# 2020 Final Amendments

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## Final Amendments to
## Delaware's *Regulations Governing Hazardous Waste*

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**Section 122.1 Purpose and scope of Part 122.**

(a) Coverage.

(1) These permit regulations establish provisions for Delaware's Hazardous Waste Permit Program.

(2) The regulations in this part cover basic DNREC permitting requirements, such as application requirements, standard permit conditions, and monitoring and reporting requirements.

(3)*Technical regulations.* The RCRA (state hazardous waste) permit program has separate additional regulations that contain technical requirements. These separate regulations are used by DNREC to determine what requirements must be placed in permits if they are issued. These separate regulations are located in Parts 264, 266, and 268 of these regulations.

(b) **[Reserved]**

(c) Scope of the hazardous waste permit requirement. DNREC requires a permit for the "treatment", "storage", and "disposal" of any "hazardous waste" as identified or listed in Part 261. The terms "treatment", "storage", "disposal", and "hazardous waste" are defined in Section 122.2. Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to Section 265.115) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under Section 122.1(c)(5) and (6), or obtain an enforceable document in lieu of a post-closure permit, as required under (c)(7) of this section. If a post-closure permit is required, the permit must address applicable Part 264 groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements of these regulations. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.

(1) Specific inclusions. Owners and operators of certain facilities require hazardous waste permits as well as permits under other programs for certain aspects of the facility operation. Hazardous waste permits are required for:

(i) **[Reserved]**

(ii) Treatment, storage, or disposal of hazardous waste at facilities requiring an NPDES permit. However, the owner and operator of a publicly owned treatment works receiving hazardous waste will be deemed to have a hazardous waste permit for that waste if they comply with the requirements of Section 122.60(c) (permit-by-rule for POTWs).

(iii) Barges or vessels that dispose of hazardous waste by ocean disposal and onshore hazardous waste treatment or storage facilities associated with an ocean disposal operation. However, the owner and operator will be deemed to have a State permit for ocean disposal from the barge or vessel itself if they comply with the requirements of Section 122.60(a) (permit-by-rule for ocean disposal barges and vessels).

(2) Specific exclusions and exemptions. The following persons are among those who are not required to obtain a State hazardous waste permit:

(i) Generators who accumulate hazardous waste on-site ~~for less than the time periods and under the conditions provided in Section 262.34~~ in compliance with all of the conditions for exemption provided in Sections 262.14, 262.15, 262.16, and 262.17 of these regulations.

(ii) Farmers who dispose of hazardous waste pesticides from their own use as provided in Section 262.70 of these regulations;

(iii) Persons who own or operate facilities solely for the treatment, storage or disposal of hazardous waste excluded from regulations under this part by ~~Section Section 261.4 or 261.5~~ Sections 261.4 or 262.14 (very small quantity generator exemption).

(iv) Owners or operators of totally enclosed treatment facilities as defined in Section 260.10.

(v) Owners and operators of elementary neutralization units or wastewater treatment units as defined in Section 260.10.

(vi) Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of Section 262.30 at a transfer facility for a period of ten days or less. See also Section 263.12.

(vii) Persons adding absorbent material to waste in a container (as defined in Section 260.10 of these regulations) and persons adding waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container; and ~~Section Section~~ Sections 264.17(b), 264.171, and 264.172 of these regulations are complied with.

(viii) Universal waste handlers and universal waste transporters (as defined in Section 260.10) managing the wastes listed below. These handlers are subject to regulation under Part 273.

(A) Batteries as described in Section 273.2 of these regulations;

(B) Pesticides as described in Section 273.3 of these regulations;

(C) Mercury-containing equipment as described in Section 273.4 of these regulations; ~~and~~

(D) Lamps as described in Section 273.5 of these ~~regulations.~~ regulations; and

(E) Aerosol cans as described in Section 273.6 of these regulations.

(ix)[Reserved]

(x)Reverse distributors accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals, as defined in §266.500. Reverse distributors are subject to regulation under 40 CFR part 266 subpart P for the accumulation of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals.

(3) Further exclusions.

(i) A person is not required to obtain a permit for treatment or containment activities taken during immediate response to any of the following situations:

(A) A discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of hazardous waste;

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(D) An immediate threat to human health, public safety, property, or the environment from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in Section 260.10.

(ii) Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this part for those activities.

(iii) In the case of emergency responses involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(4) Permits for less than an entire facility. DNREC may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. The interim status of any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.

(5) Closure by removal. Owners/operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under Part 265 standards must obtain a post-closure permit unless they can demonstrate to the Secretary that the closure met the standards for closure by removal or decontamination in ~~Section Section~~ Sections 264.228, 264.280(e), or 264.258, respectively. The demonstration may be made in the following ways:

(i) If the owner/operator has submitted a Part B application for a post-closure permit, the owner/operator may request a determination, based on information contained in the application, that Part 264 closure by removal standards were met. If the Secretary believes that Part 264 standards were met, he/she will notify the public of this proposed decision, allow for public comment, and reach a final determination according to the

procedures in paragraph (c)(6) of this section.

(ii) If the owner/operator has not submitted a Part B application for a post-closure permit, the owner/operator may petition the Secretary for a determination that a post-closure permit is not required because the closure met the applicable Part 264 closure standards.

(A) The petition must include data demonstrating that closure by removal or decontamination standards were met, or it must demonstrate that the unit closed under State requirements that met or exceeded the applicable 264 closure-by-removal standard.

(B) The Secretary shall approve or deny the petition according to the procedures outlined in paragraph (c)(6) of this section.

(6) Procedures for closure equivalency determination.

(i) If a facility owner/operator seeks an equivalency demonstration under Section 122.1(c)(5), the Secretary will provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner/operator within 30 days from the date of the notice. The Secretary will also, in response to a request or at his/her own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the equivalence of the Part 265 closure to a Part 264 closure. The Secretary will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.)

(ii) The Secretary will determine whether the Part 265 closure met 264 closure by removal or decontamination requirements within 90 days of its receipt. If the Secretary finds that the closure did not meet the applicable Part 264 standards, he/she will provide the owner/operator with a written statement of the reasons why the closure failed to meet Part 264 standards. The owner/operator may submit additional information in support of an equivalency demonstration within 30 days after receiving such written statement. The Secretary will review any additional information submitted and make a final determination within 60 days.

(iii) If the Secretary determines that the facility did not close in accordance with Part 264 closure by removal standards, the facility is subject to post-closure permitting requirements.

(7) Enforceable documents for post-closure care. At the discretion of the Secretary, an owner or operator may obtain, in lieu of a post-closure permit, an enforceable document imposing the requirements of Section 265.121. "Enforceable document" means an order, a plan, or other document issued by EPA or by an authorized State under an authority that meets the requirements of 40 CFR, 271.16(e) including, but not limited to, a corrective action order issued by EPA under Section 3008(h) or DNREC under 7 **Del.C.,** Chapter 63, a CERCLA remedial action, or a closure or post-closure plan.

(d) Transporters of listed or characteristic hazardous waste identified in Part 261 of these regulations, or used or waste oil as identified in Parts 263 or 279 of these regulations are required to obtain a transporters permit.

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**Section 122.19 Specific Part B requirements for incinerators.**

Except as ~~Section Section~~ Sections 264.340 and 122.19(e) of these regulations provide otherwise, owners and operators of facilities that incinerate hazardous waste must fulfill the requirements of paragraphs (a), (b), or (c) of this section.

(a) When seeking an exemption under Section 264.340(b) or (c) of these regulations (ignitable, corrosive, or reactive wastes only):

(1) Documentation that the waste is listed as a hazardous waste in Part 261, Subpart D of these regulations, solely because it is ignitable (Hazard Code 1) or corrosive (Hazard Code C) or both; or

(2) Documentation that the waste is listed as a hazardous waste in Part 261, Subpart D of these regulations solely because it is reactive (Hazard Code R) for characteristics other than those listed in 264.23(a)(4) and (5) of these regulations, and will not be burned when other hazardous wastes are present in the combustion zone; or

(3) Documentation that the waste is a hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous waste under Part 261, Subpart C of these regulations; or

(4) Documentation that the waste is a hazardous waste solely because it possesses the reactivity characteristics listed in Section 264.23(a)(1), (2), (3), (6), (7), or (8) of these regulations, and that it will not be burned when other hazardous wastes are present in the combustion zone; or

(b) Submit a trial burn plan or the results of a trial burn, including all required determinations, in accordance with 264.62; or

(c) In lieu of a trial burn, the applicant may submit the following information:

(1) An analysis of each waste or mixture of wastes to be burned including:

(i) Heat value of the waste in the form and composition in which it will be burned.

(ii) Viscosity (if applicable), or description of physical form of the waste.

(iii) An identification of any hazardous organic constituents listed in Part 261, Appendix VIII, of these regulations, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in Part 261, Appendix VIII, of these regulations which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion stated. The waste analysis must rely on appropriate analytical techniques.

(iv) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by appropriate analytical methods.

(v) A quantification of those hazardous constituents in the waste which may be designated as POHC's based on data submitted from other trial or operational burns which demonstrate compliance with the performance standards in Section 264.343 of these regulations.

(2) A detailed engineering description of the incinerator, including:

(i) Manufacturer's name and model number of incinerator.

(ii) Type of incinerator.

(iii) Linear dimension of incinerator unit including cross sectional area of combustion chamber.

(iv) Description of auxiliary fuel system (type/feed).

(v) Capacity of prime mover.

(vi) Description of automatic waste feed cutoff system(s).

(vii) Stack gas monitoring and pollution control monitoring system.

(viii) Nozzle and burner design.

(ix) Construction materials.

(x) Location and description of temperature, pressure, and flow indicating devices and control devices.

(3) A description and analysis of the waste to be burned compared with the waste for which data from operational or trial burns are provided to support the contention that a trial burn is not needed. The data should include those items listed in paragraph (c)(1) of this section. This analysis should specify the POHC's which the applicant has identified in the waste for which a permit is sought, and any differences from the POHC's in the waste for which burn data are provided.

(4) The design and operating conditions of the incinerator unit to be used, compared with that for which comparative burn data are available.

(5) A description of the results submitted from any previously conducted trial burn(s) including:

(i) Sampling and analysis techniques used to calculate performance standards in Section 264.343 of these regulations,

(ii) Methods and results of monitoring temperatures, waste feed rates, carbon monoxide, and an appropriate indicator of combustion gas velocity (including a statement concerning the precision and accuracy of this measurement).

(6) The expected incinerator operation information to demonstrate compliance with Section 264.343 and Section 264.345 of these regulations including:

(i) Expected carbon monoxide (CO) level in the stack exhaust gas.
(ii) Waste feed rate.
(iii) Combustion zone temperature.
(iv) Indication of combustion gas velocity.
(v) Expected stack gas volume, flow rate, and temperature.
(vi) Computed residence time for waste in the combustion zone.
(vii) Expected hydrochloric acid removal efficiency.
(viii) Expected fugitive emissions and their control procedures.
(ix) Proposed waste feed cut-off limits based on the identified significant operating parameters.

(7) Such supplemental information as the Secretary finds necessary to achieve the purposes of this paragraph.

(8) Waste analysis data, including that submitted in paragraph (c)(l) of this section, sufficient to allow the Secretary to specify as permit Principal Organic Hazardous Constituents (permit POHC's) those constituents for which destruction and removal efficiencies will be required.

(d) The Secretary shall approve a permit application without a trial burn if he finds that:

(1) The wastes are sufficiently similar; and

(2) The incinerator units are sufficiently similar, and the data from other trial burns are adequate to specify (under Section 264.345 of these regulations) operating conditions that will ensure that the performance standards in Section 264.345 of these regulations) operating conditions that will ensure that the performance standards in Section 264.343 of these regulations will be met by the incinerator.

(3) [Reserved]

(e) When an owner or operator demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, Subpart EEE, (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance), the requirements of this section do not apply. Nevertheless, the Secretary may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with ~~Section Section~~ Sections 122.10(k) and 122.32(b)(2).

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**Section 122.66 Permits for boilers and industrial furnaces burning hazardous waste.**

When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, Subpart EEE (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance), the requirements of this section do not apply.

Nevertheless, the Director may apply the provisions of this section, on a case-by-case basis, for purposes of information collection in accordance with ~~Section Section~~ Sections 122.10(k) and 122.32(b)(2).

(a) General. Owners and operators of new boilers and industrial furnaces (those not operating under the interim status standards of Section 266.103 of these regulations) are subject to paragraphs (b) through (f) of this section. Boilers and industrial furnaces operating under the interim status standards of Section 266.103 of these regulations are subject to paragraph (g) of this section.

(b) Permit operating periods for new boilers and industrial furnaces. A permit for a new boiler or industrial furnace shall specify appropriate conditions for the following operating periods:

(1) Pretrial burn period. For the period beginning with initial introduction of hazardous waste and ending with initiation of the trial burn, and only for the minimum time required to bring the boiler or industrial furnace to a point of operational readiness to conduct a trial burn, not to exceed 720 hours operating time when burning hazardous waste, the Secretary must establish in the Pretrial Burn Period of the permit conditions, including but not limited to, allowable hazardous waste feed rates and operating conditions. The Secretary may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be

modified to reflect the extension according to Section 122.42.

(i) Applicants must submit a statement, with Part B of the permit application, that suggests the conditions necessary to operate in compliance with the standards of ~~Section Section~~ Sections 266.104 through 266.107 of these regulations during this period. This statement should include, at a minimum, restrictions on the applicable operating requirements identified in Section 266.102(e) of these regulations.

(ii) The Secretary will review this statement and any other relevant information submitted with Part B of the permit application and specify requirements for this period sufficient to meet the performance standards of ~~Section Section~~ Sections 266.104 through 266.107 of these regulations based on his/her engineering judgment.

(2) Trial burn period. For the duration of the trial burn, the Secretary must establish conditions in the permit for the purposes of determining feasibility of compliance with the performance standards of ~~Section Section~~ Sections 266.104 through 266.107 of these regulations and determining adequate operating conditions under Section 266.102(e) of these regulations. Applicants must propose a trial burn plan, prepared under paragraph (c) of this section, to be submitted with Part B of the permit application.

(3) Post-trial burn period.

(i) For the period immediately following completion of the trial burn, and only for the minimum period sufficient to allow sample analysis, data computation, and submission of the trial burn results by the applicant, and review of the trial burn results and modification of the facility permit by the Secretary to reflect the trial burn results, the Secretary will establish the operating requirements most likely to ensure compliance with the performance standards of ~~Section Section~~ Sections 266.104 through 266.107 of these regulations based on his engineering judgment.

(ii) Applicants must submit a statement, with Part B of the application, that identifies the conditions necessary to operate during this period in compliance with the performance standards of ~~Section Section~~ Sections 266.104 through 266.107 of these regulations. This statement should include, at a minimum, restrictions on the operating requirements provided by Section 266.102(e) of these regulations.

(iii) The Secretary will review this statement and any other relevant information submitted with Part B of the permit application and specify requirements for this period sufficient to meet the performance standards of ~~Section Section~~ Sections 266.104 through 266.107 of these regulations based on his/her engineering judgment.

(4) Final permit period. For the final period of operation, the Secretary will develop operating requirements in conformance with Section 266.102(e) of these regulations that reflect conditions in the trial burn plan and are likely to ensure compliance with the performance standards of ~~Section Section~~ Sections 266.104 through 266.107 of these regulations. Based on the trial burn results, the Secretary shall make any necessary modifications to the operating requirements to ensure compliance with the performance standards. The permit modification shall proceed according to Section 122.42.

(c) Requirements for trial burn plans. The trial burn plan must include the following information. The Secretary, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this paragraph:

(1) An analysis of each feed stream, including hazardous waste, other fuels, and industrial furnace feed stocks, as fired, that includes:

(i) Heating value, levels of antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, thallium, total chlorine/chloride, and ash;

(ii) Viscosity or description of the physical form of the feed stream;

(2) An analysis of each hazardous waste, as fired, including:

(i) An identification of any hazardous organic constituents listed in Appendix VIII, Part 261, of these regulations that are present in the feed stream, except that the applicant need not analyze for constituents listed in Appendix VIII that would reasonably not be expected to be found in the hazardous waste. The constituents excluded from analysis must be identified and the basis for this exclusion explained. The waste analysis must ~~rely on appropriate analytical techniques.~~ be conducted in accordance with appropriate analytical techniques.

(ii) An approximate quantification of the hazardous constituents identified in the hazardous waste, within the precision produced by appropriate analytical methods.

(iii) A description of blending procedures, if applicable, prior to firing the hazardous waste, including a detailed analysis of the hazardous waste prior to blending, an analysis of the material with which the hazardous waste is blended, and blending ratios.

(3) A detailed engineering description of the boiler or industrial furnace, including:

(i) Manufacturer's name and model number of the boiler or industrial furnace;

(ii) Type of boiler or industrial furnace;

(iii) Maximum design capacity in appropriate units;

(iv) Description of the feed system for the hazardous waste, and, as appropriate, other fuels and industrial furnace feedstocks;

(v) Capacity of hazardous waste feed system;

(vi) Description of automatic hazardous waste feed cutoff system(s);

(vii) Description of any air pollution control system; and

(viii) Description of stack gas monitoring and any pollution control monitoring systems.

(4) A detailed description of sampling and monitoring procedures including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(5) A detailed test schedule for each hazardous waste for which the trial burn is planned, including date(s), duration, quantity of hazardous waste to be burned, and other factors relevant to the Secretary's decision under paragraph (b)(2) of this section.

(6) A detailed test protocol, including, for each hazardous waste identified, the ranges of hazardous waste feed rate, and, as appropriate, the feed rates of other fuels and industrial furnace feedstocks, and any other relevant parameters that may affect the ability of the boiler or industrial furnace to meet the performance standards in ~~Section~~ ~~Section~~ Sections 266.104 through 266.107 of these regulations.

(7) A description of, and planned operating conditions for, any emission control equipment that will be used.

(8) Procedures for rapidly stopping the hazardous waste feed and controlling emissions in the event of an equipment malfunction.

(9) Such other information as the Secretary reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of this paragraph and the criteria in paragraph (b)(2) of this section.

(d) Trial burn procedures.

(1) A trial burn must be conducted to demonstrate conformance with the standards of ~~Section Section~~ Sections 266.104 through 266.107 of these regulations under an approved trial burn plan.

(2) The Secretary shall approve a trial burn plan if he/she finds that:

(i) The trial burn is likely to determine whether the boiler or industrial furnace can meet the performance standards of ~~Section Section~~ Sections 266.104 through 266.107 of these regulations;

(ii) The trial burn itself will not present an imminent hazard to human health and the environment;

(iii) The trial burn will help the Secretary to determine operating requirements to be specified under Section 266.102(e) of these regulations; and

(iv) The information sought in the trial burn cannot reasonably be developed through other means.

(3) The Secretary must send a notice to all persons on the facility mailing list as set forth in Section 124.10(c)(1)(iv) and to the appropriate units of State and local government as set forth in

Section 124.10(c)(1)(v) announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the Secretary has issued such notice.

(i) This notice must be mailed within a reasonable time period before the trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or DNREC.

(ii) This notice must contain:

(A) The name and telephone number of applicant's contact person;

(B) The name and telephone number of the DNREC Solid and Hazardous Waste Management Section;

(C) The location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(D) An expected time period for commencement and completion of the trial burn.

(4) The applicant must submit to the Secretary a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and must submit the results of all the determinations required in paragraph (c) of this section. This submission shall be made within 90 days of completion of the trial burn, or later if approved by the Secretary.

(5) All data collected during any trial burn must be submitted to the Secretary following completion of the trial burn.

(6) All submissions required by this paragraph must be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under Section 122.11.

(e) Special procedures for DRE trial burns. When a DRE trial burn is required under Section 266.104(a) of these regulations, the Secretary will specify (based on the hazardous waste analysis data and other information in the trial burn plan) as trial Principal Organic Hazardous Constituents (POHCs) those compounds for which destruction and removal efficiencies must be calculated during the trial burn. These trial POHCs will be specified by the Secretary based on information including his/her estimate of the difficulty of destroying the constituents identified in the hazardous waste analysis, their concentrations or mass in the hazardous waste feed, and, for hazardous waste containing or derived from wastes listed in Part 261, Subpart D of these regulations, the hazardous waste organic constituent(s) identified in Appendix VII of that part as the basis for listing.

(f) Determinations based on trial burn. During each approved trial burn (or as soon after the burn as is practicable), the applicant must make the following determinations:

(1) A quantitative analysis of the levels of antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, thallium, silver, and chlorine/chloride, in the feed streams (hazardous waste, other fuels, and industrial furnace feedstocks);

(2) When a DRE trial burn is required under Section 266.104(a) of these regulations:

(i) A quantitative analysis of the trial POHCs in the hazardous waste feed;

(ii) A quantitative analysis of the stack gas for the concentration and mass emissions of the trial POHCs; and

(iii) A computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in Section 266.104(a) of these regulations;

(3) When a trial burn for chlorinated dioxins and furans is required under Section 266.104(e) of these regulations, a quantitative analysis of the stack gas for the concentration and mass emission rate of the 2,3,7,8-chlorinated tetra-octa congeners of chlorinated dibenzo-p-dioxins and furans, and a computation showing conformance with the emission standard;

(4) When a trial burn for particulate matter, metals, or $HCl/Cl_2$ is required under ~~Section Section~~ Sections 266.105, 266.106 (c) or (d), or 266.107 (b)(2) or (c) of these regulations, a quantitative analysis of the stack gas for the concentrations and mass emissions of particulate matter, metals, or hydrogen chloride (HCl) and chlorine ($Cl_2$), and computations showing conformance with the applicable emission performance standards;

(5) When a trial burn for DRE, metals, or $HCl/Cl_2$ is required under ~~Section Section~~ Sections 266.104(a), 266.106 (c) or (d), or 266.107 (b)(2) or (c) of these regulations, a quantitative analysis of the scrubber water (if any), ash residues, other residues, and products for the purpose of estimating the fate of the trial POHCs, metals, and chlorine/chloride;

(6) An identification of sources of fugitive emissions and their means of control;

(7) A continuous measurement of carbon monoxide (CO), oxygen, and where required, hydrocarbons (HC), in the stack gas; and

(8) Such other information as the Secretary may specify as necessary to ensure that the trial burn will determine compliance with the performance standards in ~~Section Section~~ Sections 266.104 through 266.107 of these regulations and to establish the operating conditions required by Section 266.102(e) of these regulations as necessary to meet those performance standards.

(g) Interim status boilers and industrial furnaces. For the purpose of determining feasibility of compliance with the performance standards of ~~Section Section~~ Sections 266.104 through 266.107 of these regulations and of determining adequate operating conditions under Section 266.103 of these regulations, applicants owning or operating existing boilers or industrial furnaces operated under the interim status standards of Section 266.103 of these regulations must either prepare and submit a trial burn plan and perform a trial burn in accordance with the requirements of this section or submit other information as specified in Section 122.22(a)(6). The Secretary must announce his or her intention to approve of the trial burn plan in accordance with the timing and distribution requirements of paragraph (d)(3) of this section. The contents of the notice must include: the name and telephone number of a contact person at the facility; the name and telephone number of the Solid and Hazardous Waste Management Section; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for agency approval of the plan and the time periods during which the trial burn would be conducted. Applicants who submit a trial burn plan and receive approval before submission of the Part B permit application must complete the trial burn and submit the results specified in paragraph (f) of this section with the Part B permit application. If completion of this process conflicts with the date set for submission of the Part B application, the applicant must contact the Secretary to establish a later date for submission of the Part B application or the trial burn results. If the applicant submits a trial burn plan with Part B of the permit application, the trial burn must be conducted and the results submitted within a time period prior to permit issuance to be specified by the Secretary.

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**Section 260.1 Purpose, Scope, and Applicability.**

(a) This part provides definitions of terms, general standards, and overview information applicable to Parts ~~260 through 265 and 268~~ 260 through 266, 268, 273, 279, 122 and 124 of these regulations.

(b) In this part:

(1) Section 260.2 sets forth the rules that DNREC will use in making information it receives available to the public and sets forth the requirements that generators, transporters, or owners or operators of treatment, storage, or disposal facilities must follow to assert claims of business confidentiality with respect to information that is submitted to DNREC under Parts ~~260 through 265 and 268~~ 260 through 266, 268, 273, 279, 122 and 124 of these regulations.

(2) Section 260.3 establishes rules of grammatical construction for Parts ~~260 through 265 and 268~~ 260 through 266, 268, 273, 279, 122 and 124 of these regulations.

(3) Section 260.10 defines terms which are used in Parts ~~260 through 265 and 268~~ 260 through 266, 268, 273, 122 and 124 of these regulations.

(4) Section 260.20 establishes procedures for petitioning DNREC to amend, modify, or revoke any provision of Parts ~~260 through 266 and 268~~ 260 through 266, 268, 273, 279, 122 and 124 of these regulations and establishes procedures for DNREC's action on such petitions.

(5) **[Reserved]**

(6) Section 260.22 establishes procedures for petitioning DNREC to amend from Subpart D of Part 261 to exclude a waste from a particular facility.

**Section 260.2 Availability of Information; Confidentiality of Information.**

(a) Any information provided to DNREC under Parts ~~260 through 266 and 268~~ 260 through 266, 268, 273, 279, 122 and 124 of these regulations will be made available to the public to the extent and in the manner authorized by 29 **Del.C.,** Chapter 100 and 7 **Del.C.,** §6304 and DNREC regulations implementing 29 **Del.C**., Chapter 100 and 7 **Del.C.,** §6304.

(b) ~~Any~~ Except as provided under paragraphs (c) and (d) of this section, any person who submits information to DNREC in accordance with Parts ~~260 through 266 and 268~~ 260 through 266, 268, 273, 279, 122 and 124 of these regulations may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in 7 **Del.C.,** §6304. Information covered by such a claim will be disclosed by DNREC only to the extent, and by means of the procedures, set forth in 7 **Del.C.,** §6304. However, if no such claim accompanies the information when it is received by DNREC, it may be made available to the public without further notice to the person submitting it.

(c) Any person submitting information to EPA in accordance with the above requirements must also submit a copy of that information to the Secretary.

(d)(1) After August 6, 2014, no claim of business confidentiality may be asserted by any person with respect to information entered on a Hazardous Waste Manifest (EPA Form 8700-22), a Hazardous Waste Manifest Continuation Sheet (EPA Form 8700-22A), or an electronic manifest format that may be prepared and used in accordance with §262.20(a)(3) of these regulations.

(2) EPA will make any electronic manifest that is prepared and used in accordance with §262.20(a)(3), or any paper manifest that is submitted to the system under §§264.71(a)(6) or 265.71(a)(6) of these regulations available to the public under this section when the electronic or paper manifest is a complete and final document. Electronic manifests and paper manifests submitted to the system are considered by EPA to be complete and final documents and publicly available information after 90 days have passed since the delivery to the designated facility of the hazardous waste shipment identified in the manifest.

(e)(1) After June 26, 2018, no claim of business confidentiality may be asserted by any person with respect to information contained in cathode ray tube export documents prepared, used, and submitted under §§261.39(a)(5) and 261.41(a) of these regulations, and with respect to information contained in hazardous waste export, import, and transit documents prepared, used, and submitted under §§262.82, 262.83, 262.84, 263.20, 264.12, 264.71, 265.12, **[~~265.71, and 267.71~~ and 265.71]** of these regulations, whether submitted electronically into EPA's Waste Import Export Tracking System or in paper format.

(2) EPA will make any cathode ray tube export documents prepared, used, and submitted under §§261.39(a)(5) and 261.41(a) of these regulations, and any hazardous waste export, import, and transit documents prepared, used, and submitted under §§262.82, 262.83, 262.84, 263.20, 264.12, 264.71, 265.12, **[~~265.71, and 267.71~~ and 265.71]** of these regulations available to the public under this section when these electronic or paper documents are considered by EPA to be final documents. These submitted electronic and paper documents related to hazardous waste exports, imports, and transits and cathode ray tube exports are considered by EPA to be final documents on March 1 of the calendar year after the related cathode ray tube exports or hazardous waste exports, imports, or transits occur.

[**Note**: See also Hazardous Waste Disclosure Regulations as adopted August 29, 1988, as part of the ***Delaware Regulations Governing Hazardous Waste***.]

**Section 260.3 Use of Number and Gender.**

As used in Parts ~~260 through 265 and 268~~ 260 through 266, 268, 273, 279, 122 and 124 of these regulations:

(a) Words in the masculine gender also include the feminine and neuter genders;
(b) Words in the singular include the plural; and
(c) Words in the plural include the singular.

**Section 260.4 Manifest Copy Submission Requirements for Certain Interstate Waste Shipments.**
(a) In any case in which the state in which waste is generated, or the state in which waste will be transported to a designated facility, requires that the waste be regulated as a hazardous waste or otherwise be tracked through a hazardous waste manifest, the designated facility that receives the waste shall, regardless of the state in which the facility is located:

(1) Complete the facility portion of the applicable manifest; (2) Sign and date the facility certification;
(3) Submit to the e-Manifest system a final copy of the manifest for data processing purposes; and
(4) Pay the appropriate per manifest fee to EPA for each manifest submitted to the e-Manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements specified in 40 CFR Part 264, Subpart FF.

**Section 260.5 Applicability of Electronic Manifest System and User Fee Requirements to Facilities Receiving State-only Regulated Waste Shipments.**
(a) For purposes of this section, "state-only regulated waste" means:

(1) A non-RCRA waste that a state regulates more broadly under its state regulatory program, or (2) A RCRA hazardous waste that is federally exempt from manifest requirements, but not exempt from manifest requirements under state law.

(b) In any case in which a state requires a RCRA manifest to be used under state law to track the shipment and transportation of a state-only regulated waste to a receiving facility, the facility receiving such a waste shipment for management shall:

(1) Comply with the provisions of §§264.71 (use of the manifest) and 264.72 (manifest discrepancies) of these regulations; and
(2) Pay the appropriate per manifest fee to EPA for each manifest submitted to the e-Manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements specified in 40 CFR Part 264, Subpart FF.

*****

**Section 260.10 Definitions.**

**"Acute hazardous waste"** means hazardous wastes that meet the listing criteria in §261.11(a)(2) and therefore are either listed in §261.31 of these regulations with the assigned hazard code of (H) or are listed in §261.33(e) of these regulations.

*****

**"Aerosol can"** means a non-refillable receptacle containing a gas compressed, liquefied, or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

*****

**"AES filing compliance date"** means the date that EPA announced in the Federal Register, on or after which exporters of hazardous waste and exporters of cathode ray tubes for recycling are required to file EPA information in the Automated Export System or its successor system, under the International Trade Data System (ITDS) platform. The AES filing compliance date is December 31, 2017.

*****

**"Airbag waste"** means any hazardous waste airbag modules or hazardous waste airbag inflators.

*****

**"Airbag waste collection facility"** means any facility that receives airbag waste from airbag handlers subject to regulation under §261.4(j) of these regulations, and accumulates the waste for more than ten days.

*****

**"Airbag waste handler"** means any person, by site, who generates airbag waste that is subject to regulation under these regulations.

*****

**"Central accumulation area"** means any on-site hazardous waste accumulation area with hazardous waste accumulating in units subject to either §262.16 (for small quantity generators) or §262.17 (for large quantity generators) of these regulations.

*****

**"Electronic import-export reporting compliance date"** means the date that EPA announces in the Federal Register, on or after which exporters, importers, and receiving facilities are required to submit certain export and import related documents to EPA using EPA's Waste Import Export Tracking System, or its successor system.

*****

**"EPA"** means the United States Environmental Protection Agency.

*****

***"Large quantity generator"*** means a generator who generates any of the following amounts in a calendar month:

(1) Greater than or equal to 1,000 kilograms (≈2,200 pounds) of non-acute hazardous waste; or
(2) Greater than 1 kilogram (≈2.2 pounds) of acute hazardous waste listed in §261.31 or §261.33(e) of these regulations; or
(3) Greater than 100 kilograms (≈220 pounds) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in §261.31 or §261.33(e) of these regulations.

*****

**"Non-acute hazardous waste"** means all hazardous wastes that are not acute hazardous waste, as defined in this section.

*****

**"Personnel"** or **"facility personnel"** means all persons who work at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of Parts 264 or 265 of these regulations. [~~**Comment:** For the purpose of personnel training, the definition of *personnel* or *facility personnel* includes emergency coordinators.~~] coordinators.

*****

**"Recognized trader"** means a person domiciled in the United States, by site of business, who acts to arrange and facilitate transboundary movements of wastes destined for recovery or disposal operations, either by purchasing from and subsequently selling to United States and foreign facilities, or by acting under arrangements with a United States waste facility to arrange for the export or import of the wastes.

*****

**"Small Quantity Generator"** means a generator who generates ~~less than 1000 kg of hazardous waste in a calendar month~~. the following amounts in a calendar month:

(1) Greater than 100 kilograms (≈220 pounds) but less than 1,000 kilograms (≈2,200 pounds) of non-acute hazardous waste; and

(2) Less than or equal to 1 kilogram (≈2.2 pounds) of acute hazardous waste listed in §261.31 or §261.33(e) of these regulations; and

(3) Less than or equal to 100 kilograms (≈220 pounds) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in §261.31 or §261.33(e) of these regulations.

*****

**"Universal Waste"** means any of the following hazardous wastes that are managed under the universal waste requirements of Part 273 of these regulations:
(1) Batteries as described in §273.2 of these regulations;
(2) Pesticides as described in §273.3 of these regulations;
(3) Mercury-containing equipment as described in §273.4 of these regulations; ~~and~~
(4) Lamps as described §273.5 of these ~~regulations.~~ of these regulations; and
(5) Aerosol cans as described in §273.6 of these regulations.

*****

**"Universal Waste Handler":**
(1) Means:

(i) A generator (as defined in this section) of universal waste; or

(ii) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(2) Does not mean:

(i) A person who treats (except under the provisions of ~~273.13 (a) or (c)~~ §273.13(a) or (c), or ~~273.33 (a) or (c)~~ §273.33(a) or (c)), disposes of, or recycles (except under the provisions of §273.13(e) or §273.33(e)) universal waste; or

(ii) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

*****

**"Very small quantity generator"** means a generator who generates less than or equal to the following amounts in a calendar month:
(1) 100 kilograms (≈220 pounds) of non-acute hazardous waste; and
(2) 1 kilogram (≈2.2 pounds) of acute hazardous waste listed in §261.31 or §261.33(e) of these regulations; and
(3) 100 kilograms (≈220 pounds) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in §261.31 or §261.33(e) of these regulations.

*****

**Section 260.11 ~~References~~ Incorporation by Reference**

…

(d) The following materials are available for purchase from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101.

(1) ''Flammable and Combustible Liquids Code'' ~~(1977 or 1981)~~ (NFPA 30), 1977 or 1981, IBR approved for §§ ~~264.198, 265.198.~~ 262.16(b), 264.198(b), and 265.198(b).

(2) [Reserved]

…

(g) The following materials are available for purchase from the Organisation for Economic ~~Co-operation~~ Cooperation and Development, Environment Direcorate, 2 rue Andre Pascal, ~~75775~~ F-75775 Paris Cedex 16, France.

(1) ~~OECD Green List of Wastes (revised May 1994), Amber List of Wastes and Red List of Wastes (both revised May 1993) as set forth in Appendix 3, Appendix 4 and Appendix 5, respectively, to the OECD Council Decision C(92)39/FINAL (Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations), IBR approved for § 262.89 of these regulations.~~ Guidance Manual for the Control of Transboundary Movements of Recoverable Wastes, copyright 2009, Annex B: OECD Consolidated List of Wastes Subject to the Green Control Procedure and Annex C: OECD Consolidated List of Wastes Subject to the Amber Control Procedure, IBR approved for §§262.82(a), 262.83(b),(d), and (g), and 262.84(b) and (d) of these regulations.

(2) [Reserved]

*****

**Section 261.1 Purpose and scope.**

(a) This part identifies those solid wastes which are subject to regulation as hazardous wastes under Parts 262 through 265, Part 268 and Parts 122 through 124 of these regulations and which are subject to the notification requirements of 7 **Del.C.,** §§6304, 6306 and 6307.

In this part:

(1) Subpart A defines the terms **solid waste** and **hazardous waste**, identifies those wastes which are excluded from regulation under Parts 262 through 266, 268 and 122 of these regulations and establishes special management requirements for hazardous waste produced by ~~conditionally exempt~~ very small quantity generators and hazardous waste which is recycled.

(2) Subpart B sets forth the criteria used by DNREC to identify characteristics of hazardous waste and to list particular hazardous wastes.

(3) Subpart C identifies characteristics of hazardous waste.

(4) Subpart D lists particular hazardous wastes.

*****

**Section 261.4 Exclusions**

(a) Materials which are not solid wastes. The following materials are not solid wastes for the purpose of this part:

(1) (i) Domestic sewage: and

(ii) Any mixture of domestic sewage and other wastes that passes through a ~~sewage~~ sewer system to a publicly-owned treatment works for ~~treatment~~ treatment, except as prohibited by §266.505 and Clean Water Act requirements at 40 CFR §403.5(b). **Domestic sewage** means untreated sanitary wastes that pass through a ~~sewage~~ sewer system.

(2) Industrial wastewater discharges that are point source discharges subject to regulation under §402 of the Clean Water Act as amended.

(**Comment**: This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected stored or treated before discharge, nor does

it exclude sludges that are generated by industrial wastewater treatment.)

(3) Irrigation return flows.

(4) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 USC §2011, et. seq.

(5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

(6) Pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in §261.1(c) of these regulations.

(7) Spent sulfuric acid used to produce virgin sulfuric acid, ~~unless it is~~ provided it is not accumulated speculatively as defined in §261.1(c) of these regulations.

(8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(9) (i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in (a)(9)(i) and (a)(9)(ii) of this section, so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both;

(C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in Part 265, Subpart W of these regulations, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator prepares a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records until closure of the facility. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the Secretary for reinstatement. The Secretary may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.

(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148 and any wastes from the coke by-products processes that are hazardous only because they

exhibit the Toxicity Characteristic (TC) specified in §261.24 of this part, when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar or mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or the tar recovery or refining processes, or mixed with coal tar.

(11) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

(12) (i) Oil-bearing hazardous secondary materials (i.e., sludges, byproducts, or spent materials) that are generated at a petroleum refinery (SIC code 2911) and are inserted into the petroleum refining process (SIC code 2911 - including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units (i.e., cokers)) unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in paragraph (a)(12)(ii) of this section, oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (i.e., from sources other than petroleum refineries) are not excluded under this section.

Residuals generated from processing or recycling materials excluded under this paragraph (a)(12)(i), where such materials as generated would have otherwise met a listing under Part 261, Subpart D, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in paragraph (a)(12)(i) of this section. Recovered oil is oil that has been reclaimed from secondary materials (including wastewater) generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172). Recovered oil does not include oil-bearing hazardous wastes listed in Part 261 Subpart D; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in §279.1.

(13) Excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled.

(14) Shredded circuit boards being recycled provided that they are:

(i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) Free of mercury switches, mercury relays and nickel-cadmium batteries and lithium batteries.

(15) **[Reserved]**

(16) [Reserved]

(17) Spent materials (as defined in §261.1) (other than hazardous wastes listed in subpart D of this part) generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered by mineral processing or by beneficiation, provided that:

(i) The spent material is legitimately recycled to recover minerals, acids, cyanide, water or other values;

(ii) The spent material is not accumulated speculatively;

(iii) Except as provided in paragraph (a)(17)(iv) of this section, the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support (except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion), and have a roof suitable for diverting rainwater away from the foundation; a tank must be free standing, not be a surface impoundment (as defined in

§260.10), and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator must operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed and operated to prevent significant releases to the environment of these materials.

(iv) The Secretary may make a site-specific determination, after public review and comment, that only solid mineral processing spent material may be placed on pads rather than tanks containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The decision-maker must affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads must provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

(A) The decision-maker must also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: The volume and physical and chemical properties of the secondary material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm to human and environmental receptors via each exposure pathway.

(B) Pads must meet the following minimum standards: Be designed of non-earthen material that is compatible with the chemical nature of the mineral processing spent material, capable of withstanding physical stresses associated with placement and removal, have run on/runoff controls, be operated in a manner which controls fugitive dust, and have integrity assurance through inspections and maintenance programs.

(C) Before making a determination under this paragraph, the Secretary must provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

(v) The owner or operator provides notice to the Secretary providing the following information: The types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process.

(vi) For purposes of paragraph (b)(7) of this section, mineral processing spent materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

(18) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process (SIC code 2911) along with normal petroleum refinery process streams, provided:

(i) the oil is hazardous only because it exhibits the characteristic of ignitability (as defined in Section 261.21) and/or toxicity for benzene (§261.24, waste code D018), and

(ii) the oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An "associated organic chemical manufacturing facility" is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is

oil that has been reclaimed from secondary materials (i.e., sludges, byproducts, or spent materials, including wastewater) from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in §261.1(c).

(b) Solid wastes which are not hazardous wastes. The following solid wastes are not hazardous waste:

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered, (e.g., refuse-derived fuel) or reused. **Household waste** means any material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas). A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this subtitle, if such facility:

(i) Receives and burns only.

(A) Household waste (from single and multiple dwellings, hotels, motels, and other residential sources) and

(B) Solid waste from commercial or industrial sources that does not contain hazardous waste; and

(ii) Such facility does not accept hazardous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

(2) Solid wastes generated by any of the following and which are returned to the soils as fertilizers:

(i) The growing and harvesting of agricultural crops.

(ii) The raising of animals, including animal manures.

(3) Mining overburden returned to the mine site.

(4)~~Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste, generated primarily from the combustion of coal or other fossil fuels, except as provided by §266.112 of these regulations for facilities that burn or process hazardous waste.~~

(4)(i) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by §266.112 of this chapter for facilities that burn or process hazardous waste.

(ii) The following wastes generated primarily from processes that support the combustion of coal or other fossil fuels that are co-disposed with the wastes in paragraph (b)(4)(i) of this section, except as provided by §266.112 of this chapter for facilities that burn or process hazardous waste:

(A) *Coal pile run-off.* For purposes of paragraph (b)(4) of this section, coal pile run-off means any precipitation that drains off coal piles.

(B) *Boiler cleaning solutions.* For purposes of paragraph (b)(4) of this section, boiler cleaning solutions means water solutions and chemical solutions used to clean the fire-side and water-side of the boiler.

(C)*Boiler blowdown.* For purposes of paragraph (b)(4) of this section, boiler blowdown means water purged from boilers used to generate steam.

(D)*Process water treatment and demineralizer regeneration wastes.* For purposes of paragraph (b)(4) of this section, process water treatment and demineralizer regeneration wastes means sludges, rinses, and spent resins generated from processes to remove dissolved gases, suspended solids, and dissolved chemical salts from combustion system process water.

(E) *Cooling tower blowdown.* For purposes of paragraph (b)(4) of this section, cooling tower blowdown means water purged from a closed cycle cooling system. Closed cycle cooling systems include cooling towers, cooling ponds, or spray canals.

(F)*Air heater and precipitator washes.* For purposes of paragraph (b)(4) of this section, air heater and precipitator washes means wastes from cleaning air preheaters and electrostatic precipitators.

(G)*Effluents from floor and yard drains and sumps.* For purposes of paragraph (b)(4) of this section, effluents from floor and yard drains and sumps means wastewaters, such as wash water, collected by or from floor drains, equipment drains, and sumps located inside the power plant building; and wastewaters, such as rain runoff, collected by yard drains and sumps located outside the power plant building.

(H)*Wastewater treatment sludges.* For purposes of paragraph (b)(4) of this section, wastewater treatment sludges refers to sludges generated from the treatment of wastewaters specified in paragraphs (b)(4)(ii)(A) through (F) of this section.

(5) Drilling fluids, produced waters, and other wastes associated with the exploration development, or production of crude oil, natural gas or geothermal energy.

(6) (i) Wastes which fail the test for the Toxicity Characteristics because chromium is present or are listed in Subpart D due to the presence of chromium which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(A) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

(B) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in non-oxidizing environments.

(ii) Specific wastes which meet the standard in paragraphs (b)(6)(i)(A), (B) and (C) (so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic) are:

(A) Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/ wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(B) Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry; hairpulp/chrome tan/retan/wet finish; hair save/chrome tan retan wet finish; retain/wet finish; no beamhouse; through-the-blue; and shearling.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry; hairpulp/ chrome tan/retan/wet finish; hair save/chrome tan/retan wet finish; no beamhouse; through-the-blue.

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(E) Wastewater treatment sludges generated by the following sub-categories of the leather tanning and finishing industry; hairpulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(F) Wastewater treatment sludges generated by the following sub-categories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/ wet finish; and through-the-blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of $Ti0_2$ pigment using chromium-bearing ores by the chloride process.

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals (including coal, phosphate rock, and overburden from the mining of uranium ore), except as provided by §266.112 of these regulations for facilities that burn or process hazardous waste.

(i) For purposes of §261.4(b)(7) beneficiation of ores and minerals is restricted to the following activities; crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching.

(ii) For the purposes of §261.4(b)(7), solid waste from the processing of ores and minerals includes only the following wastes as generated:

(A) Slag from primary copper processing;
(B) Slag from primary lead processing;
(C) Red and brown muds from bauxite refining;
(D) Phosphogypsum from phosphoric acid production;
(E) Slag from elemental phosphorus production;
(F) Gasifier ash from coal gasification;
(G) Process wastewater from coal gasification;
(H) Calcium sulfate wastewater treatment plant sludge from primary copper processing;
(I) Slag tailings from primary copper processing;
(J) Fluorogypsum from hydrofluoric acid production;
(K) Process wastewater from hydrofluoric acid production;
(L) Air pollution control dust/sludge from iron blast furnaces;
(M) Iron blast furnace slag;
(N) Treated residue from roasting/leaching of chrome ore;
(O) Process wastewater from primary magnesium processing by the anhydrous process;
(P) Process wastewater from phosphoric acid production;
(Q) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;
(R) Basic oxygen furnace and open hearth furnace slag from carbon steel production;
(S) Chloride process waste solids from titanium tetrachloride production;
(T) Slag from primary zinc processing.

(iii) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under paragraph (b) of this section if the owner or operator:

(A) Processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials; and,
(B) Legitimately reclaims the secondary mineral processing materials.

(8) Cement kiln dust waste, except as provided by §266.112 of these regulations for facilities that burn or process hazardous waste.

(9) Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

(10) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic of §261.24 (Hazardous Waste Codes D018 through D043 only) and are subject to the corrective action regulations under 7 **Del.C.,** Chapter 74, Delaware Underground Storage Tank Act.

(11) **[Reserved]**

(12) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including

mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

(13) Non-terne plated used oil filters that are not mixed with wastes listed in Subpart D of this part if these oil filters have been gravity hot-drained using one of the following methods:

(i) Puncturing the filter anti-drain back valve or the filter dome end and hot-draining;

(ii) Hot-draining and crushing;

(iii) Dismantling and hot-draining; or

(iv) Any other equivalent hot-draining method that will remove used oil.

(14) Used oil re-fining distillation bottoms that are used as feedstock to manufacture asphalt products.

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, K178, and K181 if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in paragraph (b)(15)(i) of this section were disposed prior to the effective date of the listing:

(iii) The leachate or gas condensate do not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under Sections 307(b) or 402 of the Clean Water Act.

(v) As of February 13, 2001, leachate or gas condensate derived from K169-K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. As of November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (e.g., shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of paragraph (b)(15)(v) of this section after the emergency ends.

(16) Used, intact or broken cathode ray tubes and CRT glass (CRTs)

(i) Used, intact or broken CRTs while at the site of the CRT Generator as defined in § 260.10 of this chapter are not hazardous waste, provided the CRT's are not disposed and provided they are managed as follows:

A. Used, intact CRT's

(1) Storage: A CRT generator must store used, intact CRT's

(i) in a structurally sound building with a roof, impervious floor, and walls; or

(ii) in a container in good condition, constructed, filled and closed to minimize releases to the environment of CRT glass (including fine solid materials) with the container maintained in a structurally sound roofed structure on an underlying impervious base.

(2) Labeling: Containers in which used, intact CRT's are placed must be labeled or marked "Used cathode ray tube(s)-contains leaded glass."

(3) A CRT generator may accumulate used, intact CRT's for not longer than one year from the date the CRT is first taken out of service. The CRT generator must be able to demonstrate the length of time that each CRT is accumulated from the date it is first taken out of service. [Note: The out of service date for a used, broken CRT resulting from breakage

of an out of service used, intact CRT, is that of the original out of service date.]

B. Used, Broken CRT's, including CRT Glass

(1) Storage:

(i) A CRT generator must store used, broken CRT's in a container in good condition, constructed, filled and closed to minimize releases to the environment of CRT glass (including fine solid materials).

(ii) Containers must be maintained in a structurally sound roofed structure on an underlying impervious base.

(2) Labeling: Containers in which used, broken CRT's are placed must be labeled or marked "Used cathode ray tube(s)-contains leaded glass" or "Leaded glass from televisions or computers." It must also be labeled "Do not mix with other glass materials."

(3) The CRT generator must be able to demonstrate the length of time that each used, broken CRT is accumulated from the date it is first taken out of service. [Note: The out of service date for a used, broken CRT resulting from breakage of an out of service used, intact CRT, is that of the original out of service date.]

(ii) Used, intact or broken CRTs as defined in § 260.10 of this chapter managed by CRT collectors and processors are not hazardous waste, provided the CRT's are not disposed and provided they are managed in accordance with the applicable requirements of §261.39.

(iii) Used, intact CRTs as defined in § 260.10 of this chapter are not hazardous waste when exported for recycling provided that they meet the requirements of § 261.40.

(iv) Used, intact CRTs as defined in § 260.10 of this chapter are not hazardous waste when exported for reuse provided that they meet the requirements of § 261.41.

(v) Glass removed from CRTs is not a solid waste provided that it meets the requirements of § 261.39(c).

(c) Hazardous wastes which are exempted from certain regulations. A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit, is not subject to regulation under Parts 262 through 265, 268, 122 or 124 of these regulations or to the notification requirements of 7 **Del.C.** §§6304, 6306 & 6307, until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

(d) Samples.

(1) Except as provided in paragraph (d)(2) <u>and (4)</u> of this section, a sample of solid waste or sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this Part of Parts 262 through 268, or 122 or 124 of these regulations or to the notification requirements of 7 ~~**Del.C**~~ **<u>Del.C.</u>** §§6304, 6306 and 6307 when:

(i) The sample is being transported to a laboratory for the purpose of testing; or

(ii) The sample is being transported back to the sample collector after testing; or

(iii) The sample is being stored by the sample collector before transport to a laboratory for testing; or

(iv) The sample is being stored in a laboratory before testing; or

(v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

(vi) The sample is being stored temporarily in the laboratory after testing for a specific

purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

(2) In order to qualify for the exemption in paragraph (d)(1)(i) and (ii) of this section, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:

(i) Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(ii) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:

(A) Assure that the following information accompanies the sample:

(1) The sample collector's name, mailing address and telephone number;

(2) The laboratory's name, mailing address, and telephone number;

(3) The quantity of the sample;

(4) The date of shipment; and

(5) A description of the sample.

(B) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(3) This exemption does not apply if the laboratory is no longer meeting any of the conditions stated in paragraph (d)(1) of this section.

(4)Additionally, in order to qualify for the exemption in paragraphs (d)(1)(i) and (ii) of this section, the mass of a sample that will be exported to a foreign laboratory or that will be imported to a U.S. laboratory from a foreign source must not exceed 25 kilograms.

(e) Treatability Study Samples.

(1) Except as provided in ~~paragraph~~ paragraphs (e)(2) and (4) of this section, persons who generate or collect samples for the purpose of conducting treatability studies as defined in §260.10, are not subject to any requirement of Parts 261 through 263 of these regulations or to the notification requirements of 7 **Del.C.,** Chapter 63, nor are such samples included in the quantity determinations of §261.5 and §262.34(d) when:

(i) The sample is being collected and prepared for transportation by the generator or sample collector; or

(ii) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(iii) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

(2) The exemption in paragraph (e)(1) of this section is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(i) The generator or sample collector uses (in "treatability studies") no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream; and

(ii) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with non-acute hazardous waste, or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of hazardous waste, and 1 kg of acute hazardous waste; and

(iii) The sample must be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of paragraph A or B of this subparagraph are met.

(A) The transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(B) If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information must accompany the sample:

(1) The name, mailing address, and telephone number of the originator of the sample;

(2) The name, address, and telephone number of the facility that will perform the treatability study;

(3) The quantity of the sample;

(4) The date of shipment; and

(5) A description of the sample, including its EPA Hazardous Waste Number.

(iv) The sample is shipped to a laboratory or testing facility which is exempt under §261.4(f) or has an appropriate RCRA permit or interim status.

(v) The generator or sample collector maintains the following records for a period ending 3 years after completion of the treatability study:

(A) Copies of the shipping documents;

(B) A copy of the contract with the facility conducting the treatability study;

(C) Documentation showing:

(1) The amount of waste shipped under this exemption;

(2) The name, address, and EPA identification number of the laboratory or testing facility that received the waste;

(3) The date the shipment was made; and

(4) Whether or not unused samples and residues were returned to the generator.

(vi) The generator reports the information required under paragraph (e)(2)(v)(C) of this section in its annual report.

(3) The Secretary may grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The Secretary may grant requests on a case-by-case basis for quantity limits in excess of those specified in paragraphs (e)(2) (i) and (ii) and (f)(4) of this section, for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste and 1 kg of acute hazardous waste:

(i) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process (e.g., batch versus continuous), size of the unit undergoing testing (particularly in relation to scale-up considerations), the time/quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.

(ii) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when: There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(iii) The additional quantities and timeframes allowed in paragraph (e)(3)(i) and (ii) of this section are subject to all the provisions in paragraphs (e)(1) and (e)(2)(iii) through (vi) of this section. The generator or sample collector must apply to the DNREC Secretary and provide in writing the following information:

(A) The reason why the generator or sample collector requires additional time or quantity of sample for treatability study evaluation and the additional time or quantity needed;

(B) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results on each treatability study;

(C) A description of the technical modifications or change in specifications which

will be evaluated and the expected results;

(D) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(E) Such other information that the Secretary considers necessary.

(4)Additionally, in order to qualify for the exemption in paragraph (e)(1)(i) of this section, the mass of a sample that will be exported to a foreign laboratory or testing facility, or that will be imported to a U.S. laboratory or testing facility from a foreign source must not exceed 25 kilograms.

(f) Samples Undergoing Treatability Studies at Laboratories and Testing Facilities. Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies (to the extent such facilities are not otherwise subject to RCRA requirements) are not subject to any requirement of this Part, Part 124, Parts 262-266, 268, and 122, or to the notification requirements of 7 **Del.C.,** Chapter 63 provided that the conditions of paragraphs (f)(1) through (11) of this section are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to paragraphs (f)(1) through (11) of this section. Where a group of MTUs are located at the same site, the limitations specified in (f)(1) through (11) of this section apply to the entire group of MTUs collectively as if the group were one MTU.

(1) No less than 45 days before conducting treatability studies, the facility notifies the Secretary in writing that it intends to conduct treatability studies under this paragraph.

(2) The laboratory or testing facility conducting the treatability study has an EPA identification number.

(3) No more than a total of 10,000 kg of "as received" media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other "as received" hazardous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(4) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of non-acute hazardous wastes other than contaminated media, and 1 kg of acute hazardous waste. This quantity limitation does not include treatment materials (including nonhazardous solid waste) added to "as received" hazardous waste.

(5) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year (two years for treatability studies involving bioremediation) have elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(6) The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

(7) The facility maintains records for 3 years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information must be included for each treatability study conducted:

(i) The name, address, and EPA identification number of the generator or sample collector of each waste sample;

(ii) The date the shipment was received;

(iii) The quantity of waste accepted;

(iv) The quantity of "as received" waste storage each day;

(v) The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(vi) The date the treatability study was concluded;

(vii) The date any unused sample or residues generated from the treatability study were

returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.

(8) The facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending 3 years from the completion date of each treatability study.

(9) The facility prepares and submits a report to the Secretary by March 15 of each year that includes the following information for the previous calendar year:

(i) The name, address, and EPA identification number of the facility conducting the treatability studies;

(ii) The types (by process) of treatability studies conducted;

(iii) The names and addresses of persons for whom studies have been conducted (including their EPA identification numbers);

(iv) The total quantity of waste in storage each day;

(v) The quantity and types of waste subjected to treatability studies;

(vi) When each treatability study was conducted;

(vii) The final disposition of residues and unused sample from each treatability study;

(10) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under §261.3 and, if so, are subject to Parts 261 through 268, and Part 122 of these regulations, unless the residues and unused samples are returned to the sample originator under the §261.4(e) exemption.

(11) The facility notifies the Secretary by letter when the facility is no longer planning to conduct any treatability studies at the site.

(g) Dredged material that is not a hazardous waste. Dredged material that is subject to the requirements of a permit that has been issued under 404 of the Federal Water Pollution Control Act (33 U.S.C.1344) or Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413) is not a hazardous waste. For this paragraph (g), the following definitions apply:

(1) The term dredged material has the same meaning as defined in 40 CFR 232.2;

(2) The term permit means:

(i) A permit issued by the U.S. Army Corps of Engineers (Corps) or an approved State under Section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(ii) A permit issued by the Corps under Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

(iii) In the case of Corps civil works projects, the administrative equivalent of the permits referred to in paragraphs (g)(2)(i) and (ii) of this section, as provided for in Corps regulations (for example, see 33 CFR 336.1, 336.2, and 337.6).

(h)[Reserved]

(i) [Reserved]

(j)*Airbag waste.* (1) Airbag waste at the airbag waste handler or during transport to an airbag waste collection facility or designated facility is not subject to regulation under Parts 262 through 268, Part 122, or Part 124 of these regulations, and is not subject to the notification requirements of 7 **Del.C.** Chapter 63 provided that:

(i) The airbag waste is accumulated in a quantity of no more than 250 airbag modules or airbag inflators, for no longer than 180 days;

(ii) The airbag waste is packaged in a container designed to address the risk posed by the airbag waste and labeled "Airbag Waste-Do Not Reuse";

(iii) The airbag waste is sent directly to either:

(A) An airbag waste collection facility in the United States under the control of a vehicle manufacturer or their authorized representative, or under the control of an authorized party administering a remedy program in response to a recall under the National Highway Traffic Safety Administration, or

(B) A designated facility as defined in §260.10 of these regulations;

(iv)The transport of the airbag waste complies with all applicable U.S. Department of Transportation regulations in 49 CFR Part 171 through 180 during transit;

(v)The airbag waste handler maintains at the handler facility for no less than three (3) years records of all off-site shipments of airbag waste and all confirmations of receipt

from the receiving facility. For each shipment, these records must, at a minimum, contain the name of the transporter and date of the shipment; name and address of receiving facility; and the type and quantity of airbag waste (*i.e.,* airbag modules or airbag inflators) in the shipment. Confirmations of receipt must include the name and address of the receiving facility; the type and quantity of the airbag waste (*i.e.,* airbag modules and airbag inflators) received; and the date which it was received. Shipping records and confirmations of receipt must be made available for inspection and may be satisfied by routine business records (*e.g.,* electronic or paper financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt).

(2) Once the airbag waste arrives at an airbag waste collection facility or designated facility, it becomes subject to all applicable hazardous waste regulations, and the facility receiving airbag waste is considered the hazardous waste generator for the purposes of the hazardous waste regulations and must comply with the requirements of Part 262 of these regulations.

(3) Reuse in vehicles of defective airbag modules or defective airbag inflators subject to a recall under the National Highway Traffic Safety Administration is considered sham recycling and prohibited under §261.2(g).

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**Section 261.5 ~~Special conditions for hazardous waste generated by conditionally exempt small quantity generators.~~ [Reserved]**

~~(a) A generator is a conditionally exempt small quantity generator in a calendar month if he generates no more than 100 kilograms of hazardous waste in that month.~~

~~(b) Except for those wastes identified in paragraphs (e), (f), (g), and (j) of this section, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under Parts 262 through 266, 268 and Parts 122 and 124 of these regulations, and the notification requirements of 7 **Del.C.,** Chapter 63, provided the generator complies with the requirements of paragraphs (f), (g), and (j) of this section.~~

~~(c)When making the quantity determinations of this part and Part 262, the generator must include all hazardous waste that it generates, except hazardous waste that:~~

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

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

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

~~(4) Is used oil managed under the requirements of 261.6(a)(4) and Part 279; or~~

~~(5) Is spent lead-acid batteries managed under the requirements of Part 266, Subpart G; or (6) Is universal waste managed under 261.9 and Part 273.~~

~~(d) In determining the quantity of hazardous waste generated, a generator need not include: (1) Hazardous waste when it is removed from on-site storage; or~~

~~(2) Hazardous waste produced by on-site treatment (including reclamation) of his hazardous waste, so long as the hazardous waste that is treated was counted once; or~~

~~(3) Spent materials that are generated, reclaimed, and subsequently reused on-site, so long as such spent materials have been counted once.~~

~~(e) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acute hazardous waste are subject to full regulation under Parts 262 through 266, 268 and Parts 122 and 124 of these regulations, and the notification requirements of 7 **Del.C.,** Chapter 63:~~

~~(1) A total of one kilogram of acute hazardous wastes listed in §§261.31, or 261.33(e).~~

~~(2) A total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in §§261.31, or 261.33(e).~~

~~[**Comment**: **Full regulation** means those regulations applicable to generators of 1,000 kg or greater of hazardous waste in a calendar month.]~~

~~(f)In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in paragraph (e)(1) or (e)(2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:~~

~~(1) Section 262.11 of these regulations;~~

~~(2) The generator may accumulate acute hazardous waste on-site. If he accumulates at any time acute hazardous wastes in quantities greater than those set forth in paragraphs (e)(1) or (e)(2) of this section, all of those accumulated wastes are subject to regulation under Parts 262 through 266, 268 and Parts 122 and 124 of these regulations, and the applicable notification requirements of 7 **Del.C.,** Chapter 63. The time period of §262.34(a) of these regulations for accumulation of wastes on-site begins when the accumulated wastes exceed the applicable exclusion limit;~~

~~(3) A conditionally exempt small quantity generator may either treat or dispose of his acute hazardous waste in an on-site facility or ensure, by maintaining for a period of three years, appropriate documentation (i.e., tolling agreement, letter of acceptance, manifest or other documentation deemed acceptable by the Secretary) demonstrating delivery to an off-site treatment, storage or disposal facility, either of which, if located in the U.S. is:~~

~~(i) Permitted under Part 122 of these regulations;~~

~~(ii) In interim status under Parts 122 and 265 of these regulations;~~

~~(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under Part 271 of 40 CFR;~~

~~(iv)~~**[Reserved]** ~~(v)~~

~~A facility which:~~

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

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

~~(vi) For universal waste managed under Part 273 of these regulations, a universal waste handler or destination facility subject to the requirements of Part 273 of these regulations.~~

~~(4) Only accumulates waste in containers that comply with §265.171, §265.172, and §265.173 of these regulations;~~

~~(5) Marks his containers either with the words "Hazardous Waste" or with the word "Waste" and a description to identify the contents of the container (e.g., Waste Acetone, Waste Solvent);~~

~~(6) The requirements of §261.5(f)(3) are not intended to restrict or prohibit conditionally exempt small quantity generator participation in household hazardous waste collection activities approved by the Secretary.~~

~~(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of 100 kilograms or less of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:~~

~~(1) Section 262.11 of these regulations;~~

~~(2) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time 1,000 kilograms or greater of his hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of Part 262 applicable to generators of greater than 100 kg and less than 1000 kg of hazardous waste in a calendar month as well as the requirements of Parts 263 through 266, 268 and Parts 122 and 124 of these regulations, and the applicable notification requirements of 7 **Del.C.** Chapter 63. The time period of §262.34(d) for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes equal or exceed 1000 kilograms;~~

~~(3) A conditionally exempt small quantity generator may either treat or dispose of his hazardous waste in an on-site facility or ensure, by maintaining for a period of three years, appropriate documentation (i.e. tolling agreement, letter of acceptance, manifest or other documentation deemed acceptable by the Secretary) demonstrating delivery to an off-site treatment, storage or disposal facility, either of which, if located in the U.S., is:~~

~~(i) Permitted under Part 122 of these regulations;~~

~~(ii) In interim status under Parts 122 and 265 of these regulations;~~

~~(iii) Authorized to manage hazardous waste by a State with a hazardous waste program under Part 271 of 40 CFR;~~

~~(iv)~~**[Reserved]** ~~(v)~~

~~A facility which:~~

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

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

~~(vi) For universal waste managed under Part 273 of these regulations, a universal waste handler or destination facility subject to the requirements of Part 273 of these regulations.~~

~~(4) Only accumulates waste in containers that comply with §265.171, §265.172, and §265.173 of these regulations;~~

~~(5) Marks his containers either with the words "Hazardous Waste" or with the word "Waste" and a description to identify the contents of the container (e.g., Waste Acetone, Waste Solvent);~~

~~(6) The requirements of §261.5(g)(3) are not intended to restrict or prohibit conditionally exempt small quantity generator participation in household hazardous waste collection activities approved by the Secretary.~~

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

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

~~(j)If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to regulation under Parts 260 through 266, 268, 122 and 124 of these regulations.~~

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**Section 261.6 Special requirements for hazardous waste which is used, re-used, recycled or reclaimed.**

(a)(3)…

(i) Industrial ethyl alcohol that is reclaimed except ~~that, unless provided otherwise in an international agreement as specified in §262.58;~~ that exports and imports of such recyclable materials must comply with the requirements of Part 262, Subpart H of these regulations.

…

(5) Hazardous waste that is exported to or imported ~~from designated member countries of the Organization for Economic Cooperation and Development (OECD) (as defined in §262.58(a)(1))~~ for purpose of recovery is subject to the requirements of Part 262, Subpart H~~, if it is subject to either the manifesting requirements of Part 262 or to the universal waste management standards of Part 273~~.

…

(c) (1) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of Subparts A through L, AA, BB and CC of Parts 264 and 265, and under Parts 122, 124, 266, and 268 of these regulations and the notification requirements under 7 **Del.C.,** Chapter 63, except as provided in paragraph (a) of this section. (The recycling process itself is exempt from regulation except as provided in §261.6(d).)

(2) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in paragraph (a) of this section:

(i) Notification requirements under 7 **Del.C.,** Chapter 63;

*****

(ii) Sections 265.71 and 265.72 (dealing with the use of the manifest and manifest discrepancies) of these regulations.
(iii) Section 261.6(d) of these regulations.
(iv) Section 265.75 of these regulations.

