for other hazardous waste shipments. It will also provide the generator and USFRS sufficient time to track any missing shipments.

Comment. USFRS requested EPA to modify § 266.410(a) to allow it to provide the generator's with the Transportation Tracking Document and warning statement at the time the transporter arrives at the generator to pick-up the USFRS XL waste. USFRS indicated that such a modification to the rule will make the rule harmonious with its existing system for all wastes. This would allow it to maintain the 48 hour response time for pick-up of its customer's wastes in the local area.

Response. EPA agrees to make the change requested by USFRS in § 266.410(a). The proposed rule stated that USFRS was to provide the Transportation Tracking Document and warning statement to the generator prior to the transporter arriving at the generator. The purpose of the timing requirement was to provide the generator with time to review the document and make any changes that might be necessary. This can be accomplished if the document arrives with the transporter. Additionally, since the generator and the transporter are still responsible for verifying the accuracy of the document under § 266.410(b) and (c) the ultimate goal of the rule is still achieved—i.e., accurate transportation tracking documents.

Comment. USFRS was concerned that it could not meet the MSDS requirements in §§ 266.405, 266.408(g), 266.410(c) and 266.411 because its MSDS covered the ion exchange resins prior to use (i.e., ''fresh resins'') whereas these rules contemplated an MSDS which covered the resins after use (i.e., with contamination on them). It proposed using another document—the Treatment and Storage form—which identifies the hazards associated with the wastes and emergency response protocols.

Response. EPA will revise § 266.405 to allow USFRS to use the MSDS or an equivalent form which identifies the hazards associated with the resins and filters after use and the emergency response protocols. This change should allow USFRS to use its Treatment and Storage form if it contained the requisite information.

Comment. USFRS stated that in certain instances the subpart O rules are more stringent than RCRA or its routine practices and should be revised to be the same as RCRA (e.g.., generator storage of USFRS XL waste limited to 90 days, regardless of the amount; storage of the USFRS XL waste on an impervious surface; time limits for exiting the XL project which are inconsistent with RCRA and notice to more entities of a spill than just MPCA). USFRS felt that these provisions would make it difficult to convince potential customers who are knowledgeable about RCRA to participate in this program.

Response. An XL project must be environmentally superior to the existing regulatory program. Consequently, EPA would anticipate that certain elements of this XL project would be more stringent than the RCRA regulatory program. In developing the subpart O rules, EPA attempted to balance the desire to maximize the number of participants with the need to ensure that the project would result in superior environmental benefits. EPA believes that it has done that by replacing the manifest and reporting requirements for the generators, expanding the scope of the program to include pre and post filters and eliminating the treated water re-use requirement. In exchange for these provisions EPA believes that the requirements identified as more stringent are a reasonable trade off.

Comment. USFRS suggested that § 266.412 was incorrect based on their understanding that it referred to discontinuation of business not the generator closure identified on page 50307 of the August 17, 2000 **Federal Register**.

Response. EPA disagrees with USFRS. § 266.412 requires the generators to complete closure at the time of termination of the generator's participation in the USFRS XL project. § 266.415 specifies the manner in which a generator may terminate its participation—either voluntarily, as a result of action EPA, MPCA or the County Agencies, as a result of action by USFRS or after a change in ownership. The rule also specifies the time period for completing closure under each of these scenarios—it is 60 days.

Comment. USFRS and MPCA requested EPA to commit to assisting it in expanding this project beyond the State of Minnesota.

Response. As a general goal EPA agrees that expanding an XL Project to other States and other companies may be a desired outcome of its XL program, if the pilot shows promise. EPA, however, believes that it is premature for it to make the commitment USFRS and MPCA seek. XL Projects are participant driven pilot projects. The time and resources necessary to develop a project is significant and is the responsibility of the project sponsor. USFRS did a good job of developing this XL Project with the State of Minnesota and tailoring it to the rules of that State and its local governments. However, in order to expand this project beyond the State of Minnesota USFRS will need to involve other State, local, environmental and industry groups. Additionally, it will need to modify the proposal in a manner which is consistent with each State's authorized hazardous waste program. For example, USFRS' transportation tracking document may present certain States with administrative issues.

To the extent this project is amenable to expansion EPA believes that it can make such a determination after USFRS has implemented this project for one or two years. After that time USFRS will have obtained actual data on the environmental benefits derived from this XL project. USFRS will also have had the opportunity to identify improvements to the Project and to convene the necessary stakeholder meetings. At that time EPA will be in a position to ascertain if this project is capable of being expanded on a national basis and the appropriate manner in which to make such a change.

Comment. USFRS stated that the use of 55 gallon steel drums to collect and contain spills of ion exchange resins would be inappropriate. The steel can corrode when in contact with certain

[22] USFRS did not request EPA to change the time period it would take the transporter to transport the XL wastes to its facility. Consequently, EPA will retain the requirement in 266.410(c) that the transporter deliver the USFRS XL waste to USFRS within 30 days of it picking it up from a USFRS XL waste generator.

resins [23] or can irreversibly foul them. Additionally, the amount spilled may be significantly less than 55 gallons. As an alternative USFRS suggested that the drum be a polycontainer compatible with the wastes and of sufficient size to contain the amount spilled.

Response. EPA will revise §§ 266.408(e) and 266.411 as suggested by USFRS.

Comment. USFRS was concerned that § 266.408(b) would require the generators to store the USFRS XL wastes in separate areas from their storage of other wastes. USFRS believed that simple segregation of the USFRS XL wastes would be sufficient.

Response. EPA agrees that simple segregation of the USFRS XL wastes from the other wastes is sufficient. It disagrees that § 266.408(b) requires storage in a separate area. Storage in a separate area within a storage area for other wastes would be acceptable.

Comment. One individual felt that the public participation was inadequate. He suggested that there was not enough ''non-governmental'' stakeholders. He said that the FPA should not be signed until there were additional public meetings and his client had an opportunity to become one of the stakeholders.

Response. Stakeholder involvement and representation is an important element for every XL project. It is the responsibility of the project sponsor and continues throughout the project—even during implementation. EPA regrets when any stakeholder is not able to participate as early in the process and as often as it would like. EPA certainly would expect that USFRS would include any stakeholder who wishes to be added to this stakeholder's group.

EPA disagrees, however, that there was inadequate public participation and that the FPA and rule should not be signed. USFRS had 9 separate stakeholder meetings. They invited and had in attendance representatives from industry, the environmental community, private citizens and the State and local governments. All of this was done prior to EPA public noticing the draft FPA and proposed rules on August 17, 2000. With the August 17, 2000 **Federal Register** EPA invited the public to submit comments and request a public meeting. Requests for a public meeting were to be made by August 24, 2000. EPA did not receive any such requests until it received this request on September 7, 2000. Even though this is a late request for a public meeting EPA has evaluated the merits of the request and believes that an additional public comment period or a public meeting are unnecessary. This commenter submitted two pages of substantive comments on the proposed rule and draft FPA. (EPA presents a more detailed summary and response to these comments below). The commenter was primarily concerned with EPA retaining the recycling requirement. EPA has done that. Additionally, this commenter will continue to have meaningful opportunities to comment on this project after the FPA and rule are signed. As stated earlier, stakeholder involvement continues after the FPA is signed and this rule is promulgated. That involvement will be meaningful. Major implementation issues and decisions still have to be completed. Signing the FPA and new rule is just the first step in the process. For example, the State will have to develop the legal mechanisms which it will use to implement this project. Public involvement may be useful in completing this. Additionally, some of the legal mechanisms the State may use may require public participation prior to completion of them. To the extent the commenter is concerned that it is precluded from participating in the project that is not correct. The project is structured in a manner which allows any person who qualifies to be added to the project as a generator or a transporter. To the extent the commenter is concerned that the environmental benefits of the project may be insufficient, any person—not just stakeholders—may advise EPA, USFRS, MPCA or the County Agencies of project problems at any time. If the problems are major and not capable of being fixed, EPA has retained the ability in both the FPA and rules to terminate this project at an earlier time.

Comment. One commenter responded to EPA's request for comments on whether this project should be conditioned on USFRS' ability to recycle the USFRS XL wastes. The commenter stated that the recycling requirement must be retained. He stated that before EPA eliminated that requirement it needed to conduct further studies. Those studies would provide data on the impact of the increased metal disposal against the environmental benefit of a reduction in the use of potable water. The commenter also wanted EPA to ensure that generators who are currently reclaiming metals from F006 wastes continue to do so.

Response. EPA agrees that the recycling aspect of this Project is a major part of it and has the potential to yield a significant environmental benefit. Furthermore, it appears that there is a market for this service and that USFRS will be able to obtain such services. EPA has, therefore, retained the recycling requirement. Consequently, USFRS and participating generators, through USFRS, will be recycling the USFRS XL wastes.

