

## §261.7

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40 CFR Part 273, or to State requirements analogous to 40 CFR Part 273.

(b) Generators and transporters of recyclable materials are subject to the applicable requirements of parts 262 and 263 of this chapter and the notification requirements under section 3010 of RCRA, except as provided in paragraph (a) of this section.

(c)(1) Owners and 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 124, 266, 268, and 270 of this chapter and the notification requirements under section 3010 of RCRA, 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 section 3010 of RCRA;

(ii) Sections 265.71 and 265.72 (dealing with the use of the manifest and manifest discrepancies) of this chapter.

(iii) Section 261.6(d) of this chapter.

(d) Owners or operators of facilities subject to RCRA permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of subparts AA and BB of part 264 or 265 of this chapter.

[50 FR 49203, Nov. 29, 1985, as amended at 51 FR 28682, Aug. 8, 1986; 51 FR 40637, Nov. 7, 1986; 52 FR 11821, Apr. 13, 1987; 55 FR 25493, June 21, 1990; 56 FR 7207, Feb. 21, 1991; 56 FR 32692, July 17, 1991; 57 FR 41612, Sept. 10, 1992; 59 FR 38545, July 28, 1994; 60 FR 25541, May 11, 1995; 61 FR 16309, Apr. 12, 1996; 61 FR 59950, Nov. 25, 1996; 62 FR 26019, May 12, 1997; 63 FR 24968, May 6, 1998; 63 FR 42185, Aug. 6, 1998; 66 FR 28085, May 22, 2001]

### §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 265, or

part 268, 270 or 124 of this chapter or to the notification requirements of section 3010 of RCRA.

(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 265, and parts 268, 270 and 124 of this chapter and to the notification requirements of section 3010 of RCRA.

(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, 261.32, or 261.33(e) of this chapter 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 110 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 110 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, 261.32, 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 chemical 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 or

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manufacturing chemical intermediate with the container, has been removed.

[45 FR 78529, Nov. 25, 1980, as amended at 47 FR 36097, Aug. 18, 1982; 48 FR 14294, Apr. 1, 1983; 50 FR 1999, Jan. 14, 1985; 51 FR 40637, Nov. 7, 1986]

### § 261.8 PCB wastes regulated under Toxic Substance Control Act.

The disposal of PCB-containing dielectric fluid and electric equipment containing such fluid authorized for use and regulated under part 761 of this chapter and that are hazardous only because they fail the test for the Toxicity Characteristic (Hazardous Waste Codes D018 through D043 only) are exempt from regulation under parts 261 through 265, and parts 268, 270, and 124 of this chapter, and the notification requirements of section 3010 of RCRA.

[55 FR 11862, Mar. 29, 1990]

### § 261.9 Requirements for Universal Waste.

The wastes listed in this section are exempt from regulation under parts 262 through 270 of this chapter except as specified in part 273 of this chapter and, therefore are not fully regulated as hazardous waste. The wastes listed in this section are subject to regulation under 40 CFR part 273:

- (a) Batteries as described in 40 CFR 273.2;
- (b) Pesticides as described in § 273.3 of this chapter;
- (c) Thermostats as described in § 273.4 of this chapter; and
- (d) Lamps as described in § 273.5 of this chapter.

[60 FR 25541, May 11, 1995, as amended at 64 FR 36487, July 6, 1999]

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

### § 261.10 Criteria for identifying the characteristics of hazardous waste.

- (a) The Administrator shall identify and define a characteristic of hazardous waste in subpart C only upon determining that:
  - (1) A solid waste that exhibits the characteristic may:

- (i) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

- (ii) Pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed of or otherwise managed; and

- (2) The characteristic can be:

- (i) Measured by an available standardized test method which is reasonably within the capability of generators of solid waste or private sector laboratories that are available to serve generators of solid waste; or

- (ii) Reasonably detected by generators of solid waste through their knowledge of their waste.

- (b) [Reserved]

### § 261.11 Criteria for listing hazardous waste.

- (a) The Administrator shall list a solid waste as a hazardous waste only upon determining that the solid waste meets one of the following criteria:

- (1) It exhibits any of the characteristics of hazardous waste identified in subpart C.

- (2) It has been found to be fatal to humans in low doses or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD 50 toxicity (rat) of less than 50 milligrams per kilogram, an inhalation LC 50 toxicity (rat) of less than 2 milligrams per liter, or a dermal LD 50 toxicity (rabbit) of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible, illness. (Waste listed in accordance with these criteria will be designated Acute Hazardous Waste.)

- (3) It contains any of the toxic constituents listed in appendix VIII and, after considering the following factors, the Administrator concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed:

- (i) The nature of the toxicity presented by the constituent.
    - (ii) The concentration of the constituent in the waste.