**Section 261.7 Residues of hazardous waste in empty containers.**

(a) (1) Any hazardous waste remaining in either: (i) an empty container or (ii) an inner liner removed from an empty container, as defined in paragraph (b) of this section is not subject to regulation under Parts 261 through 266, or Parts 268, 122 or 124 of these regulations or to the notification requirements of 7 **Del.C.,** §§6304, 6306 & 6307.

(2) Any hazardous waste in either (i) a container that is not empty or (ii) an inner liner removed from a container that is not empty, as defined in paragraph (b) of this section, is subject to regulation under Parts 261 through 266, and Parts 268, 122 and 124 of these regulations and to the notification requirements of 7 **Del.C.,** §§6304, 6306 & 6307.

(b) (1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in §§261.31 or 261.33(e) of these regulations is empty if:

(i) all wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating, and

(ii) no more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner, or

(iii) (A) no more than 3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 119 gallons in size, or

(B) no more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 119 gallons in size.

(2) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(3) A container or an inner liner removed from a container that has held an acute hazardous waste listed in §§261.31 or 261.33(e) is empty if:

(i) the container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemicals intermediate;

(ii) the container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(iii) in the case of a container, the inner liner that prevented contact of the commercial chemical product of manufacturing chemical intermediate with the container, has been removed.

(c)Containers of hazardous waste pharmaceuticals are subject to §266.507 for determining when they are considered empty, in lieu of this section, except as provided by §266.507(c) and (d).

*****

**Section 261.9 Requirements for Universal Waste.**

The wastes listed in this section are exempt from regulation under Parts 262 through 268 and 122 of these regulations except as specified in Part 273 of these regulations and, therefore are not fully regulated as hazardous waste. The wastes listed in this section are subject to regulation under Part 273:

(a) Batteries as described in §273.2 of these regulations;
(b) Pesticides as described in §273.3 of these regulations;
(c) Mercury-containing equipment as described in §273.4 of these regulations; ~~and~~
(d) Lamps as described in §273.5 of these ~~regulations.~~ regulations; and
(e) Aerosol cans as described in §273.6 of these regulations.

*****

**Section 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.**

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in §261.2(a)(2)(i), when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are applied to the land in lieu of their original intended use, or when, in lieu of their original intended use, they are produced for use as (or as a component of) a fuel, distributed for use as a fuel, or burned as a fuel.

(a) Any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (e) or (f) of this section.

(b) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraph (e) or (f) of this section.

(c) Any residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this section, unless the container is empty as defined in §261.7(b) <u>or §266.507</u> of these regulations.

[**Comment**: Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, DNREC considers the residue to be intended for discard, and thus a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to a drum reconditioner who reconditions the drum but discards the residue.]

(d) Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill into or on any land or water of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in listed in paragraph (e) or (f) of this section, or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would nave the generic name listed in paragraph (e) or (f).

[**Comment**: The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in . . ." refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in paragraph (e) or (f). Where a manufacturing process waste is deemed to be a hazardous waste because it contains a substance listed in paragraph (e) or (f), such waste will be listed in either §261.31 or §261.32 or will be identified as a hazardous waste by the characteristics set forth in Subpart C of this part.]

(e) The commercial chemical products, manufacturing chemical ~~intermediate~~ <u>intermediates</u> or off-specification commercial chemical ~~product~~ <u>products</u> or manufacturing chemical intermediates referred to in paragraphs (a) through (d) of this section, are identified as acute hazardous wastes (H) ~~and are subject to the small quantity exclusion defined in §261.5(e)~~.

(**Comment**: For the convenience of the regulated community the primary hazardous properties of these materials have been indicated by the letters T (Toxicity), and R (Reactivity). Absence of a letter indicates that the compound only is listed for acute toxicity).

These wastes and their corresponding EPA Hazardous Waste Numbers are:…

| Hazardous waste No. | Chemical abstracts No. | Substance |
|---|---|---|
| P023 | 107-20-0 | Acetaldehyde, chloro- |
| P002 | 591-08-2 | Acetamide, N-(aminothioxomethyl)- |

| | | |
|---|---|---|
| P057 | 640-19-7 | Acetamide, 2-fluoro- |
| P058 | 62-74-8 | Acetic acid, fluoro-, sodium salt |
| P002 | 591-08-2 | 1-Acetyl-2-thiourea |
| P003 | 107-02-8 | Acrolein |
| P070 | 116-06-3 | Aldicarb |
| P023 | 1646-88-4 | Aldicarb sulfone |
| P004 | 309-00-2 | Aldrin |
| P005 | 107-18-6 | Allyl alcohol |
| P006 | 20859-73-8 | Aluminum phosphide (R,T) |
| P007 | 2763-96-4 | 5-(Aminomethyl)-3-isoxazolol |
| P008 | 504-24-5 | 4-Aminopyridine |
| P009 | 131-74-8 | Ammonium picrate (R) |
| P119 | 7803-55-6 | Ammonium vanadate |
| P099 | 506-61-6 | Argentate(1-), bis(cyano-C)-, potassium |
| P010 | 7778-39-4 | Arsenic acid $H_3AsO_4$ |
| P012 | 1327-53-3 | Arsenic oxide $As_2O_3$ |
| P011 | 1303-28-2 | Arsenic oxide $As_2O_5$ |
| P011 | 1303-28-2 | Arsenic pentoxide |
| P012 | 1327-53-3 | Arsenic trioxide |
| P038 | 692-42-2 | Arsine, diethyl- |
| P036 | 696-28-6 | Arsonous dichloride, phenyl- |
| P054 | 151-56-4 | Aziridine |
| P067 | 75-55-8 | Aziridine, 2-methyl- |
| P013 | 542-62-1 | Barium cyanide |
| P024 | 106-47-8 | Benzenamine, 4-chloro- |
| P077 | 100-01-6 | Benzenamine, 4-nitro- |
| P028 | 100-44-7 | Benzene, (chloromethyl)- |
| P042 | 51-43-4 | 1,2-Benzenediol, 4-[1-hydroxy-2-(methylamino)ethyl]-, (R)- |
| P046 | 122-09-8 | Benzeneethanamine, alpha,alpha-dimethyl- |
| P014 | 108-98-5 | Benzenethiol |
| P127 | 1563-66-2 | 7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate |
| P188 | 57-64-7 | Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b] indol-5-yl methylcarbamate ester (1:1). |
| P001 | [1]81-81-2 | H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, & salts, when present at concentrations greater than 0.3% |
| P028 | 100-44-7 | Benzyl chloride |
| P015 | 7440-41-7 | Beryllium powder |

| | | |
|---|---|---|
| P017 | 598-31-2 | Bromoacetone |
| P018 | 357-57-3 | Brucine |
| P045 | 39196-18-4 | 2-Butanone, 3,3-dimethyl-1-(methylthio)-, O-[(methylamino)carbonyl] oxime |
| P021 | 592-01-8 | Calcium cyanide |
| P021 | 592-01-8 | Calcium cyanide $Ca(CN)_2$ |
| P189 | 5285-14-8 | Carbamic acid, [(dibutylamino)- thio]methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester |
| P191 | 644-64-4 | Carbamic acid, dimethyl-, 1-[(dimethyl-amino)carbonyl]- 5-methyl-1H-pyrazol-3-yl ester |
| P192 | 119-38-0 | Carbamic acid, dimethyl-, 3-methyl-1- (1-methylethyl)-1H- pyrazol-5-yl ester |
| P190 | 1129-41-5 | Carbamic acid, methyl-, 3-methylphenyl ester |
| P127 | 1563-66-2 | Carbofuran |
| P022 | 75-15-0 | Carbon disulfide |
| P095 | 75-44-5 | Carbonic dichloride |
| P189 | 55285-14-8 | Carbosulfan |
| P023 | 107-20-0 | Chloroacetaldehyde |
| P024 | 106-47-8 | p-Chloroaniline |
| P026 | 5344-82-1 | 1-(o-Chlorophenyl)thiourea |
| P027 | 542-76-7 | 3-Chloropropionitrile |
| P029 | 544-92-3 | Copper cyanide |
| P029 | 544-92-3 | Copper cyanide Cu(CN) |
| P202 | | m-Cumenyl methylcarbamate |
| P030 | 64-00-6 | Cyanides (soluble cyanide salts), not otherwise specified |
| P031 | 460-19-5 | Cyanogen |
| P033 | 506-77-4 | Cyanogen chloride |
| P033 | 506-77-4 | Cyanogen chloride (CN)Cl |
| P034 | 131-89-5 | 2-Cyclohexyl-4,6-dinitrophenol |
| P016 | 542-88-1 | Dichloromethyl ether |
| P036 | 696-28-6 | Dichlorophenylarsine |
| P037 | 60-57-1 | Dieldrin |
| P038 | 692-42-2 | Diethylarsine |
| P041 | 311-45-5 | Diethyl-p-nitrophenyl phosphate |
| P040 | 297-97-2 | O,O-Diethyl O-pyrazinyl phosphorothioate |
| P043 | 55-91-4 | Diisopropylfluorophosphate (DFP) |
| P004 | 309-00-2 | 1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa-chloro-1,4,4a,5,8,8a,-hexahydro-, (1alpha,4alpha,4abeta,5alpha,8alpha,8abeta)- |

| | | |
|---|---|---|
| P060 | 465-73-6 | 1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa-chloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5beta,8beta,8abeta)- |
| P037 | 60-57-1 | 2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2aalpha,3beta,6beta,6aalpha,7beta, 7aalpha)- |
| P051 | [1]72-20-8 | 2,7:3,6-Dimethanonaphth [2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2abeta,3alpha,6alpha,6abeta,7beta, 7aalpha)-, & metabolites |
| P044 | 60-51-5 | Dimethoate |
| P046 | 122-09-8 | alpha,alpha-Dimethylphenethylamine |
| P191 | 644-64-4 | Dimetilan |
| P047 | [1]534-52-1 | 4,6-Dinitro-o-cresol, & salts |
| P048 | 51-28-5 | 2,4-Dinitrophenol |
| P020 | 88-85-7 | Dinoseb |
| P085 | 152-16-9 | Diphosphoramide, octamethyl- |
| P111 | 107-49-3 | Diphosphoric acid, tetraethyl ester |
| P039 | 298-04-4 | Disulfoton |
| P049 | 541-53-7 | Dithiobiuret |
| P185 | 26419-73-8 | 1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, 0-[(methylamino)- carbonyl]oxime |
| P050 | 115-29-7 | Endosulfan |
| P088 | 145-73-3 | Endothall |
| P051 | 72-20-8 | Endrin |
| P051 | 72-20-8 | Endrin, & metabolites |
| P042 | 51-43-4 | Epinephrine |
| P031 | 460-19-5 | Ethanedinitrile |
| P066 | 16752-77-5 | Ethanimidothioc acid, N-[[(methylamino)carbonyl]oxy]-, methyl ester |
| P194 | 23135-22-0 | Ethanimidothioic acid, 2-(dimethylamino)-N-[[(methylamino) carbonyl]oxy]-2-oxo-, methyl ester |
| P101 | 107-12-0 | Ethyl cyanide |
| P054 | 151-56-4 | Ethyleneimine |
| P097 | 52-85-7 | Famphur |
| P056 | 7782-41-4 | Fluorine |
| P057 | 640-19-7 | Fluoroacetamide |
| P058 | 62-74-8 | Fluoroacetic acid, sodium salt |
| P198 | 23422-53-9 | Formetanate hydrochloride |
| P197 | 17702-57-7 | Formparanate |
| P065 | 628-86-4 | Fulminic acid, mercury(2+) salt (R,T) |

| | | |
|---|---|---|
| P059 | 76-44-8 | Heptachlor |
| P062 | 757-58-4 | Hexaethyl tetraphosphate |
| P116 | 79-19-6 | Hydrazinecarbothioamide |
| P068 | 60-34-4 | Hydrazine, methyl- |
| P063 | 74-90-8 | Hydrocyanic acid |
| P063 | 74-90-8 | Hydrogen cyanide |
| P096 | 7803-51-2 | Hydrogen phosphide |
| P060 | 465-73-6 | Isodrin |
| P192 | 119-38-0 | Isolan |
| P202 | 64-00-6 | 3-Isopropylphenyl N-methylcarbamate |
| P007 | 2763-96-4 | 3(2H)-Isoxazolone, 5-(aminomethyl)- |
| P196 | 15339-36-3 | Manganese, bis(dimethylcarbamodithioato-S,S')-, |
| P196 | 15339-36-3 | Manganese, dimethyldithiocarbamate |
| P092 | 62-38-4 | Mercury, (acetato-O)phenyl- |
| P065 | 628-86-4 | Mercury fulminate (R,T) |
| P082 | 62-75-9 | Methanamine, N-methyl-N-nitroso- |
| P064 | 624-83-9 | Methane, isocyanato- |
| P016 | 542-88-1 | Methane, oxybis[chloro- |
| P112 | 509-14-8 | Methane, tetranitro- (R) |
| P118 | 75-70-7 | Methanethiol, trichloro- |
| P198 | 23422-53-9 | Methanimidamide, N,N-dimethyl-N'-[3-[[(methylamino)-carbonyl]oxy]phenyl]-,monohydrochloride |
| P197 | 17702-57-7 | Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[(methylamino)carbonyl]oxy]phenyl]- |
| P050 | 115-29-7 | 6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide |
| P059 | 76-44-8 | 4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro- |
| P199 | 2032-65-7 | Methiocarb |
| P066 | 16752-77-5 | Methomyl |
| P068 | 60-34-4 | Methyl hydrazine |
| P064 | 624-83-9 | Methyl isocyanate |
| P069 | 75-86-5 | 2-Methyllactonitrile |
| P071 | 298-00-0 | Methyl parathion |
| P199 | 2032-65-7 | Metolcarb |
| P128 | 315-18-4 | Mexacarbate |
| P072 | 86-88-4 | alpha-Naphthylthiourea |
| P073 | 13463-39-3 | Nickel carbonyl |
| P073 | 13463-39-3 | Nickel carbonyl $Ni(CO)_4$, (T-4)- |
| P074 | 557-19-7 | Nickel cyanide |

| | | |
|---|---|---|
| P074 | 557-19-7 | Nickel cyanide $Ni(CN)_2$ |
| P075 | [1]54-11-5 | Nicotine, & salts (this listing does not include patches, gums, and lozenges that are FDA-approved over-the-counter nicotine replacement therapies) |
| P076 | 10102-43-9 | Nitric oxide |
| P077 | 100-01-6 | p-Nitroaniline |
| P078 | 10102-44-0 | Nitrogen dioxide |
| P076 | 10102-43-9 | Nitrogen oxide NO |
| P078 | 10102-44-0 | Nitrogen oxide $NO_2$ |
| P081 | 55-63-0 | Nitroglycerine (R) |
| P082 | 62-75-9 | N-Nitrosodimethylamine |
| P084 | 4549-40-0 | N-Nitrosomethylvinylamine |
| P085 | 152-16-9 | Octamethylpyrophosphoramide |
| P087 | 20816-12-0 | Osmium oxide $OsO_4$, (T-4)- |
| P087 | 20816-12-0 | Osmium tetroxide |
| P088 | 145-73-3 | 7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid |
| P194 | 23135-22-0 | Oxamyl |
| P089 | 56-38-2 | Parathion |
| P034 | 131-89-5 | Phenol, 2-cyclohexyl-4,6-dinitro- |
| P048 | 51-28-5 | Phenol, 2,4-dinitro- |
| P047 | [1]534-52-1 | Phenol, 2-methyl-4,6-dinitro-, & salts |
| P020 | 88-85-7 | Phenol, 2-(1-methylpropyl)-4,6-dinitro- |
| P009 | 131-74-8 | Phenol, 2,4,6-trinitro-, ammonium salt (R) |
| P128 | 315-18-4 | Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester) |
| P199 | 2032-65-7 | Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate |
| P202 | 64-00-6 | Phenol, 3-(1-methylethyl)-, methyl carbamate |
| P201 | 2631-37-0 | Phenol, 3-methyl-5(1-methylethyl)-, methyl carbamate |
| P092 | 62-38-4 | Phenylmercury acetate |
| P093 | 103-85-5 | Phenylthiourea |
| P094 | 298-02-2 | Phorate |
| P095 | 75-44-5 | Phosgene |
| P096 | 7803-51-2 | Phosphine |
| P041 | 311-45-5 | Phosphoric acid, diethyl 4-nitrophenyl ester |
| P039 | 298-04-4 | Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl] ester |
| P094 | 298-02-2 | Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl] ester |
| P044 | 60-51-5 | Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester |

| | | |
|---|---|---|
| P043 | 55-91-4 | Phosphorofluoridic acid, bis(1-methylethyl) ester |
| P089 | 56-38-2 | Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester |
| P040 | 297-97-2 | Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester |
| P097 | 52-85-7 | Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl] O,O-dimethyl ester |
| P071 | 298-00-0 | Phosphorothioic acid, O,O,-dimethyl O-(4-nitrophenyl) ester |
| P204 | 57-47-6 | Physostigmine |
| P188 | 57-64-7 | Physostigmine salicylate |
| P110 | 78-00-2 | Plumbane, tetraethyl- |
| P098 | 151-50-8 | Potassium cyanide |
| P098 | 151-50-8 | Potassium cyanide K(CN) |
| P099 | 506-61-6 | Potassium silver cyanide |
| P201 | 2631-37-0 | Promecarb |
| P203 | 1646-88-4 | Propanal, 2-methyl-2-(methyl-sulfonyl)-, 0-[(methylamino)carbonyl] oxime |
| P070 | 116-06-3 | Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime |
| P101 | 107-12-0 | Propanenitrile |
| P027 | 542-76-7 | Propanenitrile, 3-chloro- |
| P069 | 75-86-5 | Propanenitrile, 2-hydroxy-2-methyl- |
| P081 | 55-63-0 | 1,2,3-Propanetriol, trinitrate (R) |
| P017 | 598-31-2 | 2-Propanone, 1-bromo- |
| P102 | 107-19-7 | Propargyl alcohol |
| P003 | 107-02-8 | 2-Propenal |
| P005 | 107-18-6 | 2-Propen-1-ol |
| P067 | 75-55-8 | 1,2-Propylenimine |
| P102 | 107-19-7 | 2-Propyn-1-ol |
| P008 | 504-24-5 | 4-Pyridinamine |
| P075 | [1]54-11-5 | Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-, & salts (this listing does not include patches, gums, and lozenges that are FDA-approved over-the-counter nicotine replacement therapies) |
| P204 | 57-47-6 | Pyrrolo[2,3-b] indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)- |
| P114 | 12039-52-0 | Selenious acid, dithallium(1+) salt |
| P103 | 630-10-4 | Selenourea |
| P104 | 506-64-9 | Silver cyanide |
| P104 | 506-64-9 | Silver cyanide Ag(CN) |
| P105 | 26628-22-8 | Sodium azide |

| | | |
|---|---|---|
| P106 | 143-33-9 | Sodium cyanide |
| P106 | 143-33-9 | Sodium cyanide Na(CN) |
| P108 | [1]57-24-9 | Strychnidin-10-one, & salts |
| P018 | 357-57-3 | Strychnidin-10-one, 2,3-dimethoxy- |
| P108 | [1]57-24-9 | Strychnine, & salts |
| P115 | 7446-18-6 | Sulfuric acid, dithallium(1+) salt |
| P109 | 3689-24-5 | Tetraethyldithiopyrophosphate |
| P110 | 78-00-2 | Tetraethyl lead |
| P111 | 107-49-3 | Tetraethyl pyrophosphate |
| P112 | 509-14-8 | Tetranitromethane (R) |
| P062 | 757-58-4 | Tetraphosphoric acid, hexaethyl ester |
| P113 | 1314-32-5 | Thallic oxide |
| P113 | 1314-32-5 | Thallium oxide $Tl_2O_3$ |
| P114 | 12039-52-0 | Thallium(I) selenite |
| P115 | 7446-18-6 | Thallium(I) sulfate |
| P109 | 3689-24-5 | Thiodiphosphoric acid, tetraethyl ester |
| P045 | 39196-18-4 | Thiofanox |
| P049 | 541-53-7 | Thioimidodicarbonic diamide $[(H_2N)C(S)]_2NH$ |
| P014 | 108-98-5 | Thiophenol |
| P116 | 79-19-6 | Thiosemicarbazide |
| P026 | 5344-82-1 | Thiourea, (2-chlorophenyl)- |
| P072 | 86-88-4 | Thiourea, 1-naphthalenyl- |
| P093 | 103-85-5 | Thiourea, phenyl- |
| P185 | 26419-73-8 | Tirpate |
| P123 | 8001-35-2 | Toxaphene |
| P118 | 75-70-7 | Trichloromethanethiol |
| P119 | 7803-55-6 | Vanadic acid, ammonium salt |
| P120 | 1314-62-1 | Vanadium oxide $V_2O_5$ |
| P120 | 1314-62-1 | Vanadium pentoxide |
| P084 | 4549-40-0 | Vinylamine, N-methyl-N-nitroso- |
| P001 | [1]81-81-2 | Warfarin, & salts, when present at concentrations greater than 0.3% |
| P205 | 137-30-4 | Zinc, bis(dimethylcarbamodithioato-S,S;)- |
| P121 | 557-21-1 | Zinc cyanide |
| P121 | 557-21-1 | Zinc cyanide $Zn(CN)_2$ |
| P122 | 1314-84-7 | Zinc phosphide $Zn_3P_2$, when present at concentrations greater than 10% (R,T) |
| P205 | 137-30-4 | Ziram |

FOOTNOTE: [1]CAS Number given for parent compound only.

(f) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in paragraphs (a) through (d) of this section, are identified as toxic wastes (T), unless otherwise designated ~~and are subject to the small quantity generator exclusion defined in §261.5 (a) and (g)~~.

**(Comment**: For the convenience of the regulated community, the primary hazardous properties of these materials have been indicated by the letters T (Toxicity), R (Reactivity), I (Ignitability) and C (Corrosivity). Absence of a letter indicates that the compound is only listed for toxicity.)

These wastes and their corresponding EPA Hazardous Waste Numbers are:…

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**§ 261.39 Conditional Exclusion from Hazardous Waste for Used, Intact or Broken Cathode Ray Tubes and CRT Glass (CRTs) Managed by CRT Collectors and CRT Processors and Processed CRT Glass Undergoing Recycling.**

(a)(5)…

(i) Notify EPA and the DNREC Secretary of an intended export before the CRTs are scheduled to leave the United States. A complete notification must be submitted sixty (60) days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve (12) month or lesser period. The notification must be in writing, signed by the exporter, and include the following information:

(A) Name, mailing address, telephone number and EPA ID number (if applicable) of the exporter of the CRTs.

(B) The estimated frequency or rate at which the CRTs are to be exported and the period of time over which they are to be exported.

(C) The estimated total quantity of CRTs specified in kilograms.

(D) All points of entry to and departure from each foreign country through which the CRTs will pass.

(E) A description of the means by which each shipment of the CRTs will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.)).

(F) The name and address of the recycler or recyclers and the estimated quantity of used CRTs to be sent to each facility, as well as the names of any alternate recyclers.

(G) A description of the manner in which the CRTs will be recycled in the foreign country that will be receiving the CRTs.

(H) The name of any transit country through which the CRTs will be sent and a description of the approximate length of time the CRTs will remain in such country and the nature of their handling while there.

(ii) ~~Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 1200 Pennsylvania Ave., NW., Washington, DC. A copy of the notification must also be sent to the DNREC Secretary. In all cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export CRTs."~~ Notifications must be submitted electronically using EPA's Waste Import Export Tracking System (WIETS) or its successor system.

(iii) Upon request by EPA or DNREC, the exporter shall furnish to EPA/DNREC any additional information which a receiving country requests in order to respond to a notification.

(iv) EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraph (a)(5)(i) of this section. ~~Where a claim of confidentiality is asserted with respect to any notification information required by paragraph (a)(5)(i) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.~~

(v) The export of CRTs is prohibited unless ~~the receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the CRTs, EPA will forward an Acknowledgment of Consent to Export CRTs to the exporter. Where the receiving country objects to receipt of the CRTs or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries.~~ all of the following occur:

(A) The receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the CRTs, EPA will forward an Acknowledgment of Consent to Export CRTs to the exporter. Where the receiving country objects to receipt of the CRTs or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries.

(B) On or after the AES filing compliance date of December 31, 2017, the exporter or a U.S. authorized agent must:

(1) Submit Electronic Export Information (EEI) for each shipment to the Automated Export System (AES) or its successor system, under the International Trade Data System (ITDS) platform, in accordance with 15 CFR 30.4(b).

(2) Include the following items in the EEI, along with the other information required under 15 CFR 30.6:

(i) EPA license code;

(ii) Commodity classification code per 15 CFR 30.6(a)(12); (*iii*) EPA consent number;

(*iv*) Country of ultimate destination per 15 CFR 30.6(a)(5);

(*v*) Date of export per 15 CFR 30.6(a)(2);

(vi) Quantity of waste in shipment and units for reported quantity, if required reporting units established by value for the reported commodity classification number are in units of weight or volume per 15 CFR 30.6(a)(15); or

(vii) EPA net quantity reported in units of kilograms, if required reporting units established by value for the reported commodity classification number are not in units of weight or volume.

(vi) When the conditions specified on the original notification change, the exporter must provide EPA and the DNREC Secretary with a written re-notification of the change using the allowable methods listed in paragraph (a)(5)(ii) of this section, except for changes to the telephone number in paragraph (a)(5)(i)(A) of this section and decreases in the quantity indicated pursuant to paragraph (a)(5)(i)(C) of this section. The shipment cannot take place until consent of the receiving country to the changes has been obtained (except for changes to information about points of entry and departure and transit countries pursuant to paragraphs (a)(5)(i)(D) and (a)(5)(i)(H) of this section) and the exporter of CRTs receives from EPA a copy of the Acknowledgment of Consent to Export CRTs reflecting the receiving country's consent to the changes.

(vii) A copy of the Acknowledgment of Consent to Export CRTs must accompany the shipment of CRTs. The shipment must conform to the terms of the Acknowledgment.

(viii) If a shipment of CRTs cannot be delivered for any reason to the recycler or the alternate recycler, the exporter of CRTs must re-notify EPA and the DNREC Secretary of a change in the conditions of the original notification to allow shipment to a new recycler in accordance with paragraph (a)(5)(vi) of this section and obtain another Acknowledgment of Consent to Export CRTs.

(ix) Exporters must keep copies of notifications and Acknowledgments of Consent to Export CRTs for a period of three years following receipt of the Acknowledgment. Exporters may satisfy this recordkeeping requirement by retaining electronically submitted notifications or electronically generated Acknowledgements in the CRT exporter's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that such copies are readily available for viewing and production if requested by any EPA or DNREC inspector. No CRT exporter may be held liable for the inability to produce a notification or Acknowledgement for inspection under this section if the CRT exporter can demonstrate that the inability to produce such copies are due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system for which the CRT exporter bears no responsibility.

(x) CRT exporters must file with EPA, with a copy sent to the DNREC Secretary, no later than March 1 of each year, an annual report summarizing the quantities (in kilograms), frequency of shipment, and

ultimate destination(s) (*i.e.,* the facility or facilities where the recycling occurs) of all used CRTs exported during the previous calendar year. Such reports must also include the following:

(A) The name, EPA ID number (if applicable), and mailing and site address of the exporter;

(B) The calendar year covered by the report;

(C) A certification signed by the CRT exporter that states:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(xi) ~~Annual reports must be submitted to the office specified in paragraph (a)(5)(ii) of this section. Exporters must keep copies of each annual report for a period of at least three years from the due date of the report.~~ Prior to December 31, 2018, annual reports must be sent to the following mailing address: Office of Land and Emergency Management, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, International Branch (Mail Code 2255A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460. Hand-delivered annual reports on used CRTs exported during 2016 should be sent to: Office of Land and Emergency Management, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, International Branch (Mail Code 2255A), Environmental Protection Agency, William Jefferson Clinton South Building, Room 6144, 1200 Pennsylvania Ave. NW, Washington, DC 20004. Subsequently, annual reports must be submitted to the office listed using the allowable methods specified in paragraph (a)(5)(ii) of this section. Exporters must keep copies of each annual report for a period of at least three years from the due date of the report. Exporters may satisfy this recordkeeping requirement by retaining electronically submitted annual reports in the CRT exporter's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that a copy is readily available for viewing and production if requested by any EPA or DNREC inspector. No CRT exporter may be held liable for the inability to produce an annual report for inspection under this section if the CRT exporter can demonstrate that the inability to produce the annual report is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system for which the CRT exporter bears no responsibility.

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Appendix I - Representative Sampling Methods

The methods and equipment used for sampling waste materials will vary with the form and consistency of the waste materials to be sampled. Samples collected using the sampling protocols listed below, for sampling waste with properties similar to the indicated materials, will be considered by the Department to be representative of the waste.

Extremely viscous liquid - ASTM Standard D140-70 Crushed or powdered material - ASTM Standard D346-75 Soil or rock-like material - ASTM Standard ~~D420-89~~ D420-69 Soil-like material - ASTM Standard D1452-65

Fly Ash-like material - ASTM Standard D2234-76 [ASTM Standards are available from ASTM, 1916 Race St., Philadelphia, PA 19103]

Containerized liquid wastes - "COLIWASA".

Liquid waste in pits, ponds, lagoons, and similar reservoirs - "Pond Sampler".

The manual also contains additional information on application of these protocols.

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**Section 262.1 Terms used in this part.**

As used in this part:

**"Condition for exemption"** means any requirement in §§262.14, 262.15, 262.16, 262.17, 262.70, or Subpart L of this part that states an event, action, or standard that must occur or be met in order to obtain an exemption from any applicable requirement in Parts 124, 264 through 268, and 122 of these regulations, or from any requirement for notification under 7 **Del.C.** §6304(a).

**"Independent requirement"** means a requirement of Part 262 that states an event, action, or standard that must occur or be met; and that applies without relation to, or irrespective of, the purpose of obtaining a conditional exemption from storage facility permit, interim status, and operating requirements under §§262.14, 262.15, 262.16, 262.17, or Subpart L of this part.

**Section 262.10 Purpose, scope, and applicability.**

~~(a) These regulations establish standards for generators of hazardous waste.~~
~~(b) 261.5(c) and (d) must be used to determine the applicability of provisions of this part that are dependent on calculations of the quantity of hazardous waste generated per month.~~
~~(c)A generator who treats, stores, or disposes of hazardous waste on site must only comply with the following sections of this part with respect to that waste: §262.11 for determining whether or not he has a hazardous waste, §262.12 for obtaining an EPA identification number, §262.34 for accumulation of hazardous waste, §262.40(c) and (d) for recordkeeping, §262.43 for additional reporting and if applicable, §262.70 for farmers.~~
~~(d) Any person who exports or imports wastes that are considered hazardous under U.S. national procedures to or from the countries listed in §262.58(a)(1) for recovery must comply with Subpart H of this part. A waste is considered hazardous under U.S. national procedures if the waste meets the definition of hazardous waste in §261.3 and is subject to either the RCRA manifesting requirements at 40 CFR part 262, subpart B, the universal waste management standards of part 273, or the export requirements in the spent lead-acid battery management standards of part 266, subpart G.~~

(a) The regulations in this part establish standards for generators of hazardous waste as defined in §260.10 of these regulations.

(1) A person who generates a hazardous waste as defined by Part 261 of these regulations is subject to all the applicable independent requirements in the subparts and sections listed below:

(i) *Independent requirements of a very small quantity generator.*

(A) Section 262.11(a) through (d) Hazardous waste determination and recordkeeping; and

(B) Section 262.13 Generator category determination. (ii) *Independent requirements of a small quantity generator.*

(A) Section 262.11 Hazardous waste determination and recordkeeping;
(B) Section 262.13 Generator category determination;
(C)Section 262.18 EPA identification numbers and re-notification for small quantity generators and large quantity generators;
(D)Part 262 Subpart B—Manifest requirements applicable to small and large quantity generators;
(E) Part 262 Subpart C—Pre-transport requirements applicable to small and large quantity generators;
(F)Section 262.40 Recordkeeping;
(G)Section 262.44 Recordkeeping for small quantity generators; and
(H)Part 262 Subpart H—Transboundary movements of hazardous waste for recovery or disposal.

(iii) *Independent requirements of a large quantity generator.*

(A) Section 262.11 Hazardous waste determination and recordkeeping; (B) Section 262.13 Generator category determination;
(C)Section 262.18 EPA identification numbers and re-notification for small quantity generators and large quantity generators;

(D)Part 262 Subpart B—Manifest requirements applicable to small and large quantity generators;

(E) Part 262 Subpart C—Pre-transport requirements applicable to small and large quantity generators;

(F)Part 262 Subpart D—Recordkeeping and reporting applicable to small and large quantity generators, except §262.44; and

(G)Part 262 Subpart H—Transboundary movements of hazardous waste for recovery or disposal.

(2) A generator that accumulates hazardous waste on site is a person that stores hazardous waste; such generator is subject to the applicable requirements of Parts 124, 264 through 266, and 122 of these regulations 7 **Del.C**. §6304(a), unless it is one of the following:

(i) A very small quantity generator that meets the conditions for exemption in §262.14; (ii) A small quantity generator that meets the conditions for exemption in §§262.15 and 262.16; or

(iii) A large quantity generator that meets the conditions for exemption in §§262.15 and 262.17.

(3) A generator shall not transport, offer its hazardous waste for transport, or otherwise cause its hazardous waste to be sent to a facility that is not a designated facility, as defined in §260.10 of these regulations, or not otherwise authorized to receive the generator's hazardous waste.

(b) *Determining generator category.* A generator must use §262.13 to determine which provisions of this part are applicable to the generator based on the quantity of hazardous waste generated per calendar month.

(c)[Reserved]

(d) Any person who exports or imports hazardous waste must comply with §262.12 and Subpart H of this Part.

(e) Any person who imports hazardous waste into the United States must comply with the standards applicable to generators established in this part.

(f) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of §262.70 is not required to comply with other standards in this part or Parts 122, 264, 265, or 268 with respect to such pesticides.

(g) ~~A person who generates a hazardous waste as defined by Part 261 is subject to the compliance requirements and penalties prescribed in 7 **Del.C**., §6309 if he does not comply with the requirements of this part.~~ Penalties

(1) A generator's violation of an independent requirement is subject to penalty and injunctive relief under 7 **Del.C.** §6309.

(2) A generator's noncompliance with a condition for exemption in this part is not subject to penalty or injunctive relief under 7 **Del.C.** §6309 as a violation of a Part 262 condition for exemption. Noncompliance by any generator with an applicable condition for exemption from storage permit and operations requirements means that the facility is a storage facility operating without an exemption from the permit, interim status, and operations requirements in Parts 124, 264 through 266, and 122 of these regulations, and the notification requirements of 7 Del. C. §6304(a). Without an exemption, any violations of such storage requirements are subject to penalty and injunctive relief under 7 **Del.C.** §6309.

(h) An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility must comply with the generator standards established in this part. (Note: The provisions of §262.34 are applicable to the on site accumulation of hazardous waste by generators. Therefore, the provisions of §262.34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.)

(i) Persons responding to an explosives or munitions emergency in accordance with §264.1(g)(8)(i)(D) or (iv) or §265.1(c)(11)(i)(D) or (iv), and §122.1(c)(3)(i)(D) or (iii) are not required to comply with the standards of this part.

[**Note**: A generator who treats, stores, or disposes of hazardous waste on-site must comply with the applicable standards and permit requirements set forth in Parts 264, 265, 266, 268, and 122.]

(j)[Reserved]

(k) [Reserved]

(l) [Reserved]

(m)All reverse distributors (as defined in §266.500) are subject to Part 266 Subpart P for the management of hazardous waste pharmaceuticals in lieu of this part.

(n) Each healthcare facility (as defined in §266.500) must determine whether it is subject to Part 266 Subpart P for the management of hazardous waste pharmaceuticals, based on the total hazardous waste it generates per calendar month (including both hazardous waste pharmaceuticals and non-pharmaceutical hazardous waste). A healthcare facility that generates more than 100 kilograms (≈220 pounds) of hazardous waste per calendar month, or more than 1 kilogram (≈2.2 pounds) of acute hazardous waste per calendar month, or more than 100 kilograms (≈220 pounds) per calendar month of any residue or contaminated soil, water, or other debris, resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in §261.31 or §261.33(e), is subject to Part 266 Subpart P for the management of hazardous waste pharmaceuticals in lieu of this part. A healthcare facility that is a very small quantity generator when counting all of its hazardous waste, including both its hazardous waste pharmaceuticals and its non-pharmaceutical hazardous waste, remains subject to §262.14 and is not subject to Part 266 Subpart P, except for §§266.505 and 266.507 and the optional provisions of §266.504.

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**Section 262.11 Hazardous waste determination.**

A person who generates a solid waste, as defined in §261.2, must ~~determine if~~ make an accurate determination as to whether that waste is a hazardous waste ~~using the following method:~~ in order to ensure wastes are properly managed according to these regulations. A hazardous waste determination is made by using the following steps:

~~(a) He should first determine if the waste is excluded from regulation under §261.4.~~

~~(b) He must then determine if the waste is listed as a hazardous waste in Subpart D of Part 261.~~

~~**Note**: Even if the waste is listed, the generator still has an opportunity under Part 260, Subpart C to demonstrate to the Secretary that the waste from his particular facility or operation is not a hazardous waste.~~

~~(c)For the purpose of compliance with Part 268, or if the waste is not listed in Subpart D of Part 261, the generator must then determine whether the waste is identified in Subpart C of Part 261 by either:~~

~~(1) Testing the waste according to the methods set forth in Subpart C of Part 261, or according to an equivalent method approved by the Secretary under Part 260, Subpart C, or;~~

~~(2) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.~~

~~(d) If the waste is determined to be hazardous, the generator must refer to Parts 261, 264, 265, 266, 268 and 273 of these regulations for possible exclusions or restrictions pertaining to management of the specific waste.~~

(a) The hazardous waste determination for each solid waste must be made at the point of waste generation, before any dilution, mixing, or other alteration of the waste occurs, and at any time in the course of its management that it has, or may have, changed its properties as a result of exposure to the environment or other factors that may change the properties of the waste such that the hazardous waste classification of the waste may change.

(b) A person must determine whether the solid waste is excluded from regulation under §261.4 of these regulations.

(c)If the waste is not excluded under §261.4 of these regulations, the person must then use knowledge of the waste to determine whether the waste meets any of the listing descriptions under Part 261, Subpart D of these regulations. Acceptable knowledge that may be used in making an accurate determination as to whether the waste is listed may include waste origin, composition, the process producing the waste, feedstock, and other reliable and relevant information. If the waste is listed, the person may file a delisting petition under §§260.20 and 260.22 of these regulations to demonstrate to the Secretary that the waste from this particular site or operation is not a hazardous waste.

(d) The person then must also determine whether the waste exhibits one or more hazardous characteristics as identified in Part 261, Subpart C of these regulations by following the procedures in paragraph (d)(1) or (2) of this section, or a combination of both.

(1) The person must apply knowledge of the hazard characteristic of the waste in light of the materials or the processes used to generate the waste. Acceptable knowledge may include process knowledge (*e.g.,* information about chemical feedstocks and other inputs to the production process); knowledge of products, by-products, and intermediates produced by the manufacturing process; chemical or physical characterization of wastes; information on the chemical and physical properties of the chemicals used or produced by the process or otherwise contained in the waste; testing that illustrates the properties of the waste; or other reliable and relevant information about the properties of the waste or its constituents. A test other than a test method set forth in Part 261, Subpart C of these regulations, may be used as part of a person's knowledge to determine whether a solid waste exhibits a characteristic of hazardous waste. However, such tests do not, by themselves, provide definitive results. Persons testing their waste must obtain a representative sample of the waste for the testing, as defined at §260.10 of these regulations.

(2) When available knowledge is inadequate to make an accurate determination, the person must test the waste according to the applicable methods set forth in Part 261, Subpart C of these regulations and in accordance with the following:

(i) Persons testing their waste must obtain a representative sample of the waste for the testing, as defined at §260.10 of these regulations.

(ii) Where a test method is specified in Part 261, Subpart C of these regulations, the results of the regulatory test, when properly performed, are definitive for determining the regulatory status of the waste.

(e) If the waste is determined to be hazardous, the generator must refer to Parts 261, 264, 265, 266, 268, and 273 of these regulations for other possible exclusions or restrictions pertaining to management of the specific waste.

(f)*Recordkeeping for small and large quantity generators.* A small or large quantity generator must maintain records supporting its hazardous waste determinations, including records that identify whether a solid waste is a hazardous waste, as defined by §261.3 of these regulations. Records must be maintained for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal. These records must comprise the generator's knowledge of the waste and support the generator's determination, as described in paragraphs (c) and (d) of this section. The records must include, but are not limited to, the following types of information: The results of any tests, sampling, waste analyses, or other determinations made in accordance with this section; records documenting the tests, sampling, and analytical methods used to demonstrate the validity and relevance of such tests; records consulted in order to determine the process by which the waste was generated, the composition of the waste, and the properties of the waste; and records which explain the knowledge basis for the generator's determination, as described in paragraph (d)(1) of this section. The periods of record retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Secretary.

(g) *Identifying hazardous waste numbers for small and large quantity generators.* If the waste is determined to be hazardous, small quantity generators and large quantity generators must identify all applicable EPA hazardous waste numbers (EPA hazardous waste codes) in Subparts C and D of Part 261 of these regulations. Prior to shipping the waste off site, the generator also must mark its containers with all applicable EPA hazardous waste numbers (EPA hazardous waste codes) according to §262.32 of these regulations.

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**Section 262.12 ~~EPA Identification Numbers.~~ [Reserved]**

~~(a) A generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Secretary.~~

~~(b) A generator who has not received an EPA identification number may obtain one by applying to the Secretary using "RCRA Subtitle C Site Identification Form", EPA Form 8700-12. Upon receiving the request, the Secretary will assign an EPA identification number to the generator.~~

~~(c)A generator must not offer his hazardous waste to transporters that have not received an EPA identification number and a Delaware hazardous waste transporter permit or to treatment, storage, or~~

~~disposal facilities that have not received an EPA identification number.~~

~~(d) A generator must submit a subsequent "RCRA Subtitle C Site Identification Form", EPA Form 8700-12 whenever there is a change in name, mailing address, contact person, contact address, telephone number, ownership, type of regulated waste activity (for example, generator status), or changes in the description of regulated wastes managed or permanently ceases the regulated waste activity. This subsequent notification must be submitted to the DNREC Secretary no less than 10 days prior to implementation of the change(s).~~

**Section 262.13 Generator category determination.**

A generator must determine its generator category. A generator's category is based on the amount of hazardous waste generated each month and may change from month to month. This section sets forth procedures to determine whether a generator is a very small quantity generator, a small quantity generator, or a large quantity generator for a particular month, as defined in §260.10 of these regulations.

(a) *Generators of either acute hazardous waste or non-acute hazardous waste.* A generator who either generates acute hazardous waste or non-acute hazardous waste in a calendar month shall determine its generator category for that month by doing the following:

(1) Counting the total amount of hazardous waste generated in the calendar month;

(2) Subtracting from the total any amounts of waste exempt from counting as described in paragraphs (c) and (d) of this section; and

(3) Determining the resulting generator category for the hazardous waste generated using Table 1 of this section.

(b) *Generators of both acute and non-acute hazardous wastes.* A generator who generates both acute hazardous waste and non-acute hazardous waste in the same calendar month shall determine its generator category for that month by doing the following:

(1) Counting separately the total amount of acute hazardous waste and the total amount of non-acute hazardous waste generated in the calendar month;

(2) Subtracting from each total any amounts of waste exempt from counting as described in paragraphs (c) and (d) of this section;

(3) Determining separately the resulting generator categories for the quantities of acute and non-acute hazardous waste generated using Table 1 of this section; and

(4) Comparing the resulting generator categories from paragraph (b)(3) of this section and applying the more stringent generator category to the accumulation and management of both non-acute hazardous waste and acute hazardous waste generated for that month.

**Table 1 to §262.13—Generator Categories Based on Quantity of Waste Generated in a Calendar Month**

| **Quantity of acute hazardous waste generated in a calendar month** | **Quantity of non-acute hazardous waste generated in a calendar month** | **Quantity of residues from a cleanup of acute hazardous waste generated in a calendar month** | **Generator category** |
|---|---|---|---|
| **[~~≥ 1 kilogram~~ > 1 kilogram]** | Any amount | Any amount | Large quantity generator. |
| Any amount | ≥ 1,000 kilograms | Any amount | Large quantity generator. |
| Any amount | Any amount | > 100 kilograms | Large quantity generator. |
| **[~~< 1 kilogram~~ ≤ 1 kilogram]** | > 100 kilograms and < 1,000 kilograms | ≤ 100 kilograms | Small quantity generator. |
| **[~~< 1 kilogram~~ ≤ 1 kilogram]** | ≤ 100 kilograms | ≤ 100 kilograms | Very small quantity generator. |

(c)When making the monthly quantity-based determinations required by this part, the generator must include all hazardous waste that it generates, except hazardous waste that:

(1) Is exempt from regulation under §§261.4(c) through (f), 261.6(a)(3), 261.7(a)(1), or 261.8 of these regulations;

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

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

(4) Is used oil managed under the requirements of §261.6(a)(4) and Part 279 of these regulations;

(5) Is spent lead-acid batteries managed under the requirements of Part 266 Subpart G of these regulations;

(6) Is universal waste managed under §261.9 and Part 273 of these regulations; (7) [Reserved]

(8) Is managed as part of an episodic event in compliance with the conditions of Subpart L of this part; or

(9) Is a hazardous waste pharmaceutical, as defined in §266.500, that is subject to or managed in accordance with Part 266 Subpart P or is a hazardous waste pharmaceutical that is also a Drug Enforcement Administration controlled substance and is conditionally exempt under §266.506.

(d) In determining the quantity of hazardous waste generated in a calendar month, a generator need not include:

(1) Hazardous waste when it is removed from on-site accumulation, so long as the hazardous waste was previously counted once;

(2) Hazardous waste generated by on-site treatment (including reclamation) of the generator's hazardous waste, so long as the hazardous waste that is treated was previously counted once; and

(3) Hazardous waste spent materials that are generated, reclaimed, and subsequently reused on site, so long as such spent materials have been previously counted once.

(e) Based on the generator category as determined under this section, the generator must meet the applicable independent requirements listed in §262.10. A generator's category also determines which of the provisions of §§262.14, 262.15, 262.16 or 262.17 must be met to obtain an exemption from the storage facility permit, interim status, and operating requirements when accumulating hazardous waste.

(f) *Mixing hazardous wastes with solid wastes*

(1) *Very small quantity generator wastes.*

(i) Hazardous wastes generated by a very small quantity generator may be mixed with solid wastes. Very small quantity generators may mix a portion or all of its hazardous waste with solid waste and remain subject to §262.14 even though the resultant mixture exceeds the quantity limits identified in the definition of very small quantity generator at §260.10 of these regulations, unless the mixture exhibits one or more of the characteristics of hazardous waste identified in Part 261 Subpart C of these regulations.

(ii) If the resulting mixture exhibits a characteristic of hazardous waste, this resultant mixture is a newly-generated hazardous waste. The very small quantity generator must count both the resultant mixture amount plus the other hazardous waste generated in the calendar month to determine whether the total quantity exceeds the very small quantity generator calendar month quantity limits identified in the definition of generator categories found in §260.10. If so, to remain exempt from the permitting, interim status, and operating standards, the very small quantity generator must meet the conditions for exemption applicable to either a small quantity generator or a large quantity generator. The very small quantity generator must also comply with the applicable independent requirements for either a small quantity generator or a large quantity generator.

(iii) If a very small quantity generator's wastes are mixed with used oil, the mixture is subject to Parts 260 through 266, 268, 122, and 124 of these regulations.

(2) *Small quantity generator and large quantity generator wastes.*

(i) Hazardous wastes generated by a small quantity generator or large quantity generator may be mixed with solid waste. These mixtures are subject to the following: the mixture rule in §§261.3(a)(2)(iv), (b)(2) and (3), and (g)(2)(i); the prohibition of dilution rule at §268.3(a); the land disposal restriction requirements of §268.40 if a characteristic hazardous waste is mixed with a solid waste so that it no longer exhibits the hazardous characteristic; and the hazardous waste determination requirement at §262.11.

If the resulting mixture is found to be a hazardous waste, this resultant mixture is a newly-generated hazardous waste. A small quantity generator must count both the resultant mixture amount plus the other hazardous waste generated in the calendar month to determine whether the total quantity exceeds the small quantity generator calendar monthly quantity limits identified in the definition of generator categories found in §260.10 of these regulations. If so, to remain exempt from the permitting, interim status, and operating standards, the small quantity generator must meet the conditions for exemption applicable to a large quantity generator. The small quantity generator must also comply with the applicable independent requirements for a large quantity generator.

**Section 262.14 Conditions for exemption for a very small quantity generator.**

(a) Provided that the very small quantity generator meets all the conditions for exemption listed in this section, hazardous waste generated by the very small quantity generator is not subject to the requirements of Parts 124, 262 (except §§262.10 through 262.14) through 268, and 122 of these regulations, and the notification requirements of 7 **Del.C.** §6304(a) and the very small quantity generator may accumulate hazardous waste in containers on site without complying with such requirements. The conditions for exemption are as follows:

(1) In a calendar month the very small quantity generator generates less than or equal to the amounts specified in the definition of "very small quantity generator" in §260.10 of these regulations;

(2) The very small quantity generator complies with §262.11(a) through (d); (3) *Container requirements.*

(A) The very small quantity generator marks its container(s) of hazardous waste with the words "Hazardous Waste" or the word "Waste" and a description of the contents (e.g., "Waste Solvent" or "Waste Acetone").

(B) A container holding hazardous waste must always be closed during accumulation, except when it is necessary to add or remove waste.

(C)A container holding hazardous waste must not be opened, handled, or accumulated in a manner that may rupture the container or cause it to leak.

(D)If a container holding hazardous waste is not in good condition, or if it begins to leak, the very small quantity generator must immediately transfer the hazardous waste from this container to a container that is in good condition, or immediately manage the waste in some other way that complies with the conditions for exemption of this section.

(E) The very small quantity generator must use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be accumulated, so that the ability of the container to contain the waste is not impaired.

(4) If the very small quantity generator accumulates at any time equal to or greater than 1 kilogram (≈2.2 pounds) of acute hazardous waste or 100 kilograms (≈220 pounds) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in §§261.31 or 261.33(e) of these regulations, all quantities of that acute hazardous waste are subject to the following additional conditions for exemption:

(i) Such waste is held on site for no more than 90 days beginning on the date when the accumulated wastes exceed the amounts provided above; **[and]**

(ii) The conditions for exemption in §262.17(a) through **[~~(g); and~~ (g).]**

~~[(iii) An annual report is submitted in accordance with §262.41.]~~

(5) If the very small quantity generator accumulates at any time 1,000 kilograms (≈2,200 pounds) or greater of non-acute hazardous waste, all quantities of that hazardous waste are subject to the following additional conditions for exemption:

(i) Such waste is held on site for no more than 180 days, or 270 days, if applicable, beginning on the date when the accumulated waste exceed the amounts provided above;

(ii) The quantity of waste accumulated on site never exceeds 6,000 kilograms (≈13,200 pounds); and

(iii) The conditions for exemption in §262.16(b)(2) through (f).

(6) A very small quantity generator that accumulates hazardous waste in amounts less than the limits in paragraphs (a)(4) and (5) of this section must either treat or dispose of its hazardous waste in an on-site facility or ensure delivery, by maintaining for a period of three (3) years appropriate documentation (i.e., tolling agreement, letter of acceptance, manifest, or other documentation deemed acceptable to the Secretary) demonstrating delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under Part 122 of these regulations;

(ii) In interim status under Parts 265 and 122 of these regulations;

(iii) Authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR Part 271;

(iv)[Reserved]

(v) [Reserved]

(vi)A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or (B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation;

(vii) For universal waste managed under Part 273 of these regulations, a universal waste handler or destination facility subject to the requirements of Part 273 of these regulations; (viii) A large quantity generator under the control of the same person as the very small quantity generator, provided the following conditions are met:

(A) The very small quantity generator and the large quantity generator are under the control of the same person as defined in §260.10 of these regulations. "Control," for the purposes of this section, means the power to direct the policies of the generator, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person as defined in §260.10 of these regulations shall not be deemed to "control" such generators.

(B) The very small quantity generator marks its container(s) of hazardous waste with:

(1) The words "Hazardous Waste;" and

(2) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR Part 172 Subpart E (labeling) or Subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704);

(ix)A reverse distributor (as defined in §266.500), if the hazardous waste pharmaceutical is a potentially creditable hazardous waste pharmaceutical generated by a healthcare facility (as defined in §266.500).

(x) A healthcare facility (as defined in §266.500) that meets the conditions in §§266.502(l) and 266.503(b), as applicable, to accept non-creditable hazardous waste pharmaceuticals and potentially creditable hazardous waste pharmaceuticals from an off-

site healthcare facility that is a very small quantity generator.

(xi) For airbag waste, an airbag waste collection facility or a designated facility subject to the requirements of §261.4(j) of these regulations.

(b) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

(c)A very small quantity generator experiencing an episodic event may generate and accumulate hazardous waste in accordance with Subpart L of this part in lieu of §§262.15, 262.16, and 262.17.

**Section 262.15 Satellite accumulation area regulations for small and large quantity generators.**

(a) A generator may accumulate as much as 55 gallons of non-acute hazardous waste and/or either one quart of liquid acute hazardous waste listed in §261.31 or §261.33(e) of these regulations or 1 kilogram (≈2.2 pounds) of solid acute hazardous waste listed in §261.31 or §261.33(e) of these regulations in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator(s) of the process generating the waste, without a permit or interim status and without complying with the requirements of Parts 124, 264 through **[~~267~~ 266]**, and 122 of these regulations, provided that all of the conditions for exemption in this section are met. A generator may comply with the conditions for exemption in this section instead of complying with the conditions for exemption in §262.16(b) or §262.17(a), except as required in §262.15(a)(7) and (8). The conditions for exemption for satellite accumulation are:

(1) If a container holding hazardous waste is not in good condition, or if it begins to leak, the generator must immediately transfer the hazardous waste from this container to a container that is in good condition and does not leak, or immediately transfer and manage the waste in a central accumulation area operated in compliance with §262.16(b) or §262.17(a).

(2) The generator must use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be accumulated, so that the ability of the container to contain the waste is not impaired.

(3) Special standards for incompatible wastes.

(i) Incompatible wastes, or incompatible wastes and materials, (see Appendix V of Part 265 for examples) must not be placed in the same container, unless §265.17(b) of these regulations is complied with.

(ii) Hazardous waste must not be placed in an unwashed container that previously held an incompatible waste or material (see Appendix V of Part 265 for examples), unless §265.17(b) of these regulations is complied with.

(iii) A container holding a hazardous waste that is incompatible with any waste or other materials accumulated nearby in other containers must be separated from the other materials or protected from them by any practical means.

(4) A container holding hazardous waste must be closed at all times during accumulation, except: (i) When adding, removing, or consolidating waste; or

(ii) When temporary venting of a container is necessary

(A) For the proper operation of equipment, or

(B) To prevent dangerous situations, such as build-up of extreme pressure.

(5) A generator must mark or label its container with the following:

(i) The words "Hazardous Waste"; and

(ii) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR Part 172 Subpart E (labeling) or Subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704).

(6) A generator who accumulates either acute hazardous waste listed in §261.31 or §261.33(e) of these regulations or non-acute hazardous waste in excess of the amounts listed in paragraph (a) of this section at or near any point of generation must do the following:

(i) Immediately comply with the applicable central accumulation area regulations in §262.16(b) or §262.17(a), or

(ii) Immediately remove the excess from the satellite accumulation area to either: (A) A central accumulation area operated in accordance with the applicable regulations in §262.16(b) or §262.17(a);

(B) An on-site interim status or permitted treatment, storage, or disposal facility, or

(C)An off-site designated facility.

[Note: For the purposes of this paragraph, "immediately" means within the same shift in which the 55 gallon limit was exceeded.]

(7) All satellite accumulation areas operated by a small quantity generator must meet the preparedness and prevention regulations of §262.16(b)(8) and emergency procedures at §262.16(b)(9).

(8) All satellite accumulation areas operated by a large quantity generator must meet the Preparedness, Prevention and Emergency Procedures in Subpart M of this part.

(b) [Reserved]

**Section 262.16 Conditions for exemption for a small quantity generator that accumulates hazardous waste.**

A small quantity generator may accumulate hazardous waste on site without a permit or interim status, and without complying with the requirements of parts 124, 264 through 266, and 122 of these regulations, or the notification requirements of 7 **Del.C.** §6304(a), provided that all the conditions for exemption listed in this section are met:

(a) *Generation.* The generator generates in a calendar month no more than the amounts specified in the definition of "small quantity generator" in §260.10 of these regulations.

(b) *Accumulation.* The generator accumulates hazardous waste on site for no more than 180 days, unless in compliance with the conditions for exemption for longer accumulation in paragraphs (d) and (e) of this section. The following accumulation conditions also apply:

(1) *Accumulation limit.* The quantity of hazardous waste accumulated on site never exceeds 6,000 kilograms (≈13,200 pounds);

(2) *Accumulation of hazardous waste in containers*

(i) *Condition of containers.* If a container holding hazardous waste is not in good condition, or if it begins to leak, the small quantity generator must immediately transfer the hazardous waste from this container to a container that is in good condition, or immediately manage the waste in some other way that complies with the conditions for exemption of this section.

(ii) *Compatibility of waste with container.* The small quantity generator must use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be accumulated, so that the ability of the container to contain the waste is not impaired.

(iii) *Management of containers.*

(A) A container holding hazardous waste must always be closed during accumulation, except when it is necessary to add or remove waste.

(B) A container holding hazardous waste must not be opened, handled, or accumulated in a manner that may rupture the container or cause it to leak.

(iv)*Containment*. In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment is required. Spilled or leaked waste and accumulated precipitation must be removed immediately from the secondary containment system. Spilled or leaked waste and accumulated precipitation is subject to the hazardous waste determination requirements in §262.11. Secondary containment must be provided by one of the following methods:

(A) Accumulating containers inside a building with a base that underlies the

containers and with walls or other curbing, all of which are free of cracks or gaps and is sufficiently impervious in order to contain leaks and spills until the collected material is detected and removed;

(B) Accumulating containers in a secondary containment system designed and operated as follows:

(1) A base that underlies the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed;

(2) The base must be sloped or the containment system must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;

(3) The containment system must have sufficient capacity to contain 10% of the total volume of all containers or the volume of the largest container, whichever is greater. Containers that do not contain free liquids need not be considered in this determination;

(4) Run-on into the containment system must be prevented unless the collection system has sufficient excess capacity in addition to that required in paragraph (b)(2)(iv)(B)(3) of this section to contain any run-on which might enter the system.

(C)An equivalent method as approved by the Secretary.

(v)*Inspections.* At least weekly, the small quantity generator must inspect central accumulation areas. The small quantity generator must look for leaking containers and for deterioration of containers caused by corrosion or other factors. See paragraph (b)(2)(i) of this section for remedial action required if deterioration or leaks are detected. A written record of the inspections and remedial actions taken, if necessary, must be maintained onsite for a minimum of 3 years.

(vi)*Special conditions for the accumulation of ignitable or reactive wastes*. The small quantity generator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction including but not limited to the following: Open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (*e.g.,* from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the small quantity generator must confine smoking and open flame to specially designated locations. "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(vii) *Special conditions for accumulation of incompatible wastes.*

(A) Incompatible wastes, or incompatible wastes and materials, (see Appendix V of Part 265 for examples) must not be placed in the same container, unless §265.17(b) of these regulations is complied with.

(B) Hazardous waste must not be placed in an unwashed container that previously held an incompatible waste or material (see Appendix V of Part 265 for examples), unless §265.17(b) of these regulations is complied with.

(C)A container accumulating hazardous waste that is incompatible with any waste or other materials accumulated or stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

(3) *Accumulation of hazardous waste in tanks.*

(i) *Hazardous waste tanks having a capacity greater than or equal to 1,000 gallons*. The small quantity generator must comply with § 265.112(f) and Part 265 Subpart J, with the exception of §265.191, §265.197, §265.200, and §265.202.

(ii) *Hazardous waste tanks having a capacity less than 1,000 gallons.*

(A) A small quantity generator of hazardous waste must comply with the following general operating conditions:

(1) Treatment or accumulation of hazardous waste in tanks must comply with §265.17(b) of these regulations.

(2) Hazardous wastes or treatment reagents must not be placed in a tank if they could cause the tank or its inner liner to rupture, leak, corrode, or otherwise fail before the end of its intended life.

(3) Uncovered tanks must be operated to ensure at least 60 centimeters (2 feet) of freeboard, unless the tank is equipped with a containment structure (*e.g.,* dike or trench), a drainage control system, or a diversion structure (*e.g.,* standby tank) with a capacity that equals or exceeds the volume of the top 60 centimeters (2 feet) of the tank.

(4) Where hazardous waste is continuously fed into a tank, the tank must be equipped with a means to stop this inflow (*e.g.,* waste feed cutoff system or by-pass system to a stand-by tank).

(B) Except as noted in paragraph **[~~(b)(3)(iv)~~ (b)(3)(ii)(C)]** of this section, a small quantity generator that accumulates hazardous waste in tanks must inspect and maintain written documentation of the inspections for a minimum of 3 years, where present:

(1) Discharge control equipment (*e.g.,* waste feed cutoff systems, by- pass systems, and drainage systems) at least once each operating day, to ensure that it is in good working order;

(2) Data gathered from monitoring equipment (*e.g.,* pressure and temperature gauges) at least once each operating day to ensure that the tank is being operated according to its design;

(3) The level of waste in the tank at least once each operating day to ensure compliance with paragraph **[~~(b)(3)(ii)(C)~~ (b)(3)(ii)(A)(3)]** of this section;

(4) The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and

(5) The construction materials of, and the area immediately surrounding, discharge confinement structures (*e.g.,* dikes) at least weekly to detect erosion or obvious signs of leakage (*e.g.,* wet spots or dead vegetation). The generator must remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action must be taken immediately.

(C)A small quantity generator accumulating hazardous waste in tanks or tank systems that have full secondary containment and that either use leak detection equipment to alert personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly, where applicable, the areas identified in paragraphs (b)(3)(ii)(B)(*1*) through (*5*) of this section. Use of the alternate inspection schedule must be documented in the generator's operating record. This documentation must include a description of the established workplace practices at the generator.

(D)A small quantity generator accumulating hazardous waste in tanks must, upon closure of the facility, remove all hazardous waste from tanks, discharge control equipment, and discharge confinement structures. At closure, as throughout the operating period, unless the small quantity generator can demonstrate, in accordance with §261.3(c) or (d) of these regulations, that any solid waste removed from its tank is not a hazardous waste, then it must manage such waste in accordance with all applicable provisions of Parts 262, 263, 265 and 268 of these regulations.

(E) A small quantity generator must comply with the following special

conditions for accumulation of ignitable or reactive waste:

(1) Ignitable or reactive waste must not be placed in a tank, unless: (*a*) The waste is treated, rendered, or mixed before or immediately after placement in a tank so that the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under §261.21 or §261.23 of these regulations and §265.17(b) of these regulations is complied with; or

(b) The waste is accumulated or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(c)The tank is used solely for emergencies.

(2) A small quantity generator which treats or accumulates ignitable or reactive waste in covered tanks must comply with the buffer zone requirements for tanks contained in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code" (1977 or 1981) (incorporated by reference, see §260.11).

(*3*) A small quantity generator must comply with the following special conditions for incompatible wastes:

(a) Incompatible wastes, or incompatible wastes and materials, (see Part 265 Appendix V for examples) must not be placed in the same tank, unless §265.17(b) of these regulations is complied with.

(b) Hazardous waste must not be placed in an unwashed tank that previously held an incompatible waste or material, unless §265.17(b) of these regulations is complied with.

(4) *Accumulation of hazardous waste on drip pads.* If the waste is placed on drip pads, the small quantity generator must comply with the following:

(i) Subpart W of Part 265 of these regulations (except §265.445 (c));

(ii) The small quantity generator must remove all wastes from the drip pad at least once every 90 days. Any hazardous wastes that are removed from the drip pad at least once every 90 days are then subject to the 180-day accumulation limit in paragraph (b) of this section and §262.15 if hazardous wastes are being managed in satellite accumulation areas prior to being moved to the central accumulation area; and

(iii) The small quantity generator must maintain on site at the facility the following records readily available for inspection:

(A) A written description of procedures that are followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(B) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

(5) *Accumulation of hazardous waste in containment buildings.* If the waste is placed in containment buildings, the small quantity generator must comply with **[of]** Part 265 Subpart DD of these regulations. The generator must label its containment buildings with the words "Hazardous Waste" in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, or other persons on site and also in a conspicuous place provide an indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR Part 172 Subpart E (labeling) or Subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704).The generator

must also maintain:

(i) The professional engineer certification that the building complies with the design standards specified in §265.1101 of these regulations. This certification must be in the generator's files prior to operation of the unit; and

(ii) The following records by use of inventory logs, monitoring equipment, or any other effective means:

(A) A written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that the generator is consistent with maintaining the 90 day limit, and documentation that the procedures are complied with; or

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

(C)Inventory logs or records with the above information must be maintained on site and readily available for inspection.

(6) *Labeling and marking of containers and tanks.*

(i) *Containers.* A small quantity generator must mark or label its containers with the following:

(A) The words "Hazardous Waste";

(B) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR Part 172 Subpart E (labeling) or Subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704); and

(C)The date upon which each period of accumulation begins clearly visible for inspection on each container.

(ii) *Tanks.* A small quantity generator accumulating hazardous waste in tanks must do the following:

(A) Mark or label its tanks with the words "Hazardous Waste";

(B) Mark or label its tanks with an indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR Part 172 Subpart E (labeling) or Subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704);

(C)Use inventory logs, monitoring equipment, or other records to demonstrate that hazardous waste has been emptied within 180 days of first entering the tank if using a batch process, or in the case of a tank with a continuous flow process, demonstrate that estimated volumes of hazardous waste entering the tank daily exit the tank within 180 days of first entering; and

(D)Keep inventory logs or records with the above information on site and readily available for inspection. These records must be maintained for three (3) years.

(7) *Land disposal restrictions.* A small quantity generator must comply with all the applicable requirements under Part 268 of these regulations.

(8) *Preparedness and prevention*

(i) *Maintenance and operation of facility.* A small quantity generator must maintain and operate its facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

(ii) *Required equipment.* All areas where hazardous waste is either generated or accumulated must be equipped with the items in paragraphs (b)(8)(ii)(A) through (D) of

this section (*unless* none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below or the actual waste generation or accumulation area does not lend itself for safety reasons to have a particular kind of equipment specified below). A small quantity generator shall determine the most appropriate locations to locate equipment necessary to prepare for and respond to emergencies.