If the project operates as USFRS projects the amount of metals recycled and the number of generators who recycle metals may increase. USFRS anticipates this would happen, in part, as a result of its resin process collecting more metals prior to waste water discharge to a POTW and in part due to companies doing waste water treatment when they did not previously do it.

EPA disagrees with the commenter's suggestion that certain studies are needed prior to EPA approving of this project. XL projects are intended to pilot new approaches. By their nature, some projects will not have the data on the actual environmental benefits *a priori.* They may be used to collect the data to substantiate the benefits anticipated. Such projects may be used to assist EPA in obtaining the data and experience, on a small scale, it needs to determine whether larger, national changes should be made. This XL project does that. It requires USFRS to collect and analyze data which will allow EPA to assess the comparative environmental benefits derived from the use of its resin regeneration process and the alternative management standards imposed on F006 wastes which are recycled. (See § 266.419).

Comment. The State submitted written comments indicating that it was uncertain of the legal mechanisms it could use to implement the XL project. In its written comments, due to resource constraints and other uncertainties, it generally disagreed with certain options EPA outlined in the preamble to the proposed rule. It suggested that EPA use the FPA to incorporate their understandings and agreement on the implementation options to be used for this project.

Response. EPA shares the State's concerns about the length of time and resources it will need to finish the State and, in two instances, federal authorization proceedings to implement the new subpart O rules. EPA also agrees that the FPA can be used to identify the legal options and mechanisms the EPA and the State may use to implement this XL Project. EPA has revised the FPA to do that.

The FPA allows the State to chose any of the three options EPA identified in the preamble to the August 17, 2000, **Federal Register**. In summary those

[23] The resin canisters are steel but compatible with the resins because there is a liner which separates the resins from the steel.

options are: (1) Revise its existing hazardous waste rules to mirror new subpart O; (2) issue permits which mirror the new subpart O to the project participants using the State's XL statute; or (3) issue variance(s) which mirror the new subpart O to the project participants using the variance authority in its existing RCRA authorized hazardous waste program or. The first two options require the State to submit them to EPA for federal authorization after they are adopted by the State.[24] The State has indicated its preference for option 2 (issuing permit(s) and submitting an authorization application). To expedite matters, EPA has provided the State with guidance on the elements of an authorization application for option 2. EPA has also committed in the FPA to expedite its review of its request for authorization of option 2. Finally, EPA has delayed the start of the subpart O rules, and thus this project, in a manner which will allow USFRS to implement this XL project for the full five years, regardless of any delays the State or EPA may incur in putting in place the required legal mechanisms.

In addition to the changes already discussed EPA modified §§ 266.401, 266.403(c), 266.414, 266.415 and 266.416. EPA made these changes on its own initiative.

Sections 266.414–418 present the federal procedures for termination of an entities continued participation in this XL Project. EPA added in §§ 266.314, 266.315 and 266.316 that the State and County may have different procedures. Furthermore, EPA added that it is not bound by nor will it follow the State or local procedures. This is true regardless of the enforceable mechanisms the State uses to implement this XL Project. EPA explained this position in the preamble to the August 17, 2000 **Federal Register** and had stated it in proposed §§ 266.417 and 266.418. EPA inadvertently excluded this language in the proposed version of §§ 266.414, 266.415 and 266.416 and is correcting the final version of these sections with this final promulgation.

EPA is revising § 266.401 (definition of USFRS XL waste final project agreement) and § 266.403(c) to change the name Pioneer Transport to Pioneer Tank Lines. USFRS proposed Pioneer Tank Lines as one of the approved transporters for the USFRS XL waste. EPA mistakenly identified this company as Pioneer Transport in the proposed rules. EPA is correcting these rules to (§§ 266.401 and 266.403(c)) to reflect the correct name—Pioneer Tank Lines.

The designation for the regulatory text has been changed from subpart N, §§ 266.300–266.322 in the proposed rule to subpart O, §§ 266.400–266.422 in final rule. This is due to a numbering conflict with a simultaneously proposed rule.

VI. Additional Information

A. What Regulatory Changes Will Be Necessary To Implement This Project?

With the promulgation of this new rule no further federal regulatory changes will be needed. However, since the state of Minnesota is authorized under section 3006 of RCRA to implement the federal RCRA program it will have to complete certain steps to provide USFRS, its generators and transporters with the regulatory flexibility needed to implement the USFRS XL project. The preamble to the proposed rule provides a detailed discussion of the steps Minnesota can take to implement this USFRS XL project. The approved generators, transporters and USFRS are subject to the present state regulations, which do not provide this flexibility, until such time as new regulations are adopted by the state of Minnesota or an equivalent state legal mechanism is used and authorized as part of the approved federal hazardous waste program for Minnesota. Therefore, conforming state regulatory changes or legal mechanisms must be implemented in addition to the proposed federal changes for companies to enter into this XL Project. Additionally, depending on the mechanism selected by the State of Minnesota, EPA may have to review and approve of the mechanism as part of the State's authorized hazardous waste program.

B. Why Is EPA Supporting This New Approach to USFRS XL Waste Management?

EPA is supporting this new approach because it believes that it will provide superior environmental performance by promoting recycling of water and recovery and reuse of metals that would otherwise be land disposed. USFRS and its customers will be complying with requirements that are as protective of public health and the environment as the RCRA requirements that would otherwise be applicable. EPA also believes that implementation of this project will result in a significant cost savings to the participating customers. The success of this project will be evaluated on an ongoing basis and will determine whether this new approach to waste management should be extended to other areas of the country.

C. How Does This Rule Comply With Executive Order 12866?

Because this rules affects only U.S. Filter, its transporters and its customers, it is not a rule of general applicability. It is therefore, not subject to OMB review and Executive Order 12866. In addition, OMB has agreed that review of site-specific rules under Project XL is not necessary. Further, under Executive Order 12866, the Agency first must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of this proposed rule would be significantly less than $100 million and would not meet any of the other criteria specified in the Executive Order and because this proposed rule affects only USFRS and its transporters and generators, it is not a rule of general applicability or a ''significant regulatory action'' and therefore not subject to OMB review. Further today's proposed rule does not apply to any entity unless they choose on a voluntary basis to participate in this XL Project. Finally, OMB has agreed that review of site specific rules under Project XL is not necessary.

Executive Order 12866 also encourages agencies to provide a meaningful public comment period, and suggests that in most cases the comment period should be 60 days. However, in consideration of the very limited scope of today's rulemaking and the considerable public involvement in the development of the draft FPA, the EPA considers 30 days to be sufficient in providing a meaningful public comment period for today's action.

[24] The preamble to the proposed rule provides more information on the options, the rationale for each and the steps needed to make them legally enforceable.

D. Is a Regulatory Flexibility Analysis Required?

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Administrator certifies that this proposal, if promulgated, will not have a significant economic impact on a substantial number of small entities for the reasons explained below. Consequently, EPA has not prepared a regulatory flexibility analysis.

Small entities include small businesses, small organizations and small governmental jurisdictions. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as : (1) A small business according to RFA default definitions for small business (based on SBA size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Today's rule amends EPA's RCRA Regulations to modify the handling and reporting requirements for certain hazardous waste generators and transporters, as well as for USFRS. USFRS is not a small entity. The modifications authorized by the rule would reduce costs to the generators to whom it applies and those modifications should have no impact on costs to the transporters. EPA has concluded, therefore, that the rule will not have a significant economic impact on a substantial number of small entities.

E. Is an Information Collection Request Required for This Project Under the Paperwork Reduction Act?

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and has assigned OMB control number 2010–0026.

EPA is requiring that information be collected regarding which generators and transporters are eligible for regulatory flexibility under the USFRS XL Project. Information is also needed in order to keep generators, transporters, USFRS, and emergency response teams abreast of XL 001 waste, its contents, and when it is shipped and received. Finally information is needed to determine whether the project produces superior economic and environmental benefits. The success of the project will help determine whether it should be extended to other areas of the country. Participation in the project is voluntary; however, if a generator or transporter decides to participate, EPA requires the filing of this information. Quarterly reports will be publicly available. The estimated total cost burden of collecting the information is $240,670/year and the estimated total length of time to collect it is 4205 hours/year. The estimated total number of respondents is 91. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. EPA is amending the 40 CFR part 9 table of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule. The table lists the CFR citations for EPA's reporting and recordkeeping requirements, and the current OMB control numbers. This listing of OMB control numbers and their subsequent codification in the CFR satisfy the requirements of the Paperwork Reduction Act and OMB's implementing regulations at 5 CFR part 1320.

