

Comparison of New and Old Requirements in Hazardous Waste Generator Improvements Rule

262.11 Hazardous Waste Determination and Recordkeeping	
New - 262.11	Old - 262.11
<p>A person who generates a solid waste, as defined in 40 CFR 261.2, must <u>make an accurate determination as to whether that waste is a hazardous waste in order to ensure wastes are properly managed according to applicable RCRA regulations. A hazardous waste determination is made using the following steps:</u></p>	<p>A person who generates a solid waste, as defined in 40 CFR 261.2, must <u>determine if that waste is a hazardous waste using the following method:</u></p>
<p>(a) <u>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 RCRA classification of the waste may change.</u></p>	
<p>(b) <u>A person must determine whether the solid waste is excluded from regulation under 40 CFR 261.4.</u></p>	<p>(a) <u>He should first determine if the waste is excluded from regulation under 40 CFR 261.4.</u></p>
<p>(c) <u>If the waste is not excluded under 40 CFR 261.4, the person must then use knowledge of the waste to determine whether the waste meets any of the listing descriptions under subpart D of 40 CFR part 261. 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 40 CFR 260.20 and 260.22 to demonstrate to the Administrator that the waste from this particular site or operation is not a hazardous waste.</u></p>	<p>(b) <u>He must then determine if the waste is listed as a hazardous waste in subpart D of 40 CFR part 261.</u></p>

<p>(d) <u>The person then must also determine whether the waste exhibits one or more hazardous characteristics as identified in subpart C of 40 CFR part 261 by following the procedures in paragraph (d)(1) or (2) of this section, or a combination of both.</u></p> <p>(1) <u>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 subpart C of 40 CFR part 261, or an equivalent test method approved by the Administrator under 40 CFR 260.21, 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 40 CFR 260.10.</u></p>	<p>(c) <u>For purposes of compliance with 40 CFR part 268, or if the waste is not listed in subpart D of 40 CFR part 261, the generator must then determine whether the waste is identified in subpart C of 40 CFR part 261 by either:</u></p> <p>(1) <u>Testing</u> the waste according to the methods set forth in subpart C of 40 CFR part 261, or according to an equivalent method approved by the Administrator under 40 CFR 260.21; or</p> <p>(2) <u>Applying</u> knowledge of the hazard characteristic of the waste in light of the materials or the processes used.</p>
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262.11 continued

New - 262.11

Old - 262.11

<p><i>262.11(d) (continued)</i></p> <p>(2) <u>When available knowledge is inadequate to make an accurate determination, the person must test the waste according to the applicable methods set forth in subpart C of 40 CFR part 261 or according to an equivalent method approved by the Administrator under 40 CFR 260.21 and in accordance with the following:</u></p> <p>(i) <u>Persons testing their waste must obtain a representative sample of the waste for the testing, as defined in 40 CFR 260.10.</u></p> <p>(ii) <u>Where a test method is specified in subpart C of 40 CFR part 261, the results of the regulatory test, when properly performed, are definitive for determining the regulatory status of the waste.</u></p>	
<p>(e) If the waste is determined to be hazardous, the generator must refer to parts 261, 264, 265, 266, 267, 268, and 273 of this chapter for other possible exclusions or restrictions pertaining to management of the specific waste.</p>	<p>(d) If the waste is determined to be hazardous, the generator must refer to parts 261, 264, 265, 266, 267, 268, and 273 of this chapter for possible exclusions or restrictions pertaining to management of the specific waste.</p>

<p>(f) <u>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 40 CFR 261.3. 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 at 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 at 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 Administrator.</u></p>	
<p>(g) <u>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 subpart C and D of part 261 of this chapter 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.</u></p>	
<p>Comparison of New 262.13 to Old 261.5 - Generator Category Determination & Waste Counting</p>	
<p>New -262.13</p>	<p>Old - 261.5</p>
<p><u>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 this chapter.</u></p>	

262.13 (a) & (b)

- (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.

262.13 (c)

- (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 40 CFR 261.4(c) through (f), 261.6(a)(3), 261.7(a)(1), or 261.8;

261.5(c)

- (c) When making the quantity determinations of this part and 40 CFR part 262, the generator must include all hazardous waste that it generates, except hazardous waste that:
- (1) Is exempt from regulation under 40 CFR 261.4(c) through (f), 261.6(a)(3), 261.7(a)(1), or 261.8; or

Comparison of New 262.13 to Old 261.5 -Generator Category Determination & Waste Counting (continued)

New - 262.13

Old - 261.5

262.13(c) continued

- (2) Is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in 40 CFR 260.10;

- (3) Is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under 40 CFR 261.6(c)(2);

- (4) Is used oil managed under the requirements of 40 CFR 261.6(a)(4) and 40 CFR part 279;

- (5) Is spent lead-acid batteries managed under the requirements of 40 CFR part 266 subpart G;

- (6) Is universal waste managed under 40 CFR 261.9 and 40 CFR part 273;

- (7) Is a hazardous waste that is an unused commercial chemical product (listed in 40 CFR part 261 subpart D or exhibiting one or more characteristics in 40 CFR part 261 subpart C) that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity pursuant to § 262.213. For purposes of this provision, the term eligible academic entity shall have the meaning as defined in § 262.200; 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 40 CFR 260.10; or
- (3) Is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under 40 CFR 261.6(c)(2); or
- (4) Is used oil managed under the requirements of 40 CFR 261.6(a)(4) and 40 CFR part 279; or
- (5) Is spent lead-acid batteries managed under the requirements of 40 CFR part 266, subpart G; or
- (6) Is universal waste managed under 40 CFR 261.9 and 40 CFR part 273;
- (7) Is a hazardous waste that is an unused commercial chemical product (listed in 40 CFR part 261, subpart D or exhibiting one or more characteristics in 40 CFR part 261, subpart C) that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity pursuant to §262.213. For purposes of this provision, the term eligible academic entity shall have the meaning as defined in §262.200 of Part 262.

(8) Is managed as part of an episodic event in compliance with the conditions of subpart L of this part.