(A) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

(B) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

(C)Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and

(D)Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(iii) *Testing and maintenance of equipment.* All communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

(iv)*Access to communications or alarm system.*

(A) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access (*e.g.,* direct or unimpeded access) to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, *unless* such a device is not required under paragraph **[~~(a)(8)(ii)~~ (b)(8)(ii)]** of this section.

(B) In the event there is just one employee on the premises while the facility is operating, the employee must have immediate access (*e.g.,* direct or unimpeded access) to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, *unless* such a device is not required under paragraph **[~~(a)(8)(ii)~~ (b)(8)(ii)]** of this section.

(v)*Required aisle space.* The small quantity generator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

(vi)*Arrangements with local authorities.*

(A) The small quantity generator must attempt to make arrangements with the local fire department, police department, other emergency response teams, emergency response contractors, equipment suppliers, and local hospitals, taking into account the types and quantities of hazardous wastes handled at the facility. Alternatively, arrangements may be made with the Local Emergency Planning Committee, if it is determined to be the appropriate organization with which to make arrangements.

(1) A small quantity generator attempting to make arrangements with its local fire department must determine the potential need for the services of the local police department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals.

(2) As part of this coordination, the small quantity generator shall attempt to make arrangements, as necessary, to familiarize the above organizations with the layout of the facility, the properties of hazardous waste handled at the facility and associated hazards, places where

facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes as well as the types of injuries or illnesses that could result from fires, explosions, or releases at the facility.

(3) Where more than one police or fire department might respond to an emergency, the small quantity generator shall attempt to make arrangements designating primary emergency authority to a specific fire or police department, and arrangements with any others to provide support to the primary emergency authority.

(B) A small quantity generator shall maintain records documenting written arrangements with the local fire department as well as any other organization necessary to respond to an emergency. This documentation must include documentation in the operating record that either confirms such arrangements actively exist or, in cases where no arrangements exist, confirms that attempts to make such arrangements were made. These records must be kept for a period of at least 3 years since last being applicable.

(C)A facility possessing 24-hour response capabilities may seek a waiver from the authority having jurisdiction (AHJ) over the fire code within the facility's state or locality as far as needing to make arrangements with the local fire department as well as any other organization necessary to respond to an emergency, provided that the waiver is documented in the operating record.

(9) *Emergency procedures.* The small quantity generator complies with the following conditions for those areas of the generator facility where hazardous waste is generated and accumulated:

(i) At all times there must be at least one employee either on the premises or on call (*i.e.,* available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating and having the ability to commit resources to implement all emergency response measures specified in paragraph (b)(9)(iv) of this section. This employee is the emergency coordinator.

(ii) The small quantity generator must post the following information next to telephones or in areas directly involved in the generation and accumulation of hazardous waste:

(A) The name and emergency telephone number of the emergency coordinator; (B) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(C) The telephone number of the fire department, unless the facility has a direct alarm.

(iii) The small quantity generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(iv)The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows:

(A) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(B) In the event of a spill, the small quantity generator is responsible for containing the flow of hazardous waste to the extent possible, and as soon as is practicable, cleaning up the hazardous waste and any contaminated materials or soil. Such containment and cleanup can be conducted either by the small quantity generator or by a contractor on behalf of the small quantity generator;

(C) In the event of a fire, explosion, or other release that could threaten human health outside the facility or when the small quantity generator has knowledge that a spill has reached surface water, the small quantity generator must immediately notify the National Response Center (using their 24-hour toll free number 800-424-8802) and DNREC (using their 24-hour toll free number 800-662-8802). The report must include the following information:

(1) The name, address, and U.S. EPA identification number of the small quantity generator;
(2) Date, time, and type of incident (*e.g.,* spill or fire);
(3) Quantity and type of hazardous waste involved in the incident; (*4*) Extent of injuries, if any; and
(*5*) Estimated quantity and disposition of recovered materials, if any.

(c) *Transporting over 200 miles.* A small quantity generator who must transport its waste, or offer its waste for transportation, due to there being no other option available, over a distance of 200 miles or more for off-site treatment, storage or disposal may accumulate hazardous waste on site for 270 days or less without a permit or without having interim status provided that the generator complies with the conditions of paragraph (b) of this section.

(d) *Accumulation time limit extension.* A small quantity generator who accumulates hazardous waste for more than 180 days (or for more than 270 days if it must transport its waste, or offer its waste for transportation, over a distance of 200 miles or more) is subject to the requirements of Parts 264, 265, **[ ~~267,~~]** 268, and 122 of these regulations unless it has been granted an extension to the 180-day (or 270-day if applicable) period. Such extension may be granted by DNREC if hazardous wastes must remain on site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Secretary on a case-by-case basis.

(e) *Rejected load.* A small quantity generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of §264.72 or §265.72 of these regulations may accumulate the returned waste on site in accordance with paragraphs (a)-(d) of this section. Upon receipt of the returned shipment, the generator must:

(1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or
(2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest. (f) A small quantity generator experiencing an episodic event may accumulate hazardous waste in accordance with Subpart L of this part in lieu of §262.17.

**Section 262.17 Conditions for exemption for a large quantity generator that accumulates hazardous waste.**

A large quantity generator may accumulate hazardous waste on site without a permit or interim status, and without complying with the requirements of Parts 124, 264 through **[~~267~~ 266]**, and 122 of these regulations, or the notification requirements of 7 **Del.C.** §6304(a), provided that all of the following conditions for exemption are met:

(a) *Accumulation.* A large quantity generator accumulates hazardous waste on site for no more than 90 days, unless in compliance with the accumulation time limit extension or F006 accumulation conditions for exemption in paragraphs (b) through (e) of this section. The following accumulation conditions also apply:

(1) *Accumulation of hazardous waste in containers.* If the hazardous waste is placed in containers, the large quantity generator must comply with the following:

(i) *Air emission standards.* The applicable requirements of Subparts AA, BB, and CC of Part 265 of these regulations;

(ii) *Condition of containers.* If a container holding hazardous waste is not in good condition, or if it begins to leak, the large quantity generator must immediately transfer the hazardous waste from this container to a container that is in good condition, or immediately manage the waste in some other way that complies with the conditions for exemption of this section;

(iii) *Compatibility of waste with container.* The large quantity generator must use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired;

(iv)*Management of containers.*

(A) A container holding hazardous waste must always be closed during accumulation, except when it is necessary to add or remove waste.

(B) A container holding hazardous waste must not be opened, handled, or stored in a manner that may rupture the container or cause it to leak.

(v)*Containment*. In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment is required. Spilled or leaked waste and accumulated precipitation must be removed immediately from the secondary containment system. Spilled or leaked waste and accumulated precipitation is subject to the hazardous waste determination requirements in §262.11. Secondary containment must be provided by one of the following methods:

(A) Accumulating containers inside a building with a base that underlies the containers and with walls or other curbing, all of which are free of cracks or gaps and is sufficiently impervious in order to contain leaks and spills until the collected material is detected and removed;

(B) Accumulating containers in a secondary containment system designed and operated as follows:

(1) A base that underlies the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed;

(2) The base must be sloped or the containment system must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;

(3) The containment system must have sufficient capacity to contain 10% of the total volume of all containers or the volume of the largest container, whichever is greater. Containers that do not contain free liquids need not be considered in this determination;

(4) Run-on into the containment system must be prevented unless the collection system has sufficient excess capacity in addition to that required in paragraph (a)(1)(v)(B)(3) of this section to contain any run-on which might enter the system.

(C)An equivalent method as approved by the Secretary.

(vi)*Inspections.* At least weekly, the large quantity generator must inspect central accumulation areas. The large quantity generator must look for leaking containers and for deterioration of containers caused by corrosion or other factors. See paragraph (a)(1)(ii) of this section for remedial action required if deterioration or leaks are detected. A written record of the inspections and remedial actions taken, if necessary, must be maintained onsite for a minimum of 3 years.

(vii) *Special conditions for accumulation of ignitable and reactive wastes.*

(A) Containers holding ignitable or reactive waste must be located at least 15 meters (50 feet) from the facility's property line unless a written approval is obtained from the authority having jurisdiction over the local fire code allowing hazardous waste accumulation to occur within this restricted area. A record of the written approval must be maintained as long as ignitable or reactive hazardous waste is accumulated in this area.

(B) The large quantity generator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction including but not limited to the following: Open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (*e.g.,* from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the large quantity generator must confine smoking and open flame to specially designated locations. "No Smoking" signs must be

conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(viii) *Special conditions for accumulation of incompatible wastes.*

(A) Incompatible wastes, or incompatible wastes and materials, (see Appendix V of Part 265 for examples) must not be placed in the same container, unless §265.17(b) of these regulations is complied with.

(B) Hazardous waste must not be placed in an unwashed container that previously held an incompatible waste or material (see Appendix V of Part 265 for examples), unless §265.17(b) of these regulations is complied with.

(C)A container holding a hazardous waste that is incompatible with any waste or other materials accumulated or stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

(2) *Accumulation of hazardous waste in tanks.* If the waste is placed in tanks, the large quantity generator must comply with the applicable requirements of Part 265 Subpart J, except §265.197(c) of closure and post-closure care and §265.200—Waste analysis and trial tests. The large quantity generator must also comply with the applicable requirements of Subparts AA, BB, and CC of Part 265 of these regulations.

(3) *Accumulation of hazardous waste on drip pads.* If the hazardous waste is placed on drip pads, the large quantity generator must comply with the following:

(i) Subpart W of Part 265 of these regulations;

(ii) The large quantity generator must remove all wastes from the drip pad at least once every 90 days. Any hazardous wastes that are removed from the drip pad are then subject to the 90-day accumulation limit in paragraph (a) of this section and §262.15, if the hazardous wastes are being managed in satellite accumulation areas prior to being moved to a central accumulation area; and

(iii) The large quantity generator must maintain on site at the facility the following records readily available for inspection:

(A) A written description of procedures that are followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(B) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

(4) *Accumulation of hazardous waste in containment buildings.* If the waste is placed in containment buildings, the large quantity generator must comply with Part 265 Subpart DD of these regulations. The generator must label its containment building with the words "Hazardous Waste" in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, or other persons on site, and also in a conspicuous place provide an indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR Part 172 Subpart E (labeling) or Subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704). The generator must also maintain:

(i) The professional engineer certification that the building complies with the design standards specified in §265.1101 of these regulations. This certification must be in the generator's files prior to operation of the unit; and

(ii) The following records by use of inventory logs, monitoring equipment, or any other effective means:

(A) A written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that the generator

is consistent with respecting the 90 day limit, and documentation that the procedures are complied with; or

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

(C)Inventory logs or records with the above information must be maintained on site and readily available for inspection.

(5) *Labeling and marking of containers and tanks*

(i) *Containers.* A large quantity generator must mark or label its containers with the following:

(A) The words "Hazardous Waste";

(B) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR Part 172 Subpart E (labeling) or Subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704); and

(C)The date upon which each period of accumulation begins clearly visible for inspection on each container.

(ii) *Tanks.* A large quantity generator accumulating hazardous waste in tanks must do the following:

(A) Mark or label its tanks with the words "Hazardous Waste";

(B) Mark or label its tanks with an indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR Part 172 Subpart E (labeling) or Subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704);

(C)Use inventory logs, monitoring equipment or other records to demonstrate that hazardous waste has been emptied within 90 days of first entering the tank if using a batch process, or in the case of a tank with a continuous flow process, demonstrate that estimated volumes of hazardous waste entering the tank daily exit the tank within 90 days of first entering; and

(D)Keep inventory logs or records with the above information on site and readily available for inspection.

(6) *Emergency procedures.* The large quantity generator complies with the standards in Subpart M of this part, Preparedness, Prevention and Emergency Procedures for Large Quantity Generators.

(7) *Personnel training.*

(i) Training Program

(A) Facility personnel must successfully complete a program of classroom instruction, online training (*e.g.,* computer-based or electronic), or on-the-job training that teaches them to perform their duties in a way that ensures compliance with this part. The large quantity generator must ensure that this program includes all the elements described in the document required under paragraph (a)(7)(iv) of this section.

(B) This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.

(C)At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems,

including where applicable:

(1) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;

(2) Key parameters for automatic waste feed cut-off systems; (*3*) Communications or alarm systems;

(4) Response to fires or explosions;

(5) Response to ground-water contamination incidents; and (*6*) Shutdown of operations.

(D)For facility employees that receive emergency response training pursuant to Occupational Safety and Health Administration regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the large quantity generator is not required to provide separate emergency response training pursuant to this section, provided that the overall facility training meets all the conditions of exemption in this section.

(ii) Facility personnel must successfully complete the program required in paragraph (a)(7)(i) of this section within six months after the date of their employment or upon initial assignment to a position where such training is **[~~required~~ required]**, whichever is later. Employees must not work in unsupervised positions until they have completed the training standards of paragraph (a)(7)(i) of this section.

(iii) Facility personnel must take part in an annual review of the initial training required in paragraph (a)(7)(i) of this section.

(iv)The large quantity generator must maintain the following documents and records at the facility:

(A) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(B) A written job description for each position listed under paragraph (a)(7)(iv)(A) of this section. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position;

(C)A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (a)(7)(iv)(A) of this section;

(D)Records that document that the training or job experience, required under paragraphs (a)(7)(i), (ii), and (iii) of this section, has been given to, and completed by, facility personnel.

(v)Training records on current personnel must be kept until closure of the facility. Training records on former employees must be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

(8) *Closure.* A large quantity generator accumulating hazardous wastes in containers, tanks, drip pads, and containment buildings, prior to closing a unit at the facility, or prior to closing the facility, must meet the following conditions:

(i) *Notification for closure of a waste accumulation unit.* A large quantity generator must perform one of the following when closing a waste accumulation unit:

(A) Place a notice in the operating record within 30 days after closure identifying the location of the unit within the facility; or

(B) Meet the closure performance standards of paragraph (a)(8)(iii) of this section for container, tank, and containment building waste accumulation units or paragraph (a)(8)(iv) of this section for drip pads and notify DNREC following the procedures in paragraph (a)(8)(ii)(B) of this section for the waste accumulation

unit. If the waste accumulation unit is subsequently reopened, the generator may remove the notice from the operating record.

(ii) *Notification for closure of the facility.*

(A) Notify DNREC using EPA Form 8700-12 no later than 30 days prior to closing the facility.

(B) Notify DNREC using EPA Form 8700-12 within 90 days after closing the facility that it has complied with the closure performance standards of paragraph (a)(8)(iii) or (iv) of this section. If the facility cannot meet the closure performance standards of paragraph (a)(8)(iii) or (iv) of this section, notify DNREC using EPA Form 8700-12 that it will close as a landfill under §265.310 of these regulations in the case of a container, tank or containment building unit(s), or for a facility with drip pads, notify using EPA Form 8700-12 that it will close under the standards of §265.445(b).

(C)A large quantity generator may request additional time to clean close, but it must notify DNREC using EPA Form 8700-12 within 75 days after the date provided in paragraph (a)(8)(ii)(A) of this section to request an extension and provide an explanation as to why the additional time is required.

(iii) *Closure performance standards for container, tank systems, and containment building waste accumulation units.*

(A) At closure, the generator must close the waste accumulation unit or facility in a manner that:

(1) Minimizes the need for further maintenance by controlling, minimizing, or eliminating, to the extent necessary to protect human health and the environment, the post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere,

(2) Removes or decontaminates all contaminated equipment, structures and soil and any remaining hazardous waste residues from waste accumulation units including containment system components (pads, liners, etc.), contaminated soils and subsoils, bases, and structures and equipment contaminated with waste, unless §261.3(d) of these regulations applies.

(3) Any hazardous waste generated in the process of closing either the generator's facility or unit(s) accumulating hazardous waste must be managed in accordance with all applicable standards of Parts 262, 263, 265 and 268 of these regulations, including removing any hazardous waste contained in these units within 90 days of generating it and managing these wastes in a RCRA Subtitle C hazardous waste permitted treatment, storage and disposal facility or interim status facility.

(*4*) If the generator demonstrates that any contaminated soils and wastes cannot be practicably removed or decontaminated as required in paragraph (a)(8)(ii)(A)(*2*) of this section, then the waste accumulation unit is considered to be a landfill and the generator must close the waste accumulation unit and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (§265.310 of these regulations). In addition, for the purposes of closure, post-closure, and financial responsibility, such a waste accumulation unit is then considered to be a landfill, and the generator must meet all of the requirements for landfills specified in Subparts G and H of Part 265 of these regulations.

(B) [Reserved]

(iv)*Closure performance standards for drip pad waste accumulation units.* At closure, the generator must comply with the closure requirements of paragraphs (a)(8)(ii) and (a)(8)(iii)(A)(*1*) and (*3*) of this section, and §265.445(a) and (b) of these regulations.

(v)The closure requirements of paragraph (a)(8) of this section do not apply to satellite accumulation areas.

(9) *Land disposal restrictions.* The large quantity generator complies with all

applicable requirements under Part 268 of these regulations.

(b) *Accumulation time limit extension.* A large quantity generator who accumulates hazardous waste for more than 90 days is subject to the requirements of Parts 124, 264 through 268, and Part 122 of these regulations, and the notification requirements of 7 **Del.C.** §6304(a), unless it has been granted an extension to the 90-day period. Such extension may be granted by DNREC if hazardous wastes must remain on site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Secretary on a case-by-case basis.

(c) *Accumulation of F006.* A large quantity generator who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the EPA hazardous waste number F006, may accumulate F006 waste on site for more than 90 days, but not more than 180 days without being subject to Parts 124, 264 through **[~~267~~ 266]** and 122 of these regulations, and the notification requirements of 7 **Del.C.** §6304(a), provided that it complies with all of the following additional conditions for exemption:

(1) The large quantity generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants entering F006 or otherwise released to the environment prior to its recycling;

(2) The F006 waste is legitimately recycled through metals recovery;

(3) No more than 20,000 kilograms of F006 waste is accumulated on site at any one time; and (4) The F006 waste is managed in accordance with the following:

(i) *Management standards*.

(A) If the F006 waste is placed in containers, the large quantity generator must comply with the applicable conditions for exemption in paragraph (a)(1) of this section; and/or

(B) If the F006 is placed in tanks, the large quantity generator must comply with the applicable conditions for exemption of paragraph (a)(2) of this section; and/or (C) If the F006 is placed in containment buildings, the large quantity generator must comply with Subpart DD of Part 265 of these regulations, and has placed its professional engineer certification that the building complies with the design standards specified in §265.1101 of these regulations in the facility's files prior to operation of the unit. The large quantity generator must maintain the following records:

(1) A written description of procedures to ensure that the F006 waste remains in the unit for no more than 180 days, a written description of the waste generation and management practices for the facility showing that they are consistent with the 180-day limit, and documentation that the large quantity generator is complying with the procedures; or

(2) Documentation that the unit is emptied at least once every 180 days. (ii) The large quantity generator is exempt from all the requirements in Subparts G and H of Part 265 of these regulations, except for those referenced in paragraph (a)(8) of this section.

(iii) The date upon which each period of accumulation begins is clearly marked and must be clearly visible for inspection on each container;

(iv)While being accumulated on site, each container and tank is labeled or marked clearly with:

(A) The words "Hazardous Waste"; and

(B) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR Part 172 Subpart E (labeling) or Subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704).

(v)The large quantity generator complies with the requirements in paragraphs(a)(6) and (7) of this section.

(d) *F006 transported over 200 miles.* A large quantity generator who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the EPA hazardous waste number F006, and who must transport this waste, or offer this waste for transportation, due to there being no other option, over a distance of 200 miles or more for off-site metals recovery, may accumulate F006 waste on site for more than 90 days, but not more than 270 days without being subject to Parts 124, 264 through **[~~267~~ 266]**, 122, and the notification requirements of 7 **Del.C.** §6304(a), if the large quantity generator complies with all of the conditions for exemption of paragraphs (c)(1) through (4) of this section.

(e) *F006 accumulation time extension.* A large quantity generator accumulating F006 in accordance with paragraphs (c) and (d) of this section who accumulates F006 waste on site for more than 180 days (or for more than 270 days if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more), or who accumulates more than 20,000 kilograms of F006 waste on site is an operator of a storage facility and is subject to the requirements of Parts 124, 264, 265, **[~~267,~~]** and 122 of these regulations, and the notification requirements of 7 **Del.C.** §6304(a) unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by DNREC if F006 waste must remain on site for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste must remain on site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the Secretary on a case-by-case basis.

(f)*Consolidation of hazardous waste received from very small quantity generators.* Large quantity generators may accumulate on site hazardous waste received from very small quantity generators under control of the same person (as defined in §260.10 of these regulations), without a storage permit or interim status and without complying with the requirements of Parts 124, 264 through 268, and 122 of these regulations, and the notification requirements of 7 **Del.C.** §6304(a) provided that they comply with the following conditions. "Control," for the purposes of this section, means the power to direct the policies of the generator, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person shall not be deemed to "control" such generators.

(1) The large quantity generator notifies DNREC at least thirty (30) days prior to receiving the first shipment from a very small quantity generator(s) using EPA Form 8700-12; and

(i) Identifies on the form the name(s) and site address(es) for the very small quantity generator(s) as well as the name and business telephone number for a contact person for the very small quantity generator(s); and

(ii) Submits an updated Site ID form (EPA Form 8700-12) within 30 days after a change in the name or site address for the very small quantity generator.

(2) The large quantity generator maintains records of shipments for three years from the date the hazardous waste was received from the very small quantity generator. These records must identify the name, site address, and contact information for the very small quantity generator and include a description of the hazardous waste received, including the quantity and the date the waste was received.

(3) The large quantity generator complies with the independent requirements identified in §262.10(a)(1)(iii) and the conditions for exemption in this section for all hazardous waste received from a very small quantity generator. For purposes of the labeling and marking regulations in paragraph (a)(5) of this section, the large quantity generator must label the container or unit with the date accumulation started (*i.e.,* the date the hazardous waste was received from the very small quantity generator). If the large quantity generator is consolidating incoming hazardous waste from a very small quantity generator with either its own hazardous waste or with hazardous waste from other very small quantity generators, the large quantity generator must label each container or unit with the earliest date any hazardous waste in the container was accumulated on site.

(g) *Rejected load.* A large quantity generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of §264.72 or §265.72 of these regulations may accumulate the returned waste

on site in accordance with paragraphs (a) and (b) of this section. Upon receipt of the returned shipment, the generator must:

(1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest

**Section 262.18 EPA identification numbers and re-notification for small quantity generators and large quantity generators.**

(a) A generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Secretary.

(b) A generator who has not received an EPA identification number must obtain one by applying to the Secretary using EPA Form 8700-12. Upon receiving the request, the Secretary will assign an EPA identification number to the generator.

(c)A generator must not offer its hazardous waste to transporters that have not received an EPA identification number and a Delaware hazardous waste transporter permit or to treatment, storage, or disposal facilities that have not received an EPA identification number.

(d) *Re-notification.*

(1)A small quantity generator must re-notify DNREC starting in 2021 and every four years thereafter using EPA Form 8700-12. This re-notification must be submitted by September 1st of each year in which re-notifications are required.

(2)A large quantity generator must re-notify DNREC by March 1 of each year thereafter using EPA Form 8700-12. A large quantity generator may submit this re-notification as part of its Annual Report required under §262.41.

(e) A recognized trader must not arrange for import or export of hazardous waste without having received an EPA identification number from the Secretary.

**Subpart B ~~The Manifest~~ Manifest Requirements Applicable to Small and Large Quantity Generators**

**Section 262.20 General requirements.**

(a)

(1) A generator who transports, or offers for ~~transportation~~ transport, a hazardous waste for ~~off site~~ off-site treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, must accurately prepare a Manifest (U.S. OMB Control Number 2050-0039) on EPA Form 8700-22 and, if necessary EPA Form 8700-22A, ~~according to the instructions included in the appendix to this part~~.

(2) The revised manifest form and procedures in §§260.10, 261.7, 262.20, 262.27, 262.32, ~~262.34, 262.54, 262.60, the appendix to Part 262 of these regulations,~~ of these regulations and 40 CFR § 262.21 are applicable to all manifested shipments of hazardous waste.

(3) Electronic manifest. In lieu of using the manifest form specified in paragraph (a)(1) of this section, a person required to prepare a manifest under paragraph (a)(1) of this section may prepare and use an electronic manifest, provided that the person: (i) Complies with the requirements in §262.24 for use of electronic manifests, and (ii) Complies with the requirements of 40 CFR 3.10 for the reporting of electronic documents to EPA.

(b) A generator must designate on the manifest one facility which is permitted to handle the waste described on the manifest.

(c) A generator may also designate on the manifest one alternate facility which is permitted to handle his waste in the event an emergency prevents delivery of the waste to the primary designated facility.

(d) If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste.

(e) **[Reserved]**

(f) (1) The requirements of this subpart and §262.32(b) are not applicable to the transport, on a public or private right-of-way within or along the border of contiguous property under the control of the same person (even if such contiguous property is divided by a public or private right-of-way), of:

(i) explosives or munitions during an emergency response, or
(ii) military munitions as defined in §260.10 of these regulations, or
(iii) subject to the Department's written approval, waste generated by a college or university that is taken to that generator's accumulation area.

(2) Notwithstanding §263.10(a), the generator or transporter must comply with the requirements for transporters set forth in §263.30 and §263.31 in the event of a discharge of hazardous waste on a public or private right-of-way.

**Section 262.21 ~~Reserved~~ Manifest tracking numbers, manifest printing, and obtaining manifests**

Refer to 40 CFR §262.21 for these requirements.

**Section 262.22 Number of copies.**

The manifest consists of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the designated facility with one copy each for their records and another copy to be returned to the generator.

~~This process is discussed in detail in the instructions for manifest preparation Appendix II of this part.~~

~~**Note**: The designated facility is to mail a copy of the signed "Designated Facility to Generator State" page to the DNREC Secretary.~~

**Section 262.23 Use of the manifest.**

(a) The generator must:

(1) Sign the manifest certification by hand; and

(2) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and

(3) Retain one copy in accordance with §262.40(a).

(b) The generator must give the transporter the remaining copies of the manifest.

(c) For shipments of hazardous waste within the United States solely by water (bulk shipments only), the generator must send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(d) For rail shipments of hazardous waste within the United States which originate at the site of generation the generator must send at least three copies of the manifest dated and signed in accordance with this section to:

~~(i)~~ (1) The next ~~non rail~~ non-rail transporter, if any; or

~~(ii)~~ (2) The designated facility if transported solely by rail; or

~~(iii)~~ (3) The last rail transporter to handle the waste in the United States if exported by rail.

(e) For shipments of hazardous waste to a designated facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, the generator must assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility.

**Note**: See §263.20(e) and (f) for special provisions for rail or water (bulk shipment) transporters.

(f) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are returned to the generator by the designated facility (following the procedures of §§264.72(f) or §§265.72(f)), the generator must:

(1) Sign either:

(i) Item 20 of the new manifest if a new manifest is used for the returned shipment; or

(ii) Item 18c of the original manifest if the original manifest is used for the returned shipment;

(2) Provide the transporter a copy of the manifest;

(3) Within 30 days of delivery of the rejected shipment or container residues contained in non-empty containers, send a copy of the manifest to the designated facility that returned the shipment to the **[~~generator ;~~ generator;]** and

(4) Retain at the generator's site a copy of each manifest for at least three years from the date of

delivery.

**Section 262.24 Use of the electronic manifest.**

(a) *Legal equivalence to paper manifests.* Electronic manifests that are obtained, completed, and transmitted in accordance with §262.20(a)(3), and used in accordance with this section in lieu of EPA Forms 8700-22 and 8700-22A are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

(1) Any requirement in these regulations to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 40 CFR §262.25.

(2) Any requirement in these regulations to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when an electronic manifest is transmitted to the other person by submission to the system.

(3) Any requirement in these regulations for a generator to keep or retain a copy of each manifest is satisfied by retention of a signed electronic manifest in the generator's account on the national e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or DNREC inspector.

(4) No generator may be held liable for the inability to produce an electronic manifest for inspection under this section if the generator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the generator bears no responsibility.

(b) A generator may participate in the electronic manifest system either by accessing the electronic manifest system from its own electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the generator's site by the transporter who accepts the hazardous waste shipment from the generator for off-site transportation.

(c) *Restriction on use of electronic manifests.* A generator may ~~prepare~~ use an electronic manifest for the tracking of ~~hazardous~~ waste shipments involving any RCRA hazardous waste only if it is known at the time the manifest is originated that all waste handlers named on the manifest participate in the use of the electronic manifest ~~system.~~ **~~[system]~~**, except that:

(1)A generator may sign by hand and retain a paper copy of the manifest signed by hand by the initial transporter, in lieu of executing the generator copy electronically, thereby enabling the transporter and subsequent waste handlers to execute the remainder of the manifest copies electronically.

(2)[Reserved]

(d) *Requirement for one printed copy.* To the extent the Hazardous Materials regulation on shipping papers for carriage by public highway requires shippers of hazardous materials to supply a paper document for compliance with 49 CFR 177.817, a generator originating an electronic manifest must also provide the initial transporter with one printed copy of the electronic manifest.

(e) *Special procedures when electronic manifest is unavailable.* If a generator has prepared an electronic manifest for a hazardous waste shipment, but the electronic manifest system becomes unavailable for any reason prior to the time that the initial transporter has signed electronically to acknowledge the receipt of the hazardous waste from the generator, then the generator must obtain and complete a paper manifest and if necessary, a continuation sheet (EPA Forms 8700-22 and 8700-22A) in accordance with the manifest instructions ~~in the appendix to this part~~, and use these paper forms from this point forward in accordance with the requirements of §262.23.

(f) *Special procedures for electronic signature methods undergoing tests.* If a generator has prepared an electronic manifest for a hazardous waste shipment, and signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the generator shall also sign with an ink signature the generator/offeror certification on the printed copy of the manifest provided under paragraph (d) of this section.

~~(g) *Imposition of user fee.* A generator who is a user of the electronic manifest may be assessed a user fee by EPA for the origination of each electronic manifest. EPA shall maintain and update from time-to-time the current schedule of electronic manifest user fees, which shall be determined based on current~~

~~and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to 40 CFR 262.~~ [Reserved]

~~(h)~~ *Post-receipt manifest data corrections.* After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (*e.g.,* waste handler) named on the manifest. Generators may participate electronically in the post-receipt data corrections process by following the process described in §264.71(l) of these regulations, which applies to corrections made to either paper or electronic manifest records.

**Section 262.25 Electronic manifest signatures.**

(a) Electronic signature methods for the e-Manifest system shall:

(1) Be a legally valid and enforceable signature under applicable EPA and other Federal requirements pertaining to electronic signatures; and

(2) Be a method that is designed and implemented in a manner that EPA considers to be as cost-effective and practical as possible for the users of the manifest.

**Section 262.27 Waste minimization certification.**

A generator who initiates a shipment of hazardous waste must certify to one of the following statements in Item 15 of the uniform hazardous waste manifest:

(a) "I am a large quantity generator. I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment;" or

(b) "I am a small quantity generator. I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford."

(Amended August 23, 1999, August 21, 2006)

**Subpart C ~~Pre-Transport Requirements~~ Pre-Transport Requirements Applicable to Small and Large Quantity Generators**

**~~§~~ Section 262.30 Packaging.**

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must package the waste in accordance with the applicable Department of Transportation regulations on packaging under 49 CFR ~~parts~~ Parts 173, 178, and 179.

**Section 262.31 Labeling.**

Before transporting or offering hazardous waste for transportation off site, a generator must label each package in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR Part 172.

**Section 262.32 Marking.**

(a) Before transporting or offering hazardous waste for transportation off site, a generator must mark each package of hazardous waste in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR Part 172;

(b)~~Before transporting hazardous waste or offering hazardous waste for transportation off site, a generator must mark each container of 119 gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of 49 CFR 172.304:~~

~~**HAZARDOUS WASTE** Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.~~

~~Generator's Name and Address~~ _____ ~~Generator's EPA Identification Number~~ _____ ~~Manifest Tracking Number~~ _____

(b) Before transporting hazardous waste or offering hazardous waste for transportation off site, a

generator must mark each container of 119 gallons or less used in such transportation with the following words and information in accordance with the requirements of 49 CFR 172.304:

(1) HAZARDOUS WASTE—Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

(2) Generator's Name and Address: _____.

(3) Generator's EPA Identification Number: _____.

(4) Manifest Tracking Number: _____.

(5) EPA Hazardous Waste Number(s): _____.

(c)A generator may use a nationally recognized electronic system, such as bar coding, to identify the EPA Hazardous Waste Number(s), as required by paragraph (b)(5) or paragraph (d).

(d) Lab packs that will be incinerated in compliance with §268.42(c) are not required to be marked with EPA Hazardous Waste Number(s), except D004, D005, D006, D007, D008, D010, and D011, where applicable.

**Section 262.33 Placarding.**

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must placard or offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous materials under 49 CFR Part 172, Subpart F.

**Section 262.34 ~~Accumulation time.~~ [Reserved]**

~~(a) Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status, provided that:~~

~~(1) The waste is placed:~~

~~(i) In containers and the generator complies with the applicable requirements of Subparts I, AA, BB, and CC of Part 265; and/or~~

~~(ii) In tanks and the generator complies with the applicable requirements of §265.112(f) and Subparts J, AA, BB, and CC of Part 265 except §§ 265.197(c) and 265.200; and/or~~

~~(iii) On drip pads and the generator complies with Subpart W of Part 265 and maintains the following records at the facility:~~

~~(A) A description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and~~

~~(B) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal; and/or~~

~~(iv)In containment buildings and the generator complies with Subpart DD of Part 265, has placed its professional engineer certification that the building complies with the design standards specified in §265.1101 in the facility's operating record no later than 60 days after the date of initial operation of the unit. After February 18, 1993, PE certification will be required prior to operation of the unit. The owner or operator shall maintain the following records at the facility:~~

~~(A) A written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that they are consistent with respecting the 90 day limit, and documentation that the procedures are complied with; or~~

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

~~In addition, such a generator is exempt from all the requirements in Subparts G and H of Part 265, except for §§265.111 and 265.114.~~

~~(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;~~

~~(3) While being accumulated on site, each container and tank is labeled or marked clearly with the words "Hazardous Waste"; and~~

~~(4) The generator complies with the requirements for owners or operators in Subparts C and D in Part 265, with §265.16, and with all applicable requirements of Part 268 of these regulations.~~

~~(b) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§ 261.31 or 261.33(e) in a calendar month, who accumulates~~

~~hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of Parts 264, 265, and the permit requirements of Part 122 unless he has been granted an extension to the 90-day period. Such extension may be granted by the Department if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Secretary on a case-by-case basis.~~

~~(c)~~

~~(1)A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in §261.31 or §261.33(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) or (d) as applicable of this section provided he:~~

~~(i) Complies with §§265.171, 265.172, and 265.173(a) of these regulations; and~~

~~(ii) Marks his containers either with the words "Hazardous Waste" or with the word "Waste" and a description to identify the contents of the container (e.g., Waste Acetone, Waste Solvent).~~

~~(2) A generator who accumulates either hazardous waste or acutely hazardous waste listed in §261.31 or §261.33(e) in excess of the amounts listed in paragraph (c)(1) of this section at or near any point of generation must, with respect to that amount of excess waste, comply immediately with paragraph (a) or (d) as applicable of this section or other applicable provisions of these regulations. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.~~

~~(d) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on site for 180 days or less without a permit or without having interim status provided that:~~

~~(1) The quantity of waste accumulated on site never exceeds 6000 kilograms;~~

~~(2) The generator complies with the requirements of Subpart I of Part 265 of these regulations, except for §§ 265.176(a) and 265.178;~~

~~(3) The generator complies with the requirements of §265.201 in Subpart J of Part 265. If the tank capacity exceeds 1,000 gallons, the generator must comply with the requirements of §265.112(f) and Subpart J except §§265.191, 265.197, 265.200, 265.201, 265.202;~~

~~(4) The generator complies with the requirements of paragraphs (a)(2) and (a)(3) of this section, the requirements of Subpart C of Part 265, with all applicable requirements of Part 268 of these regulations; and~~

~~(5) The generator complies with the following requirements:~~

~~(i) At all times there must be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in paragraph (d)(5)(iv) of this section. This employee is the emergency coordinator.~~

~~(ii) The generator must post the following information next to the telephone: (A) The name and telephone number of the emergency coordinator;~~

~~(B) Location of fire extinguishers and spill control material, and, if present, fire alarm; and~~

~~(C) The telephone number of the fire department, unless the facility has a direct alarm.~~

~~(iii) The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies, and documentation demonstrating such training must be maintained on-site until closure of the site for current employees and for at least three years from the date the employee last worked at the site for former employees;~~

~~(iv)The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows:~~

~~(A) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;~~

~~(B) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;~~

~~(C) In the event of a fire, explosion or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water, the generator must~~

~~immediately notify the National Response Center (using their 24 hour toll free number: 800/424 8802) and the DNREC at (302) 739-9401 or (800) 662 8802 immediately. The report must include the following information:~~

~~(1) The name, address, and U.S. EPA Identification Number of the generator;~~

~~(2) Date, time, and type of incident (e.g., spill or fire);~~

~~(3) Quantity and type of hazardous waste involved in the incident;~~

~~(4) Extent of injuries, if any; and~~

~~(5) Estimated quantity and disposition of recovered materials, if any.~~

~~(e) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who, due to there being no other option available, and who must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more for off site treatment, storage or disposal may accumulate hazardous waste on site for 270 days or less without a permit or without having interim status provided that he complies with the requirements of paragraph (d) of this section.~~

~~(f)A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6000 kg or accumulates hazardous waste for more than 180 days (or for more than 270 days if he, due to there being no other option available, must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of Parts 264 and 265 and the permit requirements of Part 122 unless he has been granted an extension to the 180 day (or 270 day if applicable) period. Such extension may be granted by the DNREC Secretary if hazardous wastes must remain on site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Secretary on a case by case basis.~~

~~(g) A generator who generates 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the EPA hazardous waste code F006, may accumulate F006 waste onsite for more than 90 days, but not more than 180 days without a permit or without having interim status provided that:~~

~~(1) The generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants or contaminants entering F006 or otherwise released to the environment prior to its recycling;~~

~~(2) The F006 waste is legitimately recycled through metals recovery;~~

~~(3) No more than 20,000 kilograms of F006 waste is accumulated onsite at any one time; and~~

~~(4) The F006 waste is managed in accordance with the following:~~

~~(i) The F006 waste is placed:~~

~~(A) In containers and the generator complies with the applicable requirements of Subparts I, AA, BB, and CC of Part 265; and/or~~

~~(B) In tanks and the generator complies with the applicable requirements of Subparts J, AA, BB, and CC of Part 265, except §§ 265.197(c) and 265.200; and/or~~

~~(C)In containment buildings and the generator complies with Subpart DD of Part 265, and has placed its professional engineer certification that the building complies with the design standards specified in §265.1101 in the facility's operating record prior to operation of the unit. The owner or operator must maintain the following records at the facility:~~

~~(1) A written description of procedures to ensure that the F006 waste remains in the unit for no more than 180 days, a written description of the waste generation and management practices for the facility showing that they are consistent with the 180-day limit, and documentation that the generator is complying with the procedures; or~~

~~(2) Documentation that the unit is emptied at least once every 180 days.~~

~~(ii) In addition, such a generator is exempt from all the requirements in Subparts G and H of Part 265, except for §§ 265.111 and 265.114.~~

~~(iii) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;~~

~~(iv)While being accumulated onsite, each container and tank is labeled or marked clearly with the words, "Hazardous Waste"; and~~

~~(v)The generator complies with the requirements for owners or operators in Subparts C and D in Part~~

~~265, with §265.16, and with §268.7(a)(5).~~

~~(h) A generator who generates 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the EPA hazardous waste code F006, and who, due to there being no other option available, must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more for offsite metals recovery, may accumulate F006 waste onsite for more than 90 days, but not more than 270 days without a permit or without having interim status if the generator complies with the requirements of paragraphs (g)(1) through (g)(4) of this section.~~

~~(i) A generator accumulating F006 in accordance with paragraphs (g) and (h) of this section who accumulates F006 waste onsite for more than 180 days (or for more than 270 days if the generator, due to there being no other option available, must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more), or who accumulates more than 20,000 kilograms of F006 waste onsite is an operator of a storage facility and is subject to the requirements of Parts 264 and 265 and the permit requirements of Part 122 unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by DNREC if F006 waste must remain onsite for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste must remain onsite due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the Secretary on a case-by- case basis.~~

~~(j)**Reserved.**~~

~~(k) **Reserved.**~~

~~(l) **Reserved.**~~

~~(m)A generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of §264.72 or §265.72 of these regulations may accumulate the returned waste on-site in accordance with paragraphs (a) and (b) or (d), (e) and (f) of this section, depending on the amount of hazardous waste on-site in that calendar month. Upon receipt of the returned shipment, the generator must:~~

~~(1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or~~

~~(2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.~~

**Section 262.35 Liquids in Landfills Prohibition**

The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited. Prior to disposal in a hazardous waste landfill, liquids must meet additional requirements as specified in §§264.314 and 265.314 of these regulations.

**Subpart D Recordkeeping and Reporting Applicable to Small and Large Quantity Generators**

**Section 262.40 Recordkeeping.**

(a) A generator must keep a copy of each manifest signed in accordance with §262.23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

(b) A generator must keep a copy of each Annual Report and Exception Report for a period of at least three years from the due date of the report.

(c) ~~A generator must keep records of any test results, waste analyses, or other determinations made in accordance with §262.11 for at least three years from the date that the waste was last sent to on site or off site treatment, storage, or disposal.~~ See §262.11(f) for recordkeeping requirements for documenting hazardous waste determinations.

(d) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Secretary.

**Section 262.41 Annual Reporting for Large Quantity Generators.**

~~(a) A generator must prepare and submit a single copy of an Annual Report to the State of Delaware, Department of Natural Resources and Environmental Control by no later than March 1 for the preceding calendar year. The Annual Report must be submitted on a form prescribed by the Department according to the instructions on the form and must cover generator activities during the previous year. The Annual Report must include the following information:~~

~~(1) The EPA identification number, name, and address of the generator; (2) The calendar year covered by the report;~~

~~(3) The EPA identification number, name, and address for each off site treatment, storage or disposal facility within the United States to which waste was shipped during the year;~~

~~(4) The name and EPA identification number of each transporter used during the reporting year for shipments to a treatment, storage or disposal facility within the United States;~~

~~(5) A description, EPA hazardous waste number (from Part 261, Subpart C or D of these regulations), DOT hazard class, and quantity of each hazardous waste shipped off site for shipments to a treatment, storage or disposal facility within the United States. This information must be listed by EPA identification number of each such off site facility to which waste was shipped.~~

~~(6) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.~~

~~(7) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984. (8) The certification signed by the generator or authorized representative.~~

~~(b) Any generator who treats, stores, or disposes of hazardous waste on site must submit an Annual Report covering those wastes in accordance with the provisions of Parts 122, 264, 265, and 266.~~

~~Reporting for exports of hazardous waste is not required on the Annual Report form. A separate annual report requirement is set forth at §262.56 §262.83(g) of these regulations for hazardous waste exporters.~~

(a) A generator who is a large quantity generator for at least one month of a year who ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States must complete and submit to the Secretary EPA Form 8700-13 A/B or a form approved by the Secretary by March 1 of the following year and must cover all generator activities during the previous year.

**[~~(b) A generator who is a very small quantity generator that accumulated at any time during the year greater than 1 kilogram (≈2.2 pounds) of acute hazardous waste or 100 kilograms (≈220 pounds) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in §§261.31 or 261.33(e) of these regulations must complete and submit to the Secretary EPA Form 8700-13A/B or a form approved by the Secretary by March 1 of the following year and must cover all generator activities during the previous year.~~]**

**[~~(c)~~ (b)]** Any generator who is a large quantity generator for at least one month of a year who treats, stores, or disposes of hazardous waste on site must complete and submit to the Secretary EPA Form 8700-13 A/B or a form approved by the Secretary by March 1 of the following year covering those wastes in accordance with the provisions of Parts 264, 265, 266, [~~**267**~~] and 122 of these regulations. This requirement also applies to large quantity generators that receive hazardous waste from very small quantity generators pursuant to §262.17(f).

**[~~(d)~~ (c)]** Exports of hazardous waste to foreign countries are not required to be reported on the Annual Report form. A separate annual report requirement is set forth at §262.83(g) for hazardous waste exporters.

**Section 262.42 Exception Reporting.**

(a) A generator who does not receive a copy of the manifest with the hand written signature of the owner or operator of the designated facility within thirty five (35) days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste, and if it has not been delivered the generator must identify the shipment and report it to the State in which the shipment originated.

(b) A generator must submit an Exception Report to the DNREC within 5 calendar days if he has not received a copy of the manifest/shipping paper with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The generator must also notify the State in which the manifest designated facility is located and the State to which the shipment may have been delivered. The Exception Report must include:

(1) A legible copy of the manifest for which the generator does not have confirmation of delivery;

(2) A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

(c) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are forwarded to an alternate facility by a designated facility using a new manifest (following the procedures of §§264.72(e)(1) through (6) or §§265.72(e)(1) through (6) ), the generator must comply with the requirements of paragraph (a) or (b) of this section, as applicable, for the shipment forwarding the material from the designated facility to the alternate facility instead of for the shipment from the generator to the designated facility. For purposes of paragraph (a) or (b) of this section for a shipment forwarding such waste to an alternate facility by a designated facility:

(1) The copy of the manifest received by the generator must have the handwritten signature of the owner or operator of the alternate facility in place of the signature of the owner or operator of the designated facility, and

(2) The 35/45-day timeframes begin the date the waste was accepted by the initial transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility.

**Section 262.43 Additional Reporting.**

(a) The Secretary, as he deems necessary under 7 **Del.C.** §6305(a)(10), may require generators to furnish additional reports concerning the quantities, management, and disposition of wastes identified or listed in Part 261.

(b) Any generator of hazardous waste who receives a Self-Certification Checklist from the Department shall complete and return the checklist within the time specified in the instructions provided by the Department.

(1) The Department shall provide generators a reasonable amount of time to complete and return a checklist. At a minimum, the generator shall have 14 days from the date of receipt to return the checklist. A checklist is deemed returned on the date it is received by the Department.

(2) The Self-Certification Checklist shall contain a certification in substantially the following form, which must be signed by an authorized representative of the generator:

"I, the undersigned representative, certify that I have personally examined and am familiar with the information contained in this submittal. The information contained in this submittal is to the best of my knowledge, true, accurate, and complete in all respects. I am fully authorized to make this certification on behalf of this generator. I am aware that there are significant penalties including, but not limited to, possible fines and imprisonment for willfully submitting false, inaccurate, or incomplete information."

**Section 262.44 Special Requirements for ~~Generators of Between 100 and 1000 Kilograms/Month~~ Small Quantity Generators.**

~~A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month is exempt from the annual report requirements found in §262.40(b) and §262.41 of this subpart.~~

A small quantity generator is subject only to the following independent requirements in this subpart:
(a) Section 262.40(a), (c), and (d), recordkeeping;
(b) Section 262.42(b), exception reporting;
and (c) Section 262.43, additional reporting.

~~Subpart E Exports of Hazardous Waste~~ **Subpart E [Reserved]**

~~**Section 262.50 Applicability.**~~

~~This subpart establishes requirements applicable to exports of hazardous waste. Except to the extent §262.58 provides otherwise, a primary exporter of hazardous waste must comply with the special requirements of this subpart and a transporter transporting hazardous waste for export must comply with applicable requirements of Part 263. Section 262.58 sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, treatment, storage and disposal of hazardous waste for shipments between the Unites States and those countries.~~

**~~Section 262.51 Definitions.~~**

~~In addition to the definitions set forth at §260.10, the following definitions apply to this subpart:~~

~~**"Consignee"** means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste will be sent.~~

~~**"EPA Acknowledgment of Consent"** means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.~~

~~**"Primary Exporter"** means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Part 262, Subpart B, which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.~~

~~**"Receiving country"** means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short term storage incidental to transportation).~~

~~**"Transit country"** means any foreign country, other than a receiving country, through which a hazardous waste is transported.~~

**~~Section 262.52 General requirements.~~**

~~Exports of hazardous waste are prohibited except in compliance with the applicable requirements of this subpart and Part 263. Exports of hazardous waste are prohibited unless:~~

~~(a) Notification in accordance with §262.53 has been provided;~~

~~(b) The receiving country has consented to accept the hazardous waste;~~

~~(c)A copy of the EPA Acknowledgment of Consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment));~~

~~(d) The hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA Acknowledgment of Consent.~~

**~~Section 262.53 Notification of intent to export.~~**

~~(a) A primary exporter of hazardous waste must notify EPA of an intended export before such waste is scheduled to leave the United States. A complete notification should be submitted sixty (60) days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve (12) month or lesser period. The notification must be in writing, signed by the primary exporter, and include the following information:~~

~~(1) Name, mailing address, telephone number and EPA I.D. number of the primary exporter;~~

~~(2) By consignee, for each hazardous waste type:~~

~~(i) A description of the hazardous waste and the EPA hazardous waste number (from Part 261, Subparts C and D of these regulations), U.S. DOT proper shipping name, hazard class and I.D. number (UN/NA) for each hazardous waste as identified in 49 CFR Part 171 through 177;~~

~~(ii) The estimated frequency or rate at which such waste is to be exported and the period of time over which such waste is to be exported;~~

~~(iii) The estimated total quantity of the hazardous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form (8700-22);~~

~~(iv)All points of entry to and departure from each foreign country through which the hazardous waste will pass;~~

~~(v)A description of the means by which each shipment of the hazardous waste will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes,~~

~~tanks, etc.));~~

~~(vi)A description of the manner in which the hazardous waste will be treated, stored or disposed of in the receiving country (e.g., land or ocean incineration, other land disposal, ocean dumping, recycling);~~

~~(vii) The name and site address of the consignee and any alternate consignee; and~~

~~(viii) The name of any transit countries through which the hazardous waste will be sent and a description of the approximate length of time the hazardous waste will remain in such country and the nature of its handling while there;~~

~~(b) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12th St. and Pennsylvania Ave., NW., Washington, DC 20004. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export." A copy of the notification must also be sent to the DNREC Secretary.~~

~~(c)Except for changes to the telephone number in paragraph (a)(1) of this section, changes to paragraph (a)(2)(v) of this section and decreases in the quantity indicated pursuant to paragraph (a)(2)(iii) of this section when the conditions specified on the original notification change (including any exceedance of the estimate of the quantity of hazardous waste specified in the original notification), the primary exporter must provide EPA with a written renotification of the change. The shipment cannot take place until consent of the receiving country to the changes (except for changes to paragraph (a)(2)(viii) of this section and in the ports of entry to and departure from transit countries pursuant to paragraph (a)(2)(iv) of this section) has been obtained and the primary exporter receives an EPA Acknowledgment of Consent reflecting the receiving country's consent to the changes.~~

~~(d) Upon request by EPA, a primary exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.~~

~~(e) In conjunction with the Department of State, EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraph (a) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by paragraph (a) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.~~

~~(f)Where the receiving country consents to the receipt of the hazardous waste, EPA will forward an EPA Acknowledgment of Consent to the primary exporter for purposes of §262.54(h). Where the receiving country objects to receipt of the hazardous waste or withdraws a prior consent, EPA will notify the primary exporter in writing. EPA will also notify the primary exporter of any responses from transit countries.~~

**~~Section 262.54 Special manifest requirements.~~**

~~A primary exporter must comply with the manifest requirements of §§262.20-262.23 except that:~~

~~(a) In lieu of the name, site address, and EPA I.D. number of the designated permitted facility, the primary exporter must enter the name and site address of the consignee.~~

~~(b) In lieu of the name, site address and EPA I.D. number of a permitted alternate facility, the primary exporter may enter the name and site address of any alternate consignee.~~

~~(c)In the International Shipments block, the primary exporter must check the export box and enter the point of exit (city and State) from the United States;~~

~~(d) The following statement must be added to the end of the first sentence of the certification set forth in Item 16 of the Uniform Hazardous Waste Manifest Form: "and conforms to the terms of the attached EPA Acknowledgment of Consent";~~

~~(e) The primary exporter may obtain the manifest form from any source that is registered with the U.S. EPA as a supplier of manifests (e.g. states, waste handlers, and/or commercial form printers).~~

~~(f)The primary exporter must require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies (as defined in §264.72(a)) between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery~~

~~of the hazardous waste.~~

~~(g) In lieu of the requirements of §262.20(d), where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter must:~~

~~(1) Renotify EPA of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with §262.53(c) and obtain an EPA Acknowledgment of Consent prior to delivery; or~~

~~(2) Instruct the transporter to return the waste to the primary exporter in the United States or designate another facility within the United States; and~~

~~(3) Instruct the transporter to revise the manifest in accordance with the primary exporter's instructions. (h) The primary exporter must attach a copy of the EPA Acknowledgment of Consent to the shipment~~

~~of the manifest which must accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter must provide the transporter with an EPA Acknowledgment of Consent which must accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter must attach the copy of the EPA Acknowledgment of Consent to the shipping paper.~~

~~(i) The primary exporter shall provide the transporter with an additional copy of the manifest for delivery to the U. S. Customs official at the point the hazardous waste leaves the United States in accordance with §263.20(g)(4).~~

**~~Section 262.55 Exception reports.~~**

~~In lieu of the requirements of §262.42, a primary exporter must file an exception report with both the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 and with a copy to the Secretary if any of the following occurs:~~

~~(a) He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within forty five (45) days from the date it was accepted by the initial transporter.~~

~~(b) Within ninety (90) days from the date the waste was accepted by the initial transporter, the primary exporter has not received written confirmation from the consignee that the hazardous waste was received;~~

~~(c)The waste is returned to the United States.~~

**~~Section 262.56 Annual reports.~~**

~~(a) Primary exporters of hazardous waste shall file with the EPA Administrator with a copy to the Secretary no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous calendar year. Such reports shall include the following:~~

~~(1) The EPA identification number, name, and mailing and site address of the exporter;~~

~~(2) The calendar year covered by the report;~~

~~(3) The name and site address of each consignee;~~

~~(4) By consignee, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from Part 261, Subpart C or D), DOT hazard class, the name and U.S. EPA I.D. number (where applicable) for each transporter used, the total amount of waste shipped and number of shipments pursuant to each notification;~~

~~(5) Except for hazardous waste produced by exporters of greater than 100 kg but less than 1000 kg in a calendar month, unless provided pursuant to §262.41:~~

~~(i) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated, and~~

~~(ii) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.~~

~~(6) A certification signed by the primary exporter which states:~~

~~I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true,~~

~~accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.~~

~~(b) Annual reports submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered reports should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12th St. and Pennsylvania Ave., NW., Washington, DC 20004. A copy of the Annual Report must also be sent to the DNREC Secretary.~~

**~~Section 262.57 Recordkeeping.~~**

~~(a) For all exports a primary exporter must:~~

~~(1) Keep a copy of each notification of intent to export for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;~~

~~(2) Keep a copy of each EPA Acknowledgment of Consent for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;~~

~~(3) Keep a copy of each confirmation of delivery of the hazardous waste from the consignee for at least three years from the date the hazardous waste was accepted by the initial transporter; and~~

~~(4) Keep a copy of each annual report for a period of at least three years from the due date of the report.~~

~~(b) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the EPA Administrator.~~

**~~Section 262.58 International Agreements.~~**

~~(a) Any person who exports or imports wastes that are considered hazardous under U.S. national procedures to or from designated Member countries of the Organization for Economic Cooperation and Development (OECD) as defined in paragraph (a)(1) of this section for purposes of recovery is subject to Subpart H of this part. The requirements of Subparts E and F do not apply to such exports and imports. A waste is considered hazardous under U.S. national procedures if the waste meets the definition of hazardous waste in §261.3 and is subject to either the RCRA manifesting requirements at part 262, subpart B, the universal waste management standards of part 273, or the export requirements in the spent lead-acid battery management standards of part 266, subpart G.~~

~~(1) For the purposes of subpart H, the designated OECD Member countries consist of Australia, Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, the Republic of Korea, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.~~

~~(2) For the purposes of Subpart H of this part, Canada and Mexico are considered OECD member countries only for the purpose of transit.~~

~~(b) Any person who exports hazardous waste to or imports hazardous waste from: a designated OECD Member country for purposes other than recovery (e.g., incineration, disposal), Mexico (for any purpose), or Canada (for any purpose) remains subject to the requirements of Subparts E and F of this part, and is not subject to the requirements of subpart H of this part.~~

~~Subpart F Imports of Hazardous Waste~~ **Subpart F [Reserved]**

**~~Section 262.60 Imports of hazardous waste.~~**

~~(a) Any person who imports hazardous waste from a foreign country into the United States must comply with the requirements of this part and the special requirements of this subpart.~~

~~(b) When importing hazardous waste, a person must meet all the requirements of §262.20 for the manifest except that:~~

~~(1) In place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's name, address and EPA identification number must be used.~~

~~(2) In place of the generator's signature on the certification statement, the U.S. importer or his agent must sign and date the certification and obtain the signature of the initial transporter.~~

~~(c)A person who imports hazardous waste may obtain the manifest form from any source that is registered with the U.S. EPA as a supplier of manifests (e.g. states, waste handlers, and/or commercial forms printers).~~

~~(d) In the International Shipments block, the importer must check the import box and enter the point of entry (city and State) into the United States.~~

~~(e) The importer must provide the transporter with an additional copy of the manifest to be submitted by the receiving facility to U.S. EPA in accordance with §264.71(a)(3) and §265.71 (a)(3) of this chapter.~~

## Subpart G Farmers

**Section 262.70 Farmers.**

A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in this part or other standards in Part 122, 264, 265, or 268 for those wastes provided he triple rinses each emptied pesticide container in accordance with §261.7(b)(3) and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

## ~~Subpart H Transboundary Movements of Hazardous Waste for Recovery within the OECD~~
## **Subpart H Transboundary Movements of Hazardous Waste for Recovery within the OECD**

**~~Section 262.80 Applicability.~~**

~~(a) The requirements of this subpart apply to imports and exports of wastes that are considered hazardous under U.S. national procedures and are destined for recovery operations in the countries listed in §262.58(a)(1). A waste is considered hazardous under U.S. national procedures if the waste:~~

~~(1) Meets the definition of hazardous waste in §261.3; and~~

~~(2) Is subject to either the manifesting requirements at Part 262, Subpart B, the universal waste management standards of Part 273, or the export requirements in the spent lead-acid battery management standards of Part 266, subpart G.~~

~~(b) Any person (exporter, importer, or recovery facility operator) who mixes two or more wastes (including hazardous and non-hazardous wastes) or otherwise subjects two or more wastes (including hazardous and nonhazardous wastes) to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under RCRA and any exporter duties, if applicable, under this subpart.~~

**~~Section 262.81 Definitions.~~**

~~The following definitions apply to this subpart.~~

~~**Competent authority** means the regulatory authority or authorities of concerned countries having jurisdiction over transboundary movements of wastes destined for recovery operations.~~

~~**Countries concerned** means the OECD Member countries of export or import and any OECD Member countries of transit.~~

~~**Country of export** means any designated OECD Member country listed in §262.58(a)(1) from which a transboundary movement of hazardous wastes is planned to be initiated or is initiated.~~

~~**Country of import** means any designated OECD Member country listed in §262.58(a)(1) to which a transboundary movement of hazardous wastes is planned or takes place for the purpose of submitting the wastes to recovery operations therein.~~

~~**Country of transit** means any designated OECD Member country listed in §262.58(a)(1) and (a)(2) other than the country of export or country of import across which a transboundary movement of hazardous wastes is planned or takes place.~~

~~**Exporter** means the person under the jurisdiction of the country of export who has, or will have at the time the planned transboundary movement commences, possession or other forms of legal control of the wastes and who proposes transboundary movement of the hazardous wastes for the ultimate purpose of~~

~~submitting them to recovery operations. When the United States (U.S.) is the country of export, *exporter* is interpreted to mean a person domiciled in the United States.~~

~~**Importer** means the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the country of import.~~

~~**OECD area** means all land or marine areas under the national jurisdiction of any OECD Member country listed in §262.58. When the regulations refer to shipments to or from an OECD Member country, this means OECD area.~~

~~***OECD*** means the Organization for Economic Cooperation and Development.~~

~~**Recognized trader** means a person who, with appropriate authorization of countries concerned, acts in the role of principal to purchase and subsequently sell wastes; this person has legal control of such wastes from time of purchase to time of sale; such a person may act to arrange and facilitate transboundary movements of wastes destined for recovery operations.~~

~~**Recovery facility** means a facility which, under applicable domestic law, is operating or is authorized to operate in the country of import to receive wastes and to perform recovery operations on them.~~

~~**Recovery operations** means activities leading to resource recovery, recycling, reclamation, direct re-use or alternative uses, which include: R1 Use as a fuel (other than in direct incineration) or other means to generate energy. R2 Solvent reclamation/regeneration. R3 Recycling/reclamation of organic substances which are not used as solvents. R4 Recycling/reclamation of metals and metal compounds. R5 Recycling/reclamation of other inorganic materials. R6 Regeneration of acids or bases. R7 Recovery of components used for pollution abatement. R8 Recovery of components used from catalysts. R9 Used oil re-refining or other reuses of previously used oil. R10 Land treatment resulting in benefit to agriculture or ecological improvement. R11 Uses of residual materials obtained from any of the operations numbered R1–R10. R12 Exchange of wastes for submission to any of the operations numbered R1–R11. R13 Accumulation of material intended for any operation numbered R1–R12.~~

~~**Transboundary movement** means any movement of wastes from an area under the national jurisdiction of one OECD Member country to an area under the national jurisdiction of another OECD Member country.~~

~~**Section 262.82 General conditions.**~~

~~(a) *Scope.* The level of control for exports and imports of waste is indicated by assignment of the waste to either a list of wastes subject to the Green control procedures or a list of wastes subject to the Amber control procedures and by the national procedures of the United States, as defined in §262.80(a). The OECD Green and Amber lists are incorporated by reference in §262.89(d).~~

~~(1) Listed wastes subject to the Green control procedures.~~

~~(i) Green wastes that are not considered hazardous under U.S. national procedures as defined in §262.80(a) are subject to existing controls normally applied to commercial transactions.~~

~~(ii) Green wastes that are considered hazardous under U.S. national procedures as defined in §262.80(a) are subject to the Amber control procedures set forth in this subpart.~~

~~(2) Listed wastes subject to the Amber control procedures.~~

~~(i) Amber wastes that are considered hazardous under U.S. national procedures as defined in §262.80(a) are subject to the Amber control procedures set forth in this subpart.~~

~~(ii) Amber wastes that are considered hazardous under U.S. national procedures as defined in §262.80(a), are subject to the Amber control procedures in the United States, even if they are imported to or exported from a designated OECD Member country listed in §262.58(a)(1) that does not consider the waste to be hazardous. In such an event, the responsibilities of the Amber control procedures shift as provided:~~

~~(A) For U.S. exports, the United States shall issue an acknowledgement of receipt and assume other responsibilities of the competent authority of the country of import.~~

~~(B) For U.S. imports, the U.S. recovery facility/importer and the United States shall assume the obligations associated with the Amber control procedures that normally apply to the exporter and country of export, respectively.~~

~~(iii) Amber wastes that are not considered hazardous under U.S. national procedures as defined in §262.80(a), but are considered hazardous by an OECD Member country are subject to the Amber control procedures in the OECD Member country that considers the waste hazardous. All responsibilities of the~~

~~U.S. importer/exporter shift to the importer/exporter of the OECD Member country that considers the waste hazardous unless the parties make other arrangements through contracts.~~

~~**Note to Paragraph (a)(2):** Some wastes subject to the Amber control procedures are not listed or otherwise identified as hazardous under RCRA, and therefore are not subject to the Amber control procedures of this subpart. Regardless of the status of the waste under RCRA, however, other Federal environmental statutes (*e.g.*, the Toxic Substances Control Act) restrict certain waste imports or exports. Such restrictions continue to apply with regard to this subpart.~~

~~(3) Procedures for mixtures of wastes.~~

~~(i) A Green waste that is mixed with one or more other Green wastes such that the resulting mixture is not considered hazardous under U.S. national procedures as defined in §262.80(a) shall be subject to the Green control procedures, provided the composition of this mixture does not impair its environmentally sound recovery.~~

~~**Note to Paragraph (a)(3)(i):** The regulated community should note that some OECD Member countries may require, by domestic law, that mixtures of different Green wastes be subject to the Amber control procedures.~~

~~(ii) A Green waste that is mixed with one or more Amber wastes, in any amount, *de minimis* or otherwise, or a mixture of two or more Amber wastes, such that the resulting waste mixture is considered hazardous under U.S. national procedures as defined in §262.80(a) are subject to the Amber control procedures, provided the composition of this mixture does not impair its environmentally sound recovery.~~

~~**Note to Paragraph (a)(3)(ii):** The regulated community should note that some OECD Member countries may require, by domestic law, that a mixture of a Green waste and more than a *de minimis* amount of an Amber waste or a mixture of two or more Amber wastes be subject to the Amber control procedures.~~

~~(4) Wastes not yet assigned to an OECD waste list are eligible for transboundary movements, as follows: (i) If such wastes are considered hazardous under U.S. national procedures as defined in §262.80(a), such wastes are subject to the Amber control procedures.~~

~~(ii) If such wastes are not considered hazardous under U.S. national procedures as defined in §262.80(a), such wastes are subject to the Green control procedures.~~

~~(b) *General conditions applicable to transboundary movements of hazardous waste:*~~

~~(1) The waste must be destined for recovery operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the importing country;~~

~~(2) The transboundary movement must be in compliance with applicable international transport agreements; and~~

~~**Note to Paragraph (b)(2):** These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADNR (1970), MARPOL Convention (1973/1978), SOLAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985).~~

~~(3) Any transit of waste through a non-OECD Member country must be conducted in compliance with all applicable international and national laws and regulations.~~

~~(c)*Provisions relating to re-export for recovery to a third country:*~~

~~(1) Re-export of wastes subject to the Amber control procedures from the United States, as the country of import, to a third country listed in §262.58(a)(1) may occur only after an exporter in the United States provides notification to and obtains consent from the competent authorities in the third country, the original country of export, and any transit countries. The notification must comply with the notice and consent procedures in §262.83 for all countries concerned and the original country of export. The competent authorities of the original country of export, as well as the competent authorities of all other countries concerned have thirty (30) days to object to the proposed movement.~~

~~(i) The thirty (30) day period begins once the competent authorities of both the initial country of export and new country of import issue Acknowledgements of Receipt of the notification.~~