F. Does This Project Trigger the Requirements of the Unfunded Mandates Reform Act?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why the alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this proposed rule is limited to USFRS and certain of its customers and transporters. This proposed rule would create no federal mandate because it is a voluntary program proposed by USFRS. Further, EPA is imposing no enforceable duties that are anticipated to be more expensive or more onerous for the parties that would exist without this proposed rule. The rule does not change the authorization status of the State. Since the proposed rule is a relaxation of the federal regulatory program, it will not take effect until the State adopts the

rule. The State is under no federal obligation to adopt less stringent requirements. EPA has also determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Nevertheless, in developing this proposed rule, EPA worked closely with MPCA, Ramsey, Hennepin, Anoka, Dakota, Carver, Scott and Washington Counties and received meaningful and timely input in the development of this proposed rule.

G. How Does This Rule Comply With Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks?

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant,'' as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental, health or safety risks addressed by this action present a disproportionate risk to children. The proposed rule has no identifiable direct impact upon the health and/or safety risks to children and adoption of the proposed regulatory changes would not disproportionately affect children. Finally, all XL projects must demonstrate superior environmental performance. Therefore, EPA anticipates that the proposed rulemaking will benefit all people, including children. The proposed rulemaking is thus in compliance with the intent and requirements of the Executive Order.

H. How Does This Rule Comply With Executive Order 13132 on Federalism?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255), August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The requirements outlined in today's proposed rule would apply only to the USFRS facility and generators and transporters of USFRS XL waste and will not take effect unless Minnesota chooses to adopt equivalent legal mechanisms or requirements under state law. Thus, the requirements of Section 6 of the Executive Order do not apply to this rule. Although Section 6 of Executive Order 13132 does not apply to this rule, EPA did fully coordinate and consult with State and local officials in developing this rule.

I. How Does This Rule Comply With Executive Order 13175: Consultation and Coordination With Indian Tribal Governments?

Tribal Governments (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

J. Does This Rule Comply With the National Technology Transfer and Advancement Act?

Section 12(d) of NTTAA, Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary standards. This proposed rulemaking sets alternative handling and paperwork requirements for certain hazardous wastes; it does not set technical standards. EPA is not considering the use of any voluntary consensus standards.

K. How Does This Rule Comply With the Congressional Review Act?

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular

applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this rule is of particular applicability.

List of Subjects

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 266

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: May 3, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, parts 261 and 266 of Chapter I of title 40 of the Code of Federal Regulations are amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

Subpart A—General

2. Section 261.6 is amended by revising paragraph (a)(2) introductory text and by adding paragraph (a)(2)(v) to read as follows:

§ 261.6 Requirements for recyclable materials.

(a) * * *

(2) The following recyclable materials are not subject to the requirements of this section but are regulated under subparts C through O of part 266 of this chapter and all applicable provisions in parts 270 and 124 of this chapter:

* * * * *

(v) U.S. Filter Recovery Services XL waste (subpart O).

* * * * *

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

1. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922–6925, 6934 and 6937.

2. Part 266 is amended by adding a new subpart O to reads as follows:

Subpart O—Standards Applicable to U.S. Filter Recovery Services XL Waste and U.S. Filter Recovery Services, Inc.

Sec.

§ 266.400 Purpose, scope, and applicability.

The purpose of this subpart is to implement the U.S. Filter Recovery Services (USFRS) eXcellence in Leadership (XL) Project. Any person who is a USFRS XL waste generator or transporter must handle the USFRS XL waste in accordance with the requirements contained within this subpart. The standards and requirements of this subpart also apply to USFRS and its facility located at 2430 Rose Place, Roseville, Minnesota. These requirements are imposed on USFRS in addition to any requirements contained in its RCRA hazardous waste permit or other applicable state or federal law. USFRS XL waste generators and transporters are not required to comply with the requirements of 40 CFR 261.5, parts 262 through 266 (except this subpart O), parts 268, 270, 273 and 279 provided they manage USFRS XL waste in compliance with the requirements of this subpart O.

§ 266.401 Definitions.

County Environmental Agencies or County Agencies means the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington in Minnesota.

USFRS means U.S. Filter Recovery Services, Inc. whose principal place of business for the purposes of these rules is 2430 Rose Place, Roseville, Minnesota.

USFRS XL Waste means one or more USFRS used water treatment resin canisters and their contents, any associated USFRS pre- or post-resin filters and their containers and their contents from a USFRS XL waste generator located within the State of Minnesota. USFRS XL waste includes the ion exchange resins, the associated pre- and post-resin filters, wastes contained on or within the ion exchange resins and filters and any other wastes contained within the water treatment resin canisters and filter containers. USFRS XL waste also includes spills of XL waste which are handled in accordance with the requirements in this subpart. This definition does not include wastes that were generated prior to the date a generator is added to this USFRS XL Project. USFRS XL waste shall be identified by the waste code XL001.

USFRS XL Waste Application Form means the form approved by EPA and Minnesota Pollution Control Agency (MPCA) as part of the USFRS XL Waste Project or subsequently modified by USFRS and approved by EPA and MPCA and used for characterization of the chemical constituents of a person's USFRS XL waste. The USFRS XL Waste Application Form shall include all attachments by USFRS or the applicant, including but not limited to, the USFRS Site Engineering Form, Systems Engineering Form and any waste analysis.

USFRS XL Waste Approved Customer means only those persons located in Minnesota who have properly identified their wastes and processes on the USFRS XL waste application form; have not been excluded by EPA, MPCA or the County Agencies from participation in

the USFRS XL waste project; have signed the USFRS XL waste Final Project Agreement (FPA); have certified that they have read and understand the USFRS XL waste training module; and have not generated USFRS XL wastes.

USFRS XL waste approved transporter means a transporter located within the State of Minnesota who has a satisfactory safety rating from the United States Department of Transportation (USDOT) in the last year; has not been excluded by EPA, MPCA or the County Agencies from participation in the USFRS XL waste project; has signed the USFRS XL waste FPA; and has signed a certification that it has been trained by USFRS on the proper handling of USFRS XL wastes and understands its responsibilities under this subpart.

USFRS XL Waste Facility or USFRS Facility means the U.S. Filter Recovery Service, Inc. operations located at 2430 Rose Place, Roseville, Minnesota.

USFRS XL Waste Final Project Agreement (FPA) means the agreement signed by USFRS, EPA, MPCA, the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington in Minnesota, Pioneer Tank Lines and USFRS XL waste customers, generators and transporters. The FPA may be modified to add or delete participants, subject to the approval of EPA and MPCA. The FPA was signed by EPA, USFRS and MPCA on September 21, 2000.

USFRS XL Waste Generator means a USFRS XL waste approved customer who generates or generated USFRS XL waste.

USFRS XL Waste Project, USFRS XL Project or XL Project means the program identified in the Final Project Agreement and this part for the generation, transportation and subsequent treatment, storage and disposal of USFRS XL waste.

USFRS XL waste training module means the recorded training program approved by EPA and MPCA as part of the USFRS XL Waste Project or subsequently modified by USFRS and approved by EPA and MPCA and developed by USFRS for the purpose of informing USFRS XL waste approved customers, generators and transporters of the special requirements imposed on them by this part and the proper method of handling USFRS XL wastes.

USFRS XL Waste Transportation Tracking Document means the Transportation Tracking Document developed by USFRS which was approved by EPA and the MPCA as part of the USFRS XL Waste Project or subsequently modified by USFRS and approved by EPA and MPCA; and used when USFRS XL waste is transported off-site from a generator.

USFRS XL Waste Transporter means USFRS or a USFRS XL waste approved transporter who transports USFRS XL waste.

§ 266.402 Procedures for adding persons as generators to EPA's USFRS XL Project.

(a) Any person who wishes to participate in the USFRS XL Project as a generator must obtain the approval of the EPA and the Minnesota Pollution Control Agency (MPCA). The approval of the County Agency is also required if that person will generate USFRS XL waste at a location in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington, Minnesota. The procedures identified in this subpart are to be followed to obtain EPA approval to add a person to the federal USFRS XL Project. USFRS and a proposed generator must also comply with the procedures identified by the MPCA, and appropriate County Agencies. A person may not be added to the federal USFRS XL Project unless it has the approval of EPA, MPCA and as appropriate the County Agencies.

(b) USFRS is the only entity which may propose to add a person as a generator to the USFRS XL Project. USFRS may propose to EPA to add persons to the USFRS XL Project at any time provided, USFRS complies with the requirements of this section. Prior to being considered a USFRS XL waste generator, a person must first be approved as a USFRS XL waste approved customer. Only a USFRS XL waste approved customer may become a USFRS XL waste generator. A person becomes a USFRS XL waste generator after it first generates or causes USFRS XL waste to be regulated.

