

Environmental Protection Agency

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public hearing to challenge the decision. Upon receiving such a request, the Regional Administrator will hold a public hearing. The Regional Administrator will provide notice of the hearing to the public and allow public participation at the hearing. The Regional Administrator will issue a final order after the hearing stating whether or not compliance with part 262 is required. The order becomes effective 30 days after service of the decision unless the Regional Administrator specifies a later date or unless review by the Administrator is requested. The order may be appealed to the Administrator by any person who participated in the public hearing. The Administrator may choose to grant or to deny the appeal. Final Agency action occurs when a final order is issued and Agency review procedures are exhausted.

(b) If the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of parts 270 and 124 of this chapter. The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the Regional Administrator's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the Agency's determination. The question of whether the Regional Administrator's decision was proper will remain open for consideration during the public comment period discussed under §124.11 of this chapter and in any subsequent hearing.

[50 FR 663, Jan. 4, 1985, as amended at 71 FR 40258, July 14, 2006]

§ 260.42 Notification requirement for hazardous secondary materials.

(a) Facilities managing hazardous secondary materials under §§260.30, 261.4(a)(23), 261.4(a)(24), 261.4(a)(25), or 261.4(a)(27) must send a notification prior to operating under the regulatory provision and by March 1 of each even-numbered year thereafter to the Re-

gional Administrator using EPA Form 8700-12 that includes the following information:

- (1) The name, address, and EPA ID number (if applicable) of the facility;
- (2) The name and telephone number of a contact person;
- (3) The NAICS code of the facility;
- (4) The regulation under which the hazardous secondary materials will be managed;
- (5) For reclaimers and intermediate facilities managing hazardous secondary materials in accordance with §261.4(a)(24) or (25), whether the reclaimer or intermediate facility has financial assurance (not applicable for persons managing hazardous secondary materials generated and reclaimed under the control of the generator);
- (6) When the facility began or expects to begin managing the hazardous secondary materials in accordance with the regulation;
- (7) A list of hazardous secondary materials that will be managed according to the regulation (reported as the EPA hazardous waste numbers that would apply if the hazardous secondary materials were managed as hazardous wastes);
- (8) For each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land-based unit;
- (9) The quantity of each hazardous secondary material to be managed annually; and
- (10) The certification (included in EPA Form 8700-12) signed and dated by an authorized representative of the facility.

(b) If a facility managing hazardous secondary materials has submitted a notification, but then subsequently stops managing hazardous secondary materials in accordance with the regulation(s) listed above, the facility must notify the Regional Administrator within thirty (30) days using EPA Form 8700-12. For purposes of this section, a facility has stopped managing hazardous secondary materials if the facility no longer generates, manages and/or reclaims hazardous secondary materials under the regulation(s) above and does not expect to manage any amount

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of hazardous secondary materials for at least 1 year.

[73 FR 64759, Oct. 30, 2008, as amended at 80 FR 1772, Jan. 13, 2015; 83 FR 24667, May 30, 2018]

§ 260.43 Legitimate recycling of hazardous secondary materials.

(a) Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste regulations must be legitimate. Hazardous secondary material that is not legitimately recycled is discarded material and is a solid waste. In determining if their recycling is legitimate, persons must address all the requirements of this paragraph and must consider the requirements of paragraph (b) of this section.

(1) Legitimate recycling must involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process. The hazardous secondary material provides a useful contribution if it:

- (i) Contributes valuable ingredients to a product or intermediate; or
- (ii) Replaces a catalyst or carrier in the recycling process; or
- (iii) Is the source of a valuable constituent recovered in the recycling process; or
- (iv) Is recovered or regenerated by the recycling process; or
- (v) Is used as an effective substitute for a commercial product.

(2) The recycling process must produce a valuable product or intermediate. The product or intermediate is valuable if it is:

- (i) Sold to a third party; or
- (ii) Used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.

(3) The generator and the recycler must manage the hazardous secondary material as a valuable commodity when it is under their control. Where there is an analogous raw material, the hazardous secondary material must be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material, the hazardous sec-

ondary material must be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.

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

(1) The product of the recycling process does not:

- (i) Contain significant concentrations of any hazardous constituents found in appendix VIII of part 261 that are not found in analogous products; or
- (ii) Contain concentrations of hazardous constituents found in appendix VIII of part 261 at levels that are significantly elevated from those found in analogous products, or
- (iii) Exhibit a hazardous characteristic (as defined in part 261 subpart C) that analogous products do not exhibit.

(2) In making a determination that a hazardous secondary material is legitimately recycled, persons must evaluate all factors and consider legitimacy as a whole. If, after careful evaluation of these considerations, the factor in this paragraph is not met, then this fact may be an indication that the material is not legitimately recycled. However, the factor in this paragraph does not have to be met for the recycling to be considered legitimate. In evaluating the extent to which this factor is met and in determining whether a process that does not meet this factor is still legitimate, persons can consider exposure from toxics in the product, the bioavailability of the toxics in the product and other relevant considerations.

(c) [Reserved]

[73 FR 64759, Oct. 30, 2008, as amended at 80 FR 1772, Jan. 13, 2015; 83 FR 24667, May 30, 2018]

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Subpart A—General

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- 261.2 Definition of solid waste.
- 261.3 Definition of hazardous waste.
- 261.4 Exclusions.
- 261.5 [Reserved]