~~(ii) The transboundary movement may commence if no objection has been lodged after the thirty (30) day period has passed or immediately after written consent is received from all relevant OECD importing and transit countries.~~

~~(2) In the case of re-export of Amber wastes to a country other than those listed in § 262.58(a)(1), notification to and consent of the competent authorities of the original OECD Member country of export and any OECD Member countries of transit is required as specified in paragraph (c)(1) of this section, in addition to compliance with all international agreements and arrangements to which the first importing OECD Member country is a party and all applicable regulatory requirements for exports from the first~~

~~country of import.~~

~~(d) *Duty to return or re-export wastes subject to the Amber control procedures.*~~

~~When a transboundary movement of wastes subject to the Amber control procedures cannot be completed in accordance with the terms of the contract or the consent(s) and alternative arrangements cannot be made to recover the waste in an environmentally sound manner in the country of import, the waste must be returned to the country of export or re-exported to a third country. The provisions of paragraph (c) of this section apply to any shipments to be re-exported to a third country. The following provisions apply to shipments to be returned to the country of export as appropriate:~~

~~(1) Return from the United States to the country of export: The U.S. importer must inform EPA at the specified address in §262.83(b)(1)(i) of the need to return the shipment. EPA will then inform the competent authorities of the countries of export and transit, citing the reason(s) for returning the waste. The U.S. importer must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned Member countries. If the return shipment will cross any transit country, the return shipment may only occur after EPA provides notification to and obtains consent from the competent authority of the country of transit, and provides a copy of that consent to the U.S. importer.~~

~~(2) Return from the country of import to the United States: The U.S. exporter must provide for the return of the hazardous waste shipment within ninety (90) days from the time the country of import informs EPA of the need to return the waste or such other period of time as the concerned Member countries agree. The U.S. exporter must submit an exception report to EPA in accordance with §262.87(b).~~

~~(e) *Duty to return wastes subject to the Amber control procedures from a country of transit.* When a transboundary movement of wastes subject to the Amber control procedures does not comply with the requirements of the notification and movement documents or otherwise constitutes illegal shipment, and if alternative arrangements cannot be made to recover these wastes in an environmentally sound manner, the waste must be returned to the country of export. The following provisions apply as appropriate:~~

~~(1) Return from the United States (as country of transit) to the country of export: The U.S. transporter must inform EPA at the specified address in §262.83(b)(1)(i) of the need to return the shipment. EPA will then inform the competent authority of the country of export, citing the reason(s) for returning the waste. The U.S. transporter must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned Member countries.~~

~~(2) Return from the country of transit to the United States (as country of export): The U.S. exporter must provide for the return of the hazardous waste shipment within ninety (90) days from the time the competent authority of the country of transit informs EPA of the need to return the waste or such other period of time as the concerned Member countries agree. The U.S. exporter must submit an exception report to EPA in accordance with § 262.87(b).~~

~~(f)*Requirements for wastes destined for and received by R12 and R13 facilities.* The transboundary movement of wastes destined for R12 and R13 operations must comply with all Amber control procedures for notification and consent as set forth in § 262.83 and for the movement document as set forth in § 262.84. Additional responsibilities of R12/R13 facilities include:~~

~~(1) Indicating in the notification document the foreseen recovery facility or facilities where the subsequent R1–R11 recovery operation takes place or may take place.~~

~~(2) Within three (3) days of the receipt of the wastes by the R12/R13 recovery facility or facilities, the facility(ies) shall return a signed copy of the movement document to the exporter and to the competent authorities of the countries of export and import. The facility(ies) shall retain the original of the movement document for three (3) years.~~

~~(3) As soon as possible, but no later than thirty (30) days after the completion of the R12/R13 recovery operation and no later than one (1) calendar year following the receipt of the waste, the R12 or R13 facility(ies) shall send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. Washington, DC 20460, by mail, email without digital signature followed by mail, or fax followed by mail.~~

~~(4) When an R12/R13 recovery facility delivers wastes for recovery to an R1–R11 recovery facility located in the country of import, it shall obtain as soon as possible, but no later than one (1) calendar~~

~~year following delivery of the waste, a certification from the R1–R11 facility that recovery of the wastes at that facility has been completed. The R12/R13 facility must promptly transmit the applicable certification to the competent authorities of the countries of import and export, identifying the transboundary movements to which the certification pertain.~~

~~(5) When an R12/R13 recovery facility delivers wastes for recovery to an R1–R11 recovery facility located:~~

~~(i) In the initial country of export, Amber control procedures apply, including a new notification;~~

~~(ii) In a third country other than the initial country of export, Amber control procedures apply, with the additional provision that the competent authority of the initial country of export shall also be notified of the transboundary movement.~~

~~(g) *Laboratory analysis exemption.* The transboundary movement of an Amber waste is exempt from the Amber control procedures if it is in certain quantities and destined for laboratory analysis to assess its physical or chemical characteristics, or to determine its suitability for recovery operations. The quantity of such waste shall be determined by the minimum quantity reasonably needed to perform the analysis in each particular case adequately, but in no case exceed twenty-five kilograms (25 kg). Waste destined for laboratory analysis must still be appropriately packaged and labeled.~~

~~(h) *Notification and Copies to the State of Delaware*. Any person submitting information to EPA in accordance with the requirements of this section must also submit copies to the DNREC Secretary at the same time.~~

**~~Section 262.83 Notification and consent.~~**

~~(a) *Applicability.* Consent must be obtained from the competent authorities of the relevant OECD countries of import and transit prior to exporting hazardous waste destined for recovery operations subject to this subpart. Hazardous wastes subject to the Amber control procedures are subject to the requirements of paragraph (b) of this section; and wastes not identified on any list are subject to the requirements of paragraph (c) of this section.~~

~~(b) *Amber wastes.* Exports of hazardous wastes from the United States as described in § 262.80(a) that are subject to the Amber control procedures are prohibited unless the notification and consent requirements of paragraph (b)(1) or paragraph (b)(2) of this section are met.~~

~~(1) Transactions requiring specific consent:~~

~~(i) *Notification.* At least forty-five (45) days prior to commencement of each transboundary movement, the exporter must provide written notification in English of the proposed transboundary movement to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, with the words ''Attention: OECD Export Notification'' prominently displayed on the envelope. This notification must include all of the information identified in paragraph (d) of this section. In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, the same RCRA waste codes, and are to be sent periodically to the same recovery facility by the same exporter, the exporter may submit one general notification of intent to export these wastes in multiple shipments during a period of up to one (1) year. Even when a general notification is used for multiple shipments, each shipment still must be accompanied by its own movement document pursuant to §262.84.~~

~~(ii) *Tacit consent.* If no objection has been lodged by any countries concerned (*i.e.,* exporting, importing, or transit) to a notification provided pursuant to paragraph (b)(1)(i) of this section within thirty (30) days after the date of issuance of the Acknowledgement of Receipt of notification by the competent authority of the country of import, the transboundary movement may commence. Tacit consent expires one (1) calendar year after the close of the thirty (30) day period; re-notification and renewal of all consents is required for exports after that date.~~

~~(iii) *Written consent.* If the competent authorities of all the relevant OECD importing and transit countries provide written consent in a period less than thirty (30) days, the transboundary movement may commence immediately after all necessary consents are received. Written consent expires for each relevant OECD importing and transit country one (1) calendar year after the date of that country's consent unless otherwise specified; re-notification and renewal of each expired consent is required for exports after that date.~~

~~(2) Transboundary movements to facilities pre-approved by the competent authorities of the importing countries to accept specific wastes for recovery:~~

~~(i) *Notification.* The exporter must provide EPA a notification that contains all the information identified in paragraph (d) of this section in English, at least ten (10) days in advance of commencing shipment to a preapproved facility. The notification must indicate that the recovery facility is preapproved, and may apply to a single specific shipment or to multiple shipments as described in paragraph (b)(1)(i) of this section. This information must be sent to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, with the words "OECD Export Notification—Pre-approved Facility" prominently displayed on the envelope. General notifications that cover multiple shipments as described in paragraph (b)(1)(i) of this section may cover a period of up to three (3) years. Even when a general notification is used for multiple shipments, each shipment still must be accompanied by its own movement document pursuant to §262.84.~~

~~(ii) Exports to pre-approved facilities may take place after the elapse of seven (7) working days from the issuance of an Acknowledgement of Receipt of the notification by the competent authority of the country of import unless the exporter has received information indicating that the competent authority of any countries concerned objects to the shipment.~~

~~(c)*Wastes not covered in the OECD Green and Amber lists.* Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists, incorporated by reference in §262.89(d), but which are considered hazardous under U.S. national procedures as defined in §262.80(a), are subject to the notification and consent requirements established for the Amber control procedures in accordance with paragraph (b) of this section. Wastes destined for recovery operations, that have not been assigned to the OECD Green and Amber lists incorporated by reference in §262.89(d), and are not considered hazardous under U.S. national procedures as defined by §262.80(a) are subject to the Green control procedures.~~

~~(d) *Notifications submitted under this section must include the information specified in paragraphs (d)(1) through (d)(14) of this section:*~~

~~(1) Serial number or other accepted identifier of the notification document;~~

~~(2) Exporter name and EPA identification number (if applicable), address, telephone, fax numbers, and email address;~~

~~(3) Importing recovery facility name, address, telephone, fax numbers, e-mail address, and technologies employed;~~

~~(4) Importer name (if not the owner or operator of the recovery facility), address, telephone, fax numbers, and email address; whether the importer will engage in waste exchange recovery operation R12 or waste accumulation recovery operation R13 prior to delivering the waste to the final recovery facility and identification of recovery operations to be employed at the final recovery facility;~~

~~(5) Intended transporter(s) and/or their agent(s); address, telephone, fax, and e-mail address;~~

~~(6) (6) Country of export and relevant competent authority, and point of departure;~~

~~(7) Countries of transit and relevant competent authorities and points of entry and departure;~~

~~(8) Country of import and relevant competent authority, and point of entry;~~

~~(9) Statement of whether the notification is a single notification or a general notification. If general, include period of validity requested;~~

~~(10) Date(s) foreseen for commencement of transboundary movement(s); (11) Means of transport envisaged;~~

~~(12) Designation of waste type(s) from the appropriate OECD list incorporated by reference in §262.89(d), description(s) of each waste type, estimated total quantity of each, RCRA waste code, and the United Nations number for each waste type;~~

~~(13) Specification of the recovery operation(s) as defined in §262.81.~~

~~(14) Certification/Declaration signed by the exporter that states: I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally enforceable written contractual obligations have been entered into, and that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement. Name: ||||||||||||||| Signature: ||||||||||||||| Date: ||||||||||||||||~~

~~**Note to Paragraph (d)(14):** The United States does not currently require financial assurance for these~~

~~waste shipments. However, U.S. exporters may be asked by other governments to provide and certify to such assurance as a condition of obtaining consent to a proposed movement.~~

~~(e) *Certificate of Recovery.* As soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following receipt of the waste, the U.S. recovery facility shall send a certificate of recovery to the exporter and to the competent authorities of the countries of export and import by mail, e-mail without a digital signature followed by mail, or fax followed by mail. The certificate of recovery shall include a signed, written and dated statement that affirms that the waste materials were recovered in the manner agreed to by the parties to the contract required under §262.85. (f) *Notification and Copies to the State of Delaware*. Any person submitting information to EPA in accordance with the requirements of this section must also submit copies to the DNREC Secretary at the same time.~~

**~~Section 262.84 Movement document.~~**

~~(a) All U.S. parties subject to the contract provisions of §262.85 must ensure that a movement document meeting the conditions of paragraph (b) of this section accompanies each transboundary movement of wastes subject to the Amber control procedures from the initiation of the shipment until it reaches the final recovery facility, including cases in which the waste is stored and/or sorted by the importer prior to shipment to the final recovery facility, except as provided in paragraphs (a)(1) and (2) of this section.~~

~~(1) For shipments of hazardous waste within the United States solely by water (bulk shipments only), the generator must forward the movement document with the manifest to the last water (bulk shipment) transporter to handle the waste in the United States if exported by water, (in accordance with the manifest routing procedures at §262.23(c)).~~

~~(2) For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator must forward the movement document with the manifest (in accordance with the routing procedures for the manifest in §262.23(d)) to the next non-rail transporter, if any, or the last rail transporter to handle the waste in the United States if exported by rail.~~

~~(b) The movement document must include all information required under §262.83 (for notification), as well as the following paragraphs (b)(1) through (b)(7) of this section:~~

~~(1) Date movement commenced;~~

~~(2) Name (if not exporter), address, telephone, fax numbers, and e-mail of primary exporter; (3) Company name and EPA ID number of all transporters;~~

~~(4) Identification (license, registered name or registration number) of means of transport, including types of packaging envisaged;~~

~~(5) Any special precautions to be taken by transporter(s);~~

~~(6) Certification/declaration signed by the exporter that no objection to the shipment has been lodged, as follows: I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally enforceable written contractual obligations have been entered into, that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement, and that:~~

~~1.All necessary consents have been received; OR~~

~~2.The shipment is directed to a recovery facility within the OECD area and no objection has been received from any of the countries concerned within the thirty (30) day tacit consent period; OR~~

~~3.The shipment is directed to a recovery facility pre-approved for that type of waste within the OECD area; such an authorization has not been revoked, and no objection has been received from any of the countries concerned.~~

~~(Delete sentences that are not applicable)~~

~~Name: lllllllllllllll Signature: lllllllllllllll Date: lllllllllllllll~~

~~(7) Appropriate signatures for each custody transfer (*e.g.,* transporter, importer, and owner or operator of the recovery facility).~~

~~(c)Exporters also must comply with the special manifest requirements of §262.54(a), (b), (c), (e), and (i) and importers must comply with the import requirements of part 262, subpart F.~~

~~(d) Each U.S. person that has physical custody of the waste from the time the movement commences until it arrives at the recovery facility must sign the movement document (*e.g.,* transporter, importer, and~~

~~owner or operator of the recovery facility).~~

~~(e) Within three (3) working days of the receipt of imports subject to this subpart, the owner or operator of the U.S. recovery facility must send signed copies of the movement document to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and to the competent authorities of the countries of export and transit. If the concerned U.S. recovery facility is a R12/R13 recovery facility as defined under §262.81, the facility shall retain the original of the movement document for three (3) years.~~

~~(f)*Notification and Copies to the State of Delaware*. Any person submitting information to EPA in accordance with the requirements of this section must also submit copies to the DNREC Secretary at the same time.~~

**~~Section 262.85 Contracts.~~**

~~(a) Transboundary movements of hazardous wastes subject to the Amber control procedures are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the exporter and the owner or operator of the recovery facility, and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangements.~~

~~(b) Contracts or equivalent arrangements must specify the name and EPA ID number, where available, of paragraph (b)(1) through (b)(4) of this section:~~

~~(1) The generator of each type of waste;~~

~~(2) Each person who will have physical custody of the wastes; (3) Each person who will have legal control of the wastes; and (4) The recovery facility.~~

~~(c)Contracts or equivalent arrangements must specify which party to the contract will assume responsibility for alternate management of the wastes if their disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts must specify that:~~

~~(1) The person having actual possession or physical control over the wastes will immediately inform the exporter and the competent authorities of the countries of export and import and, if the wastes are located in a country of transit, the competent authorities of that country; and~~

~~(2) The person specified in the contract will assume responsibility for the adequate management of the wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of wastes and, as the case may be, shall provide the notification for re-export.~~

~~(d) Contracts must specify that the importer will provide the notification required in §262.82(c) prior to the re-export of controlled wastes to a third country.~~

~~(e) Contracts or equivalent arrangements must include provisions for financial guarantees, if required by the competent authorities of any countries concerned, in accordance with applicable national or international law requirements.~~

~~**Note to Paragraph (e):** Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD Member countries do. It is the responsibility of the exporter to ascertain and comply with such requirements; in some cases, transporters or importers may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.~~

~~(f)Contracts or equivalent arrangements must contain provisions requiring each contracting party to comply with all applicable requirements of this subpart.~~

~~(g) Upon request by EPA, U.S. exporters, importers, or recovery facilities must submit to EPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40 CFR 2.203(b) will be~~

~~treated as confidential and will be disclosed by EPA only as provided in §260.2.~~

~~**Note to Paragraph (g):** Although the United States does not require routine submission of contracts at this time, the OECD Decision allows Member countries to impose such requirements. When other OECD Member countries require submission of partial or complete copies of the contract as a condition to granting consent to proposed movements, EPA will request the required information; absent submission of such information, some OECD Member countries may deny consent for the proposed movement.~~

**~~Section 262.86 Provisions relating to recognized traders.~~**

~~(a) A recognized trader who takes physical custody of a waste and conducts recovery operations (including storage prior to recovery) is acting as the owner or operator of a recovery facility and must be so authorized in accordance with all applicable Federal and State laws.~~

~~(b) A recognized trader acting as an exporter or importer for transboundary shipments of waste must comply with all the requirements of this subpart associated with being an exporter or importer.~~

**~~Section 262.87 Reporting and recordkeeping.~~**

~~(a) *Annual reports.* For all waste movements subject to this subpart, persons (*e.g.*, exporters, recognized traders) who meet the definition of primary exporter in §262.51 or who initiate the movement documentation under §262.84 shall file an annual report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. (If the primary exporter or the person who initiates the movement document under § 262.84 is required to file an annual report for waste exports that are not covered under this subpart, he may include all export information in one report provided the following information on exports of waste destined for recovery within the designated OECD Member countries is contained in a separate section.) Such reports shall include all of the following paragraphs (a)(1) through (a)(6) of this section specified as follows:~~

~~(1) The EPA identification number, name, and mailing and site address of the exporter filing the report;~~

~~(2) The calendar year covered by the report;~~

~~(3) The name and site address of each final recovery facility;~~

~~(4) By final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from part 261, subpart C or D), designation of waste type(s) and applicable waste code(s) from the appropriate OECD waste list incorporated by reference in §262.89(d), DOT hazard class, the name and U.S. EPA identification number (where applicable) for each transporter used, the total amount of hazardous waste shipped pursuant to this subpart, and number of shipments pursuant to each notification;~~

~~(5) In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100 kg but less than 1,000 kg in a calendar month, and except for hazardous waste for which information was already provided pursuant to §262.41:~~

~~(i) A description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated; and~~

~~(ii) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and~~

~~(6) A certification signed by the person acting as primary exporter or initiator of the movement document under §262.84 that states: I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.~~

~~(b) *Exception reports.* Any person who meets the definition of primary exporter in §262.51 or who initiates the movement document under §262.84 must file an exception report in lieu of the requirements of~~

~~§262.42 (if applicable) with the Office of Enforcement and Compliance Assurance, Office of Federal~~

~~Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, if any of the following occurs:~~

~~(1) He has not received a copy of the RCRA hazardous waste manifest (if applicable) signed by the transporter identifying the point of departure of the waste from the United States, within forty-five (45) days from the date it was accepted by the initial transporter;~~

~~(2) Within ninety (90) days from the date the waste was accepted by the initial transporter, the exporter has not received written confirmation from the recovery facility that the hazardous waste was received;~~

~~(3) The waste is returned to the United States.~~ ~~(c)~~ ~~*Recordkeeping.*~~

~~(1) Persons who meet the definition of primary exporter in §262.51 or who initiate the movement document under §262.84 shall keep the following records in paragraphs (c)(1)(i) through (c)(1)(iv) of this section:~~

~~(i) A copy of each notification of intent to export and all written consents obtained from the competent authorities of countries concerned for a period of at least three (3) years from the date the hazardous waste was accepted by the initial transporter;~~

~~(ii) A copy of each annual report for a period of at least three (3) years from the due date of the report;~~

~~(iii) A copy of any exception reports and a copy of each confirmation of delivery (*i.e.*, movement document) sent by the recovery facility to the exporter for at least three (3) years from the date the hazardous waste was accepted by the initial transporter or received by the recovery facility, whichever is applicable; and~~

~~(iv)A copy of each certificate of recovery sent by the recovery facility to the exporter for at least three (3) years from the date that the recovery facility completed processing the waste shipment.~~

~~(2) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.~~

~~(3) A copy of the annual and/or exception reports must be sent to the DNREC Secretary.~~

**~~Section 262.88 Pre approval for U.S. Recovery Facilities (Reserved).~~**

**~~Section 262.89 OECD Waste Lists.~~**

~~(a) *General.* For the purposes of this subpart, a waste is considered hazardous under U.S. national procedures, and hence subject to this subpart, if the waste:~~

~~(1) Meets the Federal definition of hazardous waste in 40 CFR §261.3; and~~

~~(2) Is subject to either the Federal RCRA manifesting requirements at 40 CFR part 262, subpart B, the universal waste management standards of part 273, or the export requirements in the spent lead-acid battery management standards of part 266, subpart G.~~

~~(b) If a waste is hazardous under paragraph (a) of this section, it is subject to the Amber control procedures, regardless of whether it appears in the OECD Amber List, incorporated by reference in paragraph (d) of this section.~~

~~(c)The appropriate control procedures for hazardous wastes and hazardous waste mixtures are addressed in 262.82.~~

~~(d) The OECD waste lists, as set forth in Annex B ("Green List") and Annex C ("Amber List") (collectively "OECD waste lists") of the 2009 "Guidance Manual for the Implementation of Council Decision C(2001)107/FINAL, as Amended, on the Control of Transboundary Movements of Wastes Destined for Recovery Operations," are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**. The materials are available for inspection at: the U.S. Environmental Protection Agency, Docket Center Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004 (Docket # EPA–HQ–RCRA–2005–0018) or at the National Archives and Records Administration (NARA), and may be obtained from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue André Pascal, F–75775 Paris Cedex 16, France. For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/* federal-register/cfr/ibr-locations.html. To contact the EPA Docket Center Public Reading Room, call (202) 566–1744. To contact the OECD, call +33 (0) 1 45 24 81 67.~~

**Section 262.80 Applicability.**

(a) The requirements of this subpart apply to transboundary movements of hazardous wastes.

(b) Any person (including exporter, importer, disposal facility operator, or recovery facility operator) who mixes two or more wastes (including hazardous and non-hazardous wastes) or otherwise subjects two or more wastes (including hazardous and non-hazardous wastes) to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under RCRA and any exporter duties, if applicable, under this subpart.

**Section 262.81 Definitions.**

In addition to the definitions set forth at § 260.10 of these regulations, the following definitions apply to this subpart:

**"Competent authority"** means the regulatory authority or authorities of concerned countries having jurisdiction over transboundary movements of wastes.

**"Countries concerned"** means the countries of export or import and any countries of transit.

**"Country of export"** means any country from which a transboundary movement of hazardous wastes is planned to be initiated or is initiated.

**"Country of import"** means any country to which a transboundary movement of hazardous wastes is planned or takes place for the purpose of submitting the wastes to recovery or disposal operations therein.

**"Country of transit"** means any country other than the country of export or country of import across which a transboundary movement of hazardous wastes is planned or takes place.

**"Disposal operations"** means activities which do not lead to the possibility of resource recovery, recycling, reclamation, direct re-use or alternate uses, which include:

(1) D1 Release or Deposit into or onto land, other than by any of operations D2 through D5 or D12.

(2) D2 Land treatment, such as biodegradation of liquids or sludges in soils.

(3) D3 Deep injection, such as injection into wells, salt domes or naturally occurring repositories. (4) D4 Surface impoundment, such as placing of liquids or sludges into pits, ponds or lagoons. (5) D5 Specially engineered landfill, such as placement into lined discrete cells which are capped and isolated from one another and the environment.

(6) D6 Release into a water body other than a sea or ocean, and other than by operation D4.

(7) D7 Release into a sea or ocean, including sea-bed insertion, other than by operation D4.

(8) D8 Biological treatment not specified elsewhere in operations D1 through D12, which results in final compounds or mixtures which are discarded by means of any of operations D1 through D12.

(9) D9 Physical or chemical treatment not specified elsewhere in operations D1 through D12, such as evaporation, drying, calcination, neutralization, or precipitation, which results in final compounds or mixtures which are discarded by means of any of operations D1through D12. (10) D10 Incineration on land.

(11) D11 Incineration at sea.

(12) D12 Permanent storage.

(13) D13 Blending or mixing, prior to any of operations D1 through D12.

(14) D14 Repackaging, prior to any of operations D1 through D13.

(15) D15 (or DC17 for transboundary movements with Canada only) Interim Storage, prior to any of operations D1 through D12.

(16) DC15 Release, including the venting of compressed or liquified gases, or treatment, other than by any of operations D1 to D12 (for transboundary movements with Canada only).

(17) DC16 Testing of a new technology to dispose of a hazardous waste (for transboundary movements with Canada only).

**"EPA Acknowledgment of Consent (AOC)"** means the letter EPA sends to the exporter documenting the specific terms of the country of import's consent and the country(ies) of transit's consent(s). The AOC meets the definition of an export license in U.S. Census Bureau regulations 15 CFR 30.1.

**"Export"** means the transportation of hazardous waste from a location under the jurisdiction of the United States to a location under the jurisdiction of another country, or a location not under the jurisdiction of any country, for the purposes of recovery or disposal operations therein.

**"Exporter,"** also known as primary exporter on the RCRA hazardous waste manifest, means the person domiciled in the United States who is required to originate the movement document in accordance with §262.83(d) or the manifest for a shipment of hazardous waste in accordance with subpart B of this part, or equivalent State provision, which specifies a foreign receiving facility as the facility to which the hazardous wastes will be sent, or any recognized trader who proposes export of the hazardous wastes for recovery or disposal operations in the country of import.

**"Foreign exporter"** means the person under the jurisdiction of the country of export who has, or will have at the time the planned transboundary movement commences, possession or other forms of legal control of the hazardous wastes and who proposes shipment of the hazardous wastes to the United States for recovery or disposal operations.

**"Foreign importer"** means the person to whom possession or other form of legal control of the hazardous waste is assigned at the time the exported hazardous waste is received in the country of import.

**"Foreign receiving facility"** means a facility which, under the importing country's applicable domestic law, is operating or is authorized to operate in the country of import to receive the hazardous wastes and to perform recovery or disposal operations on them.

**"Import"** means the transportation of hazardous waste from a location under the jurisdiction of another country to a location under the jurisdiction of the United States for the purposes of recovery or disposal operations therein.

**"Importer"** means the person to whom possession or other form of legal control of the hazardous waste is assigned at the time the imported hazardous waste is received in the United States.

**"OECD"** means the Organization for Economic Cooperation and Development.

**"OECD area"** means all land or marine areas under the national jurisdiction of any OECD Member country. When the regulations refer to shipments to or from an OECD Member country, this means OECD area.

**"OECD Member country"** means the countries that are members of the OECD and participate in the Amended 2001 OECD Decision. (EPA provides a list of OECD Member countries at https://www.epa.gov/hwgenerators/international-agreements-transboundary-shipments-waste).

**"Receiving facility"** means a U.S. facility which, under RCRA and other applicable domestic laws, is operating or is authorized to operate to receive hazardous wastes and to perform recovery or disposal operations on them.

**"Recovery operations"** means activities leading to resource recovery, recycling, reclamation, direct re-use or alternative uses, which include:

(1) R1 Use as a fuel (other than in direct incineration) or other means to generate energy.
(2) R2 Solvent reclamation/regeneration.
(3) R3 Recycling/reclamation of organic substances which are not used as solvents.
(4) R4 Recycling/reclamation of metals and metal compounds.
(5) R5 Recycling/reclamation of other inorganic materials.
(6) R6 Regeneration of acids or bases.
(7) R7 Recovery of components used for pollution abatement.
(8) R8 Recovery of components used from catalysts.
(9) R9 Used oil re-refining or other reuses of previously used oil.
(10) R10 Land treatment resulting in benefit to agriculture or ecological improvement.
(11) R11 Uses of residual materials obtained from any of the operations numbered R1 through R10 or RC14 (for transboundary shipments with Canada only).
(12) R12 Exchange of wastes for submission to any of the operations numbered R1 through R11 or RC14 (for transboundary shipments with Canada only).
(13) R13 Accumulation of material intended for any operation numbered R1 through R12 or RC14 (for transboundary shipments with Canada only).
(14) RC14 Recovery or regeneration of a substance or use or re-use of a recyclable material, other than by any of operations R1 to R10 (for transboundary shipments with Canada only). (15) RC15 Testing of a new technology to recycle a hazardous recyclable

material (for transboundary shipments with Canada only).

(16) RC16 Interim storage prior to any of operations R1 to R11 or RC14 (for transboundary shipments with Canada only).

**"Transboundary movement"** means any movement of hazardous wastes from an area under the national jurisdiction of one country to an area under the national jurisdiction of another country.

**Section 262.82 General conditions.**

(a) Scope. The level of control for exports and imports of waste is indicated by assignment of the waste to either a list of wastes subject to the Green control procedures or a list of wastes subject to the Amber control procedures and whether the waste is or is not hazardous waste. The OECD Green and Amber lists are incorporated by reference in §260.11.

(1) Green list wastes.

(i) Green wastes that are not hazardous wastes are subject to existing controls normally applied to commercial transactions, and are not subject to the requirements of this subpart.

(ii) Green wastes that are hazardous wastes are subject to the requirements of this subpart.

(2) Amber list wastes.

(i) Amber wastes that are hazardous wastes are subject to the requirements of this subpart, even if they are imported to or exported from a country that does not consider the waste to be hazardous or control the transboundary shipment as a hazardous waste import or export.

(A) For exports, the exporter must comply with §262.83.

(B) For imports, the recovery or disposal facility and the importer must comply with §262.84.

(ii) Amber wastes that are not hazardous wastes, but are considered hazardous by the other country are subject to the Amber control procedures in the country that considers the waste hazardous, and are not subject to the requirements of this subpart. All responsibilities of the importer or exporter shift to the foreign importer or foreign exporter in the other country that considers the waste hazardous unless the parties make other arrangements through contracts.

[Note to Paragraph (a)(2): Some Amber list wastes are not listed or otherwise identified as hazardous under RCRA, and therefore are not subject to the requirements of this subpart. Regardless of the status of the waste under RCRA, however, other Federal environmental statutes (e.g., the Toxic Substances Control Act) restrict certain waste imports or exports. Such restrictions continue to apply with regard to this subpart.]

(3) Mixtures of wastes.

(i) A Green waste that is mixed with one or more other Green wastes such that the resulting mixture is not hazardous waste is not subject to the requirements of this subpart.

[Note to Paragraph (a)(3)(i): The regulated community should note that some countries may require, by domestic law, that mixtures of different Green wastes be subject to the Amber control procedures.]

(ii) A Green waste that is mixed with one or more Amber wastes, in any amount, de minimis or otherwise, or a mixture of two or more Amber wastes, such that the resulting waste mixture is hazardous waste is subject to the requirements of this subpart.

[Note to Paragraph (a)(3)(ii): The regulated community should note that some countries may require, by domestic law, that a mixture of a Green waste and more than a de minimis amount of an Amber waste or a mixture of two or more Amber wastes be subject to the Amber control procedures.]

(4) Wastes not yet assigned to an OECD waste list are eligible for transboundary movements, as follows:

(i) If such wastes are hazardous wastes, such wastes are subject to the requirements of this subpart.

(ii) If such wastes are not hazardous wastes, such wastes are not subject to

the requirements of this subpart.

(b) General conditions applicable to transboundary movements of hazardous waste.

(1) The hazardous waste must be destined for recovery or disposal operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the country of import; (2) The transboundary movement must be in compliance with applicable international transport agreements; and

[Note to Paragraph (b)(2): These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADNR (1970), MARPOL Convention (1973/1978), SOLAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985).]

(3) Any transit of hazardous waste through one or more countries must be conducted in compliance with all applicable international and national laws and regulations.

(c)Duty to return wastes subject to the Amber control procedures during transit through the United States. When a transboundary movement of hazardous wastes transiting the United States and subject to the Amber control procedures does not comply with the requirements of the notification and movement documents or otherwise constitutes illegal shipment, and if alternative arrangements cannot be made to recover or dispose of these wastes in an environmentally sound manner, the waste must be returned to the country of export. The U.S. transporter must inform EPA at the specified mailing address in paragraph (e) of this section of the need to return the shipment. EPA will then inform the competent authority of the country of export, citing the reason(s) for returning the waste. The U.S. transporter must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned countries.

(d) Laboratory analysis exemption. Export or import of a hazardous waste sample is exempt from the requirements of this subpart if the sample is destined for laboratory analysis to assess its physical or chemical characteristics, or to determine its suitability for recovery or disposal operations, does not exceed twenty-five kilograms (25 kg) in quantity, is appropriately packaged and labeled, and complies with the conditions of §§261.4(d) or (e).

(e) EPA Address for submittals by postal mail or hand delivery. Submittals required in this subpart to be made by postal mail or hand delivery should be sent to the following addresses:

(1) For postal mail delivery, the Office of Land and Emergency Management, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, International Branch (Mail Code 2255A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

(2) For hand-delivery, the Office of Land and Emergency Management, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, International Branch (Mail Code 2255A), Environmental Protection Agency, William Jefferson Clinton South Building, Room 6144, 1200 Pennsylvania Ave. NW, Washington, DC 20004.

**Section 262.83 Exports of hazardous waste.**

(a) General export requirements. Except as provided in paragraphs (a)(5) and (6) of this section, exporters that have received an AOC from EPA before December 31, 2016 are subject to that approval and the requirements listed in the AOC that existed at the time of that approval until such time the approval period expires. All other exports of hazardous waste are prohibited unless:

(1) The exporter complies with the contract requirements in paragraph (f) of this section;

(2) The exporter complies with the notification requirements in paragraph (b) of this section;

(3) The exporter receives an AOC from EPA documenting consent from the countries of import and transit (and original country of export if exporting previously imported hazardous waste);

(4) The exporter ensures compliance with the movement documents requirements in paragraph (d) of this section;

(5) The exporter ensures compliance with the manifest instructions for export shipments in paragraph (c) of this section; and

(6) The exporter or a U.S. authorized agent:

(i) For shipments initiated prior to the AES filing compliance date of December 31, 2017, does one of the following:

(A) Submits Electronic Export Information (EEI) for each shipment to the Automated Export System (AES) or its successor system, under the International

Trade Data System (ITDS) platform, in accordance with 15 CFR 30.4(b), and includes the following items in the EEI, along with the other information required under 15 CFR 30.6:

(1) EPA license code;
(2) Commodity classification code for each hazardous waste per 15 CFR 30.6(a)(12);
(3) EPA consent number for each hazardous waste;
(4) Country of ultimate destination code per 15 CFR 30.6(a)(5); (5) Date of export per 15 CFR 30.6(a)(2);
(6) RCRA hazardous waste manifest tracking number, if required;
(7) Quantity of each hazardous waste in shipment and units for reported quantity, if required reporting units established by value for the reported commodity classification number are in units of weight or volume per 15 CFR 30.6(a)(15); or
(8) EPA net quantity for each hazardous waste reported in units of kilograms if solid or in units of liters if liquid, if required reporting units established by value for the reported commodity classification number are not in units of weight or volume.

(B) Complies with a paper-based process by:

(1) Attaching paper documentation of consent (i.e., a copy of the EPA Acknowledgment of Consent, international movement document) to the manifest, or shipping papers if a manifest is not required, which must accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter must provide the transporter with the paper documentation of consent which must accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter must attach the paper documentation of consent to the shipping paper.

(2)Providing the transporter with an additional copy of the manifest, and instructing the transporter via mail, email or fax to deliver that copy to the U.S. Customs official at the point the hazardous waste leaves the United States in accordance with §263.20(g)(4)(ii).

(ii) For shipments initiated on or after the AES filing compliance date of December 31, 2017, submits Electronic Export Information (EEI) for each shipment to the Automated Export System (AES) or its successor system, under the International Trade Data System (ITDS) platform, in accordance with 15 CFR 30.4(b), and includes the following items in the EEI, along with the other information required under 15 CFR 30.6:

(A)EPA license code;
(B)Commodity classification code for each hazardous waste per 15 CFR 30.6(a)(12);
(C)EPA consent number for each hazardous waste;
(D)Country of ultimate destination code per 15 CFR 30.6(a)(5); (E) Date of export per 15 CFR 30.6(a)(2);
(F)RCRA hazardous waste manifest tracking number, if required;
(G)Quantity of each hazardous waste in shipment and units for reported quantity, if required reporting units established by value for the reported commodity classification number are in units of weight or volume per 15 CFR 30.6(a)(15); or
(H)EPA net quantity for each hazardous waste reported in units of kilograms if solid or in units of liters if liquid, if required reporting units established by value for the reported commodity classification number are not in units of weight or volume.

(b) Notifications

(1) General notifications. At least sixty (60) days before the first shipment of hazardous waste is expected to leave the United States, the exporter must provide notification in English to EPA of the proposed transboundary movement. Notifications must be submitted electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The notification may cover up to one year of shipments of one or more hazardous wastes being sent to the same recovery or disposal facility, and must include all of the following information:

(i) Exporter name and EPA identification number, address, telephone, fax numbers,

and email address;

(ii) Foreign receiving facility name, address, telephone, fax numbers, email address, technologies employed, and the applicable recovery or disposal operations as defined in §262.81;

(iii) Foreign importer name (if not the owner or operator of the foreign receiving facility), address, telephone, fax numbers, and email address;

(iv)Intended transporter(s) and/or their agent(s); address, telephone, fax, and email address;

(v)"U.S." as the country of export name, "USA01" as the relevant competent authority code, and the intended U.S. port(s) of exit;

(vi)The ISO standard 3166 country name 2-digit code, OECD/Basel competent authority code, and the ports of entry and exit for each country of transit;

(vii) The ISO standard 3166 country name 2-digit code, OECD/Basel competent authority code, and port of entry for the country of import;

(viii) Statement of whether the notification covers a single shipment or multiple shipments;

(ix)Start and End Dates requested for transboundary movements;

(x) Means of transport planned to be used;

(xi)Description(s) of each hazardous waste, including whether each hazardous waste is regulated universal waste under Part 273 of these regulations, spent lead-acid batteries being exported for recovery of lead under Part 266, Subpart G of these regulations, or industrial ethyl alcohol being exported for reclamation under §261.6(a)(3)(i), estimated total quantity of each waste in either metric tons or cubic meters, the applicable RCRA waste code(s) for each hazardous waste, the applicable OECD waste code from the lists incorporated by reference in §260.11, and the United Nations/U.S. Department of Transportation (DOT) ID number for each waste;

(xii) Specification of the recovery or disposal operation(s) as defined in §262.81. (xiii) Certification/Declaration signed by the exporter that states:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally enforceable written contractual obligations have been entered into and that any applicable insurance or other financial guarantee is or shall be in force covering the transboundary movement.

Name:

Signature:

Date:

(2) Exports to pre-consented recovery facilities in OECD Member countries. If the recovery facility is located in an OECD member country and has been pre-consented by the competent authority of the OECD member country to recover the waste sent by exporters located in other OECD member countries, the notification may cover up to three years of shipments. Notifications proposing export to a pre-consented facility in an OECD member country must include all information listed in paragraphs (b)(1)(i) through (b)(1)(xiii) of this section and additionally state that the facility is pre-consented. Exporters must submit the notification to EPA using the allowable methods listed in paragraph (b)(1) of this section at least ten days before the first shipment is expected to leave the United States.

(3) Notifications listing interim recycling operations or interim disposal operations. If the foreign receiving facility listed in paragraph (b)(1)(ii) of this section will engage in any of the interim recovery operations R12 or R13 or interim disposal operations D13 through D15, or in the case of transboundary movements with Canada, any of the interim recovery operations R12, R13, or RC16, or interim disposal operations D13 to D14, or DC17, the notification submitted according to paragraph (b)(1) of this section must also include the final foreign recovery or disposal facility name, address, telephone, fax numbers, email address, technologies employed, and which of the applicable recovery or disposal operations R1 through R11 and D1 through D12, or in the case of transboundary movements with Canada, which of the applicable recovery or disposal operations R1 through R11, RC14 to RC15, D1 through D12, and DC15 to DC16 will be employed at the final foreign recovery or disposal facility. The recovery and disposal operations in this paragraph

are defined in §262.81.

(4) Re-notifications. When the exporter wishes to change any of the information specified on the original notification (including increasing the estimate of the total quantity of hazardous waste specified in the original notification or adding transporters), the exporter must submit a re-notification of the changes to EPA using the allowable methods in paragraph (b)(1) of this section. Any shipment using the requested changes cannot take place until the countries of import and transit consent to the changes and the exporter receives an EPA AOC letter documenting the countries' consents to the changes.

(5) For cases where the proposed country of import and recovery or disposal operations are not covered under an international agreement to which both the United States and the country of import are parties, EPA will coordinate with the Department of State to provide the complete notification to country of import and any countries of transit. In all other cases, EPA will provide the notification directly to the country of import and any countries of transit. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraphs (b)(1)(i) through (xiii) of this section.

(6) Where the countries of import and transit consent to the proposed transboundary movement(s) of the hazardous waste(s), EPA will forward an EPA AOC letter to the exporter documenting the countries' consents. Where any of the countries of import and transit objects to the proposed transboundary movement(s) of the hazardous waste or withdraws a prior consent, EPA will notify the exporter.

(7) Export of hazardous wastes for recycling or disposal operations that were originally imported into the United States for recycling or disposal operations in a third country is prohibited unless an exporter in the United States complies with the export requirements in §262.83, including providing notification to EPA in accordance with paragraph (b)(1) of this section. In addition to listing all required information in paragraphs (b)(1)(i) through (b)(1)(xiii) of this section, the exporter must provide the original consent number issued for the initial import of the wastes in the notification, and receive an AOC from EPA documenting the consent of the competent authorities in new country of import, the original country of export, and any transit countries prior to re-export. (8) Upon request by EPA, the exporter must furnish to EPA any additional information which the country of import requests in order to respond to a notification.

(c)RCRA manifest instructions for export shipments. The exporter must comply with the manifest requirements of §§262.20 through 262.23 except that:

(1) In lieu of the name, site address and EPA ID number of the designated permitted facility, the exporter must enter the name and site address of the foreign receiving facility;

(2) In the International Shipments block, the exporter must check the export box and enter the U.S. port of exit (city and State) from the United States.

(3) The exporter must list the consent number from the AOC for each hazardous waste listed on the manifest, matched to the relevant list number for the hazardous waste from block 9b. If additional space is needed, the exporter should use a Continuation Sheet(s) (EPA Form 8700-22A).

(4) The exporter may obtain the manifest from any source that is registered with the U.S. EPA as a supplier of manifests (e.g., states, waste handlers, and/or commercial forms printers).

(d) Movement document requirements for export shipments.

(1) All exporters must ensure that a movement document meeting the conditions of paragraph (d)(2) of this section accompanies each transboundary movement of hazardous wastes from the initiation of the shipment until it reaches the foreign receiving facility, including cases in which the hazardous waste is stored and/or sorted by the foreign importer prior to shipment to the foreign receiving facility, except as provided in paragraphs (d)(1)(i) and (ii) of this section.

(i) For shipments of hazardous waste within the United States solely by water (bulk shipments only), the exporter must forward the movement document to the last water (bulk shipment) transporter to handle the hazardous waste in the United States if exported by water.

(ii) For rail shipments of hazardous waste within the United States which start from the company originating the export shipment, the exporter must forward the movement document to the next non-rail transporter, if any, or the last rail transporter to handle the

hazardous waste in the United States if exported by rail.

(2) The movement document must include the following paragraphs (d)(2)(i) through (xv) of this section:

(i) The corresponding consent number(s) and hazardous waste number(s) for the listed hazardous waste from the relevant EPA AOC(s);

(ii) The shipment number and the total number of shipments from the EPA AOC;

(iii) Exporter name and EPA identification number, address, telephone, fax numbers, and email address;

(iv)Foreign receiving facility name, address, telephone, fax numbers, email address, technologies employed, and the applicable recovery or disposal operations as defined in §262.81;

(v)Foreign importer name (if not the owner or operator of the foreign receiving facility), address, telephone, fax numbers, and email address;

(vi)Description(s) of each hazardous waste, quantity of each hazardous waste in the shipment, applicable RCRA hazardous waste code(s) for each hazardous waste, applicable OECD waste code for each hazardous waste from the lists incorporated by reference in §260.11, and the United Nations/U.S. Department of Transportation (DOT) ID number for each hazardous waste;

(vii) Date movement commenced;

(viii) Name (if not exporter), address, telephone, fax numbers, and email of company originating the shipment;

(ix)Company name, EPA ID number, address, telephone, fax, and email address of all transporters;

(x)Identification (license, registered name or registration number) of means of transport, including types of packaging;

(xi)Any special precautions to be taken by transporter(s);

(xii) Certification/declaration signed and dated by the exporter that the information in the movement document is complete and correct;

(xiii) Appropriate signatures for each custody transfer (e.g., transporter, importer, and owner or operator of the foreign receiving facility);

(xiv)Each U.S. person that has physical custody of the hazardous waste from the time the movement commences until it arrives at the foreign receiving facility must sign the movement document (e.g., transporter, foreign importer, and owner or operator of the foreign receiving facility); and

(xv)As part of the contract requirements per paragraph (f) of this section, the exporter must require that the foreign receiving facility send a copy of the signed movement document to confirm receipt within three working days of shipment delivery to the exporter, to the competent authorities of the countries of import and transit, and for shipments occurring on or after the electronic import-export reporting compliance date, the exporter must additionally require that the foreign receiving facility send a copy to EPA at the same time using the allowable methods listed in paragraph (b)(1) of this section.

(e) Duty to return or re-export hazardous wastes. When a transboundary movement of hazardous wastes cannot be completed in accordance with the terms of the contract or the consent(s) and alternative arrangements cannot be made to recover or dispose of the waste in an environmentally sound manner in the country of import, the exporter must ensure that the hazardous waste is returned to the United States or re-exported to a third country. If the waste must be returned, the exporter must provide for the return of the hazardous waste shipment within ninety days from the time the country of import informs EPA of the need to return the waste or such other period of time as the concerned countries agree. In all cases, the exporter must submit an exception report to EPA in accordance with paragraph (h) of this section.

(f)Export contract requirements.

(1) Exports of hazardous waste are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent

arrangements must be executed by the exporter, foreign importer (if different from the foreign receiving facility), and the owner or operator of the foreign receiving facility, and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangements.

(2) Contracts or equivalent arrangements must specify the name and EPA ID number, where available, of paragraph (f)(2)(i) through (iv) of this section:

(i) The company from where each export shipment of hazardous waste is initiated; (ii) Each person who will have physical custody of the hazardous wastes;

(iii) Each person who will have legal control of the hazardous wastes; and

(iv) The foreign receiving facility.

(3) Contracts or equivalent arrangements must specify which party to the contract will assume responsibility for alternate management of the hazardous wastes if their disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts must specify that:

(i) The transporter or foreign receiving facility having actual possession or physical control over the hazardous wastes will immediately inform the exporter, EPA, and either the competent authority of the country of transit or the competent authority of the country of import of the need to make alternate management arrangements; and

(ii) The person specified in the contract will assume responsibility for the adequate management of the hazardous wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of hazardous wastes and, as the case may be, shall provide the notification for re-export to the competent authority in the country of import and include the equivalent of the information required in paragraph (b)(1) of this section, the original consent number issued for the initial export of the hazardous wastes in the notification, and obtain consent from EPA and the competent authorities in the new country of import and any transit countries prior to re-export.

(4) Contracts must specify that the foreign receiving facility send a copy of the signed movement document to confirm receipt within three working days of shipment delivery to the exporter and to the competent authorities of the countries of import and transit. For contracts that will be in effect on or after the electronic import-export reporting compliance date, the contracts must additionally specify that the foreign receiving facility send a copy to EPA at the same time using the allowable methods listed in paragraph (b)(1) of this section on or after that date.

(5) Contracts must specify that the foreign receiving facility shall send a copy of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the exporter and to the competent authority of the country of import. For contracts that will be in effect on or after the electronic import-export reporting compliance date, the contracts must additionally specify that the foreign receiving facility send a copy to EPA at the same time using the allowable methods listed in paragraph (b)(1) of this section on or after that date.

(6) Contracts must specify that the foreign importer or the foreign receiving facility that performed interim recycling operations R12, R13, or RC16, or interim disposal operations D13 through D15 or DC17, (recovery and disposal operations defined in §262.81) as appropriate, will:

(i) Provide the notification required in paragraph (f)(3)(ii) of this section prior to any re-export of the hazardous wastes to a final foreign recovery or disposal facility in a third country; and

(ii) Promptly send copies of the confirmation of recovery or disposal that it receives from the final foreign recovery or disposal facility within one year of shipment delivery to the final foreign recovery or disposal facility that performed one of recovery operations R1 through R11, or RC16, or one of disposal operations D1 through D12, DC15 or DC16 to the competent authority of the country of import. For contracts that will be in

effect on or after the electronic import-export reporting compliance date, the contracts must additionally specify that the foreign facility send copies to EPA at the same time using the allowable method listed in paragraph (b)(1) of this section on or after that date.

(7) Contracts or equivalent arrangements must include provisions for financial guarantees, if required by the competent authorities of the country of import and any countries of transit, in accordance with applicable national or international law requirements.

[Note to Paragraph (f)(7): Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD Member countries and other foreign countries do. It is the responsibility of the exporter to ascertain and comply with such requirements; in some cases, persons or facilities located in those OECD Member countries or other foreign countries may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.]

(8) Contracts or equivalent arrangements must contain provisions requiring each contracting party to comply with all applicable requirements of this subpart.

(9) Upon request by EPA or DNREC, U.S. exporters, importers, or recovery facilities must submit to EPA or DNREC copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity).

(g)Annual reports. The exporter shall file an annual report with EPA no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. Prior to December 31, 2018, the exporter must mail or hand-deliver annual reports to EPA using one of the addresses specified in §262.82(e), or submit to EPA using the allowable methods specified in paragraph (b)(1) of this section if the exporter has electronically filed EPA information in AES, or its successor system, per paragraph (a)(6)(i)(A) of this section for all shipments made the previous calendar year. Subsequently, the exporter must submit annual reports to EPA using the allowable methods specified in paragraph (b)(1) of this section. The annual report must include all of the following paragraphs (g)(1) through (6) of this section specified as follows:

(1) The EPA identification number, name, and mailing and site address of the exporter filing the report;

(2) The calendar year covered by the report;

(3) The name and site address of each foreign receiving facility;

(4) By foreign receiving facility, for each hazardous waste exported: (i) A description of the hazardous waste;

(ii) The applicable EPA hazardous waste code(s) (from Part 261, Subpart C or D of these regulations) for each waste;

(iii) The applicable waste code from the appropriate OECD waste list incorporated by reference in §260.11;

(iv)The applicable DOT ID number;

(v)The name and U.S. EPA ID number (where applicable) for each transporter used over the calendar year covered by the report; and

(vi)The consent number(s) under which the hazardous waste was shipped, and for each consent number, the total amount of the hazardous waste and the number of shipments exported during the calendar year covered by the report;

(5) In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100kg but less than 1,000kg in a calendar month, and except for hazardous waste for which information was already provided pursuant to §262.41:

(i) A description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated; and

(ii) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

(6) A certification signed by the exporter that states:

I certify under penalty of law that I have personally examined and am familiar with the information

submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.

(h) Exception reports.

(1) The exporter must file an exception report in lieu of the requirements of §262.42 (if applicable) with EPA if any of the following occurs:

(i) The exporter has not received a copy of the RCRA hazardous waste manifest (if applicable) signed by the transporter identifying the point of departure of the hazardous waste from the United States, within forty-five (45) days from the date it was accepted by the initial transporter, in which case the exporter must file the exception report within the next thirty (30) days;

(ii) The exporter has not received a written confirmation of receipt from the foreign receiving facility in accordance with paragraph (d) of this section within ninety (90) days from the date the waste was accepted by the initial transporter in which case the exporter must file the exception report within the next thirty (30) days; or

(iii) The foreign receiving facility notifies the exporter, or the country of import notifies EPA, of the need to return the shipment to the U.S. or arrange alternate management, in which case the exporter must file the exception report within thirty (30) days of notification, or one (1) day prior to the date the return shipment commences, whichever is sooner.

(2) Prior to the electronic import-export reporting compliance date, exception reports must be mailed or hand delivered to EPA using the addresses listed in §262.82(e). Subsequently, exception reports must be submitted to EPA using the allowable methods listed in paragraph (b)(1) of this section.

(i) Recordkeeping.

(1) The exporter shall keep the following records in paragraphs (i)(1)(i) through (v) of this section and provide them to EPA or DNREC personnel upon request:

(i) A copy of each notification of intent to export and each EPA AOC for a period of at least three (3) years from the date the hazardous waste was accepted by the initial transporter;

(ii) A copy of each annual report for a period of at least three (3) years from the due date of the report;

(iii) A copy of any exception reports and a copy of each confirmation of receipt (i.e., movement document) sent by the foreign receiving facility to the exporter for at least three (3) years from the date the hazardous waste was accepted by the initial transporter; and

(iv)A copy of each confirmation of recovery or disposal sent by the foreign receiving facility to the exporter for at least three (3) years from the date that the foreign receiving facility completed interim or final processing of the hazardous waste shipment.

(v)A copy of each contract or equivalent arrangement established per §262.85 for at least three (3) years from the expiration date of the contract or equivalent arrangement.

(2) Exporters may satisfy these recordkeeping requirements by retaining electronically submitted documents in the exporter's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or DNREC inspector. No exporter may be held liable for the inability to produce such documents for inspection under this section if the exporter can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system for which the exporter bears no responsibility.

(3) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

**Section 262.84 Imports of hazardous waste.**

(a) General import requirements.

(1) With the exception of paragraph (a)(5) of this section, importers of shipments covered under a consent from EPA to the country of export issued before December 31, 2016 are subject to that approval and the requirements that existed at the time of that approval until such time the approval period expires. Otherwise, any other person who imports hazardous waste from a foreign country into the United States must comply with the requirements of this part and the special requirements of this subpart.

(2) In cases where the country of export does not require the foreign exporter to submit a notification and obtain consent to the export prior to shipment, the importer must submit a notification to EPA in accordance with paragraph (b) of this section.

(3) The importer must comply with the contract requirements in paragraph (f) of this section. (4) The importer must ensure compliance with the movement documents requirements in paragraph (d) of this section; and

(5) The importer must ensure compliance with the manifest instructions for import shipments in paragraph (c) of this section.

(b) Notifications. In cases where the competent authority of the country of export does not regulate the waste as hazardous waste and, thus, does not require the foreign exporter to submit to it a notification proposing export and obtain consent from EPA and the competent authorities for the countries of transit, but EPA does regulate the waste as hazardous waste:

(1) The importer is required to provide notification in English to EPA of the proposed transboundary movement of hazardous waste at least sixty (60) days before the first shipment is expected to depart the country of export. Notifications submitted prior to the electronic import-export reporting compliance date must be mailed or hand delivered to EPA at the addresses specified in §262.82(e). Notifications submitted on or after the electronic import-export reporting compliance date must be submitted electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The notification may cover up to one year of shipments of one or more hazardous wastes being sent from the same foreign exporter, and must include all of the following information:

(i) Foreign exporter name, address, telephone, fax numbers, and email address;

(ii) Receiving facility name, EPA ID number, address, telephone, fax numbers, email address, technologies employed, and the applicable recovery or disposal operations as defined in §262.81;

(iii) Importer name (if not the owner or operator of the receiving facility), EPA ID number, address, telephone, fax numbers, and email address;

(iv)Intended transporter(s) and/or their agent(s); address, telephone, fax, and email address;

(v)"U.S." as the country of import, "USA01" as the relevant competent authority code, and the intended U.S. port(s) of entry;

(vi)The ISO standard 3166 country name 2-digit code, OECD/Basel competent authority code, and the ports of entry and exit for each country of transit;

(vii) The ISO standard 3166 country name 2-digit code, OECD/Basel competent authority code, and port of exit for the country of export;

(viii) Statement of whether the notification covers a single shipment or multiple shipments;

(ix)Start and End Dates requested for transboundary movements;

(x) Means of transport planned to be used;

(xi)Description(s) of each hazardous waste, including whether each hazardous waste is regulated universal waste under Part 273 of these regulations, spent lead-acid batteries being exported for recovery of lead under Part 266, Subpart G of these regulations, or industrial ethyl alcohol being exported for reclamation under §261.6(a)(3)(i), estimated total quantity of each hazardous waste, the applicable RCRA hazardous waste code(s) for each hazardous waste, the applicable OECD waste code from the lists incorporated by reference in §260.11, and the United Nations/U.S. Department of Transportation (DOT) ID number for each hazardous waste;

(xii) Specification of the recovery or disposal operation(s) as defined in §262.81;

and (xiii) Certification/Declaration signed by the importer that states:
I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally enforceable written contractual obligations have been entered into and that any applicable insurance or other financial guarantee is or shall be in force covering the transboundary movement.
Name:
Signature:
Date:
[Note to Paragraph (b)(1)(xiii): The United States does not currently require financial assurance for these waste shipments.]

(2) Notifications listing interim recycling operations or interim disposal operations. If the receiving facility listed in paragraph (b)(1)(ii) of this section will engage in any of the interim recovery operations R12 or R13 or interim disposal operations D13 through D15, the notification submitted according to paragraph (b)(1) of this section must also include the final recovery or disposal facility name, address, telephone, fax numbers, email address, technologies employed, and which of the applicable recovery or disposal operations R1 through R11 and D1 through D12, will be employed at the final recovery or disposal facility. The recovery and disposal operations in this paragraph are defined in §262.81.

(3) Re-notifications. When the foreign exporter wishes to change any of the conditions specified on the original notification (including increasing the estimate of the total quantity of hazardous waste specified in the original notification or adding transporters), the importer must submit a re-notification of the changes to EPA using the allowable methods in paragraph (b)(1) of this section. Any shipment using the requested changes cannot take place until EPA and the countries of transit consent to the changes and the importer receives an EPA AOC letter documenting the consents to the changes.

(4) A notification is complete when EPA determines the notification satisfies the requirements of paragraphs (b)(1)(i) through (xiii) of this section.

(5) Where EPA and the countries of transit consent to the proposed transboundary movement(s) of the hazardous waste(s), EPA will forward an EPA AOC letter to the importer documenting the countries' consents and EPA's consent. Where any of the countries of transit or EPA objects to the proposed transboundary movement(s) of the hazardous waste or withdraws a prior consent, EPA will notify the importer.

(6) Export of hazardous wastes originally imported into the United States. Export of hazardous wastes that were originally imported into the United States for recycling or disposal operations is prohibited unless an exporter in the United States complies with the export requirements in §262.83(b)(7).

(c)RCRA Manifest instructions for import shipments.

(1) When importing hazardous waste, the importer must meet all the requirements of §262.20 for the manifest except that:

(i) In place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's name, address and EPA identification number must be used.

(ii) In place of the generator's signature on the certification statement, the importer or his agent must sign and date the certification and obtain the signature of the initial transporter.

(2) The importer may obtain the manifest form from any source that is registered with the EPA as a supplier of manifests (e.g., states, waste handlers, and/or commercial forms printers).

(3) In the International Shipments block, the importer must check the import box and enter the point of entry (city and State) into the United States.

(4) The importer must provide the transporter with an additional copy of the manifest to be submitted by the receiving facility to U.S. EPA in accordance with §264.71(a)(3) and §265.71(a)(3).

(5) In lieu of the requirements of §262.20(d), where a shipment cannot be delivered for any reason to the receiving facility, the importer must instruct the transporter in writing via fax, email

or mail to:

(i) Return the hazardous waste to the foreign exporter or designate another facility within the United States; and

(ii) Revise the manifest in accordance with the importer's instructions. (d) Movement document requirements for import shipments.

(1) The importer must ensure that a movement document meeting the conditions of paragraph (d)(2) of this section accompanies each transboundary movement of hazardous wastes from the initiation of the shipment in the country of export until it reaches the receiving facility, including cases in which the hazardous waste is stored and/or sorted by the importer prior to shipment to the receiving facility, except as provided in paragraphs (d)(1)(i) and (ii) of this section.

(i) For shipments of hazardous waste within the United States by water (bulk shipments only), the importer must forward the movement document to the last water (bulk shipment) transporter to handle the hazardous waste in the United States if imported by water.

(ii) For rail shipments of hazardous waste within the United States which start from the company originating the export shipment, the importer must forward the movement document to the next non-rail transporter, if any, or the last rail transporter to handle the hazardous waste in the United States if imported by rail.

(2) The movement document must include the following paragraphs (d)(2)(i) through (xv) of this section:

(i) The corresponding AOC number(s) and waste number(s) for the listed waste;

(ii) The shipment number and the total number of shipments under the AOC number;

(iii) Foreign exporter name, address, telephone, fax numbers, and email address;

(iv) Receiving facility name, EPA ID number, address, telephone, fax numbers, email address, technologies employed, and the applicable recovery or disposal operations as defined in §262.81;

(v)Importer name (if not the owner or operator of the receiving facility), EPA ID number, address, telephone, fax numbers, and email address;

(vi)Description(s) of each hazardous waste, quantity of each hazardous waste in the shipment, applicable RCRA hazardous waste code(s) for each hazardous waste, the applicable OECD waste code for each hazardous waste from the lists incorporated by reference in §260.11, and the United Nations/U.S. Department of Transportation (DOT) ID number for each hazardous waste;

(vii) Date movement commenced;

(viii) Name (if not the foreign exporter), address, telephone, fax numbers, and email of the foreign company originating the shipment;

(ix)Company name, EPA ID number, address, telephone, fax, and email address of all transporters;

(x)Identification (license, registered name or registration number) of means of transport, including types of packaging;

(xi)Any special precautions to be taken by transporter(s);

(xii) Certification/declaration signed and dated by the foreign exporter that the information in the movement document is complete and correct;

(xiii) Appropriate signatures for each custody transfer (e.g., transporter, importer, and owner or operator of the receiving facility);

(xiv)Each person that has physical custody of the waste from the time the movement commences until it arrives at the receiving facility must sign the movement document (e.g., transporter, importer, and owner or operator of the receiving facility); and

(xv)The receiving facility must send a copy of the signed movement document to confirm receipt within three (3) working days of shipment delivery to the foreign exporter, to the competent authorities of the countries of export and transit, and for shipments received on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system.

(e) Duty to return or export hazardous wastes. When a transboundary movement of hazardous wastes cannot be completed in accordance with the terms of the contract or the consent(s), the provisions of

paragraph (f)(4) of this section apply. If alternative arrangements cannot be made to recover the hazardous waste in an environmentally sound manner in the United States, the hazardous waste must be returned to the country of export or exported to a third country. The provisions of paragraph (b)(6) of this section apply to any hazardous waste shipments to be exported to a third country. If the return shipment will cross any transit country, the return shipment may only occur after EPA provides notification to and obtains consent from the competent authority of the country of transit, and provides a copy of that consent to the importer.

(f)Import contract requirements.

(1) Imports of hazardous waste must occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the foreign exporter, importer, and the owner or operator of the receiving facility, and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangements.

(2) Contracts or equivalent arrangements must specify the name and EPA ID number, where available, of paragraph (f)(2)(i) through (iv) of this section:

(i) The foreign company from where each import shipment of hazardous waste is initiated;

(ii) Each person who will have physical custody of the hazardous wastes; (iii) Each person who will have legal control of the hazardous wastes; and (iv) The receiving facility.

(3) Contracts or equivalent arrangements must specify the use of a movement document in accordance with §262.84(d).

(4) Contracts or equivalent arrangements must specify which party to the contract will assume responsibility for alternate management of the hazardous wastes if their disposition cannot be carried out as described in the notification of intent to export submitted by either the foreign exporter or the importer. In such cases, contracts must specify that:

(i) The transporter or receiving facility having actual possession or physical control over the hazardous wastes will immediately inform the foreign exporter and importer, and the competent authority where the shipment is located of the need to arrange alternate management or return; and

(ii) The person specified in the contract will assume responsibility for the adequate management of the hazardous wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of the hazardous wastes and, as the case may be, shall provide the notification for re-export required in §262.83(b)(7).

(5) Contracts must specify that the importer or the receiving facility that performed interim recycling operations R12, R13, or RC16, or interim disposal operations D13 through D15 or DC15 through DC17, as appropriate, will provide the notification required in §262.83(b)(7) prior to the re-export of hazardous wastes. The recovery and disposal operations in this paragraph are defined in §262.81.

(6) Contracts or equivalent arrangements must include provisions for financial guarantees, if required by the competent authorities of any countries concerned, in accordance with applicable national or international law requirements.

[Note to Paragraph (f)(6): Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD Member countries or other foreign countries do. It is the responsibility of the importer to ascertain and comply with such requirements; in some cases, persons or facilities located in those countries may refuse to enter into the necessary contracts absent specific references or

certifications to financial guarantees.]

(7) Contracts or equivalent arrangements must contain provisions requiring each contracting party to comply with all applicable requirements of this subpart.

(8) Upon request by EPA or DNREC, importers or disposal or recovery facilities must submit to EPA or DNREC copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity).

(g) Confirmation of recovery or disposal. The receiving facility must do the following:

(1) Send copies of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to the competent authority of the country of export, and for shipments recycled or disposed of on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system.

(2) If the receiving facility performed any of recovery operations R12, R13, or RC16, or disposal operations D13 through D15, or DC17, the receiving facility shall promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC14 to RC15, or one of disposal operations D1 through D12, or DC15 to DC16, to the competent authority of the country of export, and for confirmations received on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The recovery and disposal operations in this paragraph are defined in §262.81.

(h) Recordkeeping.

(1) The importer shall keep the following records and provide them to EPA or DNREC personnel upon request:

(i) A copy of each notification that the importer sends to EPA under paragraph (b)(1) of this section and each EPA AOC it receives in response for a period of at least three (3) years from the date the hazardous waste was accepted by the initial foreign transporter; and

(ii) A copy of each contract or equivalent arrangement established per paragraph (f) of this section for at least three (3) years from the expiration date of the contract or equivalent arrangement.

(2) The receiving facility shall keep the following records:

(i) A copy of each confirmation of receipt (i.e., movement document) that the receiving facility sends to the foreign exporter for at least three (3) years from the date it received the hazardous waste;

(ii) A copy of each confirmation of recovery or disposal that the receiving facility sends to the foreign exporter for at least three (3) years from the date that it completed processing the waste shipment;

(iii) For the receiving facility that performed any of recovery operations R12, R13, or RC16, or disposal operations D13 through D15, or DC17 (recovery and disposal operations defined in §262.81), a copy of each confirmation of recovery or disposal that the final recovery or disposal facility sent to it for at least three (3) years from the date that the final recovery or disposal facility completed processing the waste shipment; and

(iv) A copy of each contract or equivalent arrangement established per paragraph (f) of this section for at least three (3) years from the expiration date of the contract or equivalent arrangement.