(c) USFRS will conduct a preliminary evaluation of any person it wishes to propose to EPA to add to the USFRS XL Project as a generator. USFRS will complete this preliminary evaluation prior to proposing to EPA to add such a person to the USFRS XL Project. The preliminary evaluation will consist of the following activities: USFRS will require any person who wishes to become a USFRS XL waste generator to complete and sign the USFRS XL Waste Application Form; USFRS will complete the waste characterization required by 40 CFR 266.406(b); USFRS will evaluate the person's storage area for the USFRS XL waste to determine whether it meets the standards of this subpart O; and USFRS will provide the person with a copy of the USFRS XL waste MSDS, FPA and training module.

(d) After successfully completing the activities identified in paragraph (c) of this section, USFRS will provide EPA with the name and such other information as the Agency may require to determine if a person may participate in the USFRS XL Project as a generator. USFRS will propose for inclusion into the USFRS XL Project only those person(s) whose wastes are compatible with the ion exchange resin process and canisters and whose storage area meets the standards in this subpart O. EPA's approval shall be effective within twenty one days of EPA's receipt of USFRS's written notice proposing to add a person to the USFRS XL Project unless EPA, within that time period, provides USFRS with a written notice rejecting such person.

(e) After securing the approval of EPA, MPCA and the County Agencies, USFRS shall notify the person it proposed to add to the USFRS XL Project in writing that it is approved for participation in the USFRS XL Project. USFRS will assign to that person a unique client number and waste profile number for each waste stream approved for this XL project. USFRS will obtain from that person a copy of the signed USFRS XL waste FPA and a certification that it has read and agrees to follow the USFRS XL waste training module. USFRS shall also ensure that as part of this certification the approved customer identifies its contact person as required by 40 CFR 266.408(h). Upon request by EPA, USFRS will provide EPA with a copy of the signed documents or other documents it requests.

(f) USFRS will accept USFRS XL waste only from those persons who have received the approval of EPA, MPCA and, as appropriate, the County Agencies and who have signed the USFRS XL Project FPA and the certification identified in paragraph (e) of this section. A person's participation in this USFRS XL Project is effective after EPA, MPCA and, as appropriate, the County Agency approve of them and on the date that USFRS receives the signed USFRS XL waste FPA and certification. At that time the person is a USFRS XL waste approved customer. A USFRS XL waste approved customer becomes a USFRS XL waste generator when it first generates or causes USFRS XL wastes to be regulated. A USFRS XL waste generator must handle all USFRS XL wastes generated after the effective date of it being added to the USFRS XL Project in accordance with the provisions of this subpart O. USFRS XL waste that is generated prior to this date is not subject to this subpart O and it must be handled according to the appropriate hazardous waste characterization for that waste, (e.g..

F006 and any other applicable waste code).

(g) USFRS will require a USFRS XL waste approved customer and generator to update the USFRS XL waste application form prior to it adding to or modifying the waste streams or processes it identified on its initial USFRS XL waste application form. USFRS will notify EPA, MPCA and as appropriate, the County Agencies whenever a customer or generator notifies USFRS that it has or will add or modify waste streams or processes. EPA will notify USFRS if any further EPA approvals are required.

§ 266.403 Procedures for adding persons as transporters to EPA's USFRS XL Project.

(a) Any person who wishes to participate in the USFRS XL Project as a transporter must obtain the approval of the EPA and the MPCA. The approval of the County Agencies is also required if that person's principal place of business is located in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington. The procedures identified in this subpart are to be followed to obtain EPA approval to add a person as a transporter to the federal USFRS XL Project. USFRS and a proposed transporter must also comply with the procedures identified by the MPCA, and as appropriate the County Agencies. A person may not be added to the federal USFRS XL Project unless it has received the approval of EPA, MPCA and as appropriate the County Agencies.

(b) USFRS is the only entity which may propose to EPA to add a person as a transporter to the USFRS XL Project.

(c) USFRS and Pioneer Tank Lines are approved USFRS XL waste transporters. USFRS may propose to EPA to add other persons as USFRS XL waste transporters provided USFRS complies with the requirements of this section. USFRS will conduct a preliminary evaluation of any person who it proposes to add as a USFRS XL waste transporter. As part of that preliminary evaluation USFRS will ascertain whether the transporter has a valid EPA identification number, a valid Minnesota hazardous materials registration (''Minnesota registration'') and a satisfactory safety rating from USDOT within the last year.

(d) After successfully completing the activities identified in paragraph (c) in this section USFRS will provide EPA with the name of the transporter, the unique USFRS client identification number for the transporter, the results of its preliminary evaluation identified in paragraph (c) and other information as EPA may require to determine if that person may participate in the USFRS XL Project. USFRS will propose for inclusion into the USFRS XL Project only those person(s) who have a satisfactory safety rating from USDOT. EPA's approval shall be effective within twenty one days of its receipt of USFRS's written notice proposing to add a person to the USFRS XL Project unless EPA, within that time period, provides USFRS with a written notice rejecting such person.

(e) After receiving the approval of EPA, MPCA and as appropriate the County Agencies USFRS shall notify the person in writing that it is approved for participation in the USFRS XL Project. USFRS will obtain from that person a copy of the signed USFRS XL waste FPA and a certification that it has been trained by USFRS on the proper handling of USFRS XL wastes and understands its responsibilities under this subpart O.

(f) USFRS will allow only USFRS XL approved transporters to transport USFRS XL wastes. A person's participation in this USFRS XL Project is effective after it receives the approval of EPA, MPCA and the County Agencies, as appropriate, and on the date that USFRS receives the signed USFRS XL waste FPA and certification. A USFRS XL waste approved transporter becomes a USFRS XL waste transporter when it first transports or accepts for transport USFRS XL waste.

(g) USFRS will require a USFRS XL waste approved transporter or USFRS XL waste transporter to notify it of any change in its rating from USDOT, its Minnesota registration or its EPA identification number. USFRS will notify EPA, MPCA and, the appropriate County Agencies in writing of any such changes. EPA will notify USFRS in writing of any additional information or steps that may be required as a result of such changes.

§ 266.404 USFRS requirements related to the development, use and content of USFRS XL Waste Training Module.

(a) USFRS will develop, implement and maintain a USFRS XL Waste Training Module. USFRS will provide this training module to every person who applies for participation in the USFRS XL Project. USFRS may use any recorded communication media that is appropriate for communicating the requirements of this subpart (e.g., printed brochures, videos, etc.).

(b) The Training Module will, at a minimum, identify the hazards presented by the USFRS XL waste: for generators, explain how to handle the installation and replacement of the ion exchange resin canisters and the pre- and post-resin filters; and explain the requirements imposed on the generator or transporter pursuant to this part.

(c) USFRS shall submit this training module to EPA for approval prior to accepting the first shipment of USFRS XL wastes.

§ 266.405 USFRS requirements relative to the development, use and content of USFRS XL Waste MSDS.

USFRS will develop a USFRS XL waste material safety data sheet (MSDS) or similar document which meets the requirements of this subpart. USFRS will provide a copy of the USFRS XL waste MSDS to every person who applies for participation in the USFRS XL Project. USFRS will ensure that the USFRS XL waste MSDS prominently instructs individuals in the proper handling and emergency response procedures for spills or leaks of the USFRS XL wastes.

§ 266.406 Waste characterization.

(a) *Submission of USFRS XL Waste Application Form by USFRS XL Waste Generator.* A person who proposes to participate in the USFRS XL Project as a generator of USFRS XL wastes must properly identify the wastes and processes which contribute to the production of the USFRS XL waste at its company. For the purposes of this subpart O it shall identify only those waste streams which meet the F006 listing and shall identify them on the USFRS XL waste application form. It shall complete and submit to USFRS the USFRS XL Waste Application Form. It shall update and submit to USFRS the XL Waste Application prior to changing any process which contributes to the USFRS XL waste it generates.

(b) *USFRS Waste Profile Analyses.* For any person which USFRS proposes to add to the USFRS XL Project as a generator, USFRS will perform a waste profile analysis of the waste stream(s) and process(es) which will contribute to the USFRS XL waste at that company. USFRS will update such analyses whenever a USFRS XL waste generator notifies USFRS of a change or modification to its waste stream or process contributing to its USFRS XL waste. USFRS will include in the waste profile analysis a complete chemical analysis of the waste stream(s) and a determination of its compatibility with the ion exchange resin process, canisters and filters. USFRS shall complete such analysis in accordance with the testing methods identified in the waste analysis plan contained within its RCRA hazardous waste permit. USFRS shall assign to each generator a unique

customer identification number and waste profile number.

