

**§261.8**

EFFECTIVE DATE NOTE: At 70 FR 10815, Mar. 4, 2005, §261.7 was amended by revising paragraph (b)(1)(iii), effective Sept. 6, 2005. For the convenience of the user, the revised text is set forth as follows:

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

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(b)(1) \* \* \*

(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.

**§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]

**40 CFR Ch. I (7-1-05 Edition)**

**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.)

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(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.

(iii) The potential of the constituent or any toxic degradation product of the constituent to migrate from the waste into the environment under the types of improper management considered in paragraph (a)(3)(vii) of this section.

(iv) The persistence of the constituent or any toxic degradation product of the constituent.

(v) The potential for the constituent or any toxic degradation product of the constituent to degrade into non-harmful constituents and the rate of degradation.

(vi) The degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems.

(vii) The plausible types of improper management to which the waste could be subjected.

(viii) The quantities of the waste generated at individual generation sites or on a regional or national basis.

(ix) The nature and severity of the human health and environmental damage that has occurred as a result of the improper management of wastes containing the constituent.

(x) Action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent.

(xi) Such other factors as may be appropriate.

Substances will be listed on appendix VIII only if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms.

(Wastes listed in accordance with these criteria will be designated Toxic wastes.)

(b) The Administrator may list classes or types of solid waste as hazardous

waste if he has reason to believe that individual wastes, within the class or type of waste, typically or frequently are hazardous under the definition of hazardous waste found in section 1004(5) of the Act.

(c) The Administrator will use the criteria for listing specified in this section to establish the exclusion limits referred to in §261.5(c).

[45 FR 33119, May 19, 1980, as amended at 55 FR 18726, May 4, 1990; 57 FR 14, Jan. 2, 1992]

### Subpart C—Characteristics of Hazardous Waste

#### § 261.20 General.

(a) A solid waste, as defined in §261.2, which is not excluded from regulation as a hazardous waste under §261.4(b), is a hazardous waste if it exhibits any of the characteristics identified in this subpart.

[ *Comment:* §262.11 of this chapter sets forth the generator's responsibility to determine whether his waste exhibits one or more of the characteristics identified in this subpart.]

(b) A hazardous waste which is identified by a characteristic in this subpart is assigned every EPA Hazardous Waste Number that is applicable as set forth in this subpart. This number must be used in complying with the notification requirements of section 3010 of the Act and all applicable record-keeping and reporting requirements under parts 262 through 265, 268, and 270 of this chapter.

(c) For purposes of this subpart, the Administrator will consider a sample obtained using any of the applicable sampling methods specified in appendix I to be a representative sample within the meaning of part 260 of this chapter.

[ *Comment:* Since the appendix I sampling methods are not being formally adopted by the Administrator, a person who desires to employ an alternative sampling method is not required to demonstrate the equivalency of his method under the procedures set forth in §§260.20 and 260.21.]

[45 FR 33119, May 19, 1980, as amended at 51 FR 40636, Nov. 7, 1986; 55 FR 22684, June 1, 1990; 56 FR 3876, Jan. 31, 1991]