(3) Importers and receiving facilities may satisfy these recordkeeping requirements by retaining electronically submitted documents in the importer's or receiving facility's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or DNREC inspector. No importer or receiving facility may be held liable for the inability to produce such documents for inspection under this section if the importer or receiving facility can demonstrate that the inability

to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system for which the importer or receiving facility bears no responsibility.

(4) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

**Sections 262.85-262.89 [Reserved]**

**Subpart I [Reserved]**

**Subpart J [Reserved]**

**Subpart K [Reserved]**

**Subpart L: Alternative Standards for Episodic Generation**

**Section 262.230 Applicability.**
This subpart is applicable to very small quantity generators and small quantity generators as defined in §260.10 of these regulations.

**Section 262.231 Definitions for this subpart.**
**"Episodic event"** means an activity or activities, either planned or unplanned, that does not normally occur during generator operations, resulting in an increase in the generation of hazardous wastes that exceeds the calendar month quantity limits for the generator's usual category.

**"Planned episodic event"** means an episodic event that the generator planned and prepared for, including regular maintenance, tank cleanouts, short-term projects, and removal of excess chemical inventory.

**"Unplanned episodic event"** means an episodic event that the generator did not plan or reasonably did not expect to occur, including production process upsets, product recalls, accidental spills, or "acts of nature," such as tornado, hurricane, or flood.

**Section 262.232 Conditions for a generator managing hazardous waste from an episodic event.**
(a) *Very small quantity generator.* A very small quantity generator may maintain its existing generator category for hazardous waste generated during an episodic event provided that the generator complies with the following conditions:

(1) The very small quantity generator is limited to one episodic event per calendar year, unless a petition is granted under §262.233;

(2) *Notification.* The very small quantity generator must notify the Department no later than thirty (30) calendar days prior to initiating a planned episodic event using EPA Form 8700-12. In the event of an unplanned episodic event, the generator must notify the Department within 72 hours of the unplanned event via phone, email, or fax and subsequently submit EPA Form 8700-12 within seven (7) calendar days of the unplanned event. The generator shall include the start date and end date of the episodic event, the reason(s) for the event, types and estimated quantities of hazardous waste expected to be generated as a result of the episodic event, and shall identify a facility contact and emergency coordinator with 24-hour telephone access to discuss the notification submittal or respond to an emergency in compliance with §262.16(b)(9)(i);

(3) *EPA ID Number.* The very small quantity generator must have an EPA identification number or obtain an EPA identification number using EPA Form 8700-12;

(4) *Accumulation.* A very small quantity generator is prohibited from accumulating hazardous waste generated from an episodic event on drip pads, in containment buildings, or in tanks. When accumulating hazardous waste in containers, the following conditions apply:

(i) *Containers.* A very small quantity generator accumulating in containers must mark or label its containers with the following:

(A) The words "Episodic Hazardous Waste";

(B) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR Part 172 Subpart E (labeling) or Subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704); and

(C)The date upon which the episodic event began, clearly visible for inspection on each container.

(ii) [Reserved]

(iii) Hazardous waste must be managed in a manner that minimizes the possibility of a fire, explosion, or release of hazardous waste or hazardous waste constituents to the air, soil, or water;

(A) Containers must be in good condition and compatible with the hazardous waste being accumulated therein. Containers must be kept closed except to add or remove waste.

(B) [Reserved]

(5) The very small quantity generator must comply with the hazardous waste manifest provisions of Subpart B of this Part when it sends its episodic event hazardous waste off site to a designated facility, as defined in §260.10 of these regulations.

(6) The very small quantity generator has up to sixty (60) calendar days from the start of the episodic event to manifest and send its hazardous waste generated from the episodic event to a designated facility, as defined in §260.10 of these regulations.

(7) Very small quantity generators must maintain the following records for three (3) years from the end date of the episodic event:

(i) Beginning and end dates of the episodic event; (ii) A description of the episodic event;

(iii) A description of the types and quantities of hazardous wastes generated during the event;

(iv)A description of how the hazardous waste was managed as well as the name of the RCRA-designated facility that received the hazardous waste;

(v)Name(s) of hazardous waste transporters; and

(vi)An approval letter from the Department if the generator petitioned to conduct one additional episodic event per calendar year.

(b) *Small quantity generators.* A small quantity generator may maintain its existing generator category during an episodic event provided that the generator complies with the following conditions:

(1) The small quantity generator is limited to one episodic event per calendar year unless a petition is granted under §262.233;

(2) *Notification.* The small quantity generator must notify the Department no later than thirty (30) calendar days prior to initiating a planned episodic event using EPA Form 8700-12. In the event of an unplanned episodic event, the small quantity generator must notify the Department within 72 hours of the unplanned event via phone, email, or fax, and subsequently submit EPA Form 8700-12 within seven (7) calendar days of the unplanned event. The small quantity generator shall include the start date and end date of the episodic event and the reason(s) for the event, types and estimated quantities of hazardous wastes expected to be generated as a result of the episodic event, and identify a facility contact and emergency coordinator with 24-hour telephone access to discuss the notification submittal or respond to emergency;

(3) *EPA ID Number.* The small quantity generator must have an EPA identification number or obtain an EPA identification number using EPA Form 8700-12; and

(4) *Accumulation by small quantity generators.* A small quantity generator is prohibited from

accumulating hazardous wastes generated from an episodic event **[waste]** on drip pads or in containment buildings. When accumulating hazardous waste generated from an episodic event in containers and tanks, the following conditions apply:

(i) *Containers.* A small quantity generator accumulating episodic hazardous waste in containers must meet the standards at §262.16(b)(2) of these regulations and must mark or label its containers with the following:

(A) The words "Episodic Hazardous Waste";

(B) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR Part 172 Subpart E (labeling) or Subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704); and

(C)The date upon which the episodic event began, clearly visible for inspection on each container.

(ii) *Tanks.* A small quantity generator accumulating episodic hazardous waste in tanks must meet the standards at §262.16(b)(3) and must do the following:

(A) Mark or label its tank with the words "Episodic Hazardous Waste";

(B) Mark or label its tanks with an indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR Part 172 Subpart E (labeling) or Subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704);

(C)Use inventory logs, monitoring equipment or other records to identify the date upon which each period of accumulation begins and ends; and

(D)Keep inventory logs or records with the above information on site and available for inspection for three (3) years from the end date of the episodic event.

(5) The small quantity generator must treat hazardous waste generated from an episodic event on-site or manifest and ship such hazardous waste off site to a designated facility (as defined by §260.10 of these regulations) within sixty (60) calendar days from the start of the episodic event.

(6) The small quantity generator must maintain the following records for three (3) years from the end date of the episodic event:

(i) Beginning and end dates of the episodic event; (ii) A description of the episodic event;

(iii) A description of the types and quantities of hazardous wastes generated during the event;

(iv)A description of how the hazardous waste was managed as well as the name of the designated facility (as defined by §260.10 of these regulations) that received the hazardous waste;

(v)Name(s) of hazardous waste transporters; and

(vi)An approval letter from the Department if the generator petitioned to conduct one additional episodic event per calendar year.

(vii) If accumulating episodic waste in tanks, inventory logs or records required by §262.232(b)(4)(ii)(D).

**Section 262.233 Petition to manage one additional episodic event per calendar year.**

(a) A generator may petition the Secretary for a second episodic event in a calendar year without impacting its generator category under the following conditions:

(1) If a very small quantity generator or small quantity generator has already held a planned episodic event in a calendar year, the generator may petition the Department for an additional unplanned episodic event in that calendar year within 72 hours of the unplanned event.

(2) If a very small quantity generator or small quantity generator has already held an unplanned episodic event in a calendar year, the generator may petition the Department for an additional planned episodic event in that calendar year.

(b) The petition must include the following:

(1) The reason(s) why an additional episodic event is needed and the nature of the episodic event;

(2) The estimated amount of hazardous waste to be managed from the event; (3) How the hazardous waste is to be managed;

(4) The estimated length of time needed to complete management of the hazardous waste generated from the episodic event—not to exceed sixty (60) days; and

(5) Information regarding the previous episodic event managed by the generator, including the nature of the event, whether it was a planned or unplanned event, and how the generator complied with the conditions.

(c)The petition must be made to the Secretary in writing, either on paper or electronically.

(d) The generator must retain written approval in its records for three (3) years from the date the episodic event ended.

(e) The generator must comply with the requirements of §262.232 for the second episodic event.

## Subpart M—Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators

### Section 262.250 Applicability.

The regulations of this subpart apply to those areas of a large quantity generator where hazardous waste is generated or accumulated on site.

### Section 262.251 Maintenance and operation of facility.

A large quantity generator must maintain and operate its facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

### Section 262.252 Required equipment.

All areas deemed applicable by §262.250 must be equipped with the items in paragraphs (a) through (d) of this section (unless none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below or the actual hazardous waste generation or accumulation area does not lend itself for safety reasons to have a particular kind of equipment specified below). A large quantity generator may determine the most appropriate locations within its facility to locate equipment necessary to prepare for and respond to emergencies:

(a) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

(b) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two- way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;

(c)Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and

(d) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

### Section 262.253 Testing and maintenance of equipment.

All communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

**Section 262.254 Access to communications or alarm system.**

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access (*e.g.,* direct or unimpeded access) to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, *unless* such a device is not required under §262.252.

(b) In the event there is just one employee on the premises while the facility is operating, the employee must have immediate access (*e.g.,* direct or unimpeded access) to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, *unless* such a device is not required under §262.252.

**Section 262.255 Required aisle space.**

The large quantity generator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

**Section 262.256 Arrangements with local authorities.**

(a) The large quantity generator must attempt to make arrangements with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers, and local hospitals, taking into account the types and quantities of hazardous wastes handled at the facility. Arrangements may be made with the Local Emergency Planning Committee, if it is determined to be the appropriate organization with which to make arrangements.

(1) A large quantity generator attempting to make arrangements with its local fire department must determine the potential need for the services of the local police department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals.

(2) As part of this coordination, the large quantity generator shall attempt to make arrangements, as necessary, to familiarize the above organizations with the layout of the facility, the properties of the hazardous waste handled at the facility and associated hazards, places where personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes as well as the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(3) Where more than one police or fire department might respond to an emergency, the large quantity generator shall attempt to make arrangements designating primary emergency authority to a specific fire or police department, and arrangements with any others to provide support to the primary emergency authority.

(b) The large quantity generator shall maintain records documenting the arrangements with the local fire department as well as any other organization necessary to respond to an emergency. This documentation must include documentation in the operating record that either confirms such arrangements actively exist or, in cases where no arrangements exist, confirms that attempts to make such arrangements were made. These records must be kept for a period of at least 3 years since last being applicable.

(c)A facility possessing 24-hour response capabilities may seek a waiver from the authority having jurisdiction (AHJ) over the fire code within the facility's state or locality as far as needing to make arrangements with the local fire department as well as any other organization necessary to respond to an emergency, provided that the waiver is documented in the operating record.

**Sections 262.257 through 262.259 [Reserved].**

**Section 262.260 Purpose and implementation of contingency plan.**

(a) A large quantity generator must have a contingency plan for the facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

(b) The provisions of the plan must be carried out immediately whenever there is a fire, explosion, or

release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

**Section 262.261 Content of contingency plan.**

(a) The contingency plan must describe the actions facility personnel must take to comply with §§262.260 and 262.265 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(b) If the generator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR Part 112, or some other emergency or contingency plan, it need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the standards of this part. The generator may develop one contingency plan that meets all regulatory standards. The Department recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan").

(c)The plan must describe arrangements agreed to with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers, local hospitals or, if applicable, the Local Emergency Planning Committee, pursuant to §262.256.

(d) The plan must list names and emergency telephone numbers of all persons qualified to act as emergency coordinator (see §262.264), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates. In situations where the generator facility has an emergency coordinator continuously on duty because it operates 24 hours per day, every day of the year, the plan may list the staffed position (*e.g.,* operations manager, shift coordinator, shift operations supervisor) as well as an emergency telephone number that can be guaranteed to be answered at all times.

(e) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(f)The plan must include an evacuation plan for generator personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

**Section 262.262 Copies of contingency plan.**

A printed copy of the contingency plan and all revisions to the plan must be maintained at the large quantity generator's facility and—

(a) The large quantity generator must submit a copy of the contingency plan and all revisions to all local emergency responders (*i.e.,* police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services). This document may also be submitted to the Local Emergency Planning Committee, as appropriate. Documentation of written submission and receipt must be maintained at the facility for three (3) years from the requirement last being applicable.

(b) A large quantity generator that first becomes subject to these provisions after **[~~[insert effective date of these regulations]~~ January 21, 2021]** or a large quantity generator that is otherwise amending its contingency plan must at that time submit a quick reference guide of the contingency plan to the local emergency responders identified in paragraph (a) of this section or, as appropriate, the Local Emergency Planning Committee. The quick reference guide must include the following elements:

(1) The types/names of hazardous wastes in layman's terms and the associated hazard associated with each hazardous waste present at any one time (*e.g.,* toxic paint wastes, spent ignitable solvent, corrosive acid);

(2) The estimated maximum amount of each hazardous waste that may be present at any one time;

(3) The identification of any hazardous wastes where exposure would require unique or

special treatment by medical or hospital staff;

(4) A map of the facility showing where hazardous wastes are generated, accumulated, and treated and routes for accessing these wastes;

(5) A street map of the facility in relation to surrounding businesses, schools, and residential areas to understand how best to get to the facility and also evacuate residents and workers; (6) The locations of water supply (*e.g.,* fire hydrant and its flow rate);

(7) The identification of on-site notification systems (*e.g.,* a fire alarm that rings off site, smoke alarms); and

(8) The name of the emergency coordinator(s) and 24-hour/7-day emergency telephone number(s) or, in the case of a facility where an emergency coordinator is continuously on duty, the emergency telephone number for the emergency coordinator.

(b) Generators must update, if necessary, their quick reference guides, whenever the contingency plan is amended and submit these documents to the local emergency responders identified at paragraph (a) of this section or, as appropriate, the Local Emergency Planning Committee.

**Section 262.263 Amendment of contingency plan.**

The contingency plan must be reviewed, and immediately amended, if necessary, whenever:

(a) Applicable regulations are revised;

(b) The plan fails in an emergency;

(c)The generator facility changes—in its design, construction, operation, maintenance, or other circumstances—in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency;

(d) The list of emergency coordinators changes; or

(e) The list of emergency equipment changes.

**Section 262.264 Emergency coordinator.**

At all times, there must be at least one employee either on the generator's premises or on call (*i.e.,* available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures and implementing the necessary emergency procedures outlined in §262.265. Although responsibilities may vary depending on factors such as type and variety of hazardous waste(s) handled by the facility, as well as type and complexity of the facility, this emergency coordinator must be thoroughly familiar with all aspects of the generator's contingency plan, all operations and activities at the facility, the location and characteristics of hazardous waste handled, the location of all records within the facility, and the facility's layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

**Section 262.265 Emergency procedures.**

(a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is unavailable) must immediately:

(1) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(2) Notify appropriate state or local agencies with designated response roles if their help is needed.

(b) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and areal extent of any released materials. The emergency coordinator may do this by observation or review of the facility records or manifests and, if necessary, by chemical analysis.

(c)Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (*e.g.,* the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions).

(d) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, the emergency coordinator must report the findings as follows:

(1) If the assessment indicates that evacuation of local areas may be advisable, the emergency coordinator must immediately notify appropriate local authorities. The emergency coordinator must be available to help appropriate officials decide whether local areas should be evacuated; and

(2) The emergency coordinator must immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll free number (800) 424-8802) and the Department's Emergency Response Team at (800) 662-8802 or (302) 739-9401. The report must include:

(i) Name and telephone number of reporter; (ii) Name and address of the generator;

(iii) Time and type of incident (*e.g.,* release, fire);

(iv)Name and quantity of material(s) involved, to the extent known;

(v) The extent of injuries, if any; and

(vi) The possible hazards to human health, or the environment, outside the facility.

(e) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the generator's facility. These measures must include, where applicable, stopping processes and operations, collecting and containing released hazardous waste, and removing or isolating containers.

(f)If the generator stops operations in response to a fire, explosion, or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(g) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered waste, contaminated soil, or surface water, or any other material that results from a release, fire, or explosion at the facility. Unless the generator can demonstrate, in accordance with §261.3(c) or (d) of these regulations, that the recovered material is not a hazardous waste, then it is a newly generated hazardous waste that must be managed in accordance with all the applicable requirements and conditions for exemption in Parts 262, 263, and 265 of these regulations.

(h) The emergency coordinator must ensure that, in the affected area(s) of the facility:

(1) No hazardous waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

(2) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(i) The generator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, the generator must submit a written report on the incident to the Secretary. The report must include:

(1) Name, address, and telephone number of the generator; (2) Date, time, and type of incident (*e.g.,* fire, explosion);

(3) Name and quantity of material(s) involved;

(4) The extent of injuries, if any;

(5) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(6) Estimated quantity and disposition of recovered material that resulted from the incident.

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~~Appendix to Part 262~~

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~~Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and Their Instructions) U.S. EPA Form 8700-22.~~

~~Read all instructions before completing this form.~~

~~1.This form has been designed for use on a 12-pitch (elite) typewriter which is also compatible with standard computer printers; a firm point pen may also be used – press down hard.~~

~~2.Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, and disposal facilities to complete this form (FORM 8700-22) and, if~~

~~necessary, the continuation sheet (FORM 8700-22A) for both inter- and intrastate transportation of hazardous waste.~~

~~**12 DE Reg. 1428 (05/01/09)**~~

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~~**Manifest 8700-22**~~

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~~The following statement must be included with each Uniform Hazardous Waste Manifest, either on the form, in the instructions to the form, or accompanying the form:~~

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~~Public reporting burden for this collection of information is estimated to average: 30 minutes for generators, 10 minutes for transporters, and 25 minutes for owners or operators of treatment, storage, and disposal facilities. This includes time for reviewing instructions, gathering data, completing, reviewing and transmitting the form. Any correspondence regarding the PRA burden statement for the manifest must be sent to the Director of the Collection Strategies Division in EPA's Office of Information Collection at the following address: U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Do not send the completed form to this address.~~

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~~I.**Instructions for Generators**~~

~~Item 1. Generator's U.S. EPA Identification Number~~

~~Enter the generator's U.S. EPA twelve digit identification number, or the State generator identification number if the generator site does not have an EPA identification number.~~

~~Item 2. Page 1 of 1~~

~~Enter the total number of pages used to complete this Manifest (i.e., the first page (EPA Form 8700-22) plus the number of Continuation Sheets (EPA Form 8700-22A), if any).~~

~~Item 3. Emergency Response Phone Number~~

~~Enter a phone number for which emergency response information can be obtained in the event of an incident during transportation. The emergency response phone number must:~~

~~1.Be the number of the generator or the number of an agency or organization who is capable of and accepts responsibility for providing detailed information about the shipment;~~

~~2.Reach a phone that is monitored 24 hours a day at all times the waste is in transportation (including transportation related storage); and~~

~~3.Reach someone who is either knowledgeable of the hazardous waste being shipped and has comprehensive emergency response and spill cleanup/incident mitigation information for the material being shipped or has immediate access to a person who has that knowledge and information about the shipment.~~

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~~**Note**: Emergency Response phone number information should only be entered in Item 3 when there is one phone number that applies to all the waste materials described in Item 9b. If a situation (e.g., consolidated shipments) arises where more than one Emergency Response phone number applies to the various wastes listed on the manifest, the phone numbers associated with each specific material should be entered after its description in Item 9b.~~

~~Item 4. Manifest Tracking Number~~

~~This unique tracking number must be preprinted on the manifest by the forms printer.~~

~~Item 5. Generator's Mailing Address, Phone Number and Site Address~~

~~Enter the name of the generator, the mailing address to which the completed manifest signed by the designated facility should be mailed, and the generator's telephone number. Note, the telephone number (including area code) should be the normal business number for the generator, or the number where the generator or his authorized agent may be reached to provide instructions in the event the designated and/or alternate (if any) facility rejects some or all of the shipment. Also enter the physical site address from which the shipment originates only if this address is different than the mailing address.~~

~~Item 6. Transporter 1 Company Name, and U.S. EPA ID Number~~

~~Enter the company name and U.S. EPA ID number of the first transporter who will transport the waste. Vehicle or driver information may not be entered here.~~

~~Item 7. Transporter 2 Company Name and U.S. EPA ID Number~~

~~If applicable, enter the company name and U.S. EPA ID number of the second transporter who will transport the waste. Vehicle or driver information may not be entered here. If more than two transporters are needed, use a Continuation Sheet(s) (EPA Form 8700- 22A).~~

~~Item 8. Designated Facility Name, Site Address, and U.S. EPA ID Number~~

~~Enter the company name and site address of the facility designated to receive the waste listed on this manifest. Also enter the facility's phone number and the U.S. EPA twelve digit identification number of the facility.~~

~~Item 9. U.S. DOT Description (Including Proper Shipping Name, Hazard Class or Division, Identification Number, and Packing Group)~~

~~Item 9a. If the wastes identified in Item 9b consist of both hazardous and nonhazardous materials, then identify the hazardous materials by entering an "X" in this Item next to the corresponding hazardous material identified in Item 9b.~~

~~Item 9b. Enter the U.S. DOT Proper Shipping Name, Hazard Class or Division, Identification Number (UN/NA) and Packing Group for each waste as identified in 49 CFR 172. Include technical name(s) and reportable quantity references, if applicable.~~

~~**12 DE Reg. 1428 (05/01/09)**~~

~~**Note:** If additional space is needed for waste descriptions, enter these additional descriptions in Item 27 on the Continuation Sheet (EPA Form 8700-22A). Also, if more than one Emergency Response phone number applies to the various wastes described in either Item 9b or Item 27, enter applicable Emergency Response phone numbers immediately following the shipping descriptions for those Items.~~

~~Item 10. Containers (Number and Type)~~

~~Enter the number of containers for each waste and the appropriate abbreviation from Table I (below) for the type of container.~~

~~**TABLE I. TYPES OF CONTAINERS**~~

~~BA = Burlap, cloth, paper, or plastic bags.~~
~~CF = Fiber or plastic boxes, cartons, cases.~~
~~CM = Metal boxes, cartons, cases (including roll-offs).~~
~~CW = Wooden boxes, cartons, cases.~~
~~CY = Cylinders.~~
~~DF = Fiberboard or plastic drums, barrels, kegs.~~
~~DM = Metal drums, barrels, kegs.~~
~~DT = Dump truck.~~
~~DW = Wooden drums, barrels, kegs.~~
~~HG = Hopper or gondola cars.~~
~~TC = Tank cars.~~
~~TP = Portable tanks.~~
~~TT = Cargo tanks (tank trucks).~~

~~Item 11. Total Quantity~~

~~Enter, in designated boxes, the total quantity of waste. Round partial units to the nearest whole unit, and do not enter decimals or fractions. To the extent practical, report quantities using appropriate units of measure that will allow you to report quantities with precision. Waste quantities entered should be based on actual measurements or reasonably accurate estimates of actual quantities shipped. Container capacities are not acceptable as estimates.~~

~~Item 12. Units of Measure (Weight/Volume)~~

~~Enter, in designated boxes, the appropriate abbreviation from Table II (below) for the unit of measure.~~

~~**TABLE II. UNITS OF MEASURE**~~

~~G = Gallons (liquids only).~~ ~~K = Kilograms.~~
~~L = Liters (liquids only).~~

~~M = Metric Tons (1000 kilograms).~~
~~N = Cubic Meters.~~
~~P = Pounds.~~
~~T = Tons (2000 pounds).~~ ~~Y = Cubic Yards.~~

~~**Note:** Tons, Metric Tons, Cubic Meters, and Cubic Yards should only be reported in connection with very large bulk shipments, such as rail cars, tank trucks, or barges.~~

~~Item 13. Waste Codes~~

~~Enter up to six federal and state waste codes to describe each waste stream identified in Item 9b. State waste codes that are not redundant with federal codes must be entered here, in addition to the federal waste codes which are most representative of the properties of the waste.~~

~~Item 14. Special Handling Instructions and Additional Information.~~

~~1.Generators may enter any special handling or shipment-specific information necessary for the proper management or tracking of the materials under the generator's or other handler's business processes, such as waste profile numbers, container codes, bar codes, or response guide numbers. Generators also may use this space to enter additional descriptive information about their shipped materials, such as chemical names, constituent percentages, physical state, or specific gravity of wastes identified with volume units in Item 12.~~

~~2.This space may be used to record limited types of federally required information for which there is no specific space provided on the manifest, including any alternate facility designations; the manifest tracking number of the original manifest for rejected wastes and residues that are re-shipped under a second manifest; and the specification of PCB waste descriptions and PCB out-of-service dates required under 40 CFR 761.207. Generators, however, cannot be required to enter information in this space to meet state regulatory requirements.~~

~~Item 15. Generator's/Offeror's Certifications~~

~~1.The generator must read, sign, and date the waste minimization certification statement. In signing the waste minimization certification statement, those generators who have not been exempted by statute or regulation from the duty to make a waste minimization certification under section 3002(b) of RCRA are also certifying that they have complied with the waste minimization requirements. The Generator's Certification also contains the required attestation that the shipment has been properly prepared and is in proper condition for transportation (the shipper's certification). The content of the shipper's certification statement is as follows:~~

~~"I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked, and labeled/placarded, and are in all respects in proper condition for transport by highway according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgment of Consent." When a party other than the generator prepares the shipment for transportation, this party may also sign the shipper's certification statement as the offeror of the shipment.~~

~~2.Generator or Offeror personnel may preprint the words, "On behalf of" in the signature block or may hand write this statement in the signature block prior to signing the generator/offeror certification, to indicate that the individual signs as the employee or agent of the named principal.~~

~~**Note:** All of the above information except the handwritten signature required in Item 15 may be pre-printed.~~

~~II.**Instructions for International Shipment Block**~~

~~Item 16. International Shipments~~

~~For export shipments, the primary exporter must check the export box, and enter the point of exit (city and state) from the United States. For import shipments, the importer must check the import box and~~

~~enter the point of entry (city and state) into the United States. For exports, the transporter must sign and date the manifest to indicate the day the shipment left the United States. Transporters of hazardous waste shipments must deliver a copy of the manifest to the U.S. Customs when exporting the waste across U.S. borders.~~

~~III.~~**~~Instructions for Transporters~~**

~~Item 17. Transporters' Acknowledgments of Receipt~~

~~Enter the name of the person accepting the waste on behalf of the first transporter. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt. Only one signature per transportation company is required. Signatures are not required to track the movement of wastes in and out of transfer facilities, unless there is a change of custody between transporters.~~

~~If applicable, enter the name of the person accepting the waste on behalf of the second transporter. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.~~

~~**Note**: Transporters carrying imports, who are acting as importers, may have responsibilities to enter information in the International Shipments Block. Transporters carrying exports may also have responsibilities to enter information in the International Shipments Block. See above instructions for Item 16.~~

~~IV.~~**~~Instructions for Owners and Operators of Treatment, Storage, and Disposal Facilities~~**

~~Item 18. Discrepancy~~

~~Item 18a. Discrepancy Indication Space~~

~~1.The authorized representative of the designated (or alternate) facility's owner or operator must note in this space any discrepancies between the waste described on the Manifest and the waste actually received at the facility. Manifest discrepancies are: significant differences (as defined by §§ 264.72(b) and 265.72(b)) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives, rejected wastes, which may be a full or partial shipment of hazardous waste that the TSDF cannot accept, or container residues, which are residues that exceed the quantity limits for "empty" containers set forth in DRGHW 261.7(b).~~

~~2.For rejected loads and residues (DRGHW 264.72(d), (e), and (f), or DRGHW 265.72(d), (e), or (f)), check the appropriate box if the shipment is a rejected load (i.e., rejected by the designated and/or alternate facility and is sent to an alternate facility or returned to the generator) or a regulated residue that cannot be removed from a container. Enter the reason for the rejection or the inability to remove the residue and a description of the waste. Also, reference the manifest tracking number for any additional manifests being used to track the rejected waste or residue shipment on the original manifest. Indicate the original manifest tracking number in Item 14, the Special Handling Block and Additional Information Block of the additional manifests.~~

~~3.Owners or operators of facilities located in unauthorized States (i.e., states in which the U.S. EPA administers the hazardous waste management program) who cannot resolve significant differences in quantity or type within 15 days of receiving the waste must submit to their Regional Administrator a letter with a copy of the Manifest at issue describing the discrepancy and attempts to reconcile it (40 CFR 264.72(c) and 265.72(c)).~~

~~4.Owners or operators of facilities located in authorized States (i.e., those States that have received authorization from the U.S. EPA to administer the hazardous waste management program) should contact their State agency for information on where to report discrepancies involving "significant differences" to state officials.~~

~~Item 18b. Alternate Facility (or Generator) for Receipt of Full Load Rejections~~

~~Enter the name, address, phone number, and EPA Identification Number of the Alternate Facility which the rejecting TSDF has designated, after consulting with the generator, to receive a fully rejected waste shipment. In the event that a fully rejected shipment is being returned to the generator, the rejecting TSDF may enter the generator's site information in this space. This field is not to be used to forward partially rejected loads or residue waste shipments.~~

~~Item 18c. Alternate Facility (or Generator) Signature~~

~~The authorized representative of the alternate facility (or the generator in the event of a returned shipment) must sign and date this field of the form to acknowledge receipt of the fully rejected wastes or residues identified by the initial TSDF.~~

~~Item 19. Hazardous Waste Report Management Method Codes~~

~~Enter the most appropriate Hazardous Waste Report Management Method code for each waste listed in Item 9. The Hazardous Waste Report Management Method code is to be entered by the first treatment, storage, or disposal facility (TSDF) that receives the waste and is the code that best describes the way in which the waste is to be managed when received by the TSDF.~~

~~Item 20. Designated Facility Owner or Operator Certification of Receipt (Except as Noted in Item 18a)~~

~~Enter the name of the person receiving the waste on behalf of the owner or operator of the facility. That person must acknowledge receipt or rejection of the waste described on the Manifest by signing and entering the date of receipt or rejection where indicated. Since the Facility Certification acknowledges receipt of the waste except as noted in the Discrepancy Space in Item 18a, the certification should be signed for both waste receipt and waste rejection, with the rejection being noted and described in the space provided in Item 18a. Fully rejected wastes may be forwarded or returned using Item 18b after consultation with the generator. Enter the name of the person accepting the waste on behalf of the owner or operator of the alternate facility or the original generator. That person must acknowledge receipt or rejection of the waste described on the Manifest by signing and entering the date they received or rejected the waste in Item 18c. Partially rejected wastes and residues must be re-shipped under a new manifest, to be initiated and signed by the rejecting TSDF as offeror of the shipment.~~

~~Manifest Continuation Sheet~~

~~Instructions-Continuation Sheet, U.S. EPA Form 8700-22A~~

~~Read all instructions before completing this form. This form has been designed for use on a 12-pitch (elite) typewriter; a firm point pen may also be used-press down hard.~~

~~This form must be used as a continuation sheet to U.S. EPA Form 8700-22 if:~~

~~•More than two transporters are to be used to transport the waste; or~~

~~•More space is required for the U.S. DOT descriptions and related information in Item 9 of U.S. EPA Form 8700-22.~~

~~Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, or disposal facilities to use the uniform hazardous waste manifest (EPA Form 8700-22) and, if necessary, this continuation sheet (EPA Form 8700-22A) for both interstate and intrastate transportation.~~

~~Item 21. Generator's ID Number~~

~~Enter the generator's U.S. EPA twelve digit identification number or, the State generator identification number if the generator site does not have an EPA identification number.~~

~~Item 22. Page I-~~

~~Enter the page number of this Continuation Sheet.~~

~~Item 23. Manifest Tracking Number~~

~~Enter the Manifest Tracking number from Item 4 of the Manifest form to which this continuation sheet is attached.~~

~~Item 24. Generator's Name~~

~~Enter the generator's name as it appears in Item 5 on the first page of the Manifest.~~

~~Item 25. Transporter-Company Name~~

~~If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 3 Company Name. Also enter the U.S. EPA twelve digit identification number of the transporter described in Item 25.~~

~~Item 26. Transporter-Company Name~~

~~If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the~~

~~word "Transporter" the order of the transporter. For example, Transporter 4 Company Name. Each Continuation Sheet can record the names of two additional transporters. Also enter the U.S. EPA twelve digit identification number of the transporter named in Item 26.~~

~~Item 27. U.S. D.O.T. Description Including Proper Shipping Name, Hazardous Class, and ID Number (UN/NA)~~

~~For each row enter a sequential number under Item 27b that corresponds to the order of waste codes from one continuation sheet to the next, to reflect the total number of wastes being shipped. Refer to instructions for Item 9 of the manifest for the information to be entered.~~

~~Item 28. Containers (No. And Type)~~

~~Refer to the instructions for Item 10 of the manifest for information to be entered.~~

~~Item 29. Total Quantity~~

~~Refer to the instructions for Item 11 of the manifest form.~~

~~Item 30. Units of Measure (Weight/Volume)~~

~~Refer to the instructions for Item 12 of the manifest form.~~

~~Item 31. Waste Codes~~

~~Refer to the instructions for Item 13 of the manifest form.~~

~~Item 32. Special Handling Instructions and Additional Information~~

~~Refer to the instructions for Item 14 of the manifest form.~~

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~~Transporters~~

~~Item 33. Transporter-Acknowledgment of Receipt of Materials~~

~~Enter the same number of the Transporter as identified in Item 25. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 25. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.~~

~~Item 34. Transporter-Acknowledgment of Receipt of Materials~~

~~Enter the same number of the Transporter as identified in Item 26. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 26. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.~~

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~~Owner and Operators of Treatment, Storage, or Disposal Facilities~~

~~Item 35. Discrepancy Indication Space~~

~~Refer to Item 18. This space may be used to more fully describe information on discrepancies identified in Item 18a of the manifest form.~~

~~Item 36. Hazardous Waste Report Management Method Codes~~

~~For each field here, enter the sequential number that corresponds to the waste materials described under Item 27, and enter the appropriate process code that describes how the materials will be processed when received. If additional continuation sheets are attached, continue numbering the waste materials~~

~~and process code fields sequentially, and enter on each sheet the process codes corresponding to the waste materials identified on that sheet.~~

Note: Manifest images are also being deleted

Please print or type. (Form designed for use on elite (12-pitch) typewriter.) Form Approved. OMB No. 2050-0039

**UNIFORM HAZARDOUS WASTE MANIFEST**

1. Generator ID Number
2. Page 1 of
3. Emergency Response Phone
4. Manifest Tracking Number

5. Generator's Name and Mailing Address
Generator's Site Address (if different than mailing address)
Generator's Phone:

6. Transporter 1 Company Name
U.S. EPA ID Number

7. Transporter 2 Company Name
U.S. EPA ID Number

8. Designated Facility Name and Site Address
U.S. EPA ID Number
Facility's Phone:

| 9a. HM | 9b. U.S. DOT Description (Including Proper Shipping Name, Hazard Class, ID Number, and Packing Group (if any)) | 10. Containers No. | 10. Containers Type | 11. Total Quantity | 12. Unit Wt./Vol. | 13. Waste Codes |
|---|---|---|---|---|---|---|
| | 1. | | | | | |
| | 2. | | | | | |
| | 3. | | | | | |
| | 4. | | | | | |

14. Special Handling Instructions and Additional Information

15. GENERATOR'S/OFFEROR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked and labeled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgment of Consent. I certify that the waste minimization statement identified in 40 CFR 262.27(a) (if I am a large quantity generator) or (b) (if I am a small quantity generator) is true.

Generator's/Offeror's Printed/Typed Name | Signature | Month | Day | Year

16. International Shipments ☐ Import to U.S. ☐ Export from U.S. Port of entry/exit:
Transporter signature (for exports only): Date leaving U.S.:

17. Transporter Acknowledgment of Receipt of Materials
Transporter 1 Printed/Typed Name | Signature | Month | Day | Year
Transporter 2 Printed/Typed Name | Signature | Month | Day | Year

18. Discrepancy
18a. Discrepancy Indication Space ☐ Quantity ☐ Type ☐ Residue ☐ Partial Rejection ☐ Full Rejection
Manifest Reference Number:
18b. Alternate Facility (or Generator)
U.S. EPA ID Number
Facility's Phone:
18c. Signature of Alternate Facility (or Generator) | Month | Day | Year

19. Hazardous Waste Report Management Method Codes (i.e., codes for hazardous waste treatment, disposal, and recycling systems)
1. 2. 3. 4.

20. Designated Facility Owner or Operator: Certification of receipt of hazardous materials covered by the manifest except as noted in Item 18a
Printed/Typed Name | Signature | Month | Day | Year

GENERATOR | INT'L | TRANSPORTER | DESIGNATED FACILITY

EPA Form 8700-22 (Rev. 3-05) Previous editions are obsolete.

DESIGNATED FACILITY TO DESTINATION STATE (IF REQUIRED)

VOID

Please print or type. (Form designed for use on elite (12-pitch) typewriter.) Form Approved. OMB No. 2050-0039

**UNIFORM HAZARDOUS WASTE MANIFEST (Continuation Sheet)**

21. Generator ID Number
22. Page
23. Manifest Tracking Number

24. Generator's Name

25. Transporter _____ Company Name — U.S. EPA ID Number

26. Transporter _____ Company Name — U.S. EPA ID Number

| 27a. HM | 27b. U.S. DOT Description (Including Proper Shipping Name, Hazard Class, ID Number, and Packing Group (if any)) | 28. Containers No. | 28. Containers Type | 29. Total Quantity | 30. Unit Wt./Vol. | 31. Waste Codes |
|---|---|---|---|---|---|---|
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32. Special Handling Instructions and Additional Information

GENERATOR

33. Transporter _____ Acknowledgment of Receipt of Materials
Printed/Typed Name — Signature — Month Day Year

34. Transporter _____ Acknowledgment of Receipt of Materials
Printed/Typed Name — Signature — Month Day Year

TRANSPORTER

35. Discrepancy

36. Hazardous Waste Report Management Method Codes (i.e., codes for hazardous waste treatment, disposal, and recycling systems)

DESIGNATED FACILITY

EPA Form 8700-22A (Rev. 3-05) Previous editions are obsolete. DESIGNATED FACILITY TO DESTINATION STATE (IF REQUIRED)

VOID

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~~Section 263.10 Scope.~~ **Section 263.10 Scope**

(a) These regulations establish standards which apply to persons transporting hazardous waste within the United States if the transportation requires a manifest under Part ~~262, or transporters of Used Oil within the State of Delaware.~~ 262. These regulations also apply to persons transporting hazardous waste into, out of, or through the State of Delaware that does not require a manifest under Part 262 and persons transporting used oil into, out of, or through the State of Delaware.

~~**NOTE**:~~ [Note: The regulations set forth in Parts 262 and 263 establish the responsibilities of generators and transporters of hazardous waste in the handling, transportation, and management of that waste. In these regulations, DNREC has expressly adopted certain regulations of the **[United States]** Department of Transportation (DOT) governing the transportation of hazardous materials. These regulations concern, among other things, labeling, marking, placarding, using proper containers, and reporting discharges. DNREC adoption of these DOT regulations ensures consistency with the requirements of DOT and thus avoids the establishment of duplicative or conflicting requirements with respect to these matters. These DNREC Regulations which apply to intrastate transportation of hazardous waste are enforceable by DNREC. DOT has revised its hazardous materials transportation regulations in order to encompass the transportation of hazardous waste and to regulate intrastate, as well as interstate, transportation of hazardous waste.

Transporters of hazardous waste are cautioned that DOT's regulations are fully applicable to their activities and enforceable by DOT. These DOT regulations are codified in Title 49, Code of Federal Regulations, Subchapter C. DOT regulations ~~means~~ mean the most current regulations as promulgated to date in Title 49, CFR, ~~Subchapter C~~ Subchapter C].

(b) These regulations do not apply to on-site transportation of hazardous waste by generators or by owners or operators of permitted hazardous waste management facilities.

(c) A transporter of hazardous waste must also comply with Part 262, Standards Applicable to Generators of Hazardous Waste, if he:

(1) Transports hazardous waste into the United States from abroad; or

(2) Mixes hazardous wastes of different DOT shipping descriptions by placing them into a single container.

(d) ~~A transporter of hazardous waste subject to the Federal manifesting requirements of 40 CFR Part 262, or subject to the waste management standards of Part 273, that is being imported from or exported to any of the countries listed in §262.58(a)(1) for purposes of recovery is subject to this Subpart and to all other relevant requirements of Subpart H of Part 262, including, but not limited to, §262.84 for movement documents.~~ A transporter of hazardous waste that is being imported from or exported to any other country for the purposes of recovery or disposal is subject to this Subpart and to all other relevant requirements of Part 262, Subpart H of these regulations, including, but not limited to §262.83(d) and §262.84(d) for movement documents.

(e) The regulations in this part do not apply to transportation during an explosives or munitions emergency response, conducted in accordance with §264.1(g)(8)(i)(D) or (iv) or §265.1(c)(11)(i)(D) or (iv), and §122.1(c)(3)(i)(D) or (iii).

(f) Section 266.203 of these regulations identifies how the requirements of this part apply to military munitions classified as solid waste under §266.202.

(g)These regulations do not apply to the transportation of waste from a very small quantity generator to a large quantity generator in accordance with §262.14(a)(6)(viii) of these regulations.

(h)These regulations do not apply to the transportation of potentially creditable hazardous waste pharmaceuticals transported in accordance with Part 266, Subpart P of these regulations.

**Section 263.11 EPA Identification Number.**

(a) A transporter must not transport hazardous wastes without having received an EPA identification number from the Secretary.

(b) A transporter who has not received an EPA identification number may obtain one by applying to the Secretary using ~~**State of Delaware Notification of Regulated Waste Activity** form and~~ EPA Form 8700-12. Upon receiving the request, the Secretary will assign an EPA identification number to the transporter.

(c) A transporter must submit a subsequent ~~State of Delaware Notification of Regulated Waste Activity Form (8700-12~~) EPA Form 8700-12 whenever there is a change in name, mailing address, contact

person, contact address, telephone number, ownership, type of regulated waste activity, or changes in the description of regulated wastes managed or permanently ceases the regulated waste activity. This subsequent notification must be submitted to the Secretary no less than 10 days prior to implementation of the change(s).

**Section 263.12 Transfer Facility Requirements.**

(a) A transporter ~~consolidating and/or storing~~ who consolidates or stores manifested shipments of hazardous waste in containers meeting the independent requirements of §262.30 for less than 10 days is an owner or operator of a transfer facility subject to the requirements of this section.

(1)When consolidating or storing hazardous waste, the transporter must mark its containers of 119 gallons or less with the following information:

(i) The words "Hazardous Waste"; and

(ii) The applicable EPA hazardous waste number(s) (EPA hazardous waste codes) in Subparts C and D of Part 261 of these regulations, or in compliance with §262.32(c).

(2)[Reserved]

(b) A transporter commingling manifested shipments of hazardous waste in containers meeting the independent requirements of §262.30 is an owner or operator of a hazardous waste treatment and storage facility subject to the requirements of Parts 260-266, 268 and Parts 122 and 124 of these regulations.

(1)When commingling the contents of two or more containers with the same hazardous waste into a new container, or when commingling two different hazardous wastes that are compatible with each other, the transporter must mark its containers of 119 gallons or less with the following information:

(i) The words "Hazardous Waste"; and

(ii) The applicable EPA hazardous waste number(s) (EPA hazardous waste codes) in Subparts C and D of Part 261 of these regulations, or in compliance with §262.32(c).

(2)[Reserved]

(c) A transfer facility shall not be operated without prior written approval of the Secretary. No written approval shall be granted unless the owner or operator submits an application and fee, and demonstrates to the Secretary that the facility complies with §§ 264.16 and 264.112 and Part 264, Subparts C, D and I of these regulations.

(d) No written approval shall be granted unless the owner or operator demonstrates to the Secretary that the transfer facility location complies with the requirements of the Delaware Regulations Governing the Location of Hazardous Waste Storage, Treatment, and Disposal Facilities.

(e) Any hazardous waste transfer facility that ceases to operate or maintain approval status shall implement the approved closure plan within 30 days, unless an extension has been granted by the Secretary.

(f) Transfer of ownership of any hazardous waste transfer facility shall be consistent with the conditions of §122.40 of these regulations.

(g) A transfer facility owner or operator must maintain a log of the time and date on which each container or transport vehicle of hazardous waste is received or shipped, including the number from its manifest. Completed log records must be maintained on-site for a period of at least three years.

(h) Storage of manifested shipments of hazardous waste in containers or vehicles by a transporter at its own terminal for a period of 72 hours or less, provided no consolidation or commingling occurs, is exempted from the requirements of §263.12(a) through (g), provided that the transporter:

(1) notifies the Solid and Hazardous Waste Management Section in writing prior to commencing the activity;

(2) maintains a log of the time and date on which each container or transport vehicle of hazardous waste is received or shipped, including the number from its manifest. Completed log records must be maintained on-site for a period of at least three years;

(3) does not open any containers or transport vehicles for any purpose, including adding absorbent to, or sampling, transferring, or treating hazardous waste;

(4) stores the waste in containers or transport vehicles which meet the design requirements specified by US DOT for each type of waste stored. During storage and shipment, these containers or transport vehicles must be packaged, labeled and marked in accordance with Subpart C of Part 262;

(5) does not handle or store containers or transport vehicles in a manner which would cause them to leak; and

(6) complies with the standards for hazardous waste discharges specified in §263.30.

## Subpart B - Compliance with the Manifest System and Recordkeeping

**Section 263.20 The Manifest System.**

(a) (1) *Manifest requirement.* A transporter may not accept hazardous waste from a generator unless the transporter is also provided with a manifest signed in accordance with the requirements of **[~~§262.23.~~ §262.23, or is provided with an electronic manifest that is obtained, completed, and transmitted in accordance with §262.20(a)(3) of these regulations, and signed with a valid and enforceable electronic signature as described in §262.25 of these regulations.]**

(2) *Exports.* ~~In the case of exports other than those subject to Subpart H of DRGHW part 262, a transporter may not accept such waste from a primary exporter or other person if he knows the shipment does not conform to the EPA Acknowledgment of Consent; and unless, in addition to a manifest signed by the generator as provided in this section, the transporter shall also be provided with an EPA Acknowledgment of Consent which, except for shipments by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)). For exports of hazardous waste subject to the requirements of Subpart H of DRGHW part 262, a transporter may not accept hazardous waste without a tracking document that includes all information required by DRGHW 262.84.~~ For exports of hazardous waste subject to the requirements of Part 262, Subpart H of these regulations, a transporter may not accept hazardous waste without a manifest signed by the generator in accordance with this section, as appropriate, and for exports occurring under the terms of a consent issued by EPA on or after December 31, 2016, a movement document that includes all information required by §262.83(d).

(3) *Compliance Date for Form Revisions.* The revised Manifest form and procedures in §260.10, 261.7, 263.20, and 263.21, had an effective date of September 5, 2006. The Manifest form and procedures in 40 CFR §§260.10, 261.7, 263.20, and 263.21, contained in the 40 CFR, parts 260 to 265, edition revised as of July 1, 2004, were applicable until September 5, 2006.

(4) *Use of electronic manifest—legal equivalence to paper forms for participating transporters.* Electronic manifests that are obtained, completed, and transmitted in accordance with §262.20(a)(3) of these regulations, and used in accordance with this section in lieu of EPA Forms 8700-22 and 8700-22A, are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, carry, provide, give, use, or retain a manifest.

(i) Any requirement in these regulations to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 40 CFR 262.25.

(ii) Any requirement in these regulations to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person by submission to the system.

(iii) Any requirement in these regulations for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment, except that to the extent that the Hazardous Materials regulation on shipping papers for carriage by public highway requires transporters of hazardous materials to carry a paper document to comply with 49 CFR 177.817, a hazardous waste transporter must carry one printed copy of the electronic manifest on the transport vehicle.

(iv) Any requirement in these regulations for a transporter to keep or retain a copy of a manifest is satisfied by the retention of an electronic manifest in the transporter's account

on the e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or DNREC inspector.

(v) No transporter may be held liable for the inability to produce an electronic manifest for inspection under this section if that transporter can demonstrate that the inability to produce the electronic manifest is exclusively due to a technical difficulty with the EPA system for which the transporter bears no responsibility.

(5) A transporter may participate in the electronic manifest system either by accessing the electronic manifest system from the transporter's own electronic equipment, or by accessing the electronic manifest system from the equipment provided by a participating generator, by another transporter, or by a designated facility.

(6) *Special procedures when electronic manifest is not available.* If after a manifest has been originated electronically and signed electronically by the initial transporter, and the electronic manifest system should become unavailable for any reason, then:

(i) The transporter in possession of the hazardous waste when the electronic manifest becomes unavailable shall reproduce sufficient copies of the printed manifest that is carried on the transport vehicle pursuant to paragraph (a)(4)(iii) of this section, or obtain and complete another paper manifest for this purpose. The transporter shall reproduce sufficient copies to provide the transporter and all subsequent waste handlers with a copy for their files, plus two additional copies that will be delivered to the designated facility with the hazardous waste.

(ii) On each printed copy, the transporter shall include a notation in the Special Handling and Additional Description space (Item 14) that the paper manifest is a replacement manifest for a manifest originated in the electronic manifest system, shall include (if not pre-printed on the replacement manifest) the manifest tracking number of the electronic manifest that is replaced by the paper manifest, and shall also include a brief explanation why the electronic manifest was not available for completing the tracking of the shipment electronically.

(iii) A transporter signing a replacement manifest to acknowledge receipt of the hazardous waste must ensure that each paper copy is individually signed and that a legible handwritten signature appears on each copy.

(iv) From the point at which the electronic manifest is no longer available for tracking the waste shipment, the paper replacement manifest copies shall be carried, signed, retained as records, and given to a subsequent transporter or to the designated facility, following the instructions, procedures, and requirements that apply to the use of all other paper manifests.

(7) *Special procedures for electronic signature methods undergoing tests.* If a transporter using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the transporter shall sign the electronic manifest electronically and also sign with an ink signature the transporter acknowledgement of receipt of materials on the printed copy of the manifest that is carried on the vehicle in accordance with paragraph (a)(4)(iii) of this section. This printed copy bearing the generator's and transporter's ink signatures shall also be presented by the transporter to the designated facility to sign in ink to indicate the receipt of the waste materials or to indicate discrepancies. After the owner/operator of the designated facility has signed this printed manifest copy with its ink signature, the printed manifest copy shall be delivered to the designated facility with the waste materials.

(8) ~~*Imposition of user fee for electronic manifest use.* A transporter who is a user of the electronic manifest may be assessed a user fee by EPA for the origination or processing of each electronic manifest. EPA shall maintain and update from time-to-time the current schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to part 262 of 40 CFR.~~ [Reserved]

(9)*Post-receipt manifest data corrections.* After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (*e.g.,* waste handler) named on the manifest. Transporters

may participate electronically in the post-receipt data corrections process by following the process described in §264.71(l) of this chapter, which applies to corrections made to either paper or electronic manifest records.

(b)Before transporting the hazardous waste, the transporter must sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. The transporter must return a signed copy to the generator before leaving the generator's property.

(c)The transporter must ensure that the manifest accompanies the hazardous waste. In the case of exports occurring under the terms of a consent issued by EPA to the exporter on or after December 31, 2016, the transporter must ensure that a movement document that includes all information required by §262.83(d) of these regulations also accompanies the hazardous waste. In the case of imports occurring under the terms of a consent issued by EPA to the country of export or the importer on or after December 31, 2016, the transporter must ensure that a movement document that includes all information required by §262.84(d) of these regulations also accompanies the hazardous waste.

(d)A transporter who delivers a hazardous waste to another transporter or to the designated facility must:

(1) Obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest; and

(2) Retain one copy of the manifest in accordance with §263.22; and

(3) Give the remaining copies of the manifest to the accepting transporter or designated facility.

(e) The requirements of paragraphs (c), (d) and (f) of this section do not apply to water (bulk shipment) transporters if:

(1) The hazardous waste is delivered by water (bulk shipment) to the designated facility; and

(2) A shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports or imports occurring under the terms of a consent issued by EPA on or after December 31, 2016, a movement document that includes all information required by §262.83(d) or §262.84(d) of these regulations accompanies the hazardous waste; and

(3) The delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper; and

(4) The person delivering the hazardous waste to the initial water (bulk shipment) transporter obtains the date of delivery and signature of the water (bulk shipment) transporter on the manifest and forwards it to the designated facility; and

(5) A copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with §263.22.

(f)For shipments involving rail transportation, the requirements of paragraphs (c), (d) and (e) do not apply and the following requirements do apply:

(1) When accepting hazardous waste from a non-rail transporter, the initial rail transporter must: (i) Sign and date the manifest acknowledging acceptance of the hazardous waste;

(ii) Return a signed copy of the manifest to the non-rail transporter; (iii) Forward at least three copies of the manifest to:

(A) The next non-rail transporter, if any; or,

(B) The designated facility, if the shipment is delivered to that facility by rail; or (C) The last rail transporter designated to handle the waste in the United States;

(iv) Retain one copy of the manifest and rail shipping paper in accordance with §263.22.

(2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports or imports occurring under the terms of a consent issued by EPA on or after December 31, 2016, a movement document that includes all information required by §262.83(d) or §262.84(d) of these regulations accompanies the hazardous waste at all times.

[Note to Paragraph (f)(2): Intermediate rail transporters are not required to sign the manifest, movement document, or shipping paper.]

(3) When delivering hazardous waste to the designated facility, a rail transporter must:

(i) Obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or the shipping paper (if the manifest has not

been received by the facility); and

(ii) Retain a copy of the manifest or signed shipping paper in accordance with §263.22. (4) When delivering hazardous waste to a non-rail transporter a rail transporter must:

(i) Obtain the date of delivery and the handwritten signature of the next non-rail transporter on the manifest; and

(ii) Retain a copy of the manifest in accordance with §263.22.

(5) Before accepting hazardous waste from a rail transporter, a non-rail transporter must sign and date the manifest and provide a copy to the rail transporter.

(g) Transporters who transport hazardous waste out of the United States must:

(1) Sign and date the manifest in the International Shipments block to indicate the date that the shipment left the United States;

(2) Retain one copy in accordance with §263.22(d);

(3) Return a signed copy of the manifest to the generator; and (4) For paper manifests only,

(i) Send a copy of the manifest to the e-Manifest system in accordance with the allowable methods specified in §264.71(a)(2)(v) of these regulations; and

(ii) For shipments initiated prior to the AES filing compliance date of December 31, 2017, when instructed by the exporter to do so, give a copy of the manifest to a U.S. Customs official at the point of departure from the United States.

(h) A transporter transporting hazardous waste from a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month need not comply with the requirements of this section or those of §263.22 provided that:

(1) The waste is being transported pursuant to a reclamation agreement as provided for in §262.20(e);

(2) The transporter records, on a log or shipping paper, the following information for each shipment:

(i) The name, address, and U.S. EPA Identification Number of the generator of the waste; (ii) The quantity of waste accepted;

(iii) All DOT-required shipping information;

(iv) The date the waste is accepted; and

(3) The transporter carries this record when transporting waste to the reclamation facility; and (4) The transporter retains these records for a period of at least three years after termination or expiration of the agreement.

**Section 263.21 Compliance with the Manifest.**

(a) ~~The transporter must deliver the entire quantity of hazardous waste which he has accepted from a generator or a transporter to~~ Except as provided in paragraph (b) of this section, the transporter must deliver the entire quantity of hazardous waste which he or she has accepted from a generator or a transporter to:

(1) The designated facility listed on the manifest; or

(2) The alternate designated facility, if the hazardous waste cannot be delivered to the designated facility because an emergency prevents delivery; or

(3) The next designated transporter, transporter; or

(4) The place outside the United States designated by the generator.

(b) (1) Emergency condition. If the hazardous waste cannot be delivered in accordance with ~~paragraph (a)~~ **[~~paragraphs~~ paragraph]** (a)(1), (2), or (4) of this section because of an emergency condition other than rejection of the waste by the designated facility or alternate designated facility, then the transporter must contact the generator for further ~~directions~~ instructions and must revise the manifest according to the generator's instructions.

~~(2) If hazardous waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter must obtain the following:~~

~~(i) For a partial load rejection or for regulated quantities of container residues, a copy of the original manifest that includes the facility's date and signature, and the Manifest Tracking Number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue in the discrepancy block of the~~

~~original manifest. The transporter must retain a copy of this manifest in accordance with §263.22, and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter must obtain a new manifest to accompany the shipment, and the new manifest must include all of the information required in §264.72(e)(1) through (6) or (f)(1) through (6) or §265.72(e)(1) through (6) or (f)(1) through (6).~~

~~(ii) For a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection in the discrepancy block of the manifest, and the name, address, phone number, and Identification Number for the alternate facility or generator to whom the shipment must be delivered. The transporter must retain a copy of the manifest in accordance with §263.22, and give a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter must obtain a new manifest for the shipment and comply with §264.72(e)(1) through (6) or § 265.72(e)(1) through (6).~~

(2) *Transporters without agency authority.* If the hazardous waste is not delivered to the next designated transporter in accordance with paragraph (a)(3) of this section, and the current transporter is without contractual authorization from the generator to act as the generator's agent with respect to transporter additions or substitutions, then the current transporter must contact the generator for further instructions prior to making any revisions to the transporter designations on the manifest. The current transporter may thereafter make such revisions if:

(i) The hazardous waste is not delivered in accordance with paragraph (a)(3) of this section because of an emergency condition; or

(ii) The current transporter proposes to change the transporter(s) designated on the manifest by the generator, or to add a new transporter during transportation, to respond to an emergency, or for purposes of transportation efficiency, convenience, or safety; and

(iii) The generator authorizes the revision.

(3) *Transporters with agency authority.* If the hazardous waste is not delivered to the next designated transporter in accordance with paragraph (a)(3) of this section, and the current transporter has authorization from the generator to act as the generator's agent, then the current transporter may change the transporter(s) designated on the manifest, or add a new transporter, during transportation without the generator's prior, explicit approval, provided that:

(i) The current transporter is authorized by a contractual provision that provides explicit agency authority for the transporter to make such transporter changes on behalf of the generator;

(ii) The transporter enters in Item 14 of each manifest for which such a change is made, the following statement of its agency authority: "Contract retained by generator confers agency authority on initial transporter to add or substitute additional transporters on generator's behalf;" and

(iii) The change in designated transporters is necessary to respond to an emergency, or for purposes of transportation efficiency, convenience, or safety.

(4) *Generator liability.* The grant by a generator of authority to a transporter to act as the agent of the generator with respect to changes to transporter designations under paragraph (b)(3) of this section does not affect the generator's liability or responsibility for complying with any applicable requirement under these regulations, or grant any additional authority to the transporter to act on behalf of the generator.

(c)If hazardous waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter must obtain the following:

(1) For a partial load rejection or for regulated quantities of container residues, a copy of the original manifest that includes the facility's signature and date, and the Manifest Tracking Number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue in the discrepancy block of the original manifest. The transporter must retain a copy of this manifest in accordance with §263.22, and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the

shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter must obtain a new manifest to accompany the shipment, and the new manifest must include all of the information required in §264.72(e)(1) through (6) or (f)(1) through (6) or §265.72(e)(1) through (6) or (f)(1) through (6) of these regulations.

(2) For a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection in the discrepancy block of the manifest, and the name, address, phone number, and Identification Number for the alternate facility or generator to whom the shipment must be delivered. The transporter must retain a copy of the manifest in accordance with §263.22, and give a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter must obtain a new manifest for the shipment and comply with §264.72(e)(1) through (6) or §265.72(e)(1) through (6) of these regulations.

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**Section 264.1 Purpose, scope and applicability.**

(a) The purpose of this part is to establish minimum standards which define the acceptable management of hazardous waste.

(b) The standards in this part apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste, except as specifically provided otherwise in this part or Part 261 of these regulations.

(c) The requirements of this part apply to a person disposing of hazardous waste by means of ocean disposal subject to permit issued under the Marine Protection, Research, and Sanctuary Act, only to the extent they are included in a permit by rule granted to such a person under §122.60(a) of these regulations.

(d) The underground injection of hazardous waste is banned in the State of Delaware.

(e) The requirements of this part apply to the owner or operator of POTW which treats, stores, or disposes of hazardous waste only to the extent they are included in a permit by rule granted to such a person under ~~Part~~ Section 122.60(c) of these regulations.

(f) **[Reserved]**

(g) The requirements of this part do not apply to:

(1) The owner or operator of a facility permitted, licensed, or registered by a state to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under this part by ~~§261.5~~ §262.14 of these regulations;

(2) The owner or operator of a facility managing recyclable materials described in §261.6(a)(2), (3), and (4) of these regulations (except to the extent they are referred to in Part 279 or Subparts C, F, G or H of Part 266 of these regulations).

(3) A generator accumulating waste on-site in compliance with ~~§262.34~~ §§262.14, 262.15, 262.16, or 262.17 of these regulations.

(4) A farmer disposing of waste pesticides from his own use in compliance with §262.70 of these regulations;

(5) The owner or operator of a totally enclosed treatment facility as defined in §260.10.

(6) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in §260.10 of these regulations, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in §268.40 of these regulations, Table Treatment Standards for Hazardous Wastes), or reactive (D003) waste, to remove the characteristic before land disposal, the ~~owner/operator~~ owner or operator must comply with the requirements set out in §264.17(b).

(7) To a person who treats, stores, or disposes of hazardous waste in a state which is authorized under Subpart A or B of 40 CFR Part 271 if the state has not been authorized to carry out the requirements and prohibitions applicable to the treatment, storage, or disposal of hazardous waste at his facility which are imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. The requirements and prohibitions that are applicable until a state receives authorization to carry them out include all Federal program requirements identified in 40 CFR §271.1(j).

(8) (i) Except as provided in paragraph (g)(8)(ii) of this section, a person engaged in treatment or

containment activities during immediate response to any of the following situations:

(A) A discharge of hazardous waste;

(B) An imminent and substantial threat of a discharge of hazardous waste;

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in §260.10.

(ii) An owner or operator of a facility otherwise regulated by this part must comply with all applicable requirements of Subparts C and D.

(iii) Any person who is covered by paragraph (g)(8)(i) of this section and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this part and Parts 122 - 124 of these regulations for those activities.

(iv) In the case of an explosives or munitions emergency response, if a Federal, State, Tribal or local official acting within the scope of his or her official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(9) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of §262.30 at a transfer facility for a period of ten days or less, except as otherwise specified in §263.12.

(10) The addition of absorbent material to waste in a container (as defined in §260.10 of these regulations) or the addition of waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container; and §§264.17(b), 264.171, and 264.172 are complied with.

(11) Universal waste handlers and universal waste transporters (as defined in 260.10) handling the wastes listed below. These handlers are subject to regulation under Part 273, when handling the below listed universal wastes.

(i) Batteries as described in §273.2;

(ii) Pesticides as described in §273.3 of these regulations;

(iii) Mercury-containing equipment as described in §273.4 of these regulations; ~~and~~

(iv) Lamps as described in §273.5 of these ~~regulations.~~ regulations; and

(v) Aerosol cans as described in §273.6 of these regulations.

(12)[Reserved]

(13)Reverse distributors accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals, as defined in §266.500. Reverse distributors are subject to regulation under Part 266 Subpart P in lieu of this part for the accumulation of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals.

(h) The requirements of this part apply to owners or operators of all facilities which treat, store, or dispose of hazardous wastes referred to in Part 268.

(i) Section 266.205 of these regulations identifies when the requirements of this part apply to the storage of military munitions classified as solid waste under §266.202 of these regulations. The treatment and disposal of hazardous waste military munitions are subject to the applicable permitting, procedural, and technical standards in Parts 260 through 268 and 122.

(j) The requirements of Subparts B, C, and D of this part and §264.101 do not apply to remediation waste management sites. (However, some remediation waste management sites may be a part of a facility that is subject to a traditional hazardous waste permit because the facility is also treating, storing or disposing

of hazardous wastes that are not remediation wastes. In these cases, Subparts B, C, and D of this part, and §264.101 do apply to the facility subject to the traditional hazardous waste permit.) Instead of the requirements of Subparts B, C, and D of this part, owners or operators of remediation waste management sites must:

(1) Obtain an EPA identification number by applying to the Secretary using EPA Form 8700-12;

(2) Obtain a detailed chemical and physical analysis of a representative sample of the hazardous remediation wastes to be managed at the site. At a minimum, the analysis must contain all of the information which must be known to treat, store or dispose of the waste according to this part and Part 268 of these regulations, and must be kept accurate and up to date;

(3) Prevent people who are unaware of the danger from entering, and minimize the possibility for unauthorized people or livestock to enter onto the active portion of the remediation waste management site, unless the owner or operator can demonstrate to the Secretary that:

(i) Physical contact with the waste, structures, or equipment within the active portion of the remediation waste management site will not injure people or livestock who may enter the active portion of the remediation waste management site; and

(ii) Disturbance of the waste or equipment by people or livestock who enter onto the active portion of the remediation waste management site, will not cause a violation of the requirements of this part;

(4) Inspect the remediation waste management site for malfunctions, deterioration, operator errors, and discharges that may be causing, or may lead to, a release of hazardous waste constituents to the environment, or a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment, and must remedy the problem before it leads to a human health or environmental hazard. Where a hazard is imminent or has already occurred, the ~~owner/operator~~ owner or operator must take remedial action immediately;

(5) Provide personnel with classroom or on-the-job training on how to perform their duties in a way that ensures the remediation waste management site complies with the requirements of this part, and on how to respond effectively to emergencies;

(6) Take precautions to prevent accidental ignition or reaction of ignitable or reactive waste, and prevent threats to human health and the environment from ignitable, reactive and incompatible waste;

(7) For remediation waste management sites subject to regulation under Subparts I through O and Subpart X of this part, the ~~owner/operator~~ owner or operator must design, construct, operate, and maintain a unit within a 100-year floodplain to prevent washout of any hazardous waste by a 100-year flood, unless the ~~owner/operator~~ owner or operator can meet the demonstration of §264.18(b);

(8) Not place any non-containerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave;

(9) Develop and maintain a construction quality assurance program for all surface impoundments, waste piles and landfill units that are required to comply with §§ 264.221(c) and (d), 264.251(c) and (d), and 264.301(c) and (d) at the remediation waste management site, according to the requirements of §264.19;

(10) Develop and maintain procedures to prevent accidents and a contingency and emergency plan to control accidents that occur. These procedures must address proper design, construction, maintenance, and operation of remediation waste management units at the site. The goal of the plan must be to minimize the possibility of, and the hazards from a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. The plan must explain specifically how to treat, store and dispose of the hazardous remediation waste in question, and must be implemented immediately whenever a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment;

(11) Designate at least one employee, either on the facility premises or on call (that is, available to respond to an emergency by reaching the facility quickly), to coordinate all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of

the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan;

(12) Develop, maintain and implement a plan to meet the requirements in paragraphs (j)(2) through (j)(6) and (j)(9) through (j)(10) of this section; and

(13) Maintain records documenting compliance with paragraphs (j)(1) through (j)(12) of this section.