§ 266.407 USFRS XL waste identification, handling, and recycling.

(a) USFRS XL waste will be denoted by the hazard waste code XL001 while it is handled by the USFRS XL waste generator or transporter. At the USFRS facility, the USFRS XL waste will be denoted by the waste code(s) it would have had at the generator but for its characterization as USFRS XL waste (i.e., F006 and any other applicable characteristic waste code). USFRS and others who may receive residuals from the USFRS XL waste will handle the USFRS XL waste and residuals according to the wastes code(s) it would have had at the generator (i.e., F006 and the appropriate characteristic hazardous waste code) and not according to the XL001 designation. USFRS shall handle the USFRS XL waste at its facility in accordance with its State issued RCRA hazardous waste permit and any applicable federal requirements.

(b) USFRS may not accept any customers into this Project unless and until it has arranged for recycling of the metals contained in the XL001 wastes it receives. USFRS shall continue to recycle the metals contained in the XL001 waste it receives throughout the duration of the XL Project.

(c) USFRS shall identify a spill response coordinator at its facility. This person shall be responsible for coordinating the proper response to any spill, leaks or emergencies of USFRS XL wastes at the generator or during transport. He will also be responsible for receiving the calls from the generators and transporters required by this subpart O for such spills, leaks or emergencies.

§ 266.408 Accumulation and storage prior to off-site transport.

A USFRS waste generator may store its USFRS XL waste on-site for less than 90 days, provided it complies with the following:

(a) *Condition and use of containers.* Except as provided in paragraph (e) of this section, the USFRS waste generator it will store the USFRS XL waste in the USFRS water treatment resin canisters and filter containers. At the time it places the resin canister or filter containers in storage it will ensure that the water treatment resin canisters and filter containers are disconnected from any processes and are sealed. It will ensure that the USFRS XL wastes are not mixed with other solid wastes. It will affix to the resin canisters and filter containers a warning statement containing the information presented in paragraph (c) of this section.

(b) *Condition of storage area.* It will store the USFRS XL waste on an impervious surface. The USFRS waste generator will store the USFRS XL waste separately from other wastes or materials and will ensure that there is adequate aisle space to determine the condition of the USFRS XL waste and to notice and respond to any leaks of USFRS XL waste.

(c) *Pre-transport requirements.* It will place the following warning statement prominently on the USFRS XL waste: XL001 wastes–USFRS ion exchange resin process wastes—Federal Law Prohibits Improper Disposal. This is USFRS XL waste from (insert XL waste generator's name). Handle as a hazardous waste and ship only to USFRS located at 2430 Rose Place, Roseville, MN. This waste was placed in this container on (date) and placed in storage at (insert USFRS XL waste generator's name) on (insert date). *If found, contact USFRS and the nearest police, public safety authority, EPA or MPCA. The USFRS telephone number is (insert phone number). USFRS Transportation Tracking Document Number_____ If spilled immediately contain the spill and prevent it from going into any water body; collect the spilled material and place in an appropriately sized polycontainer; contact USFRS and the nearest police, public safety authority, EPA or MPCA.*

(d) *Inspections.* The USFRS waste generator will inspect the condition of the USFRS XL waste weekly while it is in storage at its company. It will maintain a log of these inspections. The log will indicate the date the USFRS XL waste was placed in storage, the condition of the water treatment resin canister and filter containers at that time, the date(s) of the inspection, the person conducting the inspection, and the condition of the water treatment resin canisters and the filter containers and the storage area at the time of the inspection.

(e) *Response to spills or leaks.* The USFRS waste generator will immediately contain and collect any spill or leak of USFRS XL wastes. It will orally notify USFRS, and the duty officer at MPCA (Non-metro: 1–800–422–0798; Metro: 651–649–5451) within 24 hours of discovery of the spill or leak. It will place any spilled or leaked materials in an appropriately sized polycontainer and comply with the requirements of paragraphs (a) through (c) of this section. It will arrange with USFRS for the disposal of that spilled or leaked material with the next shipment of USFRS XL wastes from its company. If allowed by the local POTW it may discharge any leaked or spilled water to its permitted drainage system. Otherwise, such wasters will be sent to USFRS.

(f) *Decontamination of storage area.* The USFRS waste generator will decontaminate all areas, equipment or soils used for or contaminated with USFRS XL waste no later than the dates provided in section §§ 266.412, 266.414 and 266.415.

(g) *USFRS XL Waste MSDS.* It shall maintain and exhibit in a prominent location the USFRS XL Waste MSDS. It shall provide a copy of the USFRS XL waste MSDS to all local entities responsible for responding to releases of hazardous materials or wastes, (e.g., local police and fire departments, hospitals, etc.). It shall retain documentation of its efforts to comply with this paragraph (g).

(h) *Contact person.* No later than the date that it signs the FPA it will designate to USFRS a person who is responsible for handling its USFRS XL waste and its compliance with this subpart. That person shall complete training for the proper handling of USFRS XL waste and shall certify that he has read and understands the requirements imposed by this subpart O and the USFRS XL waste training module. That person shall also be responsible for responding to spills or leaks at the generator.

(i) *Communication devices.* It shall have an operating communication device (e.g., telephone, alarm, etc.) which allows the contact person to notify the appropriate state, local and federal officials and local hospitals and company personnel in case of an emergency.

§ 266.409 USFRS XL waste transporter pre-transport requirements.

A USFRS XL waste transporter will ensure that the USFRS XL waste is within an approved container which prominently displays the following warning statement: XL001 wastes—USFRS ion exchange resin process wastes—Federal Law Prohibits Improper Disposal. This is USFRS XL waste from (insert XL waste generator's name). Handle as a hazardous waste and ship only to USFRS located at 2430 Rose Place, Roseville, MN. This waste was placed in this container on (date) and placed in storage at (insert USFRS XL waste generator's name) on (insert date). *If found, contact USFRS and the nearest police, public safety authority, MPCA or EPA. The USFRS telephone number is (insert phone number). USFRS Transportation Tracking Document Number_____. If spilled*

immediately contain the spill and prevent it from going into any water body; collect the spilled material and place in an appropriately sized polycontainer; contact USFRS and the nearest police, public safety authority, EPA or MPCA.

§ 266.410 USFRS XL Waste Transport and Transportation Tracking Document.

A USFRS XL Transportation Tracking Document and USFRS XL Waste MSDS will accompany every shipment of USFRS XL waste from a USFRS XL waste generator off-site. Each resin canister and filter container will have the warning statement required by §§ 266.408(c) and 266.409 affixed to it. USFRS, and the USFRS XL waste generator and transporter shall comply with the following requirements:

(a) *USFRS.* USFRS will require each USFRS XL waste generator to contact USFRS to arrange for the transportation of the USFRS XL waste. USFRS will contact and use only USFRS XL waste transporters to transport the USFRS XL waste. USFRS will require that the USFRS XL waste transporter pick up the generator's USFRS XL waste prior to the expiration of the storage time limit provided to the generator pursuant to § 266.408. USFRS will complete and send to the USFRS XL waste generator the USFRS XL waste Transportation Tracking Document and warning statement identified in §§ 266.408(c) and 266.409. USFRS will ensure that the generator receives these documents by the time the transporter arrives at the generator. USFRS will include on the Transportation Tracking Document all information EPA determines is required to comply with this subpart O. USFRS will direct the USFRS XL waste transporter to ship the USFRS XL waste to its facility at 2430 Rose Place, Roseville, Minnesota within 30 days of its pick-up from a USFRS XL waste generator. If a shipment is not received within 30 days, USFRS will contact the transporter to determine the disposition of the load. If USFRS does not receive the shipment within 5 days of its scheduled arrival date, it will notify EPA, MPCA, the USFRS XL generator and as appropriate the County Agencies. USFRS will send a copy of the Transportation Tracking Document to the USFRS XL waste generator within 10 days of USFRS' receipt of the XL001 waste from the transporter.

(b) *USFRS XL waste generators.* A USFRS XL waste generator must contact USFRS for the off-site transport, treatment, storage or disposal of USFRS XL wastes. A USFRS waste generator will use only a USFRS XL waste transporter to transport the USFRS XL waste to the USFRS Roseville, Minnesota facility located at 2430 Rose Place. It must verify the accuracy of the USFRS XL Waste Transportation Tracking Document and warning statement, make any corrections to them that are necessary and sign the Transportation Tracking Document. It must affix the warning statement to each resin canister and filter container and provide a copy of the USFRS XL Waste Transportation Tracking Document and USFRS XL waste MSDS to the USFRS XL waste transporter at the time it provides the transporter with the USFRS XL waste.

