

§ 260.43

40 CFR Ch. I (7–1–10 Edition)

manufacturers, reclaimers, and intermediate facilities managing hazardous secondary materials which are excluded from regulation under § 261.2(a)(2)(ii), § 261.4(a)(23), (24), or (25) must send a notification prior to operating under the exclusion(s) and by March 1 of each even numbered year thereafter to the Regional Administrator using EPA Form 8700–12 that includes the following information:

(1) The name, address, and EPA ID number (if applicable) of the facility;

(2) The name and telephone number of a contact person;

(3) The NAICS code of the facility;

(4) The exclusion under which the hazardous secondary materials will be managed (e.g., § 261.2(a)(2)(ii), § 261.4(a)(23), (24), and/or (25));

(5) For reclaimers and intermediate facilities managing hazardous secondary materials in accordance with § 261.4(a)(24) or (25), whether the reclaimer or intermediate facility has financial assurance (not applicable for persons managing hazardous secondary materials generated and reclaimed under the control of the generator);

(6) When the facility expects to begin managing the hazardous secondary materials in accordance with the exclusion;

(7) A list of hazardous secondary materials that will be managed according to the exclusion (reported as the EPA hazardous waste numbers that would apply if the hazardous secondary materials were managed as hazardous wastes);

(8) For each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land-based unit;

(9) The quantity of each hazardous secondary material to be managed annually; and

(10) The certification (included in EPA Form 8700–12) signed and dated by an authorized representative of the facility.

(b) If a hazardous secondary material generator, tolling contractor, toll manufacturer, reclaimer or intermediate facility has submitted a notification, but then subsequently stops managing hazardous secondary materials in accordance with the exclusion(s), the fa-

cility must notify the Regional Administrator within thirty (30) days using EPA Form 8700–12. For purposes of this section, a facility has stopped managing hazardous secondary materials if the facility no longer generates, manages and/or reclaims hazardous secondary materials under the exclusion(s) and does not expect to manage any amount of hazardous secondary materials for at least one year.

[73 FR 64759, Oct. 30, 2008]

§ 260.43 Legitimate recycling of hazardous secondary materials regulated under § 260.34, § 261.2(a)(2)(ii), and § 261.4(a)(23), (24), or (25).

(a) Persons regulated under § 260.34 or claiming to be excluded from hazardous waste regulation under § 261.2(a)(2)(ii), § 261.4(a)(23), (24), or (25) because they are engaged in reclamation must be able to demonstrate that the recycling is legitimate. Hazardous secondary material that is not legitimately recycled is discarded material and is a solid waste. In determining if their recycling is legitimate, persons must address the requirements of § 260.43(b) and must consider the requirements of § 260.43(c) below.

(b) Legitimate recycling must involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process, and the recycling process must produce a valuable product or intermediate.

(1) The hazardous secondary material provides a useful contribution if it

(i) Contributes valuable ingredients to a product or intermediate; or

(ii) Replaces a catalyst or carrier in the recycling process; or

(iii) Is the source of a valuable constituent recovered in the recycling process; or

(iv) Is recovered or regenerated by the recycling process; or

(v) Is used as an effective substitute for a commercial product.

(2) The product or intermediate is valuable if it is

(i) Sold to a third party; or

(ii) Used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.

(c) The following factors must be considered in making a determination as to the overall legitimacy of a specific recycling activity.

(1) The generator and the recycler should manage the hazardous secondary material as a valuable commodity. Where there is an analogous raw material, the hazardous secondary material should be managed, at a minimum, in a manner consistent with the management of the raw material. Where there is no analogous raw material, the hazardous secondary material should be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.

(2) The product of the recycling process does not

(i) Contain significant concentrations of any hazardous constituents found in Appendix VIII of part 261 that are not found in analogous products; or

(ii) Contain concentrations of any hazardous constituents found in Appendix VIII of part 261 at levels that are significantly elevated from those found in analogous products; or

(iii) Exhibit a hazardous characteristic (as defined in part 261 subpart C) that analogous products do not exhibit.

(3) In making a determination that a hazardous secondary material is legitimately recycled, persons must evaluate all factors and consider legitimacy as a whole. If, after careful evaluation of these other considerations, one or both of the factors are not met, then this fact may be an indication that the material is not legitimately recycled.

However, the factors in this paragraph do not have to be met for the recycling to be considered legitimate. In evaluating the extent to which these factors are met and in determining whether a process that does not meet one or both of these factors is still legitimate, persons can consider the protectiveness of the storage methods, exposure from toxics in the product, the bioavailability of the toxics in the product, and other relevant considerations.

[73 FR 64759, Oct. 30, 2008]

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Subpart A—General

Sec.

- 261.1 Purpose and scope.
- 261.2 Definition of solid waste.
- 261.3 Definition of hazardous waste.
- 261.4 Exclusions.
- 261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators.
- 261.6 Requirements for recyclable materials.
- 261.7 Residues of hazardous waste in empty containers.
- 261.8 PCB wastes regulated under Toxic Substance Control Act.
- 261.9 Requirements for Universal Waste.

Subpart B—Criteria for Identifying the Characteristics of Hazardous Waste and for Listing Hazardous Waste

- 261.10 Criteria for identifying the characteristics of hazardous waste.
- 261.11 Criteria for listing hazardous waste.

Subpart C—Characteristics of Hazardous Waste

- 261.20 General.
- 261.21 Characteristic of ignitability.
- 261.22 Characteristic of corrosivity.
- 261.23 Characteristic of reactivity.
- 261.24 Toxicity characteristic.

Subpart D—Lists of Hazardous Wastes

- 261.30 General.
- 261.31 Hazardous wastes from non-specific sources.
- 261.32 Hazardous wastes from specific sources.
- 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.
- 261.35 Deletion of certain hazardous waste codes following equipment cleaning and replacement.

Subpart E—Exclusions/Exemptions

- 261.38 Exclusion of comparable fuel and syngas fuel.
- 261.39 Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling.
- 261.40 Conditional Exclusion for Used, Intact Cathode Ray Tubes (CRTs) Exported for Recycling.
- 261.41 Notification and Recordkeeping for Used, Intact Cathode Ray Tubes (CRTs) Exported for Reuse.