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**Section 264.12 Required notices.**

~~(a) (1) The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must notify the Regional Administrator in writing at least four weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.~~

~~(2) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to Part 262, Subpart H must provide a copy of the movement document bearing all required signatures to the the foreign exporter; to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to the competent authorities of all other concerned countries within three (3) working days of receipt of the shipment. The original of the signed movement document must be maintained at the facility for at least three (3) years. In addition, such owner or operator shall, as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following the receipt of the hazardous waste, send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to EPA's Office of Enforcement and Compliance Assurance at the above address by mail, e-mail without a digital signature followed by mail, or fax followed by mail.~~

~~(3) Any person submitting information to EPA in accordance with the requirements of this section must also submit copies to the DNREC Secretary.~~

(a) The owner or operator of a facility that is arranging or has arranged to receive hazardous waste subject to Part 262, Subpart H of these regulations from a foreign source must submit the following required notices:

(1) As per §262.84(b) of these regulations, for imports where the competent authority of the country of export does not require the foreign exporter to submit to it a notification proposing export and obtain consent from EPA and the competent authorities for the countries of transit, such owner or operator of the facility, if acting as the importer, must provide notification of the proposed transboundary movement in English to EPA using the allowable methods listed in §262.84(b)(1) of these regulations at least 60 days before the first shipment is expected to depart the country of export. The notification may cover up to one year of shipments of wastes having similar physical and chemical characteristics, the same United Nations classification, the same RCRA waste codes and OECD waste codes, and being sent from the same foreign exporter.

(2) As per §262.84(d)(2)(xv) of these regulations, a copy of the movement document bearing all required signatures within three (3) working days of receipt of the shipment to the foreign exporter; to the competent authorities of the countries of export and transit that control the shipment as an export and transit shipment of hazardous waste respectively; and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The original of the signed movement document must be maintained at the facility for at least three (3) years. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the

document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system for which the owner or operator of a facility bears no responsibility.

(3) As per §262.84(f)(4) of these regulations, if the facility has physical control of the waste and it must be sent to an alternate facility or returned to the country of export, such owner or operator of the facility must inform EPA, using the allowable methods listed in §262.84(b)(1) of these regulations of the need to return or arrange alternate management of the shipment.

(4) As per §262.84(g) of these regulations, such owner or operator shall:

(i) Send copies of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and for shipments recycled or disposed of on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system.

(ii) If the facility performed any of recovery operations R12, R13, or RC16, or disposal operations D13 through D15, or DC17, promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC16, or one of disposal operations D1 through D12, or DC15 to DC16, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The recovery and disposal operations in this paragraph are defined in §262.81 of these regulations.

(b) The owner or operator of a facility that receives hazardous waste from an off-site source (except where the owner or operator is also the generator) must inform the generator in writing that he has the appropriate permit(s) for, and will accept, the waste the generator is shipping. The owner or operator must keep a copy of this written notice as part of the operating record.

(c) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator must notify the new owner or operator in writing of the requirements of this part and Part 122 of these regulations.

[**Comment**: An owner's or operator's failure to notify the new owner or operator of the requirements of this part in no way relieves the new owner or operator of his obligation to comply with all applicable requirements.]

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**Section 264.15 General inspection requirements.**

(a) The owner or operator must inspect his facility for malfunctions and deterioration, operator errors, and discharges which may be causing - or may lead to - (1) release of hazardous waste constituents to the environment or (2) a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.

(b) (1) The owner or operator must develop and follow a written schedule for inspecting monitoring equipment, safety, and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

(2) He must keep this schedule at the facility.

(3) The schedule must identify the types of problems (e.g., malfunctions or deterioration) which are to be looked for during the inspection (e.g., inoperative sump pump, leaking fitting, eroding dike, etc.).

(4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error

goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 264.174, 264.193, 264.195, 264.226, 264.254, 264.278, 264.303, 264.347, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, and 264.1083 through 264.1089 of this part, where applicable. Part 122 of these regulations requires the inspection schedule to be submitted with Part B of the permit application. The Department will evaluate the schedule along with the rest of the application to ensure that it adequately protects human health and the environment. As part of this review, the Department may modify or amend the schedule as necessary.

~~[**Comment**: Part 122, Subpart B, of these regulations requires the inspection schedule to be submitted with Part B of the permit application. DNREC will evaluate the schedule along with the rest of the application to ensure that it adequately protects human health and the environment. As part of this review, DNREC may modify or amend the schedule as may be necessary.]~~

(c) The owner or operator must remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action must be taken immediately.

(d) The owner or operator must record inspections in an inspection log or summary. He must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

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**Section 264.71 Use of manifest system.**

(a) (1) If a facility receives hazardous waste accompanied by a manifest, the ~~owner or operator,~~ owner, operator, or ~~his/her~~ the owner or **[operator's]** agent, must sign and date the manifest as indicated in paragraph (a)(2) of this section to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

(2) If ~~a~~ the facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator or his agent must:

(i) Sign and date~~, by hand,~~ each copy of the manifest;

(ii) Note any discrepancies (as defined in §264.72(a)) on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the manifest;

(iv) Within 30 days of delivery, send a copy (~~Page 3~~ Page 2) of the manifest to the generator ~~and a copy of the signed "Designated Facility to Generator State" page to the DNREC Secretary~~;

(v) ~~Within 30 days of delivery, send the top copy (Page 1) of the Manifest to the e-Manifest system for purposes of data entry and processing. In lieu of mailing this paper copy to EPA, the owner or operator may transmit to the EPA system an image file of Page 1 of the manifest, or both a data string file and the image file corresponding to Page 1 of the manifest. Any data or image files transmitted to EPA under this paragraph must be submitted in data file and image file formats that are acceptable to EPA and that are supported by EPA's electronic reporting requirements and by the electronic manifest system.~~ Submit paper manifests in accordance with:

(A) *Options for compliance on June 30, 2018.* Beginning on June 30, 2018, send the top copy (Page 1) of any paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing, or in lieu of submitting the paper copy to EPA, the owner or operator may transmit to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or both a data file and image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date of delivery. Submissions of copies to the e-Manifest system shall be made at the mailing address or electronic mail/submission address specified at the e-Manifest program website's directory of services. Beginning on June 30, 2021, EPA will not accept mailed

paper manifests from facilities for processing in e-Manifest.

(B) *Options for compliance on June 30, 2021.* Beginning on June 30, 2021, the requirement to submit the top copy (Page 1) of the paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing may be met by the owner or operator only by transmitting to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or by transmitting to the EPA system both a data file and the image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date of delivery. Submissions of copies to the e-Manifest system shall be made to the electronic mail/submission address specified at the e-Manifest program website's directory of services; and

(vi) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(3) ~~If a facility receives hazardous waste imported from a foreign source, the receiving facility must mail a copy of the manifest and documentation confirming EPA's consent to the import of hazardous waste to the following address within 30 days of delivery: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460~~ The owner or operator of a facility receiving hazardous waste subject to Part 262, Subpart H of these regulations from a foreign source must:

(i)Additionally list the relevant consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest, matched to the relevant list number for the waste from block 9b. If additional space is needed, the owner or operator should use a Continuation Sheet(s) (EPA Form 8700-22A); and

(ii)Send a copy of the manifest within thirty (30) days of delivery to EPA using the addresses listed in §262.82(e) of these regulations until the facility can submit such a copy to the e-Manifest system per paragraph (a)(2)(v) of this section.

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures), the owner or operator, or his agent, must:

(1) Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

(2) Note any significant discrepancies (as defined in §264.72(a) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper.

[Comment: The Department does not intend that the owner or operator of a facility whose procedures under §264.13(c) include waste analysis must perform that analysis before signing the manifest and giving it to the transporter. Section 264.72(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.]

(3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

(4) Within 30 days after the delivery, send a copy of the signed and dated manifest or a signed and dated copy of the shipping paper (if the manifest has not been received within 30 days after delivery) to the generator ~~and a copy to the DNREC Secretary~~; and

(5) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of Part 262 of these regulations. The provisions of §§262.15, 262.16, and 262.17 of these regulations are applicable to the on-site accumulation of hazardous waste by generators. Therefore, the provisions of §§262.15, 262.16, and 262.17 of these regulations only apply to owners or operators who are shipping hazardous waste which they generated at that facility or operating as a large quantity generator consolidating or commingling hazardous waste from very small quantity generators under §262.17(f).

~~[Comment: The provision of §262.34 are applicable to the on site accumulation of hazardous wastes by~~

~~generators. Therefore, the provisions of §262.34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.]~~

(d)~~(1) Within three working days of the receipt of a shipment subject to Part 262, Subpart H, the owner or operator of the facility must provide a copy of the movement document bearing all required signatures to the exorter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and to competent authorities of all other concerned countries. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature.~~

~~(2) Any person submitting information to EPA in accordance with the requirements of this section must also submit copies to the DNREC Secretary.~~

(d) As per §262.84(d)(2)(xv) of these regulations, within three (3) working days of the receipt of a shipment subject to Part 262, Subpart H of these regulations, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the foreign exporter; to the competent authorities of the countries of export and transit that control the shipment as an export and transit of hazardous waste respectively; and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system, for which the owner or operator of a facility bears no responsibility.

(e) A facility must determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated Federally) as hazardous wastes under its state hazardous waste program. Facilities must also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states. (Note: for hazardous waste generated in Delaware, send a copy of the signed "Designated Facility to Generator State" page to the DNREC Secretary).

(f) Legal equivalence to paper manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with §262.20(a)(3) of these regulations, and used in accordance with this section in lieu of the paper manifest form are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

(1) Any requirement in these regulations for the owner or operator of a facility to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 40 CFR §262.25.

(2) Any requirement in these regulations to give, provide, send, forward, or to return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person.

(3) Any requirement in these regulations for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment.

(4) Any requirement in these regulations for an owner or operator to keep or retain a copy of each manifest is satisfied by the retention of the facility's electronic manifest copies in its account on the e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or DNREC inspector.

(5) No owner or operator may be held liable for the inability to produce an electronic manifest for inspection under this section if the owner or operator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the owner or operator bears no responsibility.

(g) An owner or operator may participate in the electronic manifest system either by accessing the electronic manifest system from the owner's or operator's electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the owner's or operator's site by the transporter who delivers the waste shipment to the facility.

(h) *Special procedures applicable to replacement manifests.* If a facility receives hazardous waste that is accompanied by a paper replacement manifest for a manifest that was originated electronically, the following procedures apply to the delivery of the hazardous waste by the final transporter:

(1) Upon delivery of the hazardous waste to the designated facility, the owner or operator must sign and date each copy of the paper replacement manifest by hand in Item 20 (Designated Facility Certification of Receipt) and note any discrepancies in Item 18 (Discrepancy Indication Space) of the paper replacement manifest,

(2) The owner or operator of the facility must give back to the final transporter one copy of the paper replacement manifest,

(3) Within 30 days of delivery of the waste to the designated facility, the owner or operator of the facility must send one signed and dated copy of the paper replacement manifest to the generator, and send an additional signed and dated copy of the paper replacement manifest to the electronic manifest system, and

(4) The owner or operator of the facility must retain at the facility one copy of the paper replacement manifest for at least three years from the date of delivery.

(i) *Special procedures applicable to electronic signature methods undergoing tests.* If an owner or operator using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the owner or operator shall also sign with an ink signature the facility's certification of receipt or discrepancies on the printed copy of the manifest provided by the transporter. Upon executing its ink signature on this printed copy, the owner or operator shall retain this original copy among its records for at least 3 years from the date of delivery of the waste.

(j) ~~*Imposition of user fee for electronic manifest use.* An owner or operator who is a user of the electronic manifest format may be assessed a user fee by EPA for the origination or processing of each electronic manifest. An owner or operator may also be assessed a user fee by EPA for the collection and processing of paper manifest copies that owners or operators must submit to the electronic manifest system operator under §264.71(a)(2)(v). EPA shall maintain and update from time-to-time the current schedule of electronic manifest system user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to part 262 of 40 CFR.~~ *Imposition of user fee for manifest submissions.* (1) As prescribed in 40 CFR §264.1311, and determined in 40 CFR §264.1312, an owner or operator who is a user of the electronic manifest system shall be assessed a user fee by EPA for the submission and processing of each electronic and paper manifest. EPA shall update the schedule of user fees and publish them to the user community, as provided in 40 CFR §264.1313.

(2) An owner or operator subject to user fees under this section shall make user fee payments in accordance with the requirements of 40 CFR §264.1314, subject to the informal fee dispute resolution process of 40 CFR §264.1316, and subject to the sanctions for delinquent payments under 40 CFR §264.1315.

(k) *Electronic manifest signatures.* Electronic manifest signatures shall meet the criteria described in 40 CFR §262.25.

(l) *Post-receipt manifest data corrections.* After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (*e.g.,* waste handler) shown on the manifest.

(1) Interested persons must make all corrections to manifest data by electronic submission, either by directly entering corrected data to the web based service provided in e-Manifest for such corrections, or by an upload of a data file containing data corrections relating to one or more previously submitted manifests.

(2) Each correction submission must include the following information:

(i) The Manifest Tracking Number and date of receipt by the facility of the original manifest(s) for which data are being corrected;

(ii) The item number(s) of the original manifest that is the subject of the submitted correction(s); and

(iii) For each item number with corrected data, the data previously entered and the corresponding data as corrected by the correction submission.

(3) Each correction submission shall include a statement that the person submitting the corrections certifies that to the best of his or her knowledge or belief, the corrections that are included in the submission will cause the information reported about the previously received hazardous wastes to be true, accurate, and complete:

(i) The certification statement must be executed with a valid electronic signature; and (ii) A batch upload of data corrections may be submitted under one certification statement.

(4) Upon receipt by the system of any correction submission, other interested persons shown on the manifest will be provided electronic notice of the submitter's corrections.

(5) Other interested persons shown on the manifest may respond to the submitter's corrections with comments to the submitter, or by submitting another correction to the system, certified by the respondent as specified in paragraph (l)(3) of this section, and with notice of the corrections to other interested persons shown on the manifest.

*****

**Section 264.170 Applicability.**

The regulations in this subpart apply to owners and operators of all hazardous waste facilities that store ~~containers of~~ hazardous waste in containers, except as §264.1 provides otherwise.

[Comment: Under §261.7 and §261.33(c) of these regulations, if a hazardous waste is emptied from a container the residue remaining in the container is not considered a hazardous waste if the container is **empty** as defined in §261.7. In that event, management of the container is exempt from the requirements of this subpart.]

*****

**Section 264.174 Inspections.**

At least weekly, the owner or operator must inspect areas where containers are ~~stored, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.~~ stored. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors. A written record of the inspections must be maintained on-site for a minimum of 3 years. See §§ 264.15(c) and 264.171 for remedial action required if deterioration or leaks are detected.

~~[**Comment**: See §§264.15(c) and 264.171 for remedial action required if deterioration or leaks are detected.]~~

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**Section 264.191 Assessment of existing tank system's integrity.**

(a) For each existing tank system that does not have secondary containment meeting the requirements of §264.193, the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in paragraph (c) of this section, the owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by a qualified Professional Engineer, in accordance with §122.11(d) of these regulations, that attests to the tank system's integrity by January 12, 1988.

(b) This assessment must determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the waste(s) to be stored or treated, to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment must consider the following:

(1) Design standard(s), if available, according to which the tank and ancillary equipment were constructed;

(2) Hazardous characteristics of the waste(s) that have been and will be handled;

(3) Existing corrosion protection measures;

(4) Documented age of the tank system, if available (otherwise, an estimate of the age); and

(5) Results of a leak test, internal inspection, or other tank integrity examination such that:

(i) For non-enterable underground tanks, the assessment must include a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pockets, and high water table effects, and

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment must include either a leak test, as described above, or other integrity examination, that is certified by a qualified Professional Engineer in accordance with §122.11(d), that addresses cracks, leaks, corrosion, and erosion.

(Note: The practices described in the American Petroleum Institute (API) Publication, Guide for Inspection of Refinery Equipment, Chapter XIII, "Atmospheric and Low-Pressure Storage Tanks," 4th edition, 1981, may be used, where applicable, as guidelines in conducting other than a leak test.)

(c) Tank systems that store or treat materials that become hazardous wastes subsequent to July 14, 1986, must conduct this assessment within 12 months after the date that the waste becomes a hazardous waste.

(d) If, as a result of the assessment conducted in accordance with paragraph (a), a tank system is found to be leaking or unfit for use, the owner or operator must comply with the requirements of §264.196.

~~*****~~

**Section 264.316 Disposal of Small Containers of Hazardous Waste in Overpacked Drums (Lab Packs).**

…

(b) The inside containers must be overpacked in an open head DOT-specification metal shipping container (49 CFR Parts 178 and 179) of no more than 416-liter (110 gallon) capacity and surrounded by, at a minimum, a sufficient quantity of sorbent material, determined to be nonbiodegradable in accordance with ~~§264.314(e)~~ §264.314(d), to completely sorb all of the liquid contents of the inside containers. The metal outer container must be full after it has been packed with inside containers and sorbent material.

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**Section 264.552 Corrective Action Management Units (CAMU).**

(a)…

(3) *Prohibition against placing liquids in CAMUs.*

(i) The placement of bulk or noncontainerized liquid hazardous waste or free liquids contained in hazardous waste (whether or not sorbents have been added) in any CAMU is prohibited except where placement of such wastes facilitates the remedy selected for the waste.

(ii) The requirements in ~~§264.314(d)~~ §264.314(c) for placement of containers holding free liquids in landfills apply to placement in a CAMU except where placement facilitates the remedy selected for the waste.

(iii) The placement of any liquid which is not a hazardous waste in a CAMU is prohibited unless such placement facilitates the remedy selected for the waste or a demonstration is made pursuant to ~~§264.314(f)~~ §264.314(e).

(iv) The absence or presence of free liquids in either a containerized or a bulk waste must be determined in accordance with ~~§264.314(c)~~ §264.314(b). Sorbents used to treat free liquids in CAMUs must meet the requirements of ~~§264.314(e)~~ §264.314(d).

(4) Placement of CAMU-eligible wastes into or within a CAMU does not constitute land disposal of hazardous wastes.

(5) Consolidation or placement of CAMU-eligible wastes into or within a CAMU does not constitute creation of a unit subject to minimum technology requirements.

*****

**Section 264.1030 Applicability.**

(a) The regulations in this subpart apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in §264.1).

(b) Except for §264.1034, paragraphs (d) and (e), this subpart applies to process vents associated with

distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that manage hazardous wastes with organic concentrations of at least 10-ppmw, if these operations are conducted in one of the following:

(1) A unit that is subject to the permitting requirements of Part 122, or

(2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of ~~§262.34(a)~~ §262.17 (i.e., a hazardous waste recycling unit that is not a 90-day tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of Part 122, or

(3) A unit that is exempt from permitting under the provisions of ~~§262.34(a)~~ §262.17 (i.e., a "90-day tank or container) and is not a recycling unit under the provisions of §261.6.

(c) For the owner and operator of a facility subject to this subpart and who received a final hazardous waste permit prior to December 6, 1996, the requirements of this subpart shall be incorporated into the permit when the permit is reissued in accordance with the requirements of §122.15 or reviewed in accordance with the requirements of §122.50(d). Until such date when the owner and operator receive a final permit incorporating the requirements of this subpart, the owner and operator are subject to the requirements of Part 265, Subpart AA.

Note: The requirements of §§ 264.1032 through 264.1036 apply to process vents on hazardous waste recycling units previously exempt under §261.6(c)(1). Other exemptions under §§ 261.4, and 264.1(g) are not affected by these requirements.

(d) **[Reserved]**

(e) The requirements of this subpart do not apply to the process vents at a facility where the facility owner or operator certifies that all of the process vents that would otherwise be subject to this subpart are equipped with and operating air emission controls in accordance with the process vent requirements of an applicable Clean Air Act regulation codified under 40 CFR Part 60, Part 61, or Part 63. The documentation of compliance under regulations at 40 CFR Part 60, Part 61, or Part 63 shall be kept with, or made readily available with, the facility operating record.

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**Section 264.1050 Applicability.**

(a) The regulations in this subpart apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in §264.1).

(b) Except as provided in §264.1064(k), this subpart applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in one of the following:

(1) A unit that is subject to the permitting requirements of Part 122, or

(2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of §262.34(a) (i.e., a hazardous waste recycling unit that is not a "90-day" tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of Part 122, or

(3) A unit that is exempt from permitting under the provisions of ~~§262.34(a)~~ §262.17 (i.e., a "90-day" tank or container) and is not a recycling unit under the provisions of §261.6.

(c) For the owner or operator of a facility subject to this subpart and who received a final hazardous waste permit prior to December 6, 1996, the requirements of this subpart shall be incorporated into the permit when the permit is reissued in accordance with the requirements of §124.15 or reviewed in accordance with the requirements of §122.50(d). Until such date when the owner or operator receives a final permit incorporating the requirements of this subpart, the owner or operator is subject to the requirements of Part 265, Subpart BB.

(d) Each piece of equipment to which this subpart applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.

(e) Equipment that is in vacuum service is excluded from the requirements of §264.1052 to §264.1060 if it is identified as required in §264.1064(g)(5).

(f) Equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year is excluded from the requirements of §§ 264.1052 through 264.1060 of this subpart if it is identified, as required in §264.1064(g)(6) of this subpart.

(g) **[Reserved]**

(h) Purged coatings and solvents from surface coating operations subject to the national emission standards for hazardous air pollutants (NESHAP) for the surface coating of automobiles and light-duty trucks at 40 CFR part 63, subpart IIII, are not subject to the requirements of this subpart.

Note: The requirements of §§ 264.1052 through 264.1065 apply to equipment associated with hazardous waste recycling units previously exempt under §261.6(c)(1). Other exemptions under §§ 261.4, 262.34, and 264.1(g) are not affected by these requirements.

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**Section 264.1086 Standards: Containers.**

(a) The provisions of this section apply to the control of air pollutant emissions from containers for which §264.1082(b) of this subpart references the use of this section for such air emission control.

(b) General requirements.

(1) The owner or operator shall control air pollutant emissions from each container subject to this section in accordance with the following requirements, as applicable to the container, except when the special provisions for waste stabilization processes specified in paragraph (b)(2) of this section apply to the container.

(i) For a container having a design capacity greater than 0.1 $m^3$ and less than or equal to 0.46 $m^3$, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in paragraph (c) of this section.

(ii) For a container having a design capacity greater than 0.46 $m^3$ that is not in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in paragraph (c) of this section.

(iii) For a container having a design capacity greater than 0.46 $m^3$ that is in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 2 standards specified in paragraph (d) of this section.

(2) When a container having a design capacity greater than 0.1 $m^3$ is used for treatment of a hazardous waste by a waste stabilization process, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 3 standards specified in paragraph (e) of this section at those times during the waste stabilization process when the hazardous waste in the container is exposed to the atmosphere.

(c) Container Level 1 standards.

(1) A container using Container Level 1 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in paragraph (f) of this section.

(ii) A container equipped with a cover and closure devices that form a continuous barrier over the container openings such that when the cover and closure devices are secured in the closed position there are no visible holes, gaps, or other open spaces into the interior of the container. The cover may be a separate cover installed on the container (e.g., a lid on a drum or a suitably secured tarp on a roll-off box) or may be an integral part of the container structural design (e.g., a "portable tank" or bulk cargo container equipped with a screw-type cap).

(iii) An open-top container in which an organic-vapor suppressing barrier is placed on or over the hazardous waste in the container such that no hazardous waste is exposed to the atmosphere. One example of such a barrier is application of a suitable organic-vapor suppressing foam.

(2) A container used to meet the requirements of paragraph (c)(1)(ii) or (c)(1)(iii) of this section shall be equipped with covers and closure devices, as applicable to the container, that are composed of suitable materials to minimize exposure of the hazardous waste to the atmosphere and to maintain the equipment integrity, for as long as the container is in service. Factors to be

considered in selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of contact with the hazardous waste or its vapor managed in the container; the effects of outdoor exposure of the closure device or cover material to wind, moisture, and sunlight; and the operating practices for which the container is intended to be used.

(3) Whenever a hazardous waste is in a container using Container Level 1 controls, the owner or operator shall install all covers and closure devices for the container, as applicable to the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container as follows:

(A) For the purpose of meeting the requirements of this section, an empty container as defined in §261.7(b) may be open to the atmosphere at any time (i.e., covers and closure devices are not required to be secured in the closed position on an empty container).

(B) In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in §261.7(b), the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous waste. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in §265.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator of containers using Container Level 1 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in §261.7(b)), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open ~~paces~~ spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i.e., the date the container becomes subject to the Subpart CC container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest ~~in the Appendix to Part 262~~ (EPA Forms 8700-22 and 8700-22A), as required under Subpart E of this part, at §264.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

(ii) In the case when a container used for managing hazardous waste remains at the facility for a period of 1 year or more, the owner or operator shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

(iii) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect within 24 hours after detection and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

(5) The owner or operator shall maintain at the facility a copy of the procedure used to determine that containers with capacity of 0.46 $m^3$ or greater, which do not meet applicable DOT regulations as specified in paragraph (f) of this section, are not managing hazardous waste in light material service.

(d) Container Level 2 standards.

(1) A container using Container Level 2 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in paragraph (f) of this section.

(ii) A container that operates with no detectable organic emissions as defined in §265.1081 and determined in accordance with the procedure specified in paragraph (g) of this section.

(iii) A container that has been demonstrated within the preceding 12 months to be vapor-tight by using 40 CFR Part 60, Appendix A, Method 27 in accordance with the procedure specified in paragraph (h) of this section.

(2) Transfer of hazardous waste in or out of a container using Container Level 2 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other

hazardous materials. Examples of container loading procedures that the DNREC considers to meet the requirements of this paragraph include using any one of the following: A submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

(3) Whenever a hazardous waste is in a container using Container Level 2 controls, the owner or operator shall install all covers and closure devices for the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container as follows:

(A) For the purpose of meeting the requirements of this section, an empty container as defined in §261.7(b) may be open to the atmosphere at any time (i.e., covers and closure devices are not required to be secured in the closed position on an empty container).

(B) In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in §261.7(b), the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous waste.
Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded, pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emission when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on

container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for

the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in §265.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator of containers using Container Level 2 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in §261.7(b)), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i.e., the date the container becomes subject to the Subpart CC container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest ~~in the Appendix to Part 262~~ (EPA Forms 8700-22 and 8700-22A), as required under Subpart E of this part, at §264.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

(ii) In the case when a container used for managing hazardous waste remains at the facility for a period of 1 year or more, the owner or operator shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

(iii) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect no later than 24 hours after detection, and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

(e) Container Level 3 standards.

(1) A container using Container Level 3 controls is one of the following:

(i) A container that is vented directly through a closed-vent system to a control device in accordance with the requirements of paragraph (e)(2)(ii) of this section.

(ii) A container that is vented inside an enclosure which is exhausted through a closed-vent system to a control device in accordance with the requirements of paragraphs (e)(2)(i) and (e)(2)(ii) of this section.

(2) The owner or operator shall meet the following requirements, as applicable to the type of air emission control equipment selected by the owner or operator:

(i) The container enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T--Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, Appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T--Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed

and, thereafter, annually.

(ii) The closed-vent system and control device shall be designed and operated in accordance with the requirements of §264.1087 of this subpart.

(3) Safety devices, as defined in §265.1081, may be installed and operated as necessary on any container, enclosure, closed-vent system, or control device used to comply with the requirements of paragraph (e)(1) of this section.

(4) Owners and operators using Container Level 3 controls in accordance with the provisions of this subpart shall inspect and monitor the closed-vent systems and control devices as specified in §264.1087 of this subpart.

(5) Owners and operators that use Container Level 3 controls in accordance with the provisions of this subpart shall prepare and maintain the records specified in §264.1089(d) of this subpart.

(6) Transfer of hazardous waste in or out of a container using Container Level 3 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials.

Examples of container loading procedures that the DNREC considers to meet the requirements of this paragraph include using any one of the following: A submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

(f) For the purpose of compliance with paragraph (c)(1)(i) or (d)(1)(i) of this section, containers shall be used that meet the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as follows:

(1) The container meets the applicable requirements specified in 49 CFR Part 178--Specifications for Packaging or 49 CFR Part 179--Specifications for Tank Cars.

(2) Hazardous waste is managed in the container in accordance with the applicable requirements specified in 49 CFR Part 107, Subpart B--Exemptions; 49 CFR Part 172--Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements; 49 CFR Part 173--Shippers--General Requirements for Shipments and Packages; and 49 CFR Part 180--Continuing Qualification and Maintenance of Packagings.

(3) For the purpose of complying with this subpart, no exceptions to the 49 CFR Part 178 or Part 179 regulations are allowed except as provided for in paragraph (f)(4) of this section.

(4) For a lab pack that is managed in accordance with the requirements of 49 CFR Part 178 for the purpose of complying with this subpart, an owner or operator may comply with the exceptions for combination packagings specified in 49 CFR 173.12(b).

(g) To determine compliance with the no detectable organic emissions requirement of paragraph (d)(1)(ii) of this section, the procedure specified in §264.1083(d) of this subpart shall be used.

(1) Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the container, its cover, and associated closure devices, as applicable to the container, shall be checked. Potential leak interfaces that are associated with containers include, but are not limited to: The interface of the cover rim and the container wall; the periphery of any opening on the container or container cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the container is filled with a material having a volatile organic concentration representative of the range of volatile organic concentrations for the hazardous wastes expected to be managed in this type of container. During the test, the container cover and closure devices shall be secured in the closed position.

(h) Procedure for determining a container to be vapor-tight using Method 27 of 40 CFR Part 60, Appendix A for the purpose of complying with paragraph (d)(1)(iii) of this section.

(1) The test shall be performed in accordance with Method 27 of 40 CFR Part 60, Appendix A of this chapter.

(2) A pressure measurement device shall be used that has a precision of ±2.5 mm water and that

is capable of measuring above the pressure at which the container is to be tested for vapor tightness.

(3) If the test results determined by Method 27 indicate that the container sustains a pressure change less than or equal to 750 Pascals within 5 minutes after it is pressurized to a minimum of 4,500 Pascals, then the container is determined to be vapor-tight.

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Subpart FF – Fees for the Electronic Hazardous Waste Manifest Program
Refer to 40 CFR Part 264, Subpart FF for these requirements.

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**Section 265.1 Purpose, Scope, and Applicability.**

(a) The purpose of this Part is to establish minimum state standards **[~~which~~ that]** define the acceptable management of hazardous waste during the period of interim status and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled.

(b) Except as provided in §265.1080(b), the standards of this part, and of §§ 264.552, 264.553, and 264.554, apply to owners and operators of facilities that treat, store or dispose of hazardous waste who have fully complied with the requirements for interim status under 7 **Del.C.,** §6307(g) and §122.10 of these regulations until either a permit is issued under 7 **Del.C.,** Chapter 63 or until applicable Part 265 closure and post-closure responsibilities are fulfilled, and to those owners and operators of facilities in existence on November 19, 1980 who have failed to provide timely notification as required by 7 **Del.C.,** Chapter 63 and/or failed to file Part A of the permit application as required by §122.10(e) and (g). These standards apply to all treatment, storage, or disposal of hazardous waste at these facilities after the effective date of these regulations, except as specifically provided otherwise in this part or Part 261 of these regulations.

(c) The requirements of this part do not apply to:

(1) A person disposing of hazardous waste by means of ocean disposal subject to a permit issued under the Marine Protection, Research, and Sanctuaries Act;

[**Comment**: These Part 265 regulations do apply to the treatment or storage of hazardous waste before it is loaded onto an ocean vessel for incineration or disposal at sea, as provided in paragraph (b) of this section.]

(2) **~~Reserved.~~ [Reserved]**

(3) The owner or operator of a POTW which treats, stores, or disposes of hazardous waste;

[**Comment**: The owner or operator of a facility under **[~~paragraph (c)(3)~~ paragraphs (c)(1) through (3)]** of this Section is subject to the requirements of Part 264 of these regulations to the extent they are included in a permit by rule granted to such a person under Part 122.60 of these regulations.]

(4) A person who treats, stores, or disposes of hazardous waste in a State with a RCRA hazardous waste program authorized under Subparts A or B of 40 CFR Part 271, except that the requirements of this part will continue to apply:

(i) If the authorized State with a RCRA hazardous waste program does not cover disposal of hazardous waste by means of underground injection; or

(ii) To a person who treats, stores, or disposes of hazardous waste in a State authorized under Subparts A or B of 40 CFR Part 271 if the State has not been authorized to carry out the requirements and prohibitions applicable to the treatment, storage, or disposal of hazardous waste at his facility which are imposed pursuant to the Hazardous and Solid Waste Act Amendments of 1984. The requirements and prohibitions that are applicable until a State receives authorization to carry them out include all Federal program requirements identified in §271.1(j).

(5) The owner or operator of a facility permitted, licensed, or registered by ~~the~~ a State to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under this part by ~~§261.5~~ §262.14 of these regulations; of these regulations provides otherwise;

(6) The owner or operator of a facility managing recyclable materials described in §261.6(a)(2),

(3), and (4) of these regulations (except to the extent they are referred to in Part 279 or Subparts C, F, G or H of Part 266 of these regulations).

(7) A generator accumulating waste onsite in compliance with ~~§262.34~~ applicable conditions for exemption in §§262.14 through 262.17 and Subpart L of Part 262 of these regulations, except to the extent the requirements are included in ~~§262.34~~ in those sections and subparts of these regulations;

(8) A farmer disposing of waste pesticides from his own use in compliance with §262.70 of these regulations; or

(9) The owner or operator of a totally enclosed treatment facility, as defined in §260.10.

(10) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in §260.10 of these regulations, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in §268.40 of these regulations, Table Treatment Standards for Hazardous Wastes), or reactive (D003) waste, to remove the characteristic before land disposal, the ~~owner/operator~~ owner or operator must comply with the requirements set out in §265.17(b).

(11) (i) Except as provided in paragraph (c)(11)(ii) of this section, a person engaged in treatment or containment activities during immediate response to any of the following situations:

(A) A discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of a hazardous waste;

(C) A discharge of a material which when discharged, becomes a hazardous waste; or

(D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR, 260.10.

(ii) An owner or operator of a facility otherwise regulated by this part must comply with all applicable requirements of Subparts C and D.

(iii) Any person who is covered by paragraph (c)(11)(i) of this section and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this part and Parts 122-124 of these regulations for those activities.

(iv) In the case of an explosives or munitions emergency response, if a Federal, State, Tribal or local official acting within the scope of his or her official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(12) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of §262.30 at a transfer facility for a period of ten days or less.

(13) The addition of absorbent material to waste in a container (as defined in §260.10 of these regulations) or the addition of waste to the absorbent material in a container provided that these actions occur at the time waste is first placed in the containers; and §265.17(b), §265.171, and §265.172 are complied with.

(14) Universal waste handlers and universal waste transporters (as defined in 260.10) handling the wastes listed below. These handlers are subject to regulation under Part 273, when handling the below listed universal wastes.

(i) Batteries as described in §273.2;

(ii) Pesticides as described in §273.3 of these regulations;

(iii) Mercury-containing equipment as described in § 273.4 of these regulations; ~~and~~

(iv) Lamps as described in §273.5 of these ~~regulations.~~ regulations; and

(v) Aerosol cans as described in §273.6 of these regulations.

(15)[Reserved]

(16)Reverse distributors accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals, as defined in §266.500. Reverse distributors are subject to regulation under Part 266 Subpart P in lieu of this part for the accumulation of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals.

(d) The following hazardous wastes must not be managed at facilities subject to regulation under this part.

(1) EPA Hazardous **[~~Wastes~~ Waste]** Nos. F020, F021, F022, F023, F026, or F027 unless:

(i) The wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system:

(ii) The waste is stored in tanks or containers:

(iii) The waste is stored or treated in waste piles that meet the requirements of §264.250(c) as well as all other applicable requirements of Subpart L of this part:

(iv) The waste is burned in incinerators that are certified pursuant to the standards and procedures in §265.352; or

(v) The waste is burned in facilities that thermally treat the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in §265.383.

(e) The requirements of this part apply to owners or operators of all facilities which treat, store or dispose of hazardous waste referred to in Part 268, and the Part 268 standards are considered material conditions or requirements of the Part 265 interim status standards.

(f) Section 266.205 of these regulations identifies when the requirements of this part apply to the storage of military munitions classified as solid waste under §266.202 of these regulations. The treatment and disposal of hazardous waste military munitions are subject to the applicable permitting, procedural, and technical standards in Parts 260 through 268 and 122.

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**Section 265.12 Required Notices.**

~~(a) (1) The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must notify the Regional Administrator in writing at least four weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.~~

~~(2) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to Part 262, Subpart H must provide a copy of movement document bearing all required signatures to the foreign exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 and to the competent authorities of all other concerned countries within three (3) working days of receipt of the shipment. The original of the signed movement document must be maintained at the facility for at least three (3) years. In addition, such owner or operator shall, as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1) calendar year following the receipt of the hazardous waste, send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to EPA's Office of Enforcement and Compliance Assurance at the above address by mail, e-mail without a digital signature followed by mail, or fax followed by mail.~~

~~(3) Any person submitting information to EPA in accordance with the requirements of this section must also submit copies to the DNREC Secretary.~~

(a) The owner or operator of a facility that is arranging or has arranged to receive hazardous waste subject to Part 262, Subpart H of these regulations from a foreign source must submit the following required notices:

(1) As per §262.84(b) of these regulations, for imports where the competent authority of the country of export does not require the foreign exporter to submit to it a notification proposing export and obtain consent from EPA and the competent authorities for the countries of transit, such owner or operator of the facility, if acting as the importer, must provide notification of the proposed transboundary movement in English to EPA using the allowable methods listed in

§262.84(b)(1) of these regulations at least 60 days before the first shipment is expected to depart the country of export. The notification may cover up to one year of shipments of wastes having similar physical and chemical characteristics, the same United Nations classification, the same RCRA waste codes and OECD waste codes, and being sent from the same foreign exporter.

(2) As per §262.84(d)(2)(xv) of these regulations, a copy of the movement document bearing all required signatures within three (3) working days of receipt of the shipment to the foreign exporter; to the competent authorities of the countries of export and transit that control the shipment as an export and transit shipment of hazardous waste respectively; and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The original of the signed movement document must be maintained at the facility for at least three (3) years. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system, for which the owner or operator of a facility bears no responsibility.

(3) As per §262.84(f)(4) of these regulations, if the facility has physical control of the waste and it must be sent to an alternate facility or returned to the country of export, such owner or operator of the facility must inform EPA, using the allowable methods listed in §262.84(b)(1) of these regulations of the need to return or arrange alternate management of the shipment.

(4) As per §262.84(g) of these regulations, such owner or operator shall:

(i) Send copies of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system.

(ii) If the facility performed any of recovery operations R12, R13, or RC16, or disposal operations D13 through D15, or DC17, promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC16, or one of disposal operations D1 through D12, or DC15 to DC16, to the competent authority of the country of export that controls

the shipment as an export of hazardous waste, and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The recovery and disposal operations in this paragraph are defined in §262.81 of these regulations.

(b) Before transferring ownership or operation of a facility during its **[~~operation~~ operating]** life, or of a disposal facility during the post-closure care period, the owner or operator must notify the new owner or operator in writing of the requirements of this part and Part 122 of these regulations.

[**Comment**: An owner's or operator's failure to notify the new owner or operator of the requirements of this part in no way relieves the new owner or operator of his obligation to comply with all applicable requirements.]

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**Section 265.71 Use of Manifest System.**

(a) (1) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his/her agent, must sign and date the manifest as indicated in paragraph (a)(2) of this section to certify that the

hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

(2) If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, ~~operator~~ operator, or his/her agent must:

(i) Sign and date, by hand, each copy of the manifest;

(ii) Note any discrepancies (as defined in § 265.72(a)) on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the manifest;

(iv) Within 30 days of delivery, send a copy (~~Page 3~~ Page 2) of the manifest to the generator ~~and a copy of the signed "Designated Facility to Generator State" page to the DNREC Secretary~~; and

(v) ~~Within 30 days of delivery, send the top copy (Page 1) of the Manifest to the electronic manifest system for purposes of data entry and processing. In lieu of mailing this paper copy to the electronic manifest system operator, the owner or operator may transmit to the system operator an image file of Page 1 of the manifest, or both a data string file and the image file corresponding to Page 1 of the manifest. Any data or image files transmitted to EPA under this paragraph must be submitted in data file and image file formats that are acceptable to EPA and that are supported by EPA's electronic reporting requirements and by the electronic manifest system.~~ Submit paper manifests in accordance with:

(A) *Options for compliance on June 30, 2018.* Beginning on June 30, 2018, send the top copy (Page 1) of any paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing, or in lieu of submitting the paper copy to EPA, the owner or operator may transmit to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or both a data file and image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date of delivery. Submissions of copies to the e-Manifest system shall be made at the mailing address or electronic mail/submission address specified at the e-Manifest program website's directory of services. Beginning on June 30, 2021, EPA will not accept mailed paper manifests from facilities for processing in e-Manifest.

(B) *Options for compliance on June 30, 2021.* Beginning on June 30, 2021, the requirement to submit the top copy (Page1) of the paper manifest and any paper continuation sheet to the e-Manifest system for purposes of data entry and processing may be met by the owner or operator only by transmitting to the EPA system an image file of Page 1 of the manifest and any continuation sheet, or by transmitting to the EPA system both a data file and the image file corresponding to Page 1 of the manifest and any continuation sheet, within 30 days of the date of delivery. Submissions of copies to the e-Manifest system shall be made to the electronic mail/submission address specified at the e-Manifest program website's directory of services; and

(vi) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(3) ~~If a facility receives hazardous waste imported from a foreign source, the receiving facility must mail a copy of the manifest and documentation confirming EPA's consent to the import of hazardous waste to the following address within 30 days of delivery: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.~~ The owner or operator of a facility that receives hazardous waste subject to Part 262, Subpart H of these regulations from a foreign source must:

(i)Additionally list the relevant consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest, matched to the relevant list number for the waste from block 9b. If additional space is needed, the owner or operator should use a Continuation Sheet(s) (EPA Form 8700-22A); and

(ii)Send a copy of the manifest to EPA using the addresses listed in §262.82(e) of these

regulations within thirty (30) days of delivery until the facility can submit such a copy to the e-Manifest system per paragraph (a)(2)(v) of this section.

(b) If a facility receives from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures), the owner or operator, or his agent, must:

(1) Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received.

(2) Note any significant discrepancies (as defined in §265.72(a)) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper;

[Comment: DNREC does not intend that the owner or operator of a facility whose procedures under §265.13(c) include waste analysis must perform that analysis before signing the shipping paper and giving it to the transporter. Section 265.72(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.]

(3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received).

(4) Within thirty (30) days after delivery send a copy of the signed and dated manifest/shipping paper (if the manifest has not been received within 30 days after delivery) to the generator ~~and a copy to the DNREC Secretary~~; and

**[[Comment: Section 262.23(c) of these regulations requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment.]]**

(5) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) **[~~or~~ for]** at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of Part 262 of these regulations. The provisions of §§262.15, 262.16, and 262.17 of these regulations are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of §§262.15, 262.16, and 262.17 only apply to owners or operators who are shipping hazardous waste which they generated at that facility or operating as a large quantity generator consolidating or commingling hazardous waste from very small quantity generators under §262.17(f).

~~[Comment: The provisions of §262.34 are applicable to the on-site accumulation of hazardous waste by generators. Therefore, the provisions of §262.34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.]~~

(d)~~(1) Within three (3) working days of the receipt of a shipment subject to Part 262, Subpart H, the owner or operator of the facility must provide a copy of the movement document bearing all required signatures to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and to competent authorities of all other concerned countries. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature.~~

~~(2) Any person submitting information to EPA in accordance with the requirements of this section must also submit copies to the DNREC Secretary.~~

(d) As per §262.84(d)(2)(xv) of these regulations, within three (3) working days of the receipt of a shipment subject to Part 262, Subpart H of these regulations, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the foreign exporter; to the competent authorities of the countries of export and transit that control the shipment as an export and transit shipment of hazardous waste respectively; and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No

owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system, for which the owner or operator of a facility bears no responsibility.

(e) A facility must determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated Federally) as hazardous wastes under its state hazardous waste program. Facilities must also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states. (Note: for hazardous waste generated in Delaware, send a copy of the signed "Designated Facility to Generator State" page to the DNREC Secretary).

(f) *Legal equivalence to paper manifests.* Electronic manifests that are obtained, completed, and transmitted in accordance with §262.20(a)(3) of these regulations, and used in accordance with this section in lieu of the paper manifest form are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

(1) Any requirement in these regulations for the owner or operator of a facility to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of 40 CFR §262.25.

(2) Any requirement in these regulations to give, provide, send, forward, or to return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person.

(3) Any requirement in these regulations for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the hazardous waste shipment.

(4) Any requirement in these regulations for an owner or operator to keep or retain a copy of each manifest is satisfied by the retention of the facility's electronic manifest copies in its account on the e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or DNREC inspector.

(5) No owner or operator may be held liable for the inability to produce an electronic manifest for inspection under this section if the owner or operator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the EPA system for which the owner or operator bears no responsibility.

(g) An owner or operator may participate in the electronic manifest system either by accessing the electronic manifest system from the owner's or operator's electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the owner's or operator's site by the transporter who delivers the waste shipment to the facility.

(h) *Special procedures applicable to replacement manifests.* If a facility receives hazardous waste that is accompanied by a paper replacement manifest for a manifest that was originated electronically, the following procedures apply to the delivery of the hazardous waste by the final transporter:

(1) Upon delivery of the hazardous waste to the designated facility, the owner or operator must sign and date each copy of the paper replacement manifest by hand in Item 20 (Designated Facility Certification of Receipt) and note any discrepancies in Item 18 (Discrepancy Indication Space) of the replacement manifest,

(2) The owner or operator of the facility must give back to the final transporter one copy of the paper replacement manifest,

(3) Within 30 days of delivery of the hazardous waste to the designated facility, the owner or operator of the facility must send one signed and dated copy of the paper replacement manifest to the generator, and send an additional signed and dated copy of the paper replacement manifest to the electronic manifest system, and

(4) The owner or operator of the facility must retain at the facility one copy of the paper replacement manifest for at least three years from the date of delivery.

(i) *Special procedures applicable to electronic signature methods undergoing tests.* If an owner or operator using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the owner or operator shall also sign with an ink signature the

facility's certification of receipt or discrepancies on the printed copy of the manifest provided by the transporter. Upon executing its ink signature on this printed copy, the owner or operator shall retain this original copy among its records for at least 3 years from the date of delivery of the waste.

(j) *Imposition of user fee for electronic manifest use.* ~~An owner or operator who is a user of the electronic manifest format may be assessed a user fee by EPA for the origination or processing of each electronic manifest. An owner or operator may also be assessed a user fee by EPA for the collection and processing of paper manifest copies that owners or operators must submit to the electronic manifest system operator under §265.71(a)(2)(v). EPA shall maintain and update from time-to-time the current schedule of electronic manifest system user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to part 262 of 40 CFR.~~ (1) As prescribed in 40 CFR §265.1311, and determined in 40 CFR §265.1312, an owner or operator who is a user of the electronic manifest system shall be assessed a user fee by EPA for the submission and processing of each electronic and paper manifest. EPA shall update the schedule of user fees and publish them to the user community, as provided in 40 CFR §265.1313.

(2) An owner or operator subject to user fees under this section shall make user fee payments in accordance with the requirements of 40 CFR §265.1314, subject to the informal fee dispute resolution process of 40 CFR §265.1316, and subject to the sanctions for delinquent payments under 40 CFR §265.1315.

(k) *Electronic manifest signatures.* Electronic manifest signatures shall meet the criteria described in 40 CFR §262.25.

(l) *Post-receipt manifest data corrections.* After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person (*e.g.,* waste handler) shown on the manifest.

(1)Interested persons must make all corrections to manifest data by electronic submission, either by directly entering corrected data to the web based service provided in e-Manifest for such corrections, or by an upload of a data file containing data corrections relating to one or more previously submitted manifests.

(2)Each correction submission must include the following information:

(i) The Manifest Tracking Number and date of receipt by the facility of the original manifest(s) for which data are being corrected;

(ii) The Item Number(s) of the original manifest that is the subject of the submitted correction(s); and

(iii) For each Item Number with corrected data, the data previously entered and the corresponding data as corrected by the correction submission.

(3)Each correction submission shall include a statement that the person submitting the corrections certifies that to the best of his or her knowledge or belief, the corrections that are included in the submission will cause the information reported about the previously received hazardous wastes to be true, accurate, and complete.

(i) The certification statement must be executed with a valid electronic signature; and (ii) A batch upload of data corrections may be submitted under one certification statement.

(4)Upon receipt by the system of any correction submission, other interested persons shown on the manifest will be provided electronic notice of the submitter's corrections.

(5)Other interested persons shown on the manifest may respond to the submitter's corrections with comments to the submitter, or by submitting another correction to the system, certified by the respondent as specified in paragraph (l)(3) of this section, and with notice of the corrections to other interested persons shown on the manifest.

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**Section 265.73 Operating Record.**

(a) The owner or operator must keep a written **[~~operation~~ operating]** record at his facility.

(b) The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(1) A description and the quantity of each hazardous waste received, and the method(s) and

date(s) of its treatment, storage, or disposal at the facility as required by Appendix I of this part;
(2) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram that shows each cell or disposal area. For all facilities, this information must include cross-references to manifest document numbers if the waste was accompanied by a manifest;
[**Comment:** See §§ 265.119, 265.279, and 265.309 for related requirements.]
(3) Records and results of waste analysis, waste determinations, and trial tests performed as specified in §§ 265.13, 265.200, 265.225, 265.252, 265.273, 265.314, 265.341, 265.375, 265.402, 265.1034, 265.1063, 265.1084, 268.4(a) and 268.7 of these regulations.
(4) Summary reports and details of all incidents that require implementing the contingency plan as specified in §265.56(j);
(5) Records and results of inspections as required by §265.15(d) (except these data need be kept only three years);
(6) Monitoring, testing or analytical data, and corrective action where required by Subpart F of this part and by §§ 265.19, 265.90, 265.93(d)(2), 265.93(d)(5), 265.94, 265.191, 265.193, 265.195, 265.196(f), 265.224, 265.226, 265.255, 265.259, 265.260, 265.276, 265.278, 265.280(d)(1), 265.302 through 265.304, 265.347, 265.377, 265.1034(c) through 265.1034(f), 265.1035, 265.1063(d) through 265.1063(i), 265.1064, and 265.1083 through 265.1090.

[**Comment:** As required by §265.94, monitoring data at disposal facilities must be kept throughout the post-closure period.]

(7) All closure cost estimates under §265.142 and, for disposal facilities, all post-closure cost estimates under §265.144.
(8) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to §268.5 of these regulations, or monitoring data required pursuant to a petition under §268.6 of these regulations, or the applicable notice required by a generator under §268.7 of these regulations.
(9) For an off-site treatment facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under §268.7;
(10) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator under §268.7.
(11) For an off-site land disposal facility, a copy of the notice; and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under §268.7;
(12) For an on-site land disposal facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under §268.7.
(13) For an off-site storage facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under §268.7; and
(14) For an on-site storage facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under §§268.7.

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**Section 265.115 Certification of closure.**
Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of completion of final closure, the owner or operator must submit to the Secretary, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and a qualified Professional ~~Engneer~~ Engineer. Documentation supporting the qualified Professional Engineer's certification must be furnished to the Secretary upon request until he releases the owner or operator from the financial assurance requirements

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**Section 265.174 Inspections.**

~~The~~ At least weekly, the owner or operator must inspect areas where containers are stored ~~at least weekly, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors~~. The owner or operator must look for leaking containers and for deterioration of containers caused by corrosion or other factors. A written record of the inspections must be maintained onsite for a minimum of 3 years. See §§265.15(c) and 265.171 for remedial action required if deterioration or leaks are detected.
~~[Comment: See §265.171 for remedial action required if deterioration or leaks are detected.]~~

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**Section 265.201 ~~Special requirements for generators of between 100 and 1,000 kg/mo. that accumulate hazardous waste in tanks.~~ [Reserved]**

~~(a) The requirements of this section apply to small quantity generators of more than 100 kg but less than 1,000 kg of hazardous waste in a calendar month, that accumulate hazardous waste in tanks for less than 180 days (or 270 days if the generator must ship the waste greater than 200 miles), and do not accumulate over 6,000 kg on-site at any time.~~

~~(b) Generators of between 100 and 1,000 kg/mo. hazardous waste must comply with the following general operating requirements:~~
~~(1) Treatment or storage of hazardous waste in tanks must comply with §265.17(b).~~
~~(2) Hazardous wastes or treatment reagents must not be placed in a tank if they could cause the tank or its inner liner to rupture, leak, corrode, or otherwise fail before the end of its intended life.~~
~~(3) Uncovered tanks must be operated to ensure at least 60 centimeters (2 feet) of freeboard, unless the tank is equipped with a containment structure (e.g., dike or trench), a drainage control system, or a diversion structure (e.g., standby tank) with a capacity that equals or exceeds the volume of the top 60 centimeters (2 feet) of the tank.~~
~~(4) Where hazardous waste is continuously fed into a tank, the tank must be equipped with a means to stop this inflow (e.g., waste feed cut-off system or by-pass system to stand-by tank).~~

~~[Note: These systems are intended to be used in the event of a leak or overflow from the tank due to a system failure (e.g., a malfunction in the treatment process, a crack in the tank, etc.).]~~

~~(c)Generators of between 100 and 1,000 kg/mo. accumulating hazardous waste in tanks must inspect, and maintain written documentation of the inspections for a minimum of 3 years, the following, where present:~~
~~(1) Discharge control equipment (e.g., waste feed cut-off systems, by-pass systems, and drainage systems) at least once each operating day, to ensure that it is in good working order;~~
~~(2) Data gathered from monitoring equipment (e.g., pressure and temperature gauges) at least once each operating day to ensure that the tank is being operated according to its design;~~
~~(3) The level of waste in the tank at least once each operating day to ensure compliance with §265.201(b)(3);~~
~~(4) The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and~~
~~(5) The construction materials of, and the area immediately surrounding discharge confinement structures (e.g., dikes) at least weekly to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation).~~
~~[As required by §265.15(c), the owner or operator must remedy any deterioration or malfunction he finds.]~~
~~(d) Generators of between 100 and 1,000 kg/mo. accumulating hazardous waste in tanks must, upon closure of the facility, remove all hazardous waste from tanks, discharge control equipment, and discharge confinement structures.~~
~~[Note: At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with §261.3(c) or (d), that any solid waste removed from his tank is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with~~

~~all applicable requirements of Parts 262, 263, and 265.]~~
~~(e) Generators of between 100 and 1,000 kg/mo. must comply with the following special requirements for ignitable or reactive waste:~~
~~(1) Ignitable or reactive waste must not be placed in a tank, unless:~~
~~(i) The waste is treated, rendered, or mixed before or immediately after placement in a tank so that: (A) the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under §261.21 or §261.23 of these regulations; and~~
~~(B) Section 265.17(b) is complied with; or~~
~~(ii) The waste is stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or~~
~~(iii) The tank is used solely for emergencies.~~
~~(2) The owner or operator of a facility which treats or stores ignitable or reactive waste in covered tanks must comply with the buffer zone requirements for tanks contained in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code," (1977 or 1981) (incorporated by reference, see §260.11).~~
~~(f)Generators of between 100 and 1,000 kg/mo. must comply with the following special requirements for incompatible wastes:~~

~~(1) Incompatible wastes, or incompatible wastes and materials (see Appendix V for examples) must not be placed in the same tank, unless §265.17(b) is complied with.~~
~~(2) Hazardous waste must not be placed in an unwashed tank which previously held an incompatible waste or material, unless §265.17(b) is complied with.~~

~~*****~~

**Section 265.314 Special requirements for ~~[liquid]~~ bulk and containerized liquids.**

…

(e) Sorbents used to treat free liquids to be disposed of in landfills must be nonbiodegradable. Nonbiodegradable sorbents are: materials listed or described in paragraph ~~(f)(1)~~ (e)(1) of this section; materials that pass one of the tests in paragraph ~~(f)(2)~~ (e)(2) of this section; or materials that are determined by EPA to be nonbiodegradable through the Part 260 petition process.

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**Section 265.316 Disposal of small containers of hazardous waste in overpacked drums (lab packs).**

…

(b) The inside containers must be overpacked in an open head DOT-specification metal shipping container (49 CFR Parts 178 and 179) of no more than 416-liter (110 gallon) capacity and surrounded by, at a minimum, a sufficient quantity of sorbent material, determined to be nonbiodegradable in accordance with ~~§265.314(f)~~ §265.314(e), to completely sorb all of the liquid contents of the inside containers. The metal outer container must be full after it has been packed with inside containers and sorbent material.

*****

**Section 265.1030 Applicability.**

(a) The regulations in this subpart apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in §265.1).
(b) Except for §265.1034, paragraphs (d) and (e), this subpart applies to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that manage hazardous wastes with organic concentrations of at least 10 ppmw, if these operations are conducted in one of the following:

(1) A unit that is subject to the permitting requirements of Part 122, or
(2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of ~~§262.34(a)~~ §262.17 (i.e., a hazardous waste recycling unit that is not a 90-day tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of Part 122, or

(3) A unit that is exempt from permitting under the provisions of ~~§262.34(a)~~ §262.17 (i.e., a 90-day tank or container) and is not a recycling unit under the requirements of §261.6.
Note: The requirements of §§ 265.1032 through 265.1036 apply to process vents on hazardous waste recycling units previously exempt under paragraph §261.6(c)(1). Other exemptions under §§ 261.4, and 265.1(c) are not affected by these requirements.

(c) **[Reserved]**

(d) The requirements of this subpart do not apply to the process vents at a facility where the facility owner or operator certifies that all of the process vents that would otherwise be subject to this subpart are equipped with and operating air emission controls in accordance with the process vent requirements of an applicable Clean Air Act regulation codified under 40 CFR Part 60, Part 61, or Part 63. The documentation of compliance under regulations at 40 CFR Part 60, Part 61, or Part 63 shall be kept with, or made readily available with, the facility operating record.

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**Section 265.1034 Test methods and procedures.**

(a) Each owner or operator subject to the provisions of this subpart shall comply with the test methods and procedures requirements provided in this section.

(b) When a closed-vent system is tested for compliance with no detectable emissions, as required in §265.1033(k) of this subpart, the test shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21 in 40 CFR Part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 10 ppm of hydrocarbon in air).

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(5) The background level shall be determined as set forth in Reference Method 21.

(6) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(7) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(c) Performance tests to determine compliance with §265.1032(a) and with the total organic compound concentration limit of §265.1033(c) shall comply with the following:

(1) Performance tests to determine total organic compound concentrations and mass flow rates entering and exiting control devices shall be conducted and data reduced in accordance with the following reference methods and calculation procedures:

(i) Method 2 in 40 CFR Part 60 for velocity and volumetric flow rate.

(ii) Method 18 or Method 25A in 40 CFR Part 60, Appendix A for organic content. If Method 25A is used, the organic HAP used as the calibration gas must be the single organic HAP representing the largest percent by volume of the emissions. The use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(iii) Each performance test shall consist of three separate runs; each run conducted for at least 1 hour under the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. For the purpose of determining total organic compound concentrations and mass flow rates, the average of results of all runs shall apply. The average shall be computed on a time-weighted basis.

(iv) Total organic mass flow rates shall be determined by the following equation:

(A) For sources utilizing Method 18.

$$\cancel{E_h = Q_{sd}\left[\sum_{i=1}^{n} C_i MW_i\right][0.0416][10^{-6}]}$$

$$E_h = Q_{2_{sd}}\left\{\sum_{i=1}^{n} C_i MW_i\right\}[0.0416][10^{-6}]$$

where:

$E_h$ = Total organic mass flow rate, kg/$h$ ;

$Q_{2sd}$ = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

$n$ = Number of organic compounds in the vent gas;

$C_i$ = Organic concentration in ppm, dry basis, of compound $i$ in the vent gas, as determined by Method 18;

$MW_i$ = Molecular weight of organic compound $i$ in the vent gas, kg/kg-mol;

$0.0416$ = Conversion factor for molar volume, kg-mol/m$^3$ (@ 293 K and 760 mm Hg);

$10^{-6}$ = Conversion from ppm.

(B) For sources utilizing Method 25A.
$E_h = (Q)(C)(MW)(0.0416)(10^{-6})$
Where:
$E_h$ = Total organic mass flow rate, kg/h;
$Q$ = Volumetric flow rate of gases entering **[~~and~~ or]** exiting control device, as determined by Method 2, dscm/h
$C$ = Organic concentration in ppm, dry basis; as determined by Method 25A
$MW$ = Molecular weight of propane, 44;
$0.0416$ = Conversion factor for molar volume, kg-mol/m$^3$ (@ 293 K and 760 mm Hg);
$10^{-6}$ = conversion from ppm.

(v) The annual total organic emission rate shall be determined by the following equation:

$E_A = (E_h)(H)$

where:

$E_A$ = Total organic mass emission rate, kg/y;

$E_h$ = Total organic mass flow rate for the process vent, kg/ $h$ ;

$H$ = Total annual hours of operations for the affected unit, $h$ .

(vi) Total organic emissions from all affected process vents at the facility shall be determined by summing the hourly total organic mass emission rates ( $E_h$ , as determined in paragraph (c)(1)(iv) of this section) and by summing the annual total organic mass emission rates ( $E_A$ , as determined in paragraph (c)(1)(v) of this section) for all affected process vents at the facility.

(2) The owner or operator shall record such process information as may be necessary to determine the conditions of the performance tests. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test.

(3) The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

(i) Sampling ports adequate for the test methods specified in paragraph (c)(1) of this section.

(ii) Safe sampling platform(s).

(iii) Safe access to sampling platform(s).

(iv) Utilities for sampling and testing equipment.

(4) For the purpose of making compliance determinations, the time-weighted average of the results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator's control, compliance may, upon the Secretary's approval, be determined using the average of the results of the two other runs.

(d) To show that a process vent associated with a hazardous waste distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation is not subject to the requirements of this subpart, the owner or operator must make an initial determination that the time-weighted, annual average total organic concentration of the waste managed by the waste management unit is less than 10 ppmw using one of the following two methods:

(1) Direct measurement of the organic concentration of the waste using the following procedures:

(i) The owner or operator must take a minimum of four grab samples of waste for each waste stream managed in the affected unit under process conditions expected to cause the maximum waste organic concentration.

(ii) For waste generated onsite, the grab samples must be collected at a point before the waste is exposed to the atmosphere such as in an enclosed pipe or other closed system that is used to transfer the waste after generation to the first affected distillation fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation. For waste generated offsite, the grab samples must be collected at the inlet to the first waste management unit that receives the waste provided the waste has been transferred to the facility in a closed system such as a tank truck and the waste is not diluted or mixed with other waste.

(iii) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060A (incorporated by reference under §260.11 of these regulations) of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, or analyzed for its individual organic constituents).

(iv) The arithmetic mean of the results of the analyses of the four samples shall apply for each waste stream managed in the unit in determining the time-weighted, annual average total organic concentration of the waste. The time-weighted average is to be calculated using the annual quantity of each waste stream processed and the mean organic concentration of each waste stream managed in the unit.

(2) Using knowledge of the waste to determine that its total organic concentration is less than 10 ppmw. Documentation of the waste determination is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to generate a waste stream having a total organic content less than 10 ppmw, or prior speciation analysis results on the same waste stream where it can also be documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.

(e) The determination that distillation fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations manage hazardous wastes with time-weighted annual average total organic concentrations less than 10 ppmw shall be made as follows:

(1) By the effective date that the facility becomes subject to the provisions of this subpart or by the date when the waste is first managed in a waste management unit, whichever is later; and

(2) For continuously generated waste, annually; or

(3) Whenever there is a change in the waste being managed or a change in the process that generates or treats the waste.

(f) When an owner or operator and the Secretary do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least 10 ppmw based on knowledge of the waste, the dispute may be resolved by using direct measurement as specified at paragraph (d)(1) of this section.

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**Section 265.1050 Applicability.**

(a) The regulations in this subpart apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in §265.1).

(b) Except as provided in §265.1064(k), this subpart applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in one of the following:

(1) A unit that is subject to the permitting requirements of Part 122, or

(2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of ~~§262.34(a)~~ §262.17 (i.e., a hazardous waste recycling unit that is not a 90-day tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of Part 122, or

(3) A unit that is exempt from permitting under the provisions of ~~§262.34(a)~~ §262.17 (i.e., a 90-day tank or container) and is not a recycling unit under the provisions of §261.6.

(c) Each piece of equipment to which this subpart applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.

(d) Equipment that is in vacuum service is excluded from the requirements of §265.1052 to §265.1060 if it is identified as required in §265.1064(g)(5).

~~Note: The requirements of §§ 265.1052 through 265.1064 apply to equipment associated with hazardous waste recycling units previously exempt under paragraph 261.6(c)(1). Other exemptions under §§ 261.4, 262.34, and 265.1(c) are not affected by these requirements.~~

(e) Equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year is excluded from the requirements of §§265.1052 through 265.1060 of this subpart if it is identified, as required in §265.1064(g)(6) of this subpart.

(f) **[Reserved]**

(g) Purged coatings and solvents from surface coating operations subject to the national emission standards for hazardous air pollutants (NESHAP) for the surface coating of automobiles and light-duty

trucks at 40 CFR Part 63, Subpart III, are not subject to the requirements of this subpart.

**Note:** The requirements of §§ 265.1052 through 265.1064 apply to equipment associated with hazardous waste recycling units previously exempt under paragraph 261.6(c)(1). Other exemptions under §§ 261.4, and 265.1(c) are not affected by these requirements.

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**Section 265.1087 Standards: Containers.**

(a) The provisions of this section apply to the control of air pollutant emissions from containers for which §265.1083(b) of this subpart references the use of this section for such air emission control.

(b) General requirements.

(1) The owner or operator shall control air pollutant emissions from each container subject to this section in accordance with the following requirements, as applicable to the container, except when the special provisions for waste stabilization processes specified in paragraph (b)(2) of this section apply to the container.

(i) For a container having a design capacity greater than 0.1 $m^3$ and less than or equal to 0.46 $m^3$, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in paragraph (c) of this section.