(c) *USFRS XL waste transporter.* A USFRS XL waste transporter shall verify the accuracy of the information contained on the USFRS XL Waste Transportation Tracking Document and on the warning statement. It shall sign and date the USFRS Transportation Tracking Document for each shipment of USFRS XL waste it transports and carry it with each shipment that it carries. It shall carry the USFRS XL waste MSDS with each shipment. It shall pick up each shipment of USFRS XL waste prior to the expiration of the storage time limit provided the generator pursuant to § 266.408. It shall deliver each shipment of USFRS XL waste to the USFRS Roseville, Minnesota facility located at 2430 Rose Place within 30 days of it being picked-up at a USFRS XL waste generator. A USFRS transporter may store USFRS XL waste for no more than 10 days at a transfer facility without being subject to regulation under 40 CFR parts 264, 265, 268 and 270 for the storage of those wastes.

§ 266.411 Releases of USFRS XL waste during transport.

In the event of a release of USFRS XL waste during transportation, a USFRS XL waste transporter must take appropriate immediate action to protect human health and the environment, including preventing the spilled material from entering a water system or a water body. The USFRS XL waste transporter also must comply with the provisions of 40 CFR 263.31. The USFRS XL waste transporter will contact USFRS and the nearest police, public safety authority, EPA or MPCA, provide any emergency responder with a copy of the USFRS XL waste MSDS, handle the spilled material in accordance with the USFRS XL waste MSDS and the direction of any governmental entity charged with emergency response authority and transport any spilled USFRS XL waste and contaminated soils or equipment to the USFRS facility located at 2430 Rose Place, Roseville, Minnesota in a appropriately sized polycontainer.

§ 266.412 USFRS XL waste generator closure.

(a) *Generator responsibilities.* At the time of termination of a USFRS XL generator's participation in the USFRS XL Project, the USFRS XL waste generator will disconnect its process(es) from the water treatment resin canisters and filter containers; implement the alternative treatment or disposal required by § 266.413; arrange for the transport to USFRS of all USFRS XL waste that it has in storage; decontaminate any contamination resulting from the storage or handling of USFRS XL waste; and document its efforts to comply with this closure requirement.

(b) *USFRS responsibilities.* Prior to termination of a USFRS XL waste generator's participation in the USFRS XL Waste Project USFRS will remove all of the USFRS XL waste in the generator's storage area. USFRS will inspect the USFRS XL waste generator to determine if all USFRS XL wastes have been removed and to document the condition of the USFRS XL waste storage area. USFRS will provide a written summary to the customer, EPA, MPCA and as appropriate the County Agencies of its evaluation pursuant to this paragraph (b).

§ 266.413 USFRS XL waste generator requirements to maintain alternate treatment or disposal capacity.

During the period that it is participating in the USFRS XL waste Project, a USFRS XL waste generator shall maintain the ability to legally treat or dispose of its process wastes contributing to the USFRS XL waste by methods other than through transportation and treatment to USFRS' Roseville, Minnesota facility. A USFRS XL waste generator may use this alternative treatment or disposal method only after its participation in this XL Project has been terminated.

§ 266.414 Termination of a USFRS XL waste approved customer's participation in the USFRS XL Project.

The provisions in this section apply to a USFRS XL waste approved customer who has not yet generated USFRS XL waste. If a USFRS XL waste approved customer has generated or first caused to be regulated USFRS XL waste, then it is a USFRS XL waste generator and must comply with the termination provisions contained in § 266.415. The following procedures are to be followed to terminate a person's participation in the federal USFRS XL Project. MPCA or the County Agencies

may have their own procedures for terminating the participation of a person from their version of this federal USFRS XL Project. EPA is not bound by and will not follow those State or County procedures to terminate a person's continued participation in this USFRS XL Project. A USFRS waste approved customer's participation in the USFRS XL Project will terminate when the USFRS XL Project ends. It may terminate earlier either voluntarily, upon changes in ownership, upon notice by USFRS, EPA, MPCA or the appropriate County Agency.

(a) *Termination by the USFRS XL waste approved customer.* A USFRS XL waste approved customer may terminate its participation in the USFRS XL Project at any time prior to its first generating USFRS XL wastes. The USFRS XL waste approved customer will provide 5 days written notice to USFRS, EPA, MPCA and as appropriate the County Agencies its desire to terminate its in the USFRS XL Project. No further action is required by such USFRS XL waste approved customer.

(b) *Change in ownership.* A USFRS XL waste approved customer's participation will be automatically terminated upon a change in ownership. A USFRS XL waste approved customer must notify USFRS, EPA, MPCA and as appropriate the County Agencies within 5 days of a change in its ownership.

(c) *Termination by EPA, MPCA, County Agency or USFRS.* If EPA or USFRS propose to terminate a USFRS XL waste approved customer they shall provide it with 5 days written notice. If MPCA or the County Agency propose to terminate such person they shall follow their own procedures and provide EPA and USFRS with the results of such proceedings. If MPCA or the County Agency terminates such person's participation in the federal USFRS XL Project, such person will be automatically terminated without further proceedings under this subpart O.

§ 266.415 Termination of a USFRS XL waste generator's participation in the USFRS XL Project.

The procedures identified in this section are to be followed to terminate a waste generator's participation in the federal USFRS XL Project. MPCA or the County Agencies may have their own procedures for terminating the participation of a person from their version of this federal USFRS XL Project. EPA is not bound by and will not follow those State or County procedures to terminate a person's continued participation in this USFRS XL Project. A USFRS waste generator's participation in the USFRS XL Project may terminate when the USFRS XL Project ends. It may also terminate either voluntarily, upon changes in ownership, upon notice by USFRS, EPA, MPCA or the County Agency or at the termination of this subpart O.

(a) *Termination by the USFRS XL waste generator.* The USFRS XL waste generator will provide 60 days written notice to USFRS, EPA, MPCA and the County Agencies of its desire to discontinue participation in the USFRS XL Project. Within the 60 days the USFRS XL waste generator shall accomplish the closure required by § 266.412.

(b) *Termination by EPA, MPCA or the County Agency.* EPA, MPCA or the County Agency may terminate a USFRS XL waste generator's participation. If EPA proposes to terminate such person's participation then it will provide the generator with written notice. EPA retains the right to terminate a USFRS XL waste generator's participation in the USFRS XL Project if the USFRS XL waste generator is in non-compliance with the requirements of this subpart. In the event of termination by EPA, EPA will provide USFRS, the USFRS XL waste generator, MPCA, and as appropriate the County Agencies with 15 days written notice of its intent to terminate a generator's continued participation in the USFRS XL Project. During this period, which commences on receipt of the notice to terminate by the generator, the generator will have the opportunity to come back into compliance or to provide a written explanation as to why it was not in compliance and how it intends to return to compliance. If, upon review of the written explanation EPA re-issues a written notice terminating the generator from this XL Project the generator shall close in accordance with § 266.412. The USFRS XL waste generator shall complete the closure and comply with § 266.412 within sixty days of EPA's re-issuance of the notice of termination. If MPCA or the County Agency propose to terminate such person they shall follow their own procedures and provide EPA and USFRS with the results of such proceedings. If MPCA or the County Agency terminates such person's participation in the federal USFRS XL Project, that person's participation will be automatically terminated without further proceedings under this subpart and such person must comply with the closure requirements contained in § 266.412.

(c) *Termination by USFRS.* USFRS may terminate a USFRS XL waste generator's participation in the USFRS XL Project only after providing 60 days written notice to the generator, EPA, MPCA and the county agency. Within this time USFRS will arrange for the transport to its facility of the USFRS XL waste in storage. Additionally, USFRS will inspect the USFRS XL waste generator in accordance with § 266.412(b).

(d) *Termination as a result of changes in ownership.* A USFRS XL waste generator will provide written notice to USFRS, EPA, MPCA and as appropriate the County Agencies of a change in its ownership. It will provide such notice within 10 days of the change in ownership. Within the 60 days of the change in ownership the USFRS XL waste generator shall accomplish the closure required by § 266.412 unless, within that time period, EPA has approved of the new owner and EPA has approved of any modifications the new owner proposes to the prior owner's closure responsibilities. If these approvals are not received within this time period the prior owner is still responsible for completing the closure within the 60 days.

§ 266.416 Termination of a USFRS XL waste approved transporter's participation in the USFRS XL Project.

