retailers, wholesalers, or local service stations that receive spent batteries from consumers. These types of establishments rely heavily on maintaining good public relations with the consumer, and thus have an added incentive to manage their wastes properly. We also are reluctant to impose Subtitle C regulations on establishments of this type (particularly when a recycling activity is involved), unless there is a compelling environmental need. No such need is apparent in the case of stored spent lead-acid batteries.

We also are proposing not to regulate the storage of spent lead-acid batteries at immediate collection centers. Many of these centers are small establishments—*e.g.*, scrap yards or salvage dealers—that receive many different types of scrap metal (including spent batteries), segregate it, classify it into the various grades, and send it off to be smelted and refined. We estimate that there may be thousands of these establishments. We believe that these facilities are unlikely to present a significant hazard to human health and the environment because they ordinarily do not store large quantities of these batteries for long periods. Therefore, we are proposing not to regulate spent batteries when accumulated at these intermediate collection centers. However, we believe that we need to investigate these facilities further. If after this analysis we conclude that regulatory control of these facilities is necessary, we will propose appropriate regulations.

In summary, the Agency is today proposing to regulate spent lead-acid batteries only when stored before reclamation at battery cracking, battery cracking-smelting operations, or battery cracking-smelting-refining operations.[57] Spent batteries stored by these persons thus would be subject to the requirements contained in Parts 264 and 265. These include: (1) the administrative requirements of Subparts A through E, minus those regulations pertaining to the manifest requirements and waste analysis (since the batteries' composition is known) and (2) the technical standards of Subparts F through L (depending on the manner of storage). The permit requirements of Parts 122 and 124 also apply.

[57] For our purpose, the reclamation process includes both cracking and smelting, both being necessary to recover lead. (Lead plates obtained by cracking batteries are unlikely to exhibit a characteristic of hazardous waste, and so could be sent from a battery cracker to a secondary lead smelter without being subject to RCRA regulation.)

IV. Standards Applicable to the Various Activities Constituting Waste Management Under the Proposed Definition of Solid Waste

This section of the preamble reviews which regulatory standards apply to the activities defined in § 261.2 as waste management.

Persons engaging in uses constituting disposal [58] are regulated under proposed §§ 261.6(c) (generators and transporters), 261.6(d) (storage facilities), and 261.6(e) (uses constituting disposal). Persons handling wastes being reclaimed by someone other than the generator or by someone who subsequently uses the reclaimed material are regulated under proposed §§ 261.6(c) and 261.6(d).[59] In the case of hazardous wastes that are listed in 40 CFR 261.31 and 261.32 or are hazardous sludges, persons managing these wastes prior to burning or blending are also regulated under proposed §§ 261.6(c) and 261.6(d). Any wastes listed under proposed § 261.2(a)(3) also would be regulated under these provisions.

Persons accumulating materials speculatively likewise are subject to the standards in proposed §§ 261.6 (c) and (d). These materials are deemed immediately to be solid wastes. Generators who accumulate these materials for less than 90 days in tanks and containers are subject to the provisions of 40 CFR 262.34. Storage for longer periods (or for any length of time in piles or impoundments) must satisfy the applicable storage standards.[60]

The standards applicable to materials that are accumulated without sufficient amounts being recycled require further explanation. Under the proposed definition, it is not determined whether these materials are regulated recyclable materials until a year has passed. The person accumulating these wastes also may petition the Regional Administrator for a determination that the materials he is accumulating are not solid wastes.

In the Agency's view, persons accumulating these materials are storage facilities when a year elapses without sufficient turnover of the material. Thus, they are subject to the standards contained in proposed § 261.6(d). These persons should not be considered generators, or have the benefit of the generator accumulation provision (§ 262.34), because they already have held the material for well over 90 days.

We do, however, interpret these provisions as allowing a six-month period for a facility either (1) to come into compliance with the applicable requirements (*i.e.*, the storage standards in proposed § 261.6(d), and the requirement to submit permit applications—both Part A and B applications for facilities ineligible for interim status), or (2) to ship all the materials to another Subtitle C facility. This is analogous to Section 3010(b) of RCRA, which provides that Subtitle C regulations become effective six months after promulgation—to allow regulated entities lead time to come into compliance.

The Agency believes a similar principle applies when a material becomes a solid waste after held for a year without sufficient turnover. In this situation, the applicability of regulatory requirements is not certain until the year has passed, just as the applicability of regulatory requirements is uncertain until a regulation is promulgated. Because of this uncertainty, the person accumulating the material may not have had, and cannot reasonably be expected to have had, sufficient opportunity to come into compliance with the regulatory requirement.[61]

V. Possible Inclusion of a Variance Provision

The Agency considered including a variance provision in these regulations to cover processes that do not appear to be waste-based but that nevertheless fall under the revised definition of waste management. However, we decided that such situations, if they exist, can be dealt with by using the rulemaking provisions and procedures of § 260.20 of the regulations. In fact, informal rulemaking, which would accord relief on a classwide basis is the most appropriate mechanism. If a petitioner can show that its process should not be considered waste management, all similar processes should be accorded the same regulatory status at that time.

[58] The descriptions of the recycling activities that constitute waste management are shortened characterizations. The actual regulatory standards in the proposed definition of solid waste are described in detail in Part I of this preamble.

[59] Regulated recyclable materials reclaimed under a nonbatch tolling agreement are subject to regulation under Part 266.

[60] It should be remembered, however, that these materials do not necessarily remain solid wastes once they are removed from accumulation to be recycled. See proposed § 261.2(c)(2).

[61] These facilities also would have to file a notification within 90 days after the accumulated material becomes a regulated recyclable material. As an incidental matter, the six-month period described above is a good time to apply to the Regional Administrator, under proposed § 261.2(c)(3)(ii), for a determination that the accumulated material is not a solid waste. The time it takes for the Regional Administrator to make this determination is another reason to allow a six-month lead time to come into compliance.