(ii) For a container having a design capacity greater than 0.46 $m^3$ that is not in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in paragraph (c) of this section.

(iii) For a container having a design capacity greater than 0.46 $m^3$ that is in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 2 standards specified in paragraph (d) of this section.

(2) When a container having a design capacity greater than 0.1 $m^3$ is used for treatment of a hazardous waste by a waste stabilization process, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 3 standards specified in paragraph (e) of this section at those times during the waste stabilization process when the hazardous waste in the container is exposed to the atmosphere.

(c) Container Level 1 standards.

(1) A container using Container Level 1 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in paragraph (f) of this section.

(ii) A container equipped with a cover and closure devices that form a continuous barrier over the container openings such that when the cover and closure devices are secured in the closed position there are no visible holes, gaps, or other open spaces into the interior of the container. The cover may be a separate cover installed on the container (e.g., a lid on a drum or a suitably secured tarp on a roll-off box) or may be an integral part of the container structural design (e.g., a "portable tank" or bulk cargo container equipped with a screw-type cap).

(iii) An open-top container in which an organic-vapor suppressing barrier is placed on or over the hazardous waste in the container such that no hazardous waste is exposed to the atmosphere. One example of such a barrier is application of a suitable organic-vapor suppressing foam.

(2) A container used to meet the requirements of paragraph (c)(1)(ii) or (c)(1)(iii) of this section shall be equipped with covers and closure devices, as applicable to the container, that are composed of suitable materials to minimize exposure of the hazardous waste to the atmosphere and to maintain the equipment integrity for as long as it is in service. Factors to be considered in selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability, the effects of contact with the hazardous waste or its vapor managed in the container; the effects of outdoor exposure of the closure device or cover material to wind,

moisture, and sunlight; and the operating practices for which the container is intended to be used.

(3) Whenever a hazardous waste is in a container using Container Level 1 controls, the owner or operator shall install all covers and closure devices for the container, as applicable to the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container as follows:

(A) For the purpose of meeting the requirements of this section, an empty container as defined in §261.7(b) may be open to the atmosphere at any time (i.e., covers and closure devices are not required to be secured in the closed position on an empty container).

(B) In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in §261.7(b), the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous waste. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded, pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the container internal pressure in accordance with the design specifications of the container. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in §265.1081 of this subpart, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator of containers using Container Level 1 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in §261.7(b)), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i.e., the date the container becomes subject to the Subpart CC container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest ~~in the Appendix to Part 262~~ (EPA Forms 8700-22 and 8700-22A), as required under Subpart E of this part, at §265.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

(ii) In the case when a container used for managing hazardous waste remains at the facility for a period of 1 year or more, the owner or operator shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

(iii) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect within 24 hours after detection, and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

(5) The owner or operator shall maintain at the facility a copy of the procedure used to determine that containers with capacity of 0.46 $m^3$ or greater, which do not meet applicable DOT regulations as specified in paragraph (f) of this section, are not managing hazardous waste in light material service.

(d) Container Level 2 standards.

(1) A container using Container Level 2 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in paragraph (f) of this section.

(ii) A container that operates with no detectable organic emissions as defined in §265.1081 of this subpart and determined in accordance with the procedure specified in paragraph (g) of this section.

(iii) A container that has been demonstrated within the preceding 12 months to be vapor-tight by using 40 CFR Part 60, Appendix A, Method 27 in accordance with the procedure specified in paragraph (h) of this section.

(2) Transfer of hazardous waste in or out of a container using Container Level 2 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive or other hazardous materials. Examples of container loading procedures that the DNREC considers to meet the requirements of this paragraph include using any one of the following: A submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during

filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

(3) Whenever a hazardous waste is in a container using Container Level 2 controls, the owner or operator shall install all covers and closure devices for the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container as follows:

(A) For the purpose of meeting the requirements of this section, an empty container as defined in §261.7(b) may be open to the atmosphere at any time (i.e., covers and closure devices are not required to be secured in the closed position on an empty container).

(B) In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in §261.7(b), the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous waste. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded, pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emission when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal

ambient temperature fluctuations.

(v) Opening of a safety device, as defined in §265.1081 of this subpart, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator of containers using Container Level 2 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility (i.e., does not meet the conditions for an empty container as specified in §261.7(b)), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i.e., the date the container becomes subject to the Subpart CC container standards). For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest ~~in the Appendix to Part 262~~ (EPA Forms 8700-22 and 8700-22A), as required under Subpart E of this part, at §265.71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

(ii) In the case when a container used for managing hazardous waste remains at the facility for a period of 1 year or more, the owner or operator shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

(iii) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect no later than 24 hours after detection, and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

(e) Container Level 3 standards.

(1) A container using Container Level 3 controls is one of the following:

(i) A container that is vented directly through a closed-vent system to a control device in accordance with the requirements of paragraph (e)(2)(ii) of this section.

(ii) A container that is vented inside an enclosure which is exhausted through a closed-vent system to a control device in accordance with the requirements of paragraphs (e)(2)(i) and (e)(2)(ii) of this section.

(2) The owner or operator shall meet the following requirements, as applicable to the type of air emission control equipment selected by the owner or operator:

(i) The container enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T--Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, Appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in
Section 5.0 to "Procedure T--Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(ii) The closed-vent system and control device shall be designed and operated in accordance with the requirements of §265.1088 of this subpart.

(3) Safety devices, as defined in §265.1081 of this subpart, may be installed and operated as

necessary on any container, enclosure, closed-vent system, or control device used to comply with the requirements of paragraph (e)(1) of this section.

(4) Owners and operators using Container Level 3 controls in accordance with the provisions of this subpart shall inspect and monitor the closed-vent systems and control devices as specified in §265.1088 of this subpart.

(5) Owners and operators that use Container Level 3 controls in accordance with the provisions of this subpart shall prepare and maintain the records specified in §265.1090(d) of this subpart.

(6) Transfer of hazardous waste in or out of a container using Container Level 3 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the DNREC considers to meet the requirements of this paragraph include using any one of the following: A submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

(f) For the purpose of compliance with paragraph (c)(1)(i) or (d)(1)(i) of this section, containers shall be used that meet the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as follows:

(1) The container meets the applicable requirements specified in 49 CFR Part 178--Specifications for Packaging or 49 CFR Part 179--Specifications for Tank Cars.

(2) Hazardous waste is managed in the container in accordance with the applicable requirements specified in 49 CFR Part 107, Subpart B--Exemptions; 49 CFR Part 172--Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements; 49 CFR Part 173--Shippers--General Requirements for Shipments and Packages; and 49 CFR Part 180--Continuing Qualification and Maintenance of Packagings.

(3) For the purpose of complying with this subpart, no exceptions to the 49 CFR Part 178 or Part 179 regulations are allowed except as provided for in paragraph (f)(4) of this section.

(4) For a lab pack that is managed in accordance with the requirements of 49 CFR Part 178 for the purpose of complying with this subpart, an owner or operator may comply with the exceptions for combination packagings specified in 49 CFR 173.12(b).

(g) To determine compliance with the no detectable organic emissions requirements of paragraph (d)(1)(ii) of this section, the procedure specified in §265.1084(d) of this subpart shall be used.

(1) Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the container, its cover, and associated closure devices, as applicable to the container, shall be checked. Potential leak interfaces that are associated with containers include, but are not limited to: The interface of the cover rim and the container wall; the periphery of any opening on the container or container cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the container is filled with a material having a volatile organic concentration representative of the range of volatile organic concentrations for the hazardous wastes expected to be managed in this type of container. During the test, the container cover and closure devices shall be secured in the closed position.

(h) Procedure for determining a container to be vapor-tight using Method 27 of 40 CFR Part 60, Appendix A for the purpose of complying with paragraph (d)(1)(iii) of this section.

(1) The test shall be performed in accordance with Method 27 of 40 CFR Part 60, Appendix A.

(2) A pressure measure
ment device shall be used that has a precision of ±2.5 mm water and that is capable of measuring above the pressure at which the container is to be tested for vapor tightness.

(3) If the test results determined by Method 27 indicate that the container sustains a pressure change less than or equal to 750 Pascals within 5 minutes after it is pressurized to a minimum of 4,500 Pascals, then the container is determined to be vapor-tight.

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Subpart FF – Fees for the Electronic Hazardous Waste Manifest Program
Refer to 40 CFR Part 265, Subpart FF for these requirements.

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**Section 266.70 Applicability and requirements.**

(a) The regulations of this subpart apply to recyclable materials that are reclaimed to recover economically significant amounts of gold, silver, platinum, palladium, iridium, osmium, rhodium, ruthenium, or any combination of these.

(b) Persons who generate, transport, or store recyclable materials that are regulated under this subpart are subject to the following requirements:

(1) Notification requirements under 7 **Del.C.,** Chapter 63;

(2) Subpart B of Part 262 of these regulations (for generators), §263.20 and §263.21 of these regulations (for transporters), and ~~265.71~~ §265.71 and ~~265.72~~ §265.72 of these regulations (for persons who store) of these regulations; and

(3) For precious metals exported to or imported from ~~designated OECD member countries for recovery, Subpart H of Part 262 and §265.12(a)(2). For precious metals exported to or imported from non-OECD countries for recovery, Subparts E and F of Parts 262.~~ other countries for recovery, Part 262, Subpart H and §265.12 of these regulations.

(c) Persons who store recycled materials that are regulated under this subpart must keep the following records to document that they are not accumulating these materials speculatively (as defined in 261.1(c) of these regulations);

~~(i)~~ (1) Records showing the volume of these materials stored at the beginning of the calendar year;

~~(ii)~~ (2) The amount of these materials generated or received during the calendar year; and

~~(iii)~~ (3) The amount of materials remaining at the end of the calendar year.

(d) Recyclable materials that are regulated under this subpart that are accumulated speculatively (as defined in 261.1(c) of these regulations) are subject to all applicable provisions of Parts 262 through 265, 122 and 124 of these regulations.

**Subpart G - Spent Lead-Acid Batteries Being Reclaimed**

**Section 266.80 Applicability and requirements.**

(a) Are spent lead-acid batteries exempt from hazardous waste management requirements? If you generate, collect, transport, store, or regenerate lead-acid batteries for reclamation purposes, you may be exempt from certain hazardous waste management requirements. Use the following table to determine which requirements apply to you. Alternatively, you may choose to manage your spent lead-acid batteries under the "Universal Waste" rule in Part 273.

| If your batteries * * * | And if you * * * | Then you * * * | And you * * * |
|---|---|---|---|
| (1) Will be reclaimed through regeneration (such as by electrolyte replacement). | | are exempt from Parts 262 (except for § 262.11), 263, 264, 265, 266, 268, 122, 124 of these regulations, and the notification requirements at sections 6306 and 6307 of **Del.C.,** Chapter 63. | are subject to Parts 261 and 262.11 of these regulations. |

| | | | |
|---|---|---|---|
| (2) Will be reclaimed other than through regeneration. | generate, collect, and/or transport these batteries. | are exempt from Parts 262 (except for § 262.11), 263, 264, 265, 266, 122, 124 of these regulations, and the notification requirements at sections 6306 and 6307 of **Del.C.,** Chapter 63. | are subject to Parts 261 and 262.11, and applicable provisions under Part 268. |
| (3) Will be reclaimed other than through regeneration. | store these batteries but you aren't the reclaimer. | are exempt from Parts 262 (except for § 262.11), 263, 264, 265, 266, 122, 124 of these regulations, and the provisions under notification requirements at sections 6306 and 6307 of Del. C., Chapter 63. | are subject to Parts 261, 262.11, and applicable Part 268. |
| (4) Will be reclaimed other than through regeneration. | store these batteries before you reclaim them. | must comply with §266.80(b) and as appropriate other regulatory provisions described in §266.80(b). | are subject to Parts 261, 262.11, and applicable provisions under Part 268. |
| (5) Will be reclaimed other than through regeneration. | don't store these batteries before you reclaim them. | are exempt from Parts 262 (except for § 262.11), 263, 264, 265, 266, 122, 124 of these regulations, and the notification requirements at sections 6306 and 6307 of **Del.C.,** Chapter 63. | are subject to Parts 261, 262.11, and applicable provisions under Part 268. |
| (6) Will be reclaimed through regeneration or any other means. | export these batteries for reclamation in a foreign country. | are exempt from ~~parts~~ Parts 262 (except for §262.11, §262.18, and Subpart H), 263, 264, 265, 266, 268, 122, 124 of these regulations, and the notification requirements at sections 6306 and 6307 of Del.C., Chapter 63. ~~You are also exempt from part 262, except for 262.11, and except for the applicable requirements in either: (1) part 262 subpart H; or (2) 262.53 "Notification of Intent to Export, 262.56(a)(1) through (4), (6) and (b) "Annual Reports," and 262.57 "Recordkeeping".~~ | ~~are subject to part 261 and § 262.11, and either must comply with part 262, subpart H (if shipping to one of the OECD countries specified in § 262.58(a)(1)), or must:~~ ~~(a) Comply with the requirements applicable to a primary exporter in 262.53, 262.56(a) (1) through (4), (6), and (b) and 262.57; and~~ ~~(b)Export these batteries only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in subpart E of part 262 of this chapter; and~~ ~~(c)Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.~~ are subject to Part 261, §262.11, §262.18, and Part 262, Subpart H of these regulations. |

| | | | |
|---|---|---|---|
| (7) Will be reclaimed through regeneration or any other means. | Transport these batteries in the U.S. to export them for reclamation in a foreign country. | are exempt from parts 263, 264, 265, 266, 268, 122, 124 of these regulations, and the notification requirements at sections 6306 and 6307 of Del.C., Chapter 63. | must comply with applicable requirements in ~~part 262, subpart H (if shipping to one of the OECD countries specified in 262.58(a)(1)), or must comply with the following:~~ ~~(a) you may not accept a shipment if you know the shipment does not conform~~ to the EPA Acknowledgment of Consent; (b) you must ensure that a copy of the EPA ~~Acknowledgment of Consent accompanies the shipment; and~~ (c)~~you must ensure that the shipment is delivered to the facility designated by the person initiating the shipment.~~ Part 262, Subpart H **[of these regulations]**. |
| (8) Will be reclaimed other than through regeneration | Import these batteries from a foreign country and store these batteries, but you aren't the reclaimer | are exempt from Parts 262 (except for §262.11, §262.18, and Subpart H), 263, 264, 265, 266, 122, and 124 of these regulations, and the notification requirements at sections 6306 and 6307 of **Del.C.** Chapter 63. | are subject to Part 261, §262.11, §262.18, Part 262, Subpart H, and applicable provisions under Part 268 of these regulations. |
| (9) Will be reclaimed other than through regeneration | Import these batteries from a foreign country and store **[ ~~the~~ these]** batteries before you reclaim | must comply with §266.80(b) of these regulations and, as appropriate, other regulatory provisions described in §266.80(b) | are subject to Part 261, §262.11, §262.18, Part 262, Subpart H, and applicable provisions under Part 268 of these regulations. |
| (10) Will be reclaimed other than through regeneration | Import these batteries from a foreign country and don't store these batteries before you reclaim them | are exempt from Parts 262 (except for §262.11, §262.18, and Subpart H), 263, 264, 265, 266, 122, and 124 of these regulations, and the notification requirements at sections 6306 and 6307 of **Del.C.** Chapter 63. | are subject to Part 261, §262.11, §262.18, Part 262, Subpart H, and applicable provisions under Part 268 of these regulations. |

(b) If I store spent lead-acid batteries before I reclaim them but not through regeneration, which requirements apply? The requirements of paragraph (b) of this section apply to you if you store spent lead-acid batteries before you reclaim them, but you don't reclaim them through regeneration. The requirements are slightly different depending on your hazardous waste permit status.

(1) For Interim Status Facilities, you must comply with:

(i) Notification requirements under 6307 of **Del.C.,** Chapter 63.

(ii) All applicable provisions in Subpart A of Part 265 of these regulations.
(iii) All applicable provisions in Subpart B of Part 265 of these regulations except §265.13 (waste analysis).
(iv) All applicable provisions in Subparts C and D of Part 265 of these regulations.
(v) All applicable provisions in Subpart E of Part 265 of these regulations except §§ 265.71 and 265.72 (dealing with the use of the manifest and manifest discrepancies).
(vi) All applicable provisions in Subparts F through L of Part 265 of these regulations.
(vii) All applicable provisions in Parts 122 and 124 of these regulations.

(2) For Permitted Facilities.
(i) Notification requirements under 6307 of **Del.C.,** Chapter 63.
(ii) All applicable provisions in Subpart A of Part 264 of these regulations.
(iii) All applicable provisions in Subpart B of Part 264 of these regulations but not §264.13 (waste analysis).
(iv) All applicable provisions in Subparts C and D of Part 264 of these regulations.
(v) All applicable provisions in Subpart E of Part 264 of these regulations but not §264.71 or §264.72 (dealing with the use of the manifest and manifest discrepancies).
(vi) All applicable provisions in Subparts F through L of Part 264 of these regulations.
(vii) All applicable provisions in Parts 122 and 124 of these regulations.

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**Section 266.101 Management prior to burning.**

(a) Generators. Generators of hazardous waste that is burned in a boiler or industrial furnace are subject to Part 262 of these regulations.

(b) Transporters. Transporters of hazardous waste that is burned in a boiler or industrial furnace are subject to Part 263 of these regulations.

(c) Storage and treatment facilities

(1) Owners and operators of facilities that store or treat hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provisions of Parts 264, 265, and 122 of these regulations, except as provided by paragraph (c)(2) of this section. These standards apply to storage and treatment by the burner as well as to storage and treatment facilities operated by intermediaries (processors, blenders, distributors, etc.) between the generator and the burner.

(2) Owners and operators of facilities that burn, in an on-site boiler or industrial furnace exempt from regulation under the small quantity burner provisions of §266.108, hazardous waste that they generate are exempt from the regulations of Parts 264, 265, and 122 of these regulations applicable to storage units for those storage units that store mixtures of hazardous waste and the primary fuel to the boiler or industrial furnace in tanks that feed the fuel mixture directly to the burner. Storage of hazardous waste prior to mixing with the primary fuel is subject to regulation as prescribed in paragraph (c)(1) of this section.

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**Section 266.255 When is your LLMW no longer eligible for the storage and treatment conditional exemption?**

(a) When your LLMW has met the requirements of your NRC or NRC Agreement State license for decay-in-storage and can be disposed of as non-radioactive waste, then the conditional exemption for storage no longer applies. On that date your waste is subject to hazardous waste regulation under the relevant sections of Parts **[~~260-271~~ 260 through 266, 268, and 122]**, and the time period for accumulation of a hazardous waste as specified in ~~§262.34~~ §262.16 or 262.17 begins.

(b) When your conditionally exempt LLMW, which has been generated and stored under a single NRC or NRC Agreement State license number, is removed from storage, it is no longer eligible for the storage and treatment exemption. However, your waste may be eligible for the transportation and disposal conditional exemption at §266.305.

**Subpart O [Reserved]**

## Subpart P – Hazardous Waste Pharmaceuticals

**Section 266.500 Definitions for this subpart.**

The following definitions apply to this subpart:

**"Evaluated hazardous waste pharmaceutical"** means a prescription hazardous waste pharmaceutical that has been evaluated by a reverse distributor in accordance with §266.510(a)(3) and will not be sent to another reverse distributor for further evaluation or verification of manufacturer credit.

**"Hazardous waste pharmaceutical"** means a pharmaceutical that is a solid waste, as defined in §261.2, and exhibits one or more characteristics identified in Part 261 Subpart C or is listed in Part 261 Subpart D. A pharmaceutical is not a solid waste, as defined in §261.2, and therefore not a hazardous waste pharmaceutical, if it is legitimately used/reused (*e.g.,* lawfully donated for its intended purpose) or reclaimed. An over-the-counter pharmaceutical, dietary supplement, or homeopathic drug is not a solid waste, as defined in §261.2, and therefore not a hazardous waste pharmaceutical, if it has a reasonable expectation of being legitimately used/reused (*e.g.,* lawfully redistributed for its intended purpose) or reclaimed.

**"Healthcare facility"** means any person that is lawfully authorized to:

(1) Provide preventative, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, and counseling, service, assessment or procedure with respect to the physical or mental condition, or functional status, of a human or animal or that affects the structure or function of the human or animal body; or

(2) Distribute, sell, or dispense pharmaceuticals, including over-the-counter pharmaceuticals, dietary supplements, homeopathic drugs, or prescription pharmaceuticals. This definition includes, but is not limited to, wholesale distributors, third-party logistics providers that serve as

forward distributors, military medical logistics facilities, hospitals, psychiatric hospitals, ambulatory surgical centers, health clinics, physicians' offices, optical and dental providers, chiropractors, long-term care facilities, ambulance services, pharmacies, long-term care pharmacies, mail-order pharmacies, retailers of pharmaceuticals, veterinary clinics, and veterinary hospitals. This definition does not include pharmaceutical manufacturers, reverse distributors, or reverse logistics centers.

**"Household waste pharmaceutical"** means a pharmaceutical that is a solid waste, as defined in §261.2, but is excluded from being a hazardous waste under §261.4(b)(1).

**"Long-term care facility"** means a licensed entity that provides assistance with activities of daily living, including managing and administering pharmaceuticals to one or more individuals at the facility. This definition includes, but is not limited to, hospice facilities, nursing facilities, skilled nursing facilities, and the nursing and skilled nursing care portions of continuing care retirement communities. Not included within the scope of this definition are group homes, independent living communities, assisted living facilities, and the independent and assisted living portions of continuing care retirement communities.

**"Non-creditable hazardous waste pharmaceutical"** means a prescription hazardous waste pharmaceutical that does not have a reasonable expectation to be eligible for manufacturer credit or a nonprescription hazardous waste pharmaceutical that does not have a reasonable expectation to be legitimately used/reused or reclaimed. This includes but is not limited to, investigational drugs, free samples of pharmaceuticals received by healthcare facilities, residues of pharmaceuticals remaining in empty containers, contaminated personal protective equipment, floor sweepings, and clean-up material

from the spills of pharmaceuticals.

**"Non-hazardous waste pharmaceutical"** means a pharmaceutical that is a solid waste, as defined in §261.2, and is not listed in Part 261 Subpart D, and does not exhibit a characteristic identified in Part 261 Subpart C.

**"Non-pharmaceutical hazardous waste"** means a solid waste, as defined in §261.2, that is listed in Part 261 Subpart D, or exhibits one or more characteristics identified in Part 261 Subpart C, but is not a pharmaceutical, as defined in this section.

**"Pharmaceutical"** means any drug or dietary supplement for use by humans or other animals; any electronic nicotine delivery system (*e.g.,* electronic cigarette or vaping pen); or any liquid nicotine (e-liquid) packaged for retail sale for use in electronic nicotine delivery systems (*e.g.,* pre-filled cartridges or vials). This definition includes, but is not limited to, dietary supplements, as defined by the Federal Food, Drug and Cosmetic Act; prescription drugs, as defined by 21 CFR 203.3(y); over-the-counter drugs; homeopathic drugs; compounded drugs; investigational new drugs; pharmaceuticals remaining in non-empty containers; personal protective equipment contaminated with pharmaceuticals; and clean-up material from spills of pharmaceuticals. This definition does not include dental amalgam or sharps.

**"Potentially creditable hazardous waste pharmaceutical"** means a prescription hazardous waste pharmaceutical that has a reasonable expectation to receive manufacturer credit and is:

(1) In original manufacturer packaging (except pharmaceuticals that were subject to a recall);
(2) Undispensed; and
(3) Unexpired or less than one year past expiration date. The term does not include evaluated hazardous waste pharmaceuticals or nonprescription pharmaceuticals including, but not limited to, over-the-counter drugs, homeopathic drugs, and dietary supplements.

**"Reverse distributor"** means any person that receives and accumulates prescription pharmaceuticals that are potentially creditable hazardous waste pharmaceuticals for the purpose of facilitating or verifying manufacturer credit. Any person, including forward distributors, third-party logistics providers, and

pharmaceutical manufacturers, that processes prescription pharmaceuticals for the facilitation or verification of manufacturer credit is considered a reverse distributor.

**Section 266.501 Applicability.**

(a) A healthcare facility that is a very small quantity generator when counting all of its hazardous waste, including both its hazardous waste pharmaceuticals and its non-pharmaceutical hazardous waste, remains subject to §262.14 of these regulations and is *not* subject to this subpart, except for §§266.505 and 266.507 and the optional provisions of §266.504.
(b) A healthcare facility that is a very small quantity generator when counting all of its hazardous waste, including both its hazardous waste pharmaceuticals and its non-pharmaceutical hazardous waste, has the option of complying with §266.501(d) for the management of its hazardous waste pharmaceuticals as an alternative to complying with §262.14 and the optional provisions of §266.504.
(c)A healthcare facility or reverse distributor remains subject to all applicable hazardous waste regulations with respect to the management of its non-pharmaceutical hazardous waste.
(d) With the exception of healthcare facilities identified in paragraph (a) of this section, a healthcare facility is subject to the following in lieu of Parts 262 through 265 of these regulations:

(1) Sections 266.502 and 266.505 through 266.508 of this subpart with respect to the management of:
(i) Non-creditable hazardous waste pharmaceuticals, and
(ii) Potentially creditable hazardous waste pharmaceuticals if they are not destined for a reverse distributor.
(2) Sections 262.502(a), 266.503, 266.505 through 266.507, and 266.509 of this subpart with respect to the management of potentially creditable hazardous waste pharmaceuticals that are prescription pharmaceuticals and are destined for a reverse distributor.

(e) A reverse distributor is subject to §§266.505 through 266.510 of this subpart in lieu of Parts 262 through 265 of these regulations with respect to the management of hazardous waste pharmaceuticals.

(f) Hazardous waste pharmaceuticals generated or managed by entities other than healthcare facilities and reverse distributors (*e.g.,* pharmaceutical manufacturers and reverse logistics centers) are not subject to this subpart. Other generators are subject to Part 262 for the generation and accumulation of hazardous wastes, including hazardous waste pharmaceuticals.

(g) The following are not subject to Parts 260 through 273 of these regulations, except as specified:

(1) Pharmaceuticals that are not solid waste, as defined by §261.2, because they are legitimately used/reused (*e.g.,* lawfully donated for their intended purpose) or reclaimed.

(2) Over-the-counter pharmaceuticals, dietary supplements, or homeopathic drugs that are not solid wastes, as defined by §261.2, because they have a reasonable expectation of being legitimately used/reused (*e.g.,* lawfully redistributed for their intended purpose) or reclaimed.

(3) Pharmaceuticals being managed in accordance with a recall strategy that has been approved by the Food and Drug Administration in accordance with 21 CFR Part 7 Subpart C. This subpart does apply to the management of the recalled hazardous waste pharmaceuticals after the Food and Drug Administration approves the destruction of the recalled items.

(4) Pharmaceuticals being managed in accordance with a recall corrective action plan that has been accepted by the Consumer Product Safety Commission in accordance with 16 CFR Part 1115. This subpart does apply to the management of the recalled hazardous waste pharmaceuticals after the Consumer Product Safety Commission approves the destruction of the recalled items.

(5) Pharmaceuticals stored according to a preservation order, or during an investigation or judicial proceeding until after the preservation order, investigation, or judicial proceeding has concluded and/or a decision is made to discard the pharmaceuticals.

(6) Investigational new drugs for which an investigational new drug application is in effect in accordance with the Food and Drug Administration's regulations in 21 CFR Part 312. This subpart does apply to the management of the investigational new drug after the decision is made to discard the investigational new drug or the Food and Drug Administration approves the

destruction of the investigational new drug, if the investigational new drug is a hazardous waste.

(7) Household waste pharmaceuticals, including those that have been collected by an authorized collector (as defined by the Drug Enforcement Administration), provided the authorized collector complies with the conditional exemption in §§266.506(a)(2) and 266.506(b).

**Section 266.502 Standards for healthcare facilities managing non-creditable hazardous waste pharmaceuticals.**

(a) *Notification and withdrawal from this subpart for healthcare facilities managing hazardous waste pharmaceuticals*

(1) *Notification.* A healthcare facility must notify the DNREC Secretary, using the Site Identification Form (EPA Form 8700-12), that it is a healthcare facility operating under this subpart. A healthcare facility is not required to fill out Box 10.B. (Waste Codes for Federally Regulated Hazardous Waste) or Box 10.C. (Waste Codes for State Regulated Hazardous Waste) of the Site Identification Form with respect to its hazardous waste pharmaceuticals. A healthcare facility must submit a separate notification (Site Identification Form) for each site or EPA identification number.

(i) A healthcare facility that already has an EPA identification number must notify the DNREC Secretary, using the Site Identification Form (EPA Form 8700-12), that it is a healthcare facility as part of its next Annual Report, if it is required to submit one; or if not required to submit an Annual Report, within 60 days of the effective date of this subpart, or within 60 days of becoming subject to this subpart.

(ii) A healthcare facility that does not have an EPA identification number must obtain one by notifying the DNREC Secretary, using the Site Identification Form (EPA Form 8700- 12), that it is a healthcare facility as part of its next Annual Report, if it is required to submit one; or if not required to submit an Annual Report, within 60 days of the effective date of this subpart, or within 60 days of becoming subject to this subpart.

(iii) A healthcare facility must keep a copy of its notification on file for as long as the healthcare facility is subject to this subpart.

(2) *Withdrawal.* A healthcare facility that operated under this subpart but is no longer subject to this subpart, because it is a very small quantity generator under §262.14, and elects to withdraw from this subpart, must notify the DNREC Secretary using the Site Identification Form (EPA Form 8700-12) that it is no longer operating under this subpart. A healthcare facility is not required to fill out Box 10.B. (Waste Codes for Federally Regulated Hazardous Waste) or Box 10.C. (Waste Codes for State Regulated Hazardous Waste) of the Site Identification Form with respect to its hazardous waste pharmaceuticals. A healthcare facility must submit a separate notification (Site Identification Form) for each EPA identification number.

(i) A healthcare facility must submit the Site Identification Form notifying that it is withdrawing from this subpart before it begins operating under the conditional exemption of §262.14.

(ii) A healthcare facility must keep a copy of its withdrawal on file for three years from the date of signature on the notification of its withdrawal.

(b) *Training of personnel managing non-creditable hazardous waste pharmaceuticals at healthcare facilities.* A healthcare facility must ensure that all personnel that manage non-creditable hazardous waste pharmaceuticals are thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies.

(c)*Hazardous waste determination for non-creditable pharmaceuticals.* A healthcare facility that generates a solid waste that is a non-creditable pharmaceutical must determine whether that pharmaceutical is a hazardous waste pharmaceutical (*i.e.,* it exhibits a characteristic identified in Part 261 Subpart C or is listed in Part 261 Subpart D) in order to determine whether the waste is subject to this subpart. A healthcare facility may choose to manage its non-hazardous waste pharmaceuticals as non- creditable hazardous waste pharmaceuticals under this subpart.

(d) *Standards for containers used to accumulate non-creditable hazardous waste pharmaceuticals at healthcare facilities.*

(1) A healthcare facility must place non-creditable hazardous waste pharmaceuticals in a container that is structurally sound, compatible with its contents, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A healthcare facility that manages ignitable or reactive non-creditable hazardous waste pharmaceuticals, or that mixes or commingles incompatible non-creditable hazardous waste pharmaceuticals must manage the container so that it does not have the potential to:

(i) Generate extreme heat or pressure, fire or explosion, or violent reaction;

(ii) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;

(iii) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;

(iv)Damage the structural integrity of the container of non-creditable hazardous waste pharmaceuticals; or

(v)Through other like means threaten human health or the environment.

(3) A healthcare facility must keep containers of non-creditable hazardous waste pharmaceuticals closed and secured in a manner that prevents unauthorized access to its contents.

(4) A healthcare facility may accumulate non-creditable hazardous waste pharmaceuticals and non-hazardous non-creditable waste pharmaceuticals in the same container, except that non- creditable hazardous waste pharmaceuticals prohibited from being combusted because of the dilution prohibition of §268.3(c) must be accumulated in separate containers and labeled with all applicable hazardous waste numbers (*i.e.,* hazardous waste codes).

(e) *Labeling containers used to accumulate non-creditable hazardous waste pharmaceuticals at healthcare facilities.* A healthcare facility must label or clearly mark each container of non-creditable hazardous waste pharmaceuticals with the phrase "Hazardous Waste Pharmaceuticals."

(f)*Maximum accumulation time for non-creditable hazardous waste pharmaceuticals at healthcare facilities.*

(1) A healthcare facility may accumulate non-creditable hazardous waste pharmaceuticals on

site for one year or less without a permit or having interim status.

(2) A healthcare facility that accumulates non-creditable hazardous waste pharmaceuticals on site must demonstrate the length of time that the non-creditable hazardous waste pharmaceuticals have been accumulating, starting from the date it first becomes a waste. A healthcare facility may make this demonstration by any of the following methods:

(i) Marking or labeling the container of non-creditable hazardous waste pharmaceuticals with the date that the non-creditable hazardous waste pharmaceuticals became a waste; (ii) Maintaining an inventory system that identifies the date the non-creditable hazardous waste pharmaceuticals being accumulated first became a waste; (iii) Placing the non-creditable hazardous waste pharmaceuticals in a specific area and identifying the earliest date that any of the non-creditable hazardous waste pharmaceuticals in the area became a waste.

(g) *Land disposal restrictions for non-creditable hazardous waste pharmaceuticals.* The non-creditable hazardous waste pharmaceuticals generated by a healthcare facility are subject to the land disposal restrictions of Part 268 of these regulations. A healthcare facility that generates non-creditable hazardous waste pharmaceuticals must comply with the land disposal restrictions in accordance with §268.7(a) requirements, except that it is not required to identify the hazardous waste numbers (*i.e.,* hazardous waste codes) on the land disposal restrictions notification.

(h) *Procedures for healthcare facilities for managing rejected shipments of non-creditable hazardous waste pharmaceuticals.* A healthcare facility that sends a shipment of non-creditable hazardous waste pharmaceuticals to a designated facility with the understanding that the designated facility can accept and manage the waste, and later receives that shipment back as a rejected load in accordance with the manifest discrepancy provisions of §264.72 or §265.72 of these regulations may accumulate the returned non-creditable hazardous waste pharmaceuticals on site for up to an additional 90 days provided the rejected or returned shipment is managed in accordance with paragraphs (d) and (e) of this section. Upon receipt of the returned shipment, the healthcare facility must:

(1) Sign either:

(i) Item 18c of the original manifest, if the original manifest was used for the returned shipment; or

(ii) Item 20 of the new manifest, if a new manifest was used for the returned shipment; (2) Provide the transporter a copy of the manifest;

(3) Within 30 days of receipt of the rejected shipment, send a copy of the manifest to the designated facility that returned the shipment to the healthcare facility; and

(4) Within 90 days of receipt of the rejected shipment, transport or offer for transport the returned shipment in accordance with the shipping standards of §266.508(a).

(i) *Reporting by healthcare facilities for non-creditable hazardous waste pharmaceuticals*

(1) *Annual reporting by healthcare facilities.* Healthcare facilities are not subject to annual reporting requirements under §262.41, with respect to non-creditable hazardous waste pharmaceuticals managed under this subpart.

(2) *Exception reporting by healthcare facilities for a missing copy of the manifest* (i) *For shipments from a healthcare facility to a designated facility.*

(A) If a healthcare facility does not receive a copy of the manifest with the signature of the owner or operator of the designated facility within 60 days of the date the non-creditable hazardous waste pharmaceuticals were accepted by the initial transporter, the healthcare facility must submit:

(1) A legible copy of the original manifest, indicating that the healthcare facility has not received confirmation of delivery, to the DNREC Secretary; and

(2) A handwritten or typed note on the manifest itself, or on an attached sheet of paper, stating that the return copy was not received and explaining the efforts taken to locate the non-creditable hazardous waste pharmaceuticals and the results of those efforts.

(B) [Reserved]

(ii) *For shipments rejected by the designated facility and shipped to an alternate*

*facility.* (A) If a healthcare facility does not receive a copy of the manifest for a rejected shipment of the non-creditable hazardous waste pharmaceuticals that is forwarded by the designated facility to an alternate facility (using appropriate manifest procedures), with the signature of the owner or operator of the alternate facility, within 60 days of the date the non-creditable hazardous waste was accepted by the initial transporter forwarding the shipment of non-creditable hazardous waste pharmaceuticals from the designated facility to the alternate facility, the healthcare facility must submit:

(1) A legible copy of the original manifest, indicating that the healthcare facility has not received confirmation of delivery, to the DNREC Secretary; and

(2) A handwritten or typed note on the manifest itself, or on an attached sheet of paper, stating that the return copy was not received and explaining the efforts taken to locate the non-creditable hazardous waste pharmaceuticals and the results of those efforts.

(B) [Reserved]

(3) *Additional reports.* The DNREC Secretary may require healthcare facilities to furnish additional reports concerning the quantities and disposition of non-creditable hazardous waste pharmaceuticals.

(j)*Recordkeeping by healthcare facilities for non-creditable hazardous waste pharmaceuticals.*

(1) A healthcare facility must keep a copy of each manifest signed in accordance with §262.23(a) for three years or until it receives a signed copy from the designated facility which received the non-creditable hazardous waste pharmaceuticals. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

(2) A healthcare facility must keep a copy of each exception report for a period of at least three years from the date of the report.

(3) A healthcare facility must keep records of any test results, waste analyses, or other determinations made to support its hazardous waste determination(s) consistent with §262.11(f), for at least three years from the date the waste was last sent to on-site or off-site treatment, storage, or disposal **[~~facility~~]**. A healthcare facility that manages all of its non-creditable non-hazardous waste pharmaceuticals as non-creditable hazardous waste pharmaceuticals is not required to keep documentation of hazardous waste determinations.

(4) A healthcare facility must keep training records in accordance with §266.502(b) for three years.

(5) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity, or as requested by the DNREC Secretary.

(6) All records must be readily available upon request by an inspector.

(k)*Response to spills of non-creditable hazardous waste pharmaceuticals at healthcare facilities.* A healthcare facility must immediately contain all spills of non-creditable hazardous waste pharmaceuticals and manage the spill clean-up materials as non-creditable hazardous waste pharmaceuticals in accordance with the requirements of this subpart.

(l) *Accepting non-creditable hazardous waste pharmaceuticals from an off-site healthcare facility that is a very small quantity generator.* A healthcare facility may accept non-creditable hazardous waste pharmaceuticals from an off-site healthcare facility that is a very small quantity generator under §262.14, without a permit or without having interim status, provided the receiving healthcare facility:

(1) Is under the control of the same person (as defined in §260.10) as the very small quantity generator healthcare facility that is sending the non-creditable hazardous waste pharmaceuticals off site ("control," for the purposes of this section, means the power to direct the policies of the healthcare facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate healthcare facilities on behalf of a different person as defined in §260.10 of these regulations shall not be deemed to "control" such healthcare facilities) or has a contractual or other documented business relationship whereby the receiving healthcare facility supplies pharmaceuticals to the very small quantity generator healthcare facility;

(2) Is operating under this subpart for the management of its non-creditable hazardous waste pharmaceuticals;

(3) Manages the non-creditable hazardous waste pharmaceuticals that it receives from off site in compliance with this subpart; and

(4) Keeps records of the non-creditable hazardous waste pharmaceuticals shipments it receives from off site for three years from the date that the shipment is received.

**Section 266.503 Standards for healthcare facilities managing potentially creditable hazardous waste pharmaceuticals.**

(a) *Hazardous waste determination for potentially creditable pharmaceuticals.* A healthcare facility that generates a solid waste that is a potentially creditable pharmaceutical must determine whether the potentially creditable pharmaceutical is a potentially creditable hazardous waste pharmaceutical (*i.e.,* it is listed in Part 261 Subpart D or exhibits a characteristic identified in Part 261 Subpart C). A healthcare facility may choose to manage its potentially creditable non-hazardous waste pharmaceuticals as potentially creditable hazardous waste pharmaceuticals under this subpart.

(b) *Accepting potentially creditable hazardous waste pharmaceuticals from an off-site healthcare facility that is a very small quantity generator.* A healthcare facility may accept potentially creditable hazardous waste pharmaceuticals from an off-site healthcare facility that is a very small quantity generator under §262.14, without a permit or without having interim status, provided the receiving healthcare facility:

(1) Is under the control of the same person, as defined in §260.10, as the very small quantity generator healthcare facility that is sending the potentially creditable hazardous waste pharmaceuticals off site, or has a contractual or other documented business relationship whereby the receiving healthcare facility supplies pharmaceuticals to the very small quantity generator healthcare facility;

(2) Is operating under this subpart for the management of its potentially creditable hazardous waste pharmaceuticals;

(3) Manages the potentially creditable hazardous waste pharmaceuticals that it receives from off site in compliance with this subpart; and

(4) Keeps records of the potentially creditable hazardous waste pharmaceuticals shipments it receives from off site for three years from the date that the shipment is received.

(c)*Prohibition.* Healthcare facilities are prohibited from sending hazardous wastes other than potentially creditable hazardous waste pharmaceuticals to a reverse distributor.

(d) *Annual Reporting by healthcare facilities.* Healthcare facilities are not subject to annual reporting requirements under §262.41 with respect to potentially creditable hazardous waste pharmaceuticals managed under this subpart.

(e) *Recordkeeping by healthcare facilities.*

(1) A healthcare facility that initiates a shipment of potentially creditable hazardous waste pharmaceuticals to a reverse distributor must keep the following records (paper or electronic) for each shipment of potentially creditable hazardous waste pharmaceuticals for three years from the date of shipment:

(i) The confirmation of delivery; and

(ii) The shipping papers prepared in accordance with 49 CFR Part 172 Subpart C, if applicable.

(2) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity, or as requested by the DNREC Secretary.

(3) All records must be readily available upon request by an inspector.

(f)*Response to spills of potentially creditable hazardous waste pharmaceuticals at healthcare facilities.* A healthcare facility must immediately contain all spills of potentially creditable hazardous waste pharmaceuticals and manage the spill clean-up materials as non-creditable hazardous waste pharmaceuticals in accordance with this subpart.

**Section 266.504 Healthcare facilities that are very small quantity generators for both hazardous**

**waste pharmaceuticals and non-pharmaceutical hazardous waste.**

(a) *Potentially creditable hazardous waste pharmaceuticals.* A healthcare facility that is a very small quantity generator for both hazardous waste pharmaceuticals and non-pharmaceutical hazardous waste may send its potentially creditable hazardous waste pharmaceuticals to a reverse distributor.

(b) *Off-site collection of hazardous waste pharmaceuticals generated by a healthcare facility that is a very small quantity generator.* A healthcare facility that is a very small quantity generator for both hazardous waste pharmaceuticals and non-pharmaceutical hazardous waste may send its hazardous waste pharmaceuticals off site to another healthcare facility, provided:

(1) The receiving healthcare facility meets the conditions in §266.502(l) of this subpart and §266.503(b), as applicable; or

(2) The very small quantity generator healthcare facility meets the conditions in §262.14(a)(6)(viii) and the receiving large quantity generator meets the conditions in §262.17(f).

(c)*Long-term care facilities that are very small quantity generators.* A long-term care facility that is a very small quantity generator for both hazardous waste pharmaceuticals and non-pharmaceutical hazardous waste may dispose of its hazardous waste pharmaceuticals (excluding contaminated personal protective equipment or clean-up materials) in an on-site collection receptacle of an authorized collector (as defined by the Drug Enforcement Administration) that is registered with the Drug Enforcement Administration provided the contents are collected, stored, transported, destroyed and disposed of in compliance with all applicable Drug Enforcement Administration regulations for controlled substances.

(d) *Long-term care facilities with 20 beds or fewer.* A long-term care facility with 20 beds or fewer is presumed to be a very small quantity generator subject to §262.14 for both hazardous waste

pharmaceuticals and non-pharmaceutical hazardous waste and *not* subject to this subpart, except for §§266.505 and 266.507 and the other optional provisions of this section. The DNREC Secretary has the responsibility to demonstrate that a long-term care facility with 20 beds or fewer generates quantities of hazardous waste that are in excess of the very small quantity generator limits as defined in §260.10. A long-term care facility with more than 20 beds that operates as a very small quantity generator under §262.14 must demonstrate that it generates quantities of hazardous waste that are within the very small quantity generator limits as defined by §260.10.

**Section 266.505 Prohibition of sewering hazardous waste pharmaceuticals.**

All healthcare facilities, including very small quantity generators operating under §262.14 in lieu of this subpart, and reverse distributors are prohibited from discharging hazardous waste pharmaceuticals to a sewer system that passes through to a publicly-owned treatment works. Healthcare facilities and reverse distributors remain subject to the prohibitions in 40 CFR 403.5(b)(1).

**Section 266.506 Conditional exemptions for hazardous waste pharmaceuticals that are also controlled substances and household waste pharmaceuticals collected in a take-back event or program.**

(a) *Conditional exemptions.* Provided the conditions of paragraph (b) of this section are met, the following are exempt from Parts 262 through 273 of these regulations:

(1) Hazardous waste pharmaceuticals that are also listed on a schedule of controlled substances by the Drug Enforcement Administration in 21 CFR Part 1308, and

(2) Household waste pharmaceuticals that are collected in a take-back event or program, including those that are collected by an authorized collector (as defined by the Drug Enforcement Administration) registered with the Drug Enforcement Administration that commingles the household waste pharmaceuticals with controlled substances from an ultimate user (as defined by the Drug Enforcement Administration).

(b) *Conditions for exemption.* The hazardous waste pharmaceuticals must be: (1) Managed in compliance with the sewer prohibition of §266.505; and

(2) Collected, stored, transported, and disposed **[of]** in compliance with all applicable Drug Enforcement Administration regulations for controlled substances; and

(3) Destroyed by a method that the Drug Enforcement Administration has publicly deemed in

writing to meet their non-retrievable standard of destruction or combusted at one of the following:

(i) A permitted large municipal waste combustor, subject to 40 CFR Part 62 Subpart FFF or applicable state plan for existing large municipal waste combustors, or 40 CFR Part 60 Subpart Eb for new large municipal waste combustors; or

(ii) A permitted small municipal waste combustor, subject to 40 CFR Part 62 Subpart JJJ or applicable state plan for existing small municipal waste combustors, or 40 CFR Part 60 Subpart AAAA for new small municipal waste combustors; or

(iii) A permitted hospital, medical and infectious waste incinerator, subject to 40 CFR Part 62 Subpart HHH or applicable state plan for existing hospital, medical and infectious waste incinerators, or 40 CFR Part 60 Subpart Ec for new hospital, medical and infectious waste incinerators.

(iv)A permitted commercial and industrial solid waste incinerator, subject to 40 CFR Part 62 Subpart III or applicable state plan for existing commercial and industrial solid waste incinerators, or 40 CFR Part 60 Subpart CCCC for new commercial and industrial solid waste incinerators.

(v)A permitted hazardous waste combustor subject to 40 CFR Part 63 Subpart EEE.

**Section 266.507 Residues of hazardous waste pharmaceuticals in empty containers.**

(a) *Stock, dispensing and unit-dose containers.* A stock bottle, dispensing bottle, vial, or ampule (not to exceed 1 liter or 10,000 pills); or a unit-dose container (*e.g.,* a unit-dose packet, cup, wrapper, blister pack, or delivery device) is considered empty and the residues are not regulated as hazardous waste provided the pharmaceuticals have been removed from the stock bottle, dispensing bottle, vial, ampule, or the unit-dose container using the practices commonly employed to remove materials from that type of container.

(b) *Syringes.* A syringe is considered empty and the residues are not regulated as hazardous waste under this subpart provided the contents have been removed by fully depressing the plunger of the syringe. If a syringe is not empty, the syringe must be placed with its remaining hazardous waste pharmaceuticals into a container that is managed and disposed **[of]** as a non-creditable hazardous waste pharmaceutical under this subpart and any applicable federal, state, and local requirements for sharps containers and medical waste.

(c)*Intravenous (IV) bags.* An IV bag is considered empty and the residues are not regulated as hazardous waste provided the pharmaceuticals in the IV bag have been fully administered to a patient. If an IV bag is not empty, the IV bag must be placed with its remaining hazardous waste pharmaceuticals into a container that is managed and disposed **[of]** as a non-creditable hazardous waste pharmaceutical under this subpart, unless the IV bag held non-acute hazardous waste pharmaceuticals and is empty as defined in §261.7(b)(1).

(d) *Other containers, including delivery devices.* Hazardous waste pharmaceuticals remaining in all other types of unused, partially administered, or fully administered containers must be managed as non-creditable hazardous waste pharmaceuticals under this subpart, unless the container held non-acute hazardous waste pharmaceuticals and is empty as defined in §261.7(b)(1) or (2). This includes, but is not limited to, residues in inhalers, aerosol cans, nebulizers, tubes of ointments, gels, or creams.

**Section 266.508 Shipping non-creditable hazardous waste pharmaceuticals from a healthcare facility or evaluated hazardous waste pharmaceuticals from a reverse distributor.**

(a) *Shipping non-creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals.* A healthcare facility must ship non-creditable hazardous waste pharmaceuticals and a reverse distributor must ship evaluated hazardous waste pharmaceuticals off site to a designated facility (such as a permitted or interim status treatment, storage, or disposal facility) in compliance with:

(1) The following pre-transport requirements, before transporting or offering for transport off site: (i) *Packaging.* Package the waste in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR Parts 173, 178, and 180.

(ii) *Labeling.* Label each package in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR Part 172 Subpart E.

(iii) *Marking.*

(A) Mark each package of hazardous waste pharmaceuticals in accordance with the applicable Department of Transportation (DOT) regulations on hazardous materials under 49 CFR Part 172 Subpart D;

(B) Mark each container of 119 gallons or less used in such transportation with the following words and information in accordance with the requirements of 49 CFR 172.304:

HAZARDOUS WASTE—Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

Healthcare Facility's or Reverse Distributor's Name and Address

Healthcare Facility's or Reverse Distributor's EPA Identification Number

Manifest Tracking Number

(C)Lab packs that will be incinerated in compliance with §268.42(c) are not required to be marked with EPA Hazardous Waste Number(s), except D004, D005, D006, D007, D008, D010, and D011, where applicable. A nationally recognized electronic system, such as bar coding or radio frequency identification, may be used to identify the EPA Hazardous Waste Number(s).

(iv) *Placarding.* Placard or offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous materials under 49 CFR Part 172 Subpart F.

(2) The manifest requirements of Part 262 Subpart B of these regulations, except that:

(i) A healthcare facility shipping non-creditable hazardous waste pharmaceuticals is not required to list all applicable hazardous waste numbers (*i.e.,* hazardous waste codes) in Item 13 of EPA Form 8700-22.

(ii) A healthcare facility shipping non-creditable hazardous waste pharmaceuticals must write the word "PHARMS" in Item 13 of EPA Form 8700-22.

(b) *Exporting non-creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals.* A healthcare facility or reverse distributor that exports non-creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals is subject to Part 262 Subpart H of these regulations.

(c)*Importing non-creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals.* Any person that imports non-creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals is subject to Part 262 Subpart H of these regulations. A healthcare facility or reverse distributor may not accept imported non-creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals unless they have a permit or interim status that allows them to accept hazardous waste from off site.

**Section 266.509 Shipping potentially creditable hazardous waste pharmaceuticals from a healthcare facility or a reverse distributor to a reverse distributor.**

(a) *Shipping potentially creditable hazardous waste pharmaceuticals.* A healthcare facility or a reverse distributor who transports or offers for transport potentially creditable hazardous waste pharmaceuticals off site to a reverse distributor must comply with all applicable U.S. Department of Transportation regulations in 49 CFR Part 171 through 180 for any potentially creditable hazardous waste pharmaceutical that meets the definition of hazardous material in 49 CFR 171.8. For purposes of the Department of Transportation regulations, a material is considered a hazardous waste if it is subject to the Hazardous Waste Manifest Requirements specified in Part 262 of these regulations. Because a potentially creditable hazardous waste pharmaceutical does not require a manifest, it is not considered hazardous waste under the Department of Transportation regulations.

(b) *Delivery confirmation.* Upon receipt of each shipment of potentially creditable hazardous waste pharmaceuticals, the receiving reverse distributor must provide confirmation (paper or electronic) to the healthcare facility or reverse distributor that initiated the shipment that the shipment of potentially creditable hazardous waste pharmaceuticals has arrived at its destination and is under the custody and control of the reverse distributor.

(c)*Procedures for when delivery confirmation is not received within 35 calendar days.* If a healthcare facility or reverse distributor initiates a shipment of potentially creditable hazardous waste

pharmaceuticals to a reverse distributor and does not receive delivery confirmation within 35 calendar days from the date that the shipment of potentially creditable hazardous waste pharmaceuticals was sent, the healthcare facility or reverse distributor that initiated the shipment must contact the carrier and the intended recipient (*i.e.,* the reverse distributor) promptly to report that the delivery confirmation was not received and to determine the status of the potentially creditable hazardous waste pharmaceuticals.

(d) *Exporting potentially creditable hazardous waste pharmaceuticals.* A healthcare facility or reverse distributor that sends potentially creditable hazardous waste pharmaceuticals to a foreign destination must comply with the applicable sections of Part 262 Subpart H of these regulations, except the manifesting requirement of §262.83(c), in addition to paragraphs (a) through (c) of this section.

(e) *Importing potentially creditable hazardous waste pharmaceuticals.* Any person that imports potentially creditable hazardous waste pharmaceuticals into the United States is subject to paragraphs (a) through (c) of this section in lieu of Part 262 Subpart H of these regulations. Immediately after the potentially creditable hazardous waste pharmaceuticals enter the United States, they are subject to all applicable requirements of this subpart.

**Section 266.510 Standards for the management of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals at reverse distributors.**

A reverse distributor may accept potentially creditable hazardous waste pharmaceuticals from off site and accumulate potentially creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals on site without a hazardous waste permit or without having interim status, provided that it complies with the following conditions:

(a) *Standards for reverse distributors managing potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals.*

(1) *Notification.* A reverse distributor must notify the DNREC Secretary, using the Site Identification Form (EPA Form 8700-12), that it is a reverse distributor operating under this subpart.

(i) A reverse distributor that already has an EPA identification number must notify the DNREC Secretary, using the Site Identification Form (EPA Form 8700-12), that it is a reverse distributor, as defined in §266.500, within 60 days of the effective date of this subpart, or within 60 days of becoming subject to this subpart.

(ii) A reverse distributor that does not have an EPA identification number must obtain one by notifying the DNREC Secretary, using the Site Identification Form (EPA Form 8700- 12), that it is a reverse distributor, as defined in §266.500, within 60 days of the effective date of this subpart, or within 60 days of becoming subject to this subpart.

(2) *Inventory by the reverse distributor.* A reverse distributor must maintain a current inventory of all the potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals that are accumulated on site.

(i) A reverse distributor must inventory each potentially creditable hazardous waste pharmaceutical within 30 calendar days of each waste arriving at the reverse distributor.

(ii) The inventory must include the identity (*e.g.,* name or national drug code) and quantity of each potentially creditable hazardous waste pharmaceutical and evaluated hazardous waste pharmaceutical.

(iii) If the reverse distributor already meets the inventory requirements of this paragraph because of other regulatory requirements, such as State Board of Pharmacy regulations, the facility is not required to provide a separate inventory pursuant to this section.

(3) *Evaluation by a reverse distributor that is not a manufacturer.* A reverse distributor that is not a pharmaceutical manufacturer must evaluate a potentially creditable hazardous waste pharmaceutical within 30 calendar days of the waste arriving at the reverse distributor to establish whether it is destined for another reverse distributor for further evaluation or verification of manufacturer credit or for a permitted or interim status treatment, storage, or disposal facility.

(i) A potentially creditable hazardous waste pharmaceutical that is destined for another reverse distributor is still considered a "potentially creditable hazardous waste pharmaceutical" and must be managed in accordance with paragraph (b) of this section.

(ii) A potentially creditable hazardous waste pharmaceutical that is destined for a

permitted or interim status treatment, storage or disposal facility is considered an "evaluated hazardous waste pharmaceutical" and must be managed in accordance with paragraph (c) of this section.

(4) *Evaluation by a reverse distributor that is a manufacturer.* A reverse distributor that is a pharmaceutical manufacturer must evaluate a potentially creditable hazardous waste pharmaceutical to verify manufacturer credit within 30 calendar days of the waste arriving at the facility and following the evaluation must manage the evaluated hazardous waste pharmaceuticals in accordance with paragraph (c) of this section.

(5) *Maximum accumulation time for hazardous waste pharmaceuticals at a reverse distributor.*

(i) A reverse distributor may accumulate potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals on site for 180 calendar days or less. The 180 days start after the potentially creditable hazardous waste pharmaceutical has been evaluated and applies to all hazardous waste pharmaceuticals accumulated on site, regardless of whether they are destined for another reverse distributor (*i.e.,* potentially creditable hazardous waste pharmaceuticals) or a permitted or interim status treatment, storage, or disposal facility (*i.e.,* evaluated hazardous waste pharmaceuticals).

(ii) *Aging pharmaceuticals.* Unexpired pharmaceuticals that are otherwise creditable but are awaiting their expiration date (*i.e.,* aging in a holding morgue) can be accumulated for up to 180 days after the expiration date, provided that the unexpired pharmaceuticals are managed in accordance with paragraph (a) of this section and the container labeling and management standards in §266.510(c)(4)(i) through (vi).

(6) *Security at the reverse distributor facility.* A reverse distributor must prevent unknowing entry and minimize the possibility for the unauthorized entry into the portion of the facility where potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals are kept.

(i) Examples of methods that may be used to prevent unknowing entry and minimize the possibility for unauthorized entry include, but are not limited to:

(A) A 24-hour continuous monitoring surveillance system; (B) An artificial barrier such as a fence; or (C) A means to control entry, such as keycard access.

(ii) If the reverse distributor already meets the security requirements of this paragraph because of other regulatory requirements, such as Drug Enforcement Administration or State Board of Pharmacy regulations, the facility is not required to provide separate security measures pursuant to this section.

(7) *Contingency plan and emergency procedures at a reverse distributor.* A reverse distributor that accepts potentially creditable hazardous waste pharmaceuticals from off site must prepare a contingency plan and comply with the other requirements of Part 262 Subpart M of these regulations.

(8) *Closure of a reverse distributor.* When closing an area where a reverse distributor accumulates potentially creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals, the reverse distributor must comply with §262.17(a)(8)(ii) and (iii).

(9) *Reporting by a reverse distributor.*

(i) *Unauthorized waste report.* A reverse distributor must submit an unauthorized waste report if the reverse distributor receives waste from off site that it is not authorized to receive (*e.g.,* non-pharmaceutical hazardous waste, regulated medical waste). The reverse distributor must prepare and submit an unauthorized waste report to the DNREC Secretary within 45 calendar days after the unauthorized waste arrives at the reverse distributor and must send a copy of the unauthorized waste report to the healthcare facility (or other entity) that sent the unauthorized waste. The reverse distributor must manage the unauthorized waste in accordance with all applicable regulations. The unauthorized waste report must be signed by the owner or operator of the reverse distributor, or its authorized representative, and contain the following information:

(A) The EPA identification number, name, and address of the reverse distributor; (B) The date the reverse distributor received the unauthorized waste;

(C)The EPA identification number, name, and address of the healthcare facility that shipped the unauthorized waste, if available;

(D)A description and the quantity of each unauthorized waste the reverse distributor received;

(E) The method of treatment, storage, or disposal for each unauthorized waste; and

(F)A brief explanation of why the waste was unauthorized, if known.

(ii) *Additional reports.* The DNREC Secretary may require reverse distributors to furnish additional reports concerning the quantities and disposition of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals.

(10) *Recordkeeping by reverse distributors.* A reverse distributor must keep the following records (paper or electronic) readily available upon request by an inspector. The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity, or as requested by the DNREC Secretary.

(i) A copy of its notification on file for as long as the facility is subject to this subpart; (ii) A copy of the delivery confirmation and the shipping papers for each shipment of potentially creditable hazardous waste pharmaceuticals that it receives, and a copy of each unauthorized waste report, for at least three years from the date the shipment arrives at the reverse distributor;

(iii) A copy of its current inventory for as long as the facility is subject to this subpart.

(b) *Additional standards for reverse distributors managing potentially creditable hazardous waste pharmaceuticals destined for another reverse distributor.* A reverse distributor that does not have a permit or interim status must comply with the following conditions, in addition to the requirements in paragraph (a) of this section, for the management of potentially creditable hazardous waste pharmaceuticals that are destined for another reverse distributor for further evaluation or verification of manufacturer credit:

(1) A reverse distributor that receives potentially creditable hazardous waste pharmaceuticals from a healthcare facility must send those potentially creditable hazardous waste pharmaceuticals to another reverse distributor within 180 days after the potentially creditable hazardous waste pharmaceuticals have been evaluated or follow paragraph (c) of this section for evaluated hazardous waste pharmaceuticals.

(2) A reverse distributor that receives potentially creditable hazardous waste pharmaceuticals from another reverse distributor must send those potentially creditable hazardous waste pharmaceuticals to a reverse distributor that is a pharmaceutical manufacturer within 180 days after the potentially creditable hazardous waste pharmaceuticals have been evaluated or follow paragraph (c) of this section for evaluated hazardous waste pharmaceuticals.

(3) A reverse distributor must ship potentially creditable hazardous waste pharmaceuticals destined for another reverse distributor in accordance with §266.509.

(4) *Recordkeeping by reverse distributors.* A reverse distributor must keep the following records (paper or electronic) readily available upon request by an inspector for each shipment of potentially creditable hazardous waste pharmaceuticals that it initiates to another reverse distributor, for at least three years from the date of shipment. The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity, or as requested by the DNREC Secretary.

(i) The confirmation of delivery; and

(ii) The DOT shipping papers prepared in accordance with 49 CFR Part 172 Subpart C, if applicable.

(c)*Additional standards for reverse distributors managing evaluated hazardous waste pharmaceuticals.* A reverse distributor that does not have a permit or interim status must comply with the following conditions, in addition to the requirements of paragraph (a) of this section, for the management of evaluated hazardous waste pharmaceuticals:

(1) *Accumulation area at the reverse distributor.* A reverse distributor must designate an on-site accumulation area where it will accumulate evaluated hazardous waste pharmaceuticals.

(2) *Inspections of on-site accumulation area.* A reverse distributor must inspect its on-

site accumulation area at least once every seven days, looking at containers for leaks and for deterioration caused by corrosion or other factors, as well as for signs of diversion.

(3) *Personnel training at a reverse distributor.* Personnel at a reverse distributor that handle evaluated hazardous waste pharmaceuticals are subject to the training requirements of §262.17(a)(7).

(4) *Labeling and management of containers at on-site accumulation areas.* A reverse distributor accumulating evaluated hazardous waste pharmaceuticals in containers in an on-site accumulation area must:

(i) Label the containers with the words, "Hazardous Waste Pharmaceuticals"; (ii) Ensure the containers are in good condition and managed to prevent leaks;

(iii) Use containers that are made of or lined with materials which will not react with, and are otherwise compatible with, the evaluated hazardous waste pharmaceuticals, so that the ability of the container to contain the waste is not impaired;

(iv)Keep containers closed, if holding liquid or gel evaluated hazardous waste pharmaceuticals. If the liquid or gel evaluated hazardous waste pharmaceuticals are in their original, intact, sealed packaging; or repackaged, intact, sealed packaging, they are considered to meet the closed container standard;

(v)Manage any container of ignitable or reactive evaluated hazardous waste pharmaceuticals, or any container of commingled incompatible evaluated hazardous waste pharmaceuticals so that the container does not have the potential to:

(A) Generate extreme heat or pressure, fire or explosion, or violent reaction; (B) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;

(C)Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;

(D)Damage the structural integrity of the container of hazardous waste pharmaceuticals; or

(E) Through other like means threaten human health or the environment; and (vi) Accumulate evaluated hazardous waste pharmaceuticals that are prohibited from being combusted because of the dilution prohibition of §268.3(c) (*e.g.,* arsenic trioxide (P012)) in separate containers from other evaluated hazardous waste pharmaceuticals at the reverse distributor.

(5) *Hazardous waste numbers.* Prior to shipping evaluated hazardous waste pharmaceuticals off site, all containers must be marked with the applicable hazardous waste numbers (*i.e.,* hazardous waste codes). A nationally recognized electronic system, such as bar coding or radio frequency identification, may be used to identify the EPA Hazardous Waste Number(s).

(6) *Shipments.* A reverse distributor must ship evaluated hazardous waste pharmaceuticals that are destined for a permitted or interim status treatment, storage or disposal facility in accordance with the applicable shipping standards in §266.508(a) or (b).

(7) *Procedures for a reverse distributor for managing rejected shipments.* A reverse distributor that sends a shipment of evaluated hazardous waste pharmaceuticals to a designated facility with the understanding that the designated facility can accept and manage the waste, and later receives that shipment back as a rejected load in accordance with the manifest discrepancy provisions of §264.72 or §265.72 of these regulations, may accumulate the returned evaluated hazardous waste pharmaceuticals on site for up to an additional 90 days in the on-site accumulation area provided the rejected or returned shipment is managed in accordance with §266.510(a) and (c). Upon receipt of the returned shipment, the reverse distributor must:

(i) Sign either:

(A) Item 18c of the original manifest, if the original manifest was used for the returned shipment; or

(B) Item 20 of the new manifest, if a new manifest was used for the returned shipment;

(ii) Provide the transporter a copy of the manifest;

(iii) Within 30 days of receipt of the rejected shipment of the evaluated hazardous waste pharmaceuticals, send a copy of the manifest to the designated facility that returned the shipment to the reverse distributor; and

(iv)Within 90 days of receipt of the rejected shipment, transport or offer for transport the returned shipment of evaluated hazardous waste pharmaceuticals in accordance with the applicable shipping standards of §266.508(a) or (b).

(8) *Land disposal restrictions.* Evaluated hazardous waste pharmaceuticals are subject to the land disposal restrictions of Part 268 of these regulations. A reverse distributor that accepts potentially creditable hazardous waste pharmaceuticals from off site must comply with the land disposal restrictions in accordance with §268.7(a) requirements.

(9) *Reporting by a reverse distributor for evaluated hazardous waste pharmaceuticals.*

(i) *Annual reporting by a reverse distributor.* A reverse distributor that ships evaluated hazardous waste pharmaceuticals off site must prepare and submit a single copy of an annual report to the DNREC Secretary by March 1 of each year in accordance with §262.41.