The provisions in this section apply to a USFRS XL waste approved transporter who has not transported or accepted for transport USFRS XL waste. If a USFRS XL waste approved transporter has transported or accepted for transport USFRS XL waste it is a USFRS XL waste transporter and must comply with the termination provisions contained in § 266.417. The procedures identified in this section are to be followed to terminate a person's participation in the federal USFRS XL Project. MPCA or the County Agencies may have their own procedures for terminating the participation of a person from their version of this federal USFRS XL Project. EPA is not bound by and will not follow those State or County procedures to terminate a person's continued participation in this USFRS XL Project. A USFRS waste approved transporter's participation in the USFRS XL Project will terminate when the USFRS XL Project ends. It may also terminate earlier either voluntarily, upon changes in ownership, upon notice by USFRS, EPA, MPCA or the County Agency.

(a) *Termination by the USFRS XL waste approved transporter.* A USFRS XL waste approved transporter may terminate its participation in the USFRS XL Project at any time prior to its first transporting or accepting for transport USFRS XL wastes. The USFRS XL waste approved transporter will provide 5

days written notice to USFRS, EPA, MPCA, and as appropriate the County Agencies of its desire to terminate its participation in the USFRS XL Project. No further action is required by such USFRS XL waste approved transporter.

(b) *Change in ownership.* A USFRS XL waste approved transporter will be automatically terminated upon a change in ownership. A USFRS XL waste approved transporter must notify USFRS, EPA, MPCA and as appropriate the County Agencies within 5 days of a change in its ownership.

(c) *Termination by EPA, MPCA, the County Agencies or USFRS.* EPA, MPCA, the County Agencies and USFRS may also terminate a USFRS XL waste approved transporter's participation in the USFRS XL. If EPA or USFRS propose such termination they will provide the transporter, each other, MPCA and the appropriate County Agencies with 5 days written notice.

§ 266.417 Termination of a USFRS XL waste transporter's participation in the USFRS XL Project.

The procedures identified in this section are to be followed to terminate a person's participation in the federal USFRS XL Project. MPCA or the County Agencies may have their own procedures for terminating the participation of a person from their version of this federal USFRS XL Project. EPA is not bound by and will not follow those State or County procedures to terminate a person's continued participation in this USFRS XL Project. A USFRS waste transporter's participation in the USFRS XL Project will terminate when the USFRS XL Project ends. It may terminate earlier either voluntarily, upon a change in ownership of the transporter, upon notice by USFRS, EPA, MPCA or the County Agencies or at the termination of this subpart O.

(a) *Termination by the USFRS XL waste transporter—voluntary and changes in ownership.* The USFRS XL waste transporter will provide 10 days written notice to USFRS, EPA, MPCA and as appropriate the County Agencies of its desire to terminate its participation in the USFRS XL Project or of a change in ownership. Within 30 days of that notice the USFRS XL waste transporter will ensure that all of its shipments of USFRS XL waste are delivered to the USFRS facility.

(b) *Termination by EPA, MPCA or the County Agencies.* EPA, MPCA or the County Agencies may terminate a USFRS XL waste transporter's participation in the USFRS XL Project. If MPCA or the County Agency propose to terminate such person they shall follow their own procedures and provide EPA and USFRS with the results of such proceedings. If MPCA or the County Agency does terminate such person's participation, such person's participation in the federal USFRS XL Project will be automatically terminated without further proceedings under this subpart and the transporter shall ensure that all shipments of XL waste are delivered to the USFRS facility within 30 days of notice of termination. If EPA proposes to terminate a transporter's participation in the USFRS XL Project EPA will provide such person, MPCA, the County Agency and USFRS with a 30 days written notice prior to terminating such person's participation in the USFRS XL Project. EPA retains the right to terminate a USFRS XL waste transporters participation in the USFRS XL Project if the USFRS XL waste transporter is not in compliance with the requirements of this subpart O. During this period, which commences on receipt of the notice by the transporter, the USFRS XL waste transporter will have the opportunity to come back into compliance or to provide a written explanation as to why it was not in compliance and how it intends to return to compliance. If, upon review of the written explanation EPA re-issues a written notice terminating the USFRS XL waste transporter from this XL Project the USFRS XL waste transporter shall ensure that all shipments of USFRS XL waste are delivered to the USFRS facility within 30 days of such re-issued notice.

(c) *Termination by USFRS.* USFRS may terminate a USFRS XL waste transporter's participation in the USFRS XL Project only after providing 30 days written notice to the transporter, EPA, MPCA and as appropriate the County Agencies. Within this time USFRS will arrange for the transport to its facility of the USFRS XL waste in the possession of the USFRS XL waste transporter.

(d) *Change in ownership.* A USFRS XL waste transporter will be automatically terminated upon a change in ownership. A USFRS XL waste transporter must notify USFRS, EPA, the County Agencies and MPCA within 5 days of a change in its ownership. Within 30 days of its notice of change of ownership the USFRS XL waste transporter shall ensure that all shipments of USFRS XL waste in its possession are delivered to the USFRS facility.

§ 266.418 Termination of USFRS' participation in this XL Project.

The procedures identified in this section are to be followed to terminate USFRS' participation in the federal USFRS XL Project. MPCA or the County Agencies may have their own procedures for terminating USFRS' participation from their version of this federal USFRS XL Project. EPA is not bound by and will not follow those State or County procedures to terminate USFRS' continued participation in this USFRS XL Project. USFRS' participation in the USFRS XL Project will terminate when the USFRS XL project ends. It may terminate earlier either voluntarily, upon a change in ownership of USFRS, upon notice of EPA, MPCA or as appropriate the County Agency. The USFRS XL Waste Project is terminated if USFRS' participation is terminated, unless there is a change in ownership of USFRS and EPA, MPCA and the County Agencies have approved the new owner's continuation in the USFRS XL project as provided in paragraph (b) of this section. In such an instance USFRS must supply EPA, MPCA and the County Agencies with a proposed schedule for transitioning all USFRS XL Project participants to compliance with the RCRA requirements within 120 days of a notice to terminate pursuant to this section.

(a) *USFRS' termination of its participation in this XL Project—voluntary termination.* USFRS will provide written notice to all USFRS XL Project participants (e.g., USFRS XL waste approved customers and approved transporters, USFRS XL waste generators and transporters), EPA, MPCA and the County Agencies of its desire to terminate its participation in the USFRS XL Project (''voluntary termination'') USFRS will provide its notice of voluntary termination 120 days prior to the date it proposes to terminate this XL Project. Within this 120 days USFRS will arrange for the transition of it and the USFRS XL waste Project participants to return to compliance with the RCRA requirements. During this time all USFRS XL Project participants will complete all closure activities required by § 266.412.

(b) *Termination as a result in a change of ownership of USFRS.* USFRS will provide written notice to EPA, MPCA and the County Agencies of any change in ownership of USFRS. USFRS will provide this notice 90 days prior to a change in ownership. At that time, if the new owner wishes to continue the USFRS XL waste Project it will submit any revisions it proposes to make to the FPA to add itself to the USFRS XL waste project. If EPA and the new owner are able to agree upon and sign the proposed revisions to the FPA within that time frame then the new owner may continue the USFRS XL Project. If an

agreement and signature is not obtained within that time frame, the USFRS XL Project will be terminated. If it does not obtain that approval or does not wish to continue the USFRS XL Project then USFRS will arrange for the transition of all USFRS XL waste Project participants to return to compliance with the RCRA requirements within 120 days of the change in ownership. All USFRS XL waste Project participants will complete all closure activities required by § 266.412.

(c) *EPA or MPCA termination of the USFRS XL Project.* EPA or MPCA may terminate this XL Project after providing written notice to USFRS. EPA retains the right to terminate this XL Project if:

(1) USFRS is in non-compliance with the requirements of this subpart;

(2) This Project does not provide superior environmental benefit; or,

(3) If there is repeated non-compliance by USFRS XL waste generators or transporters.

(d) In the event of termination by EPA, EPA will provide USFRS, MPCA and the County Agencies with 30 days written notice of its intent to terminate this XL Project. During this period, which commences on receipt of the notice by USFRS, USFRS will have the opportunity to come back into compliance, to provide a written explanation as to why it was not in compliance and how it intends to return to compliance or otherwise respond to the reasons for EPA's proposed termination. If, upon review of the written explanation EPA re-issues a written notice terminating this XL Project then USFRS shall submit to EPA within 30 days of its receipt of the re-issued notice its plan for transitioning all USFRS XL waste Project participants to compliance with the RCRA requirements. This transition plan shall contain a proposed schedule which accomplishes compliance with RCRA within 120 days of EPA's re-issued written notice.

§ 266.419 USFRS recordkeeping and reporting requirements.

(a) *Annual reporting.* USFRS will provide an annual report, on October 1, on all USFRS XL wastes. It will provide the information separately for each USFRS XL waste generator. The annual report, at a minimum, will include:

(1) An identification of each USFRS XL waste generator who sent USFRS XL wastes to USFRS; the quantity of XL waste that USFRS received from each USFRS XL waste generator during the calendar year and a certification by USFRS that those USFRS XL wastes were treated and recycled at USFRS in accordance with this subpart O;

(2) The amount of water recycled by the generators, the pretreatment chemicals and energy the generators did not use as a result of participating in this USFRS XL Project, the amount of water discharged to the local POTW before and during this project, the amount of sludge recovered by USFRS before and during this project, the amount of sludge recovered as opposed to disposed of by a generator (if the generator disposed of the sludge prior to participating in this project), the quantity of material (ion exchange resins, filters, other wastewater treatment sludge, residues) collected from each facility (monthly), the frequency of resin canister and filter replacement in terms of process volume, the constituents in the material (ion exchange resins, filters, other wastewater treatment sludge, residues) collected at each facility (e.g., recoverable metals, contaminants/non-recoverable materials); and constituents in the material (ion exchange resins, filters, other wastewater treatment sludge, residues) disposed by each facility (e.g., contaminants/non-recoverable material).

(3) Quantity of material (ion exchange resins, filters, other wastewater treatment sludge, residues) to be processed from the XL waste at the USFRS Roseville facility, quantity of the metals recovered from the XL waste at the USFRS Roseville facility, the constituents of the recovered material (ion exchange resins, filters, other wastewater treatment sludge, residues from the XL waste), quantity and constituents of the non-recoverable material from the XL waste (ion exchange resins, filters, other wastewater treatment sludge, residues), and how it was disposed of; and

(4) The quantity of each metal recovered at each metals reclamation facility it uses for this Project.

(b) *Quarterly reporting.* USFRS will submit a quarterly report to EPA, MPCA and the County Agencies on October 1, January 1, April 1 and July 1 which will include:

(1) Sufficient information for EPA to determine the amount of superior environmental benefit resulting from this project. That report will, at a minimum, contain information which includes, but is not limited to: the volume of water and waste collected and recycled; the amount of metals recycled; the volume of recycled material sold to others; data regarding the management of the ion exchange canisters and filter containers; the constituents of the sludge; and information regarding how the sludge and residues are managed;

(2) Financial information related to the costs and savings realized as a result of implementation of this project.

(i) USFRS will collect baseline and XL costs. The baseline costs shall be calculated using two scenarios:

(A) Typical expenses (including any hazardous waste taxes) of the generator (prior to the XL Project) for pretreating and disposing effluent wastewater under the applicable Clean Water Act requirements and the costs for manifesting, transporting and disposing of F006 sludges; and

(B) Typical expenses of the generator that would be incurred if waste were recycled in compliance with RCRA and requirements for manifesting and transportation of those hazardous wastes (including tax obligations under both scenarios).

(ii) The XL costs will include the costs to the generator for completing the Transportation Tracking Document, the transportation costs for XL wastes, the generator's cost to install the ion exchange canisters and filter containers, any other costs the generator incurs such as cleaning up any spills, payment of hazardous waste taxes, etc., the cost to USFRS of metals reclamation off-site (including costs associated with transportation or disposal). USFRS will compare the baseline costs to the XL costs and provide an analysis of whether the project is resulting in cost savings for generators and which aspects of the XL Project produce any savings. USFRS will also submit any of the information required in paragraphs (b)(2)(i)(A) and (B) of this section upon request by EPA, MPCA or the County Agency;

(3) A list of all USFRS XL Waste Approved Customers and Generators. USFRS shall include on that list the customer and generator's name, a summary of the results of the USFRS waste characterization of the customer and generator's waste stream(s) and process(es), the customer's and generator's process waste streams approved for participation in the USFRS XL Waste Project, the unique client number USFRS has assigned to the customer and generator and its waste stream, the date of USFRS notice to EPA and MPCA proposing to add the customer and generator to the USFRS XL Project; the date on which USFRS notified the customer that it is approved for participation in this USFRS XL Project; and the date USFRS received the signed FPA and certification from the customer or generator. The list shall also contain the date of any notice of termination, and if there is a termination, the date on which USFRS recovered all of its USFRS XL wastes

from the generator and the date USFRS conducted its visual evaluation of the condition of the USFRS XL waste storage areas and notice of compliance with § 266.412. USFRS will update its waste customer and generator list when new customers and generators have been approved by EPA, MPCA and the County Agencies or when a customer or generator has been terminated from this XL Project; and

(4) A list of all USFRS XL Waste Approved Transporters. USFRS shall include on this list the transporter's unique USFRS client number, the transporter's name, and if available, EPA identification number and its Minnesota registration number, the date of USFRS notice to EPA and MPCA proposing to add the transporter to the USFRS XL Project; the date on which USFRS notified the transporter that it is a USFRS XL Waste Approved Transporter; and the date on which it received the signed USFRS XL waste FPA and certification. The list shall also contain the date of any notice of termination, and if there is a termination, the date on which USFRS recovered all of its USFRS XL wastes from the transporter. This USFRS XL waste transporter list may be modified upon approval of EPA and MPCA.

(c) *Recordkeeping.* USFRS will retain for three years a copy of USFRS XL waste application forms, and correspondence with each USFRS XL waste approved customer and generator; records of any spill or leak notifications it receives; records of its compliance with this subpart O; and the USFRS XL waste Transportation Tracking Document for each shipment from a USFRS XL waste generator.

§ 266.420 USFRS XL waste generator recordkeeping and reporting requirement.

A USFRS XL waste generator will retain for three years a copy of the USFRS XL Waste FPA, with all appropriate signatures; its USFRS XL waste certification; its log of weekly inspections required by § 266.408(d); its record of any notification of spills or leaks of its USFRS XL wastes required by § 266.408(e); its compliance with the training and facility contact requirements of § 266.408(h); a copy of the signed Transportation Tracking Document for USFRS XL waste it generated; and documentation of its compliance with § 266.412.

§ 266.421 USFRS XL waste transporter recordkeeping and reporting requirement.

A USFRS XL waste transporter will retain for three years a copy of the USFRS XL Waste FPA, with all appropriate signatures; its USFRS XL waste certification; a copy of the signed Transportation Tracking Document for USFRS XL waste it transported; and its record of any notification of spills or leaks of its USFRS XL wastes required by § 266.411

§ 266.422 Effective date and duration of the project.

This subpart O is effective from November 23, 2001 until five years after the State of Minnesota modifies the USFRS RCRA hazardous waste permit to incorporate USFRS' duties under this subpart O.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6965–2]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule; deletion of the Gulf Coast Vacuum Services Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is publishing a direct final rule of deletion of the Gulf Coast Vacuum Services Superfund Site (Site), located in Vermilion Parish, Louisiana from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105, 42 U.S.C. 9605(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at appendix B of 40 CFR part 300 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final rule of deletion is being published by the EPA with the concurrence of the State of Louisiana, through the Louisiana Department of Environmental Quality (LDEQ), because the EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final rule of deletion will be effective July 23, 2001 unless the EPA receives adverse comments by June 21, 2001. If adverse comments are received, the EPA will publish a timely withdrawal of the direct final rule of deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Comments may be mailed to: Ms. Beverly Negri, Community Involvement Coordinator (6SF–PO), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8157 or 1–800–533–3508.

Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: U.S. EPA Region 6 Library, Suite 12D13, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6524, Monday through Friday 7:30 a.m. to 4:30 p.m.; Vermilion Parish Library, 200 North Magdalen Square, Abbeville, Louisiana, 75011, (318) 893–2674, Monday and Thursday 9:00 a.m. to 8:00 p.m., Tuesday, Wednesday, and Friday 9:00 a.m. to 5:30 p.m., and Saturday 9:00 a.m. to 1:00 p.m.; and Louisiana Department of Environmental Quality, 7290 Bluebonnet Road, Baton Rouge, Louisiana 70809, (225) 765–0487, Monday through Friday 8:00 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mrs. Katrina Coltrain, Remedial Project Manager (6SF–LP), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8143 or 1–800–533–3508.

SUPPLEMENTARY INFORMATION:

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I. Introduction

EPA Region 6 is publishing this Direct Final Notice of Deletion of the Gulf Coast Vacuum Services Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions, if conditions at a deleted site warrant such action.

Because the EPA considers this action to be noncontroversial and routine, the EPA is taking it without prior publication of a notice of intent to delete. This action will be effective July 23, 2001 unless the EPA receives adverse comments by June 21, 2001 on this rule. If adverse comments are received within the 30-day public comment period on this rule, the EPA will publish a timely Withdrawal of this Direct Final Rule of Deletion before the effective date of the deletion, and said deletion will not take effect. The EPA