(ii) *Exception reporting by a reverse distributor for a missing copy of the manifest.* (A) *For shipments from a reverse distributor to a designated facility.*

(1) If a reverse distributor does not receive a copy of the manifest with the signature of the owner or operator of the designated facility within 35 days of the date the evaluated hazardous waste pharmaceuticals were accepted by the initial transporter, the reverse distributor must contact the transporter or the owner or operator of the designated facility to determine the status of the evaluated hazardous waste pharmaceuticals. (*2*) A reverse distributor must submit an exception report to the DNREC Secretary if it has not received a copy of the manifest with the signature of the owner or operator of the designated facility within 45 days of the date the evaluated hazardous waste pharmaceutical was accepted by the initial transporter. The exception report must include:

(i) A legible copy of the manifest for which the reverse distributor does not have confirmation of delivery; and

(ii) A cover letter signed by the reverse distributor, or its authorized representative, explaining the efforts taken to locate the evaluated hazardous waste pharmaceuticals and the results of those efforts.

(B) *For shipments rejected by the designated facility and shipped to an alternate facility.*

(1) A reverse distributor that does not receive a copy of the manifest with the signature of the owner or operator of the alternate facility within 35 days of the date the evaluated hazardous waste pharmaceuticals were accepted by the initial transporter must contact the transporter or the owner or operator of the alternate facility to determine the status of the hazardous waste. The 35-day time frame begins the date the evaluated hazardous waste pharmaceuticals are accepted by the transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility.

(2) A reverse distributor must submit an Exception Report to the DNREC Secretary if it has not received a copy of the manifest with the signature of the owner or operator of the alternate facility within 45 days of the date the evaluated hazardous waste pharmaceuticals were accepted by the initial transporter. The 45-day timeframe begins the date the evaluated hazardous waste pharmaceuticals are accepted by the

transporter forwarding the hazardous waste pharmaceutical shipment from the designated facility to the alternate facility. The Exception Report must include:

(i) A legible copy of the manifest for which the generator does not have confirmation of delivery; and

(ii) A cover letter signed by the reverse distributor, or its authorized representative, explaining the efforts taken to locate the evaluated hazardous waste pharmaceuticals and the results of those efforts.

(10) *Recordkeeping by a reverse distributor for evaluated hazardous waste pharmaceuticals.*

(i) A reverse distributor must keep a log (written or electronic) of the inspections of the on-site accumulation area, required by paragraph (c)(2) of this section. This log must be retained as a record for at least three years from the date of the inspection.

(ii) A reverse distributor must keep a copy of each manifest signed in accordance with §262.23(a) for three years or until it receives a signed copy from the designated facility that received the evaluated hazardous waste pharmaceutical. This signed copy must be retained as a record for at least three years from the date the evaluated hazardous waste pharmaceutical was accepted by the initial transporter.

(iii) A reverse distributor must keep a copy of each annual report for at least three years from the due date of the report.

(iv)A reverse distributor must keep a copy of each exception report for at least three years from the submission of the report.

(v)A reverse distributor must keep records to document personnel training, in accordance with §262.17(a)(7)(iv).

(vi)All records must be readily available upon request by an inspector. The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity, or as requested by the DNREC Secretary.

(d) *When a reverse distributor must have a permit.* A reverse distributor is an operator of a hazardous waste treatment, storage, or disposal facility and is subject to the requirements of Parts 264 and 265 and the permit requirements of Part 122, if the reverse distributor:

(1) Does not meet the conditions of this section;

(2) Accepts manifested hazardous waste from off site; or

(3) Treats or disposes of hazardous waste pharmaceuticals on site.

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**Appendix VIII. - ~~Potential PICs for Determination of Exclusion of Waste-Derived Residues~~**
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**~~PICs Found in Stack Effluents~~ Organic Compounds for Which Residues Must Be Analyzed**

[Note: table remains unchanged.]

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**Appendix IX to Part 266 - Methods Manual for Compliance With the BIF Regulations**

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**SECTION 4.0 PROCEDURE FOR ESTIMATING THE TOXICITY EQUIVALENCY OF CHLORINATED DIBENZO-P-DIOXIN AND DIBENZOFURAN CONGENERS**

PCDDs and PCDFs must be determined using whichever is the most recent version of SW-846 Method 023A (incorporated by reference in § ~~260.1~~260.11) as identified or OAQPS Method 23 of appendix A to Part 60. In this method, individual congeners or homologues[1] are measured and then summed to yield a total PCDD/PCDF value. No toxicity factors are specified in the method to compute risks from such emissions.

[1]The term "congener" refers to any one particular member of the same chemical family; e.g., there are 75 congeners of chlorinated dibenzo-p-dioxins. The term "homologue" refers to a group of structurally related

chemicals that have the same degree of chlorination. For example, there are eight homologues of CDs, monochlorinated through octachlorinated. Dibenzo-p-dioxins and dibenzofurans that are chlorinated at the 2,3,7, and 8 positions are denoted as "2378" congeners, except when 2,3,7,8-TCDD is uniquely referred to: e.g., 1,2,3,7,8-PeCDF and 2,3,4,7,8- PeCDF are both referred to as "2378-PeCDFs."

For the purpose of estimating risks posed by emissions from boilers and industrial furnaces, however, specific congeners and homologues must be measured using the specified method and then multiplied by the assigned toxicity equivalence factors (TEFs), using procedures described in "Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and

Dibenzofurans (CDDs and CDFs) and 1989 Update," EPA/625/3-89/016, March 1989. The resulting 2,3,7,8-TCDD equivalents value is used in the subsequent risk calculations and modeling efforts as discussed in the BIF final rule.

The procedure for calculating the 2,3,7,8-TCDD equivalent is as follows:

1. Using method 23, determine the concentrations of 2,7,3,8-congeners of various PCDDs and PCDFs in the sample.
2. Multiply the congener concentrations in the sample by the TEF listed in Table 4.0-1 to express the congener concentrations in terms of 2,3,7,8-TCDD equivalent. Note that congeners not chlorinated at 2,3,7, and 8 positions have a zero toxicity factor in this table.
3. Add the products obtained in step 2, to obtain the total 2,3,7,8-TCDD equivalent in the sample.

Sample calculations are provided in EPA document No. EPA/625/3-89/016, March 1989, which can be obtained from the EPA, ORD Publications Office, Cincinnati, Ohio (Phone no. 513-569-7562).

**Table 4.0-1.-2,3,7,8-TCDD Toxicity Equivalence Factors (TEFs)[1]**

| Compound | I-TEFs, 89 |
|---|---|
| Mono-, Di-, and TriCDDs | 0 |
| 2,3,7,8-TCDD | 1 |
| Other TCDDs | 0 |
| 2,3,7,8-PeCDD | 0.5 |
| Other PeCDDs | 0 |
| 2,3,7,8-HxCDD | 0.1 |
| Other HxCDDs | 0 |
| 2,3,7,8-HpCDD | 0.01 |
| Other HpCDDs | 0 |
| OCDD | 0.001 |
| Mono-, Di-, and TriCDFs | 0 |
| 2,3,7,8-TCDF | 0.1 |
| Other TCDFs | 0 |
| 1,2,3,7,8-PeCDF | 0.05 |
| 2,3,4,7,8-PeCDF | 0.5 |
| Other PeCDFs | 0 |
| 2378-HxCDFs | 0.1 |
| Other HxCDFs | 0 |
| 2378-HpCDFs | 0.01 |
| Other HpCDFs | 0 |
| OCDF | 0.001 |

Reference: Adapted from NATO/CCMS, 1988a.

[1]Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo- p-Dioxins and Dibenzofurans (CDDs and CDFs) 1989 Update EPA/625/3-89/016, March 1989.

**Section 268.1 Purpose, scope and applicability.**

(a) This part identifies hazardous wastes that are restricted from land disposal and defines those limited circumstances under which an otherwise prohibited waste may continue to be land disposed.

(b) Except as specifically provided otherwise in this part or Part 261 of these regulations the requirements of this part apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities.

(c) Restricted wastes may continue to be land disposed as follows:

(1) Where persons have been granted an extension to the effective date of a prohibition under Subpart C of this part or pursuant to §268.5, with respect to those wastes covered by the extension;

(2) Where persons have been granted an exemption from a prohibition pursuant to a petition under §268.6, with respect to those wastes and units covered by the petition;

(3) Wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited under this part, or 40 CFR Part 148, are not prohibited if the wastes:

(i) Are disposed into a nonhazardous or hazardous injection well as defined under 40 CFR 144.6 and 146.5; and

(ii) Do not exhibit any prohibited characteristic of hazardous waste identified in Part 261, Subpart C at the point of injection.

(4) Wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited under this part, are not prohibited if the wastes meet any of the following criteria, unless the wastes are subject to a specified method of treatment other than DEACT in §268.40, or are D003 reactive cyanide:

(i) The wastes are managed in a treatment system which subsequently discharges to waters of the U.S. pursuant to a permit issued under section 402 of the Clean Water Act; or

(ii) The wastes are treated for purposes of the pretreatment requirements of section 307 of the Clean Water Act; or

(iii) The wastes are managed in a zero discharge system engaged in Clean Water Act-equivalent treatment as defined in §268.37(a); and

(iv) The wastes no longer exhibit a prohibited characteristic at the point of land disposal (i.e., placement in a surface impoundment).

(d) The requirements of this part shall not affect the availability of a waiver under Section 121(d)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

(e) The following hazardous wastes are not subject to any provision of Part 268:

(1) ~~Waste generated by small quantity generators of less than 100 kilograms of non-acute hazardous waste or less than 1 kilogram of acute hazardous waste per month, as defined in §261.5 of these regulations;~~ Waste generated by very small quantity generators, as defined in §260.10 of these regulations;

(2) Waste pesticides that a farmer disposes of pursuant to §262.70;

(3) Wastes identified or listed as hazardous after November 8, 1984 for which EPA has not promulgated land disposal prohibitions or treatment standards;

(4) *De minimis* losses of characteristic wastes to wastewaters are not considered to be prohibited wastes and are defined as losses from normal material handling operations (e.g. spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; and relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; rinsate from empty containers or from containers that are rendered empty by that rinsing; and laboratory wastes not exceeding one per cent of the total flow of wastewater into the facility's headworks on an annual basis, or with a combined annualized average concentration not exceeding one part per million in the headworks of the facility's wastewater treatment or pretreatment facility.

(f) Universal waste handlers and universal waste transporters (as defined in §260.10) are exempt from

§268.7 and §268.50 for the hazardous wastes listed below. These handlers are subject to regulation under Part 273.

(1) Batteries as described in §273.2 of these regulations;

(2) Pesticides as described in §273.3 of these regulations;
(3) Mercury-containing equipment as described in §273.4 of these regulations; ~~and~~
(4) Lamps as described in §273.5 of these ~~regulations.~~ regulations; and
(5) Aerosol cans as described in §273.6 of these regulations.

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**Section 268.7 Testing, tracking, and recordkeeping requirements for generators, reverse distributors, treaters, and disposal facilities.**

(a) *Requirements for generators and reverse distributors:*

(1) A generator of hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in §268.40, 268.45, or §268.49. This determination can be made concurrently with the hazardous waste determination required in §262.11 of these regulations, in either of two ways: testing the waste or using knowledge of the waste. If the generator tests the waste, testing would normally determine the total concentration of hazardous constituents, or the concentration of hazardous constituents in an extract of the waste obtained using test method 1311 in "Test Methods of Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, (incorporated by reference, see §260.11 of these regulations), depending on whether the treatment standard for the waste is expressed as a total concentration or concentration of hazardous constituent in the waste's extract. (Alternatively, the generator must send the waste to a RCRA-permitted hazardous waste treatment facility, where the waste treatment facility must comply with the requirements of §264.13 of these regulations and paragraph (b) of this section.) In addition, some hazardous wastes must be treated by particular treatment methods before they can be land disposed and some soils are contaminated by such hazardous wastes. These treatment standards are also found in §268.40, and are described in detail in §268.42, Table 1. These wastes, and soils contaminated with such wastes, do not need to be tested (however, if they are in a waste mixture, other wastes with concentration level treatment standards would have to be tested). If a generator determines they are managing a waste or soil contaminated with a waste, that displays a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity, they must comply with the special requirements of §268.9 of this part in addition to any applicable requirements in this section.

(2) If the waste or contaminated soil does not meet the treatment standards, or if the generator chooses not to make the determination of whether his waste must be treated, with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. The notice must include the information in column "268.7(a)(2)" of the Generator Paperwork Requirements Table in paragraph (a)(4) of this section. (Alternatively, if the generator chooses not to make the determination of whether the waste must be treated, the notification must include the EPA Hazardous Waste Numbers and Manifest Number of the first shipment and must state "This hazardous waste may or may not be subject to the LDR treatment standards. The treatment facility must make the determination.") No further notification is necessary until such time that the waste or facility change, in which case a new notification must be sent and a copy placed in the generator's file.

(3) If the waste or contaminated soil meets the treatment standard at the original point of generation:

(i) With the initial shipment of waste to each treatment, storage, or disposal facility, the generator must send a one-time written notice to each treatment, storage, or disposal facility receiving the waste, and place a copy in the file. The notice must include the information indicated in column "268.7(a)(3)" of the Generator Paperwork Requirements Table in §268.7(a)(4) and the following certification statement, signed by an authorized representative:

I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with the treatment standards specified in Part 268 Subpart D. I believe that the information I submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of a fine and imprisonment.

(ii) For contaminated soil, with the initial shipment of wastes to each treatment, storage, or disposal facility, the generator must send a one-time written notice to each facility receiving the waste and place a copy in the file. The notice must include the information in column "268.7(a)(3)" of the Generator Paperwork Requirements Table in §268.7(a)(4).

(iii) If the waste changes, the generator must send a new notice and certification to the receiving facility, and place a copy in their files. Generators of hazardous debris excluded from the definition of hazardous waste under §261.3(f) of these regulations are not subject to these requirements.

(4) For reporting, tracking, and recordkeeping when exceptions allow certain wastes or contaminated soil that do not meet the treatment standards to be land disposed: There are certain exemptions from the requirement that hazardous wastes or contaminated soil meet treatment standards before they can be land disposed. These include, but are not limited to case-by-case extensions under §268.5, disposal in a no-migration unit under §268.6, or a national capacity variance or case-by-case capacity variance under Subpart C of this part. If a generator's waste is so exempt, then with the initial shipment of waste, the generator must send a one-time written notice to each land disposal facility receiving the waste. The notice must include the information indicated in column "268.7(a)(4)" of the Generator Paperwork Requirements Table below. If the waste changes, the generator must send a new notice to the receiving facility, and place a copy in their files.

**Generator Paperwork Requirements Table**

| **Required information** | **§268.7 (a)(2)** | **§268.7 (a)(3)** | **§268.7 (a)(4)** | **§268.7 (a)(9)** |
|---|---|---|---|---|
| 1. EPA Hazardous Waste Numbers and Manifest Number of first shipment | ✓ | ✓ | ✓ | ✓ |
| 2. Statement: this waste is not prohibited from land disposal | | | ✓ | |
| 3. The waste is subject to the LDRs. The constituents of concern for F001-F005, and F039, and underlying hazardous constituents in characteristic wastes, unless the waste will be treated and monitored for all constituents. If all constituents will be treated and monitored, there is no need to put them all on the LDR notice | ✓ | ✓ | | |
| 4. The notice must include the applicable wastewater/ nonwastewater category (see §§268.2(d) and (f)) and subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanide) | ✓ | ✓ | | |
| 5. Waste analysis data (when available) | ✓ | ✓ | ✓ | |
| 6. Date the waste is subject to the prohibition | | | ✓ | |
| 7. For hazardous debris, when treating with the alternative treatment technologies provided by §268.45: the contaminants subject to treatment, as described in §268.45(b); and an indication that these contaminants are being treated to comply with §268.45 | ✓ | | ✓ | |

| | | | |
|---|---|---|---|
| 8. For contaminated soil subject to LDRs as provided in §268.49(a), the constituents subject to treatment as described in §268.49(d), and the following statement: This contaminated soil [does/does not] contain listed hazardous waste and [does/does not] exhibit a characteristic of hazardous waste and [is subject to/complies with] the soil treatment standards as provided by §268.49(c) or the universal treatment standards | ✓ | ✓ | |
| 9. A certification is needed (see applicable section for exact wording) | | ✓ | ✓ |

(5) If a generator is managing and treating prohibited waste or contaminated soil in tanks, containers, or containment buildings regulated under ~~§262.34~~ §§262.15, 262.16, and 262.17 to meet applicable LDR treatment standards found at §268.40, the generator must develop and follow a written waste analysis plan which describes the procedures they will carry out to comply with the treatment standards. (Generators treating hazardous debris under the alternative treatment standards of ~~Table 1, §268.45~~ Table 1 to §268.45, however, are not subject to these waste analysis requirements.) The plan must be kept on site in the generator's records, and the following requirements must be met:

(i) The waste analysis plan must be based on a detailed chemical and physical analysis of a representative sample of the prohibited waste(s) being treated, and contain all information necessary to treat the waste(s) in accordance with the requirements of this part, including the selected testing frequency.

(ii) Such plan must be kept in the facility's on-site files and made available to inspectors.

(iii) Wastes shipped off-site pursuant to this paragraph must comply with the notification requirements of §268.7(a)(3).

(6) If a generator determines that the waste or contaminated soil is restricted based solely on his knowledge of the waste, all supporting data used to make this determination must be retained on-site in the generator's files. If a generator determines that the waste is restricted based on testing this waste or an extract developed using the test method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as referenced in §260.11 of these regulations, and all waste analysis data must be retained on-site in the generator's files.

(7) If a generator determines that he is managing a prohibited waste that is excluded from the definition of hazardous or solid waste or is exempted from regulation under §261.2 through §261.6 subsequent to the point of generation (including deactivated characteristic hazardous wastes managed in wastewater treatment systems subject to the Clean Water Act (CWA) as specified at §261.4(a)(2) or that are CWA-equivalent, or are managed in an underground injection well regulated by the SDWA), he must place a one-time notice describing such generation, subsequent exclusion from the definition of hazardous or solid waste or exemption from these regulations, and the disposition of the waste, in the facility's on-site files.

(8) Generators must retain on-site a copy of all notices, certifications, waste analysis data, and other documentation produced pursuant to this section for at least three years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site treatment, storage, or disposal. The three year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Secretary. The requirements of this paragraph apply to solid wastes even when the hazardous characteristic is removed prior to disposal, or when the waste is excluded from the definition of hazardous or solid waste under §261.2 through §261.6, or exempted from these regulations, subsequent to the point of generation.

(9) If a generator is managing a lab pack containing hazardous wastes and wishes to use the alternative treatment standard for lab packs found at §268.42(c):

(i) With the initial shipment of waste to a treatment facility, the generator must submit a notice that provides the information in column "§268.7(a)(9)" in the Generator Paperwork Requirements Table of paragraph (a)(4) of this section, and the following certification.

The certification, which must be signed by an authorized representative and must be placed in the generator's files, must say the following:

I certify under penalty of law that I personally have examined and am familiar with the waste and that the lab pack contains only wastes that have not been excluded under Appendix IV to Part 268 and that this lab pack will be sent to a combustion facility in compliance with the alternative treatment standards for lab packs at §268.42(c). I am aware that there are significant penalties for submitting a false certification, including the possibility of fine or imprisonment.

(ii) No further notification is necessary until such time that the wastes in the lab pack change, or the receiving facility changes, in which case a new notice and certification must be sent and a copy placed in the generator's file.

(iii) If the lab pack contains characteristic hazardous wastes (D001-D043), underlying hazardous constituents (as defined in §268.2(i)) need not be determined.

(iv) The generator must also comply with the requirements in paragraphs (a)(6) and (a)(7) of this section.

(10) [Reserved].

(b) Treatment facilities must test their wastes according to the frequency specified in their waste analysis plans as required by §264.13 (for permitted TSDs) or §265.13 (for interim status facilities). Such testing must be performed as provided in paragraphs (b)(1), (b)(2) and (b)(3) of this section.

(1) For wastes or contaminated soil with treatment standards expressed in the waste extract (TCLP), the owner or operator of the treatment facility must test an extract of the treatment residues, using test method 1311 (the Toxicity Characteristic Leaching Procedure, described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 as incorporated by reference in §260.11 of these regulations) to assure that the treatment residues extract meet the applicable treatment standards.

(2) For wastes or contaminated soil with treatment standards expressed as concentrations in the waste, the owner or operator of the treatment facility must test the treatment residues (not an extract of such residues) to assure that they meet the applicable treatment standards.

(3) A one-time notice must be sent with the initial shipment of waste or contaminated soil to the land disposal facility. A copy of the notice must be placed in the treatment facility's file.

(i) No further notification is necessary until such time that the waste or receiving facility change, in which case a new notice must be sent and a copy placed in the treatment facility's file.

(ii) The one-time notice must include these requirements:

**Treatment Facility Paperwork Requirements Table**

| **Required information** | **§268.7(b)** |
|---|---|
| 1. EPA Hazardous Waste Numbers and Manifest Number of first shipment | ✓ |
| 2. The waste is subject to the LDRs. The constituents of concern for F001-F005, and F039, and underlying hazardous constituents in characteristic wastes, unless the waste will be treated and monitored for all constituents. If all constituents will be treated and monitored, there is no need to put them all on the LDR notice. | ✓ |
| 3. The notice must include the applicable wastewater/ nonwastewater category (see §§268.2(d) and (f)) and subdivisions made within a waste code based on waste-specific criteria (such as D003 reactive cyanide) | ✓ |
| 4. Waste analysis data (when available) | ✓ |
| 5. For contaminated soil subject to LDRs as provided in §268.49(a), the constituents subject to | ✓ |

| | |
|---|---|
| treatment as described in §268.49(d) and the following statement, "this contaminated soil [does/does not] exhibit a characteristic of hazardous waste and [is subject to/complies with] the soil treatment standards as provided by §268.49(c)". | |
| 6. A certification is needed (see applicable section for exact wording) | ✓ |

(4) The treatment facility must submit a one-time certification signed by an authorized representative with the initial shipment of waste or treatment residue of a restricted waste to the land disposal facility. The certification must state:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the treatment process has been operated and maintained properly so as to comply with the treatment standards specified in §268.40 without impermissible dilution of the prohibited waste. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

A certification is also necessary for contaminated soil and it must state:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification and believe that it has been maintained and operated properly so as to comply with treatment standards specified in §268.49 without impermissible dilution of the prohibited wastes. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

(i) A copy of the certification must be placed in the treatment facility's on-site files. If the waste or treatment residue changes, or the receiving facility changes, a new certification must be sent to the receiving facility, and a copy placed in the file.

(ii) Debris excluded from the definition of hazardous waste under §261.3(f) of these regulations (i.e., debris treated by an extraction or destruction technology provided by Table 1, §268.45, and debris that the Secretary has determined does not contain hazardous waste), however, is subject to the notification and certification requirements of paragraph (d) of this section rather than the certification requirements of this paragraph.

(iii) For wastes with organic constituents having treatment standards expressed as concentration levels, if compliance with the treatment standards is based in whole or in part on the analytical detection limit alternative specified in §268.40(d), the certification, signed by an authorized representative, must state the following:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the nonwastewater organic constituents have been treated by combustion units as specified in §268.42, Table 1. I have been unable to detect the nonwastewater organic constituents, despite having used best good-faith efforts to analyze for such constituents. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

(iv) For characteristic wastes that are subject to the treatment standards in §268.40 (other than those expressed as a method of treatment), or §268.49, and that contain underlying hazardous constituents as defined in §268.2(i); if these wastes are treated on-site to remove the hazardous characteristic; and are then sent off-site for treatment of underlying hazardous constituents, the certification must state the following:

I certify under penalty of law that the waste has been treated in accordance with the requirements of §268.40 or §268.49 to remove the hazardous characteristic. This decharacterized waste contains underlying hazardous constituents that require further treatment to meet treatment standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

(v) For characteristic wastes that contain underlying hazardous constituents as defined

§268.2(i) that are treated on-site to remove the hazardous characteristic to treat underlying hazardous constituents to levels in §268.48 Universal Treatment Standards, the certification must state the following:

I certify under penalty of law that the waste has been treated in accordance with the requirements of §268.40 to remove the hazardous characteristic and that underlying hazardous constituents, as defined in §268.2(i) have been treated on-site to meet the §268.48 Universal Treatment Standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

(5) If the waste or treatment residue will be further managed at a different treatment, storage, or disposal facility, the treatment, storage, or disposal facility sending the waste or treatment residue off-site must comply with the notice and certification requirements applicable to generators under this section.

(6) Where the wastes are recyclable materials used in a manner constituting disposal subject to the provisions of §266.20(b) of these regulations regarding treatment standards and prohibition levels, the owner or operator of a treatment facility (*i.e.*, the recycler) must, for the initial shipment of waste, prepare a one-time certification described in paragraph (b)(4) of this section, and a one-time notice which includes the information in paragraph (b)(3) of this section (except the manifest number). The certification and notification must be placed in the facility's on-site files. If the waste or the receiving facility changes, a new certification and notification must be prepared and placed in the on-site files. In addition, the recycling facility must also keep records of the name and location of each entity receiving the hazardous waste-derived product.

(c) Except where the owner or operator is disposing of any waste that is a recyclable material used in a manner constituting disposal pursuant to §266.20(b), the owner or operator of any land disposal facility disposing any waste subject to restrictions under this part must:

(1) Have copies of the notice and certifications specified in paragraph (a) or (b) of this section.

(2) Test the waste, or an extract of the waste or treatment residue developed using test method 1311 (the Toxicity Characteristic Leaching Procedure, described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 as incorporated by reference in §260.11 of these regulations), to assure that the wastes or treatment residues are in compliance with the applicable treatment standards set forth in Subpart D of this part. Such testing must be performed according to the frequency specified in the facility's waste analysis plan as required by §264.13 or §265.13 of these regulations.

(d) Generators or treaters who first claim that hazardous debris is excluded from the definition of hazardous waste under §261.3(f) of these regulations (i.e., debris treated by an extraction or destruction technology provided by Table 1, §268.45, and debris that the Secretary has determined does not contain hazardous waste) are subject to the following notification and certification requirements:

(1) A one-time notification, including the following information, must be submitted to the Secretary:

(i) The name and address of the Subtitle D facility receiving the treated debris;

(ii) A description of the hazardous debris as initially generated, including the applicable EPA Hazardous Waste Number(s); and

(iii) For debris excluded under §261.3(f)(1) of these regulations, the technology from Table 1, §268.45, used to treat the debris.

(2) The notification must be updated if the debris is shipped to a different facility, and, for debris excluded under §261.2(f)(1) of these regulations, if a different type of debris is treated or if a different technology is used to treat the debris.

(3) For debris excluded under §261.3(f)(1) of these regulations, the owner or operator of the treatment facility must document and certify compliance with the treatment standards of Table 1, §268.45, as follows:

(i) Records must be kept of all inspections, evaluations, and analyses of treated debris that are made to determine compliance with the treatment standards;

(ii) Records must be kept of any data or information the treater obtains during treatment of the debris that identifies key operating parameters of the treatment unit; and

(iii) For each shipment of treated debris, a certification of compliance with the treatment standards must be signed by an authorized representative and placed in the facility's

files. The certification must state the following: "I certify under penalty of law that the debris has been treated in accordance with the requirements of §268.45. I am aware that there are significant penalties for making a false certification, including the possibility of fine and imprisonment."

(e) Generators and treaters who first receive from EPA or DNREC a determination that a given contaminated soil subject to LDRs as provided in §268.49(a) no longer contains a listed hazardous waste and generators and treaters who first determine that a contaminated soil subject to LDRs as provided in §268.49(a) no longer exhibits a characteristic of hazardous waste must:

(1) Prepare a one-time only documentation of these determinations including all supporting information; and,

(2) Maintain that information in the facility files and other records for a minimum of three years.

*****

**Section 268.50 Prohibitions on storage of restricted wastes.**

(a) Except as provided in this section, the storage of hazardous wastes restricted from land disposal under Subpart C of this part, or RCRA Section 3004, is prohibited, unless the following conditions are met:

(1) A generator stores such wastes in tanks, containers, or containment buildings on-site solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and the generator complies with the requirements in ~~§262.34~~ §§262.16 and 262.17 and Parts 264 and 265 of these regulations.

(2) An owner/operator of a hazardous waste treatment, storage, or disposal facility stores such wastes in tanks, containers, or containment buildings solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and:

(i) Each container is clearly marked to identify its contents and ~~the date each period of accumulation begins;~~ with:

(A) The words "Hazardous Waste;"

(B) The applicable EPA hazardous waste number(s) (EPA hazardous waste codes) in Subparts C and D of Part 261 of these regulations; or use a nationally recognized electronic system, such as bar coding, to identify the EPA hazardous waste numbers;

(C)An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); hazard communication consistent with the **[United States]** Department of Transportation requirements at 49 CFR Part 172 Subpart E (labeling) or Subpart F (placarding); a hazard statement or pictogram consistent with the **[United States]** Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704); and

(D)The date each period of accumulation begins.

(ii) Each tank is clearly marked with a description of its contents, the quantity of each hazardous waste received, and the date each period of accumulation begins, or such information for each tank is recorded and maintained in the operating record at that facility. Regardless of whether the tank itself is marked, an owner/operator must comply with the operating record requirements specified in §264.73 or §265.73.

(3) A transporter stores manifested shipments of such wastes at a transfer facility for 10 days or less.

(4)A healthcare facility accumulates such wastes in containers on site solely for the purpose of the accumulation of such quantities of hazardous waste pharmaceuticals as necessary to facilitate proper recovery, treatment, or disposal and the healthcare facility complies with the applicable requirements in §§266.502 and 266.503 of these regulations.

(5)A reverse distributor accumulates such wastes in containers on site solely for the purpose of the accumulation of such quantities of hazardous waste pharmaceuticals as necessary to

facilitate proper recovery, treatment, or disposal and the reverse distributor complies with §266.510 of these regulations.

(b) An owner/operator of a treatment, storage or disposal facility may store such wastes for up to one year unless the Agency can demonstrate that such storage was not solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.

(c) An owner/operator of a treatment, storage or disposal facility may store such wastes beyond one year; however, the owner/operator bears the burden of proving that such storage was solely for the purpose of accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.

(d) If a generator's waste is exempt from a prohibition on the type of land disposal utilized for the waste (for example, because of an approved case-by-case extension under §268.5, an approved §268.6 petition, or a national capacity variance under Subpart C), the prohibition in paragraph (a) of this section does not apply during the period of such exemption.

(e) The prohibition in paragraph (a) of this section does not apply to hazardous wastes that meet the treatment standards specified under §§268.41, 268.42, and 268.43 or the treatment standards specified under the variance in §268.44, or, where treatment standards have not been specified, is in compliance with the applicable prohibitions specified in §268.32 or RCRA Section 3004.

(f) Liquid hazardous wastes containing polychlorinated biphenyls (PCBs) at concentrations greater than or equal to 50 ppm must be stored at a facility that meets the requirements of 40 CFR 761.65(b) and must be removed from storage and treated or disposed as required by this part within one year of the date when such wastes are first placed into storage. The provisions of paragraph (c) of this section do not apply to such PCB wastes prohibited under §268.32 of this part.

(g) The prohibition and requirements in this section do not apply to hazardous remediation wastes stored in a staging pile approved pursuant to §264.554 of these regulations.

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**Section 273.1 Scope.**

(a) This part establishes requirements for managing the following:

(1) Batteries as described in §273.2;
(2) Pesticides as described in §273.3;
(3) Mercury-containing equipment as described in §273.4; ~~and~~
(4) Lamps as described in ~~§273.5.~~ §273.5; and
(5) Aerosol cans as described in §273.6.

(b) This part provides an alternative set of management standards in lieu of regulation under Parts 260 through 272.

*****

**Section 273.3 Applicability-pesticides.**

(a) Pesticides covered under this Part 273. The requirements of this part apply to persons managing pesticides, as described in §273.9, meeting the following conditions, except those listed in paragraph (b) of this section:

(1) Recalled pesticides that are:

(i) Stocks of a suspended and canceled pesticide that are part of a voluntary or mandatory recall under FIFRA Section 19(b), including, but not limited to those owned by the registrant responsible for conducting the recall; or
(ii) Stocks of a suspended or canceled pesticide, or a pesticide that is not in compliance with FIFRA, that are part of a voluntary recall by the registrant.

(2) Stocks of other unused pesticide products that are collected and managed as part of a waste pesticide collection program.

(b) Pesticides not covered under Part 273. The requirements of this part do not apply to persons managing the following pesticides:

(1) Recalled pesticides described in paragraph (a)(1) of this section, and unused pesticide

products described in paragraph (a)(2) of this section, that are managed by farmers in compliance with §262.70. (§262.70 addresses pesticides disposed of on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with §261.7(b)(3));

(2) Pesticides not meeting the conditions set forth in paragraph (a) of this section. These pesticides must be managed in compliance with the hazardous waste regulations in Parts 260 through 268 and ~~122~~ 122, except that aerosol cans as defined in §273.9 that contain pesticides may be managed as aerosol can universal waste under §273.13(e) or §273.33(e);

(3) Pesticides that are not wastes under Part 261 of these regulations, including those that do not meet the criteria for waste generation in paragraph (c) of this section or those that are not wastes as described in paragraph (d) of this section; and

(4) Pesticides that are not hazardous waste. A pesticide is a hazardous waste if it is listed in Part 261, Subpart D or if it exhibits one or more of the characteristics identified in Part 261, Subpart C.

(c) When a pesticide becomes a waste.

(1) A recalled pesticide described in paragraph (a)(1) of this section becomes a waste on the first date on which both of the following conditions apply:

(i) The generator of the recalled pesticide agrees to participate in the recall; and

(ii) The person conducting the recall decides to discard (e.g., burn the pesticide for energy recovery).

(2) An unused pesticide product described in paragraph (a)(2) of this section becomes a waste on the date the generator decides to discard it.

(d) Pesticides that are not wastes. The following pesticides are not wastes:

(1) Recalled pesticides described in paragraph (a)(1) of this section, provided that the person conducting the recall:

(i) Has not made a decision to discard (e.g., burn for energy recovery) the pesticide. Until such a decision is made, the pesticide does not meet the definition of "solid waste" under §261.2; thus the pesticide is not a hazardous waste and is not subject to hazardous waste requirements, including this Part 273. This pesticide remains subject to the requirements of FIFRA; or

(ii) Has made a decision to use a management option that, under §261.2, does not cause the pesticide to be a solid waste (i.e., the selected option is use (other than use constituting disposal) or reuse (other than burning for energy recovery), or reclamation). Such a pesticide is not a solid waste and therefore is not a hazardous waste, and is not subject to the hazardous waste requirements including this Part 273. This pesticide, including a recalled pesticide that is exported to a foreign destination for use or reuse, remains subject to the requirements of FIFRA.

(2) Unused pesticide products described in paragraph (a)(2) of this section, if the generator of the unused pesticide product has not decided to discard (e.g., burn for energy recovery) them. These pesticides remain subject to the requirements of FIFRA.

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**~~Sections 273.6 and 273.7 [Reserved]~~**

**Section 273.6 Applicability – Aerosol Cans**

(a) Aerosol cans covered under this part. The requirements of this part apply to **[~~person~~ persons]** managing aerosol cans as described in §273.9, except those listed in paragraph (b) of this section.

(b) Aerosol cans not covered under this part. The requirements of this part do not apply to persons managing the following types of aerosol cans:

(1) Aerosol cans that are not yet a waste under Part 261 of these regulations. **[Paragraph (c) of this section describes when an aerosol can becomes a waste;]**

(2) Aerosol cans that are not hazardous waste. An aerosol can is a hazardous waste if the aerosol can exhibits one or more of the characteristics identified in Part 261, Subpart C of these regulations or the aerosol can contains a substance that is listed in Part 261, Subpart D of these regulations; and

(3) Aerosol cans that meet the standard for empty containers in §261.7 of these regulations. (c) Generation of waste aerosol cans.

(1) A used aerosol can becomes a waste on the date it is discarded.

(2) An unused aerosol can becomes a waste on the date the handler decides to discard it.

**Section 273.7 [Reserved]**

**~~§273.8~~ Section 273.8 Applicability--Household and ~~conditionally exempt~~ very small quantity generator waste.**

(a) Persons managing the wastes listed below may, at their option, manage them under the requirements of this part:

(1) Household wastes that are exempt under §261.4(b)(1) of these regulations and are also of the same type as the universal wastes defined at §273.9; and/or

(2) ~~Conditionally exempt~~ Very small quantity generator wastes that are exempt under ~~§261.5~~ §262.14 of these regulations and are also of the same type as the universal wastes defined at §273.9.

(b) Persons who commingle the wastes described in paragraphs (a)(1) and (a)(2) of this section together with universal waste regulated under this part must manage the commingled waste under the requirements of this part.

**Section 273.9 Definitions.**

**"Aerosol can"** means a non-refillable receptacle containing a gas compressed, liquefied, or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

**"Ampule"** means an airtight vial made of glass, plastic, metal, or any combination of these materials.

**"Battery"** means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

**"Destination facility"** means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in §273.13(a) and (c) and §273.33(a) and (c). A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

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

**"Generator"** means any person, by site, whose act or process produces hazardous waste identified or listed in Part 261 of these regulations or whose act first causes a hazardous waste to become subject to regulation.

**"Lamp"** also referred to as **"universal waste lamp"** is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

**"Large Quantity Handler of Universal Waste"** means a universal waste handler (as defined in this section) who accumulates 5,000 kilograms or more total of universal waste (batteries, pesticides, mercury-containing equipment, ~~or lamps~~ lamps, or aerosol cans, calculated collectively) at any time. This

designation as a large quantity handler of universal waste is retained through the end of the calendar year in which **[the]** 5,000 kilogram limit is met or exceeded.

**"Mercury-containing Equipment"** means a device or part of a device (including thermostats, but excluding batteries and lamps) that contains elemental mercury integral to its function.

**"On-site"** means the same or geographically contiguous property which may be divided by public or private right-of-way, provided that the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along the right of way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, are also considered on-site property.

**"Pesticide"** means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:
(a) Is a new animal drug under FFDCA section 201(w), or
(b) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or
(c) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (a) or (b) of this **[~~section~~ definition]**.

**"Small Quantity Handler of Universal Waste"** means a universal waste handler (as defined in this section) who does not accumulate 5,000 kilograms or more total of universal waste (batteries, pesticides, mercury-containing equipment, ~~or lamps~~ lamps, or aerosol cans, calculated collectively) at any time.

**"Thermostat"** means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of §273.13(c)(2) or §273.33(c)(2).

**"Universal Waste"** means any of the following hazardous wastes that are subject to the universal waste requirements of this Part 273:
(1) Batteries as described in §273.2;
(2) Pesticides as described in §273.3;
(3) Mercury-containing equipment as described in ~~§273.4 of these regulations; and~~ §273.4;
(4) Lamps as described in ~~§273.5.~~ §273.5; and
(5) Aerosol cans as described in §273.6.

**"Universal Waste Handler":**

(a) Means:
(1) A generator (as defined in this section) of universal waste; or
(2) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.
(b) Does not mean:
(1) A person who treats (except under the provisions of §273.13(a) or (c), or §273.33(a) or (c)), disposes of, or recycles (except under the provisions of §273.13(e) or §273.33(e)) universal waste; or
(2) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

**"Universal Waste Transfer Facility"** means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

**"Universal Waste Transporter"** means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

*****

**Section 273.13 Waste management.**

(a) Universal waste batteries. A small quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but must be immediately closed after removal):

(i) Sorting batteries by type;

(ii) Mixing battery types in one container;

(iii) Discharging batteries so as to remove the electric charge;

(iv) Regenerating used batteries;

(v) Disassembling batteries or battery packs into individual batteries or cells;

(vi) Removing batteries from consumer products; or

(vii) Removing electrolyte from batteries.

(3) A small quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste (e.g., battery pack materials, discarded consumer products) as a result of the activities listed above, must determine whether the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste identified in Part 261, Subpart C.

(i) If the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste, it is subject to all applicable requirements of Parts 260 through 268 and 122. The handler is considered the generator of the hazardous electrolyte and/or other waste and is subject to Part 262.

(ii) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(b) Universal waste pesticides. A small quantity handler of universal waste must manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides must be contained in one or more of the following:

(1) A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(2) A container that does not meet the requirements of paragraph (b)(1) of this Section, provided that the unacceptable container is overpacked in a container that does meet the requirements of paragraph (b)(1) of this section; or

(3) A tank that meets the requirements of Part 265, Subpart J, except for §265.197(c), §265.200, and §265.201; or

(4) A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(c) Mercury-containing equipment. A small quantity handler of universal waste must manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste must place in a container any universal waste mercury-containing equipment with noncontained elemental mercury or that shows evidence of

leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container must be closed, structurally sound, compatible with the contents of the device, must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and must be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.

(2) A small quantity handler of universal waste may remove mercury containing ampules from universal waste mercury-containing equipment provided the handler:

(i) Removes and manages the ampules in a manner designed to prevent breakage of the ampules;

(ii) Removes the ampules only over or in a containment device (e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules from that containment device to a container that **[~~meets the requirements of DRGHW 262.34~~ is subject to all applicable requirements of Parts 260 through 266, 268, and 122 of these regulations]**;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that **[~~meets the requirements of 262.34 of these regulations~~ is subject to all applicable requirements of Parts 260 through 266, 268, and 122 of these regulations]**;

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation;

(3) A small quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler:

(i) Immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and

(ii) Follows all requirements for removing ampules and managing removed ampules under paragraph (c)(2) of this section; and

(4) (i) A small quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing must determine whether the following exhibit a characteristic of hazardous waste identified in the DRGHW Part 261, subpart C:

(A) Mercury or clean-up residues resulting from spills or leaks and/or

(B) Other solid waste generated as a result of the removal of mercury-containing ampules or housings (e.g., the remaining mercury-containing device).

(ii) If the mercury, residues, and/or other solid waste exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of parts 260 through 268 and 122 of these regulations. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it in compliance with DRGHW Part 262.

(iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(d) Lamps. A small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of

the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste must immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the lamps and must lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

(e)Aerosol cans. A small quantity handler of universal waste must manage universal waste **[aerosol]** cans in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1)Universal waste aerosol cans must be accumulated in a container that is structurally sound, compatible with the contents of the aerosol cans, lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and is protected from sources of heat.

(2)Universal waste aerosol cans that show evidence of leakage must be packaged in a separate closed container or overpacked with absorbents, or immediately punctured and drained in accordance with the requirements of paragraph (e)(4) of this section.

(3)A small quantity handler of universal waste may conduct the following activities as long as each individual aerosol can is not breached and remains intact:

(i)Sorting aerosol cans by type;

(ii)Mixing intact aerosol cans in one container; and

(iii)Removing actuators to reduce the risk of accidental release; and

(4)A small quantity handler of universal waste who punctures and drains their aerosol cans must recycle the empty punctured aerosol cans and meet the following requirements while puncturing and draining universal waste aerosol cans:

(i)Conduct puncturing and draining activities using a device specifically designed to safely puncture aerosol cans and effectively contain the residual contents and any emissions thereof.

(ii)Establish and follow a written procedure detailing how to safely puncture and drain the universal waste aerosol can (including proper assembly, operation, and maintenance of the unit, segregation of incompatible wastes, and proper waste management practices to prevent fires or releases); maintain a copy of the manufacturer's specification and instruction on site; and ensure employees operating the device are trained on proper procedures.

(iii)Ensure that puncturing of the can is done in a manner designed to prevent fires and to prevent the release of any component of universal waste to the environment. This manner includes, but is not limited to, locating the equipment on a solid, flat surface in a well-ventilated area.

(iv)Immediately transfer the contents from the waste aerosol can or puncturing device, if applicable, to a container or tank that meets the requirements of §§262.14, 262.15, 262.16, or 262.17 of these regulations.

(v)Conduct a hazardous waste determination on the contents of the emptied aerosol can per §262.11 of these regulations. Any hazardous waste generated as a result of puncturing and draining the aerosol can is subject to all applicable requirements of Parts 260 through 266, 268, 279, and 122 of these regulations. The handler is considered the generator of the hazardous waste and is subject to Part 262 of these regulations.

(iv) If the contents are determined to be non-hazardous, the handler may manage the waste in any way that is in compliance with applicable Federal, state, or local solid waste regulations.

(vii) A written procedure must be in place in the event of a spill or leak and a spill clean-up kit must be provided. All spills or leaks of the contents of the aerosol cans must be cleaned up promptly.

**Section 273.14 Labeling/marking.**

A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

(a) Universal waste batteries (i.e., each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste-Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies);"

(b) A container, (or multiple container package unit), tank, transport vehicle or vessel in which recalled universal waste pesticides as described in §273.3(a)(1) are contained must be labeled or marked clearly with:

(1) The label that was on or accompanied the product as sold or distributed; and

(2) The words "Universal Waste-Pesticide(s)" or "Waste-Pesticide(s);"

(c) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in §273.3(a)(2) are contained must be labeled or marked clearly with:

(1) (i) The label that was on the product when purchased, if still legible;

(ii) If using the labels described in paragraph (c)(1)(i) of this section is not feasible, the appropriate label as required under the Department of Transportation regulation 49 CFR Part 172;

(iii) If using the labels described in paragraphs (c)(1) (i) and (ii) of this section is not feasible, another label prescribed or designated by the waste pesticide collection program administered or recognized by a state; and

(2) The words "Universal Waste-Pesticide(s)" or "Waste-Pesticide(s)."

(d) (1) Universal waste mercury-containing equipment (i.e., each device), or a container in which the equipment is contained, must be labeled or marked clearly with any of the following phrases: "Universal Waste—Mercury Containing Equipment," "Waste Mercury-Containing Equipment," or "Used Mercury-Containing Equipment."

(2) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing **[~~thermostat~~ thermostats]** may be labeled or marked clearly with any of the following phrases: "Universal Waste—Mercury Thermostat(s)," "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s).

(e) Each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: "Universal Waste—Lamp(s)", or "Waste Lamp(s)", or "Used Lamp(s)".

(f)Universal waste aerosol cans (i.e., each aerosol can), or a container in which the aerosol cans are contained, must be labeled or marked clearly with any of the following phrases: "Universal Waste – Aerosol Can(s)," "Waste Aerosol Can(s)," or "Used Aerosol Can(s)."

**~~*****~~**

**Section 273.20 Exports.**

A small quantity handler of universal waste who sends universal waste to a foreign destination ~~other than to those OECD countries specified in §262.58(a)(1) (in which case the handler is subject to the requirements of Part 262, Subpart H) must:~~

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

~~(b) Export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in Subpart E of Part 262 of these regulations; and~~

~~(c)Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.~~ is subject to the requirements of Part 262, Subpart H of these regulations.

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**Section 273.32 Notification.**

(a) (1) Except as provided in paragraphs (a)(2) and (3) of this section, a large quantity handler of universal waste must have sent written notification of universal waste management to the Secretary, and

received an EPA Identification Number, before meeting or exceeding the 5,000 kilogram storage limit.

(2) A large quantity handler of universal waste who has already notified EPA of his hazardous waste management activities and has received an EPA Identification Number is not required to renotify under this section.

(3) A large quantity handler of universal waste who manages recalled universal waste pesticides as described in §273.3(a)(1) and who has sent notification to EPA as required by **[~~Part 265~~ 40 CFR Part 165]** is not required to notify for those recalled universal waste pesticides under this section.

(b) This notification must include:

(1) The universal waste handler's name and mailing address;

(2) The name and business telephone number of the person at the universal waste handler's site who should be contacted regarding universal waste management activities;

(3) The address or physical location of the universal waste management activities;

(4) A list of all the types of universal waste managed by the handler (e.g., batteries, pesticides, mercury-containing equipment, ~~lamps~~ lamps, and aerosol cans); and

(5) A statement indicating that the handler is accumulating more than 5,000 kg of universal waste at one time.

**Section 273.33 Management.**

(a) Universal waste batteries. A large quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but must be immediately closed after removal):

(i) Sorting batteries by type;

(ii) Mixing battery types in one container;

(iii) Discharging batteries so as to remove the electric charge;

(iv) Regenerating used batteries;

(v) Disassembling batteries or battery packs into individual batteries or cells;

(vi) Removing batteries from consumer products; or

(vii) Removing electrolyte from batteries.

(3) A large quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste (e.g., battery pack materials, discarded consumer products) as a result of the activities listed above, must determine whether the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste identified in Part 261, Subpart C.

(i) If the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of Parts 260 through 268 and 122. The handler is considered the generator of the hazardous electrolyte and/or other waste and is subject to Part 262.

(ii) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(b) Universal waste pesticides. A large quantity handler of universal waste must manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides must be contained in one or more of the following:

(1) A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(2) A container that does not meet the requirements of paragraph (b)(1) of this section, provided

that the unacceptable container is overpacked in a container that does meet the requirements of paragraph (b)(1) of this section; or

(3) A tank that meets the requirements of Part 265, Subpart J, except for §§265.197(c), 265.200, and 265.201; or

(4) A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(c) Mercury-containing equipment. A large quantity handler of universal **[~~waster~~ waste]** must manage universal waste mercury-containing equipment in a way that prevents releases of any universal **[~~waster~~ waste]** or component of a universal **[~~waster~~ waste]** to the environment, as follows:

(1) A large quantity handler of universal waste must place in a container any universal waste mercury-containing equipment with noncontained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container must be closed, structurally sound, compatible with the contents of the device, must lack evidence of leakage, spillage, or damage that could cause leadage under reasonably foreseeable conditions, and must be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.

(2) A large quantity handler of universal **[~~waster~~ waste]** may remove mercury-containing ampules from universal waste mercury-containing equipment provided the handler:

(i) Removes and manages the ampules in a manner designed to prevent breakage of the ampules;

(ii) Removes the ampules only over or in a containment device (e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks of broken ampules from that containment device to a container that meets the requirements of ~~262.34~~ Parts 260 through 266, 268, and 122 of these regulations;

(iv) Immediately **[~~transfer~~ transfers]** any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of ~~§262.34~~ Parts 260 through 266, 268, and 122 of these regulations;

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure **[~~level~~ levels]** for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation;

(3) A large quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler:

(i) Immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and

(ii) Follows all requirements for removing ampules and managing removed ampules under paragraph (c)(2) of this section; and

(4) (i) A large quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing must determine whether the following exhibit a characteristic of hazardous waste identified in the DRGHW Part 261, subpart C:

(A) Mercury or clean-up residues resulting from spills or leaks and/or

(B) Other solid waste generated as a result of the removal of mercury-containing ampules or housings (e.g., the remaining mercury-containing device).

(ii) If the mercury, residues, and/or other solid waste exhibits a characteristic of hazardous

waste, it must be managed in compliance with all applicable requirements of **[~~parts~~ Parts]** 260 through 268 and 122 of these regulations. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it in compliance with DRGHW Part 262.

(iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(d) Lamps. A large quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste must immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the lamps and must lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

(e)Aerosol cans. A large quantity handler of universal waste must manage universal waste aerosol cans in a way that prevents releases of any universal waste or component of universal waste to the environment, as follows:

(1)Universal waste aerosol cans must be accumulated in a container that is structurally sound, compatible with the contents of the aerosol cans, lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and is protected from sources of heat.

(2)Universal waste aerosol cans that show evidence of leakage must be packaged in a separate closed container or overpacked with absorbents, or immediately punctured and drained in accordance with the requirements of paragraph (e)(4) of this section.

(3)A large quantity handler of universal waste may conduct the following activities as long as each individual aerosol can is not breached and remains intact:

(i)Sorting aerosol cans by type;

(ii)Mixing intact aerosol cans in one container; and

(iii)Removing actuators to reduce the risk of accidental release; and

(4)A large quantity handler of universal waste who punctures and drains their aerosol cans must recycle the empty punctured aerosol cans and meet the following requirements while puncturing and draining universal waste aerosol cans:

(i)Conduct puncturing and draining activities using a device specifically designed to safely puncture aerosol cans and effectively contain the residual contents and any emissions thereof.

(ii)Establish and follow a written procedure detailing how to safely puncture and drain the universal waste aerosol can (including proper assembly, operation, and maintenance of the unit, segregation of incompatible wastes, and proper waste management practices to prevent fires or releases); maintain a copy of the manufacturer's specification and instruction on site; and ensure employees operating the device are trained in the proper procedures.

(iii)Ensure that puncturing of the can is done in a manner designed to prevent fires and to prevent the release of any component of universal waste to the environment. This includes, but is not limited to, locating the equipment on a solid, flat surface in a well ventilated area.

(iv)Immediately transfer the contents from the waste aerosol can or puncturing device, if applicable, to a container or tank that meets the applicable requirements of §§262.14, 262.15, 262.16, or 262.17 of these regulations.

(v)Conduct a hazardous waste determination on the contents of the emptied can per

§262.11 of these regulations. Any hazardous waste generated as a result of puncturing and draining the aerosol can is subject to all applicable requirements of Parts 260 through 266, 268, 279, and 122 of these regulations. **[The handler is considered the generator of the hazardous waste and is subject to Part 262 of these regulations.]**

(vi)If the contents are determined to be non-hazardous, the handler may manage the waste in any way that is in compliance with applicable Federal, state, or local solid waste regulations.

(vii)A written procedure must be in place in the event of a spill or release and a spill clean-up kit must be provided. All spills or leaks of the contents of the aerosol cans must be cleaned up promptly.

**Section 273.34 Labeling/marking.**

A large quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

(a) Universal waste batteries (i.e., each battery), or a container or tank in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste-Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies);"

(b) A container (or multiple container package unit), tank, transport vehicle or vessel in which recalled universal waste pesticides as described in §273.3(a)(1) are contained must be labeled or marked clearly with:

(1) The label that was on or accompanied the product as sold or distributed; and

(2) The words "Universal Waste-Pesticide(s)" or "Waste-Pesticide(s);"

(c) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in §273.3(a)(2) are contained must be labeled or marked clearly with:

(1) (i) The label that was on the product when purchased, if still legible;

(ii) If using the labels described in paragraph (c)(1)(i) of this section is not feasible, the appropriate label as required under the Department of Transportation regulation 49 CFR Part 172;

(iii) If using the labels described in paragraphs (c)(1)(i) and (1)(ii) of this section is not feasible, another label prescribed or designated by the pesticide collection program; and

(2) The words "Universal Waste-Pesticide(s)" or "Waste-Pesticide(s)."

(d) (1) Mercury-containing equipment (*i.e.*, each device), or a container in which the equipment is contained, must be labeled or marked clearly with any of the following phrases: ''Universal Waste—Mercury Containing Equipment,'' ''Waste Mercury-Containing Equipment,'' or ''Used Mercury-Containing Equipment.''

(2) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Thermostat(s)," "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s)."

(e) Each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with any one of the following phrases: "Universal Waste--Lamp(s)", or "Waste Lamp(s)", or "Used Lamp(s)".

(f)Universal waste aerosol cans (i.e., each aerosol can), or a container in which the aerosol cans are contained, must be labeled or marked clearly with any of the following phrases: "Universal Waste – Aerosol Can(s)," "Waste Aerosol Can(s)," or "Used Aerosol Can(s)."

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**Section 273.39 Tracking universal waste shipments.**

(a) Receipt of shipments. A large quantity handler of universal waste must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, movement document, or other shipping document. The record for each shipment of universal waste received must include the following information:

(1) The name and address of the originating universal waste handler or foreign shipper from whom the universal waste was sent;

(2) The quantity of each type of universal waste received (e.g., batteries, pesticides, thermostats);
(3) The date of receipt of the shipment of universal waste.

(b) Shipments off-site. A large quantity handler of universal waste must keep a record of each shipment of universal waste sent from the handler to other facilities. The record may take the form of a log, invoice, manifest, bill of ~~lading~~ lading, movement document, or other shipping document. The record for each shipment of universal waste sent must include the following information:

(1) The name and address of the universal waste handler, destination facility, or foreign destination to whom the universal waste was sent;
(2) The quantity of each type of universal waste sent (e.g., batteries, pesticides, thermostats);
(3) The date the shipment of universal waste left the facility.

(c) Record retention.

(1) A large quantity handler of universal waste must retain the records described in paragraph (a) of this section for at least three years from the date of receipt of a shipment of universal waste.
(2) A large quantity handler of universal waste must retain the records described in paragraph (b) of this section for at least three years from the date a shipment of universal waste left the facility.

**Section 273.40 Exports.**

A large quantity handler of universal waste who sends universal waste to a foreign destination ~~other than to those OECD countries specified in §262.58(a)(1) (in which case the handler is subject to the requirements of Part 262, Subpart H) must:~~

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

~~(b) Export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in Subpart E of Part 262 of these regulations; and~~
~~(c)Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.~~ is subject to the requirements of Part 262, Subpart H of these regulations.

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**Section 273.56 Exports.**

A universal waste transporter transporting a shipment of universal waste to a foreign destination ~~other than to those OECD countries specified in §262.58(a)(1) (in which case the transporter is subject to the requirements of Part 262, Subpart H) may not accept a shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent. In addition the transporter must ensure that:~~
~~(a) A copy of the EPA Acknowledgment of Consent accompanies the shipment; and~~
~~(b) The shipment is delivered to the facility designated by the person initiating the shipment.~~ is subject to the requirements of Part 262, Subpart H of these regulations.

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**Section 273.62 Tracking universal waste shipments.**

(a) The owner or operator of a destination facility must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, movement document, or other shipping document. The record for each shipment of universal waste received must include the following information:

(1) The name and address of the universal waste handler, destination facility, or foreign shipper from whom the universal waste was sent;
(2) The quantity of each type of universal waste received (e.g., batteries, pesticides, thermostats);
(3) The date of receipt of the shipment of universal waste.

(b) The owner or operator of a destination facility must retain the records described in paragraph (a) of this section for at least three years from the date of receipt of a shipment of universal waste.

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**Section 273.70 Imports.**

Persons managing universal waste that is imported from a foreign country into the United States are

subject to the requirements of Part 262, Subpart H of these regulations and the the applicable requirements of this part, immediately after the waste enters the United States, as indicated in paragraphs (a) through (c) of this section:

(a) A universal waste transporter is subject to the universal waste transporter requirements of Subpart D of this part.

(b) A universal waste handler is subject to the small or large quantity handler of universal waste requirements of Subparts B or C of this part, as applicable.

(c) An owner or operator of a destination facility is subject to the destination facility requirements of Subpart E of this part.

(d)~~Persons managing universal waste that is imported from an OECD country as specified in §262.58(a)(1) are subject to paragraphs (a) through (c) of this section, in addition to the requirements of Part 262, Subpart H.~~

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**Section 273.80 General.**

(a) ~~Any~~ Except as provided in paragraph (d) of this section, any person seeking to add a hazardous waste or a category of hazardous waste to this part may petition for a regulatory amendment under this subpart and §§ 260.20 and 260.23.

(b) To be successful, the petitioner must demonstrate to the satisfaction of the Secretary that regulation under the universal waste regulations of Part 273 is: appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by 260.20(b). The petition should also address as many of the factors listed in 273.81 as are appropriate for the waste or waste category addressed in the petition.

(c) The Secretary will evaluate petitions using the factors listed in §273.81. The Secretary will grant or deny a petition using the factors listed in §273.81. The decision will be based on the weight of evidence showing that regulation under Part 273 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

(d)Hazardous waste pharmaceuticals are regulated by Part 266 Subpart P and may not be added as a category of hazardous waste for management under this part.

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**Section 273.81 Factors for petitions to include other wastes under Part 273.**

(a) The waste or category of waste, as generated by a wide variety of generators, is listed in Subpart D of Part 261 of these regulations, or (if not listed) a proportion of the waste stream exhibits one or more characteristics of hazardous waste identified in Subpart C of Part 261 of these regulations. (When a characteristic waste is added to the universal waste regulations of Part 273 by using a generic name to identify the waste category (e.g., batteries), the definition of universal waste in §260.10 of these regulations and §273.9 will be amended to include only the hazardous waste portion of the waste category (e.g., hazardous waste batteries).) Thus, only the portion of the waste stream that does exhibit one or more characteristics (i.e., is hazardous waste) is subject to the universal waste regulations of this Part 273;

(b) The waste or category of waste is not exclusive to a specific industry or group of industries, is commonly generated by a wide variety of types of establishments (including, for example, households, retail and commercial businesses, office complexes, ~~conditionally exempt~~ very small quantity generators, small businesses, government organizations, as well as large industrial facilities);

(c) The waste or category of waste is generated by a large number of generators (e.g., more than 1,000 nationally) and is frequently generated in relatively small quantities by each generator;

(d) Systems to be used for collecting the waste or category of waste (including packaging, marking, and labeling practices) would ensure close stewardship of the waste;

(e) The risk posed by the waste or category of waste during accumulation and transport is relatively low compared to other hazardous wastes, and specific management standards proposed or referenced by the petitioner (e.g., waste management requirements appropriate to be added to §§ 273.13, 273.33, and 273.52; and/or applicable Department of Transportation requirements) would be protective of human

health and the environment during accumulation and transport;

(f) Regulation of the waste or category of waste under Part 273 will increase the likelihood that the waste will be diverted from non-hazardous waste management systems (e.g., the municipal waste stream, non-hazardous industrial or commercial waste stream, municipal sewer or stormwater systems) to recycling, treatment, or disposal in compliance with Subtitle C of RCRA.

(g) Regulation of the waste or category of waste under Part 273 will improve implementation of and compliance with the hazardous waste regulatory program; and/or

(h) Such other factors as may be appropriate.

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**Section 279.10 Applicability.**

This section identifies those materials which are subject to regulation as used oil under this part. This section also identifies some materials that are not subject to regulation as used oil under this part, and indicates whether these materials may be subject to regulation as hazardous waste under Parts 260 through 266, 268, 122, and 124 of these regulations.

(a) Used oil. DNREC presumes that used oil is to be recycled unless a used oil handler disposes of used oil, or sends used oil for disposal. For the purposes of this part, in order for used oils to be legitimately recycled via an energy recovery process, the used oils must have a minimum energy value of 5,000 BTU/pound; otherwise, used oils sent for thermal treatment cannot be legitimately recycled and are subject to the requirements of Subpart I. Except as provided in §279.11, the regulations of this part apply to used oil, and to materials identified in this section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in Subpart C of Part 261 of these regulations.

(b) Mixtures of used oil and hazardous waste

(1) Listed hazardous waste.

(i) Mixtures of used oil and hazardous waste that is listed in Subpart D of Part 261 of these regulations are subject to regulation as hazardous waste under Parts 260 through 266, 268, 122, and 124 of these regulations, rather than as used oil under this part.

(ii) Rebuttable presumption for used oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Subpart D of Part 261 of these regulations. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix VIII of Part 261 of these regulations).

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described §279.24(c), to reclaim metalworking oils/fluids. The presumption does apply to metal working oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(2) Characteristic hazardous waste. Mixing of used oil and hazardous waste that solely exhibit one or more hazardous waste characteristics identified in Subpart C of Part 261 are prohibited. Such incidental mixtures are subject to regulation as hazardous waste under Parts 260 through 266, 268, 122 and 124 of these regulations.

(3) ~~Conditionally exempt~~ Very small quantity generator hazardous waste. Mixing of used oil and ~~conditionally exempt~~ very small quantity generator hazardous waste regulated under **[~~§261.5~~ §262.14]** of these regulations is prohibited.

Such incidental mixtures are subject to regulation as hazardous waste under Parts 260 through

266, 268, 122 and 124 of these regulations.

(c) Materials containing or otherwise contaminated with used oil.

(1) Except as provided in paragraph (c)(2) of this section, materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:

(i) Are not used oil and thus not subject to this part, and

(ii) If applicable are subject to the hazardous waste regulations of Parts 124, 260 through 266, 268, and 122 of these regulations.

(2) Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under this part.

(3) Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under this part.

(d) Mixtures of used oil with products.

(1) Except as provided in paragraph (d)(2) of this section, mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under this part.

(2) Mixtures of used oil and diesel fuel mixed on-site by the generator of the used oil for use in the generator's own vehicles are not subject to this part once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of Subpart C of this part.

(e) Materials derived from used oil.

(1) Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal (e.g., re-refined lubricants) are:

(i) Not used oil and thus are not subject to this part, and

(ii) Not solid wastes and are thus not subject to the hazardous waste regulations of Parts 260 through 266, 268, 122, and 124 of these regulations as provided in §261.3(c)(2)(i) of these regulations.

(2) Materials produced from used oil that are burned for energy recovery (e.g., used oil fuels) are subject to regulation as used oil under this part.

(3) Except as provided in paragraph (e)(4) of this section, materials derived from used oil that are disposed of or used in a manner constituting disposal are:

(i) Not used oil and thus are not subject to this part, and

(ii) Are solid wastes and thus are subject to the hazardous waste regulations of Parts 260 through 266, 268, 122, and 124 of these regulations if the materials are listed or identified as hazardous waste.

(4) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to this part.

(f) Wastewater. Wastewater, the discharge of which is subject to regulation under either §402 or §307(b) of the Clean Water Act (including wastewaters at facilities which have eliminated the discharge of wastewater), contaminated with de minimis quantities of used oil are not subject to the requirements of this part. For purposes of this paragraph, "de minimis" quantities of used oils are defined as small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception will not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

(g) Used oil introduced into crude oil pipelines or a petroleum refining facility.

(1) Used oil mixed with crude oil or natural gas liquids (e.g., in a production separator or crude oil stock tank) for insertion into a crude oil pipeline is exempt from the requirements of this part. The used oil is subject to the requirements of this part prior to the mixing of used oil with crude oil or natural gas liquids.

(2) Mixtures of used oil and crude oil or natural gas liquids containing less than 1% used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking are exempt from the requirements of this part.

(3) Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of this part provided that the used oil constitutes less than 1% of the crude oil feed to any petroleum refining

facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this part.

(4) Except as provided in paragraph (g)(5) of this section, used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of this part only if the used oil meets the specification of §279.11. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this part.

(5) Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as part of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of this part. This exemption does not extend to used oil which is intentionally introduced into a hydrocarbon recovery system (e.g., by pouring collected used oil into the waste water treatment system).

(6) Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of this part.

(h) Used oil on vessels. Used oil produced on vessels from normal shipboard operations is not subject to this part until it is transported ashore.

(i) Used oil containing PCBs. In addition to the requirements of Part 279, marketers and burners of used oil who market used oil containing any quantifiable level of PCBs are subject to the requirements found at 40 CFR 761.20(e).

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**Section 279.80 Applicability.**

The requirements of this subpart apply to all used oils that cannot be legitimately recycled and are therefore being disposed.

**Section 279.81 Disposal.**

(a) Disposal of hazardous used oils. Used oils that are identified as a hazardous waste and cannot be legitimately recycled in accordance with this part must be managed in accordance with the hazardous waste management requirements of Parts 260 through 266, 268, 122 and 124 of these regulations.

(b) Disposal of nonhazardous used oils. Used oils that are not hazardous wastes and cannot be recycled under this part must be disposed in accordance with the requirements of 40 CFR Parts 257 and 258.

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