ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS requirements of CAA sections 110(a)(2)(A), (B), (C) (enforcement program only), (D)(i)(II) prong 4 (visibility), (E), (F), (G), (H), (J) (consultation and public notification only), (K), (L), and (M).

* * * * *

(b) * * *

(1) * * * Submittal from New Jersey dated October 17, 2014, as supplemented on March 15, 2017, to address the CAA infrastructure requirements of section 110(a)(2) for the 2008 Lead, 2008 8-hour ozone, 2010 NO_2, 2010 SO_2, 2012 $PM_{2.5}$, 2006 PM_{10}, and 2011 CO NAAQS is approved for (A), (B), (C) (enforcement program only), (E), (F), (G), (H), (J) (consultation and public notification only), (K), (L), and (M).

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[FR Doc. 2018–10801 Filed 5–29–18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 and 261

[EPA–HQ–OLEM–2018–0185; FRL–9977–56–OLEM]

Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is revising regulations associated with the definition of solid waste under the Resource Conservation and Recovery Act. These revisions implement vacaturs ordered by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit), on July 7, 2017, as modified on March 6, 2018.

DATES: This final rule is effective on May 30, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OLEM–2018–0185. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center. See *https://www.epa.gov/dockets/epa-docket-center-reading-room* for more information on the Public Reading Room.

FOR FURTHER INFORMATION CONTACT: Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, MC 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460, Tracy Atagi, at (703) 308–8672, (*atagi.tracy@epa.gov*).

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. General Information

A. Does this action apply to me?

This final rule applies to facilities that generate or recycle hazardous secondary materials (HSM). According to the revisions to the definition of solid waste promulgated in 2015, entities potentially affected by the original rule include over 5,000 industrial facilities in 634 industries (at the 6-digit North American Industry Classification System (NAICS) code level).[1] Most of these 634 industries have relatively few entities that are potentially affected. The top-5 economic sectors (at the 2-digit NAICS code level) with the largest number of potentially affected entities are as follows: (1) 41% in NAICS code 33—the manufacturing sector, which consists of metals, metal products, machinery, computer & electronics, electrical equipment, transportation equipment, furniture, and miscellaneous manufacturing subsectors, (2) 23% in NAICS code 32—the manufacturing sector, which consists of wood products, paper, printing, petroleum & coal products, chemicals plastics & rubber products, and nonmetallic mineral products manufacturing subsectors, (3) 3.0% in NAICS code 92—the public administration sector, (4) 2.9% in NAICS code 61—the educational services sector, and (5) 2.8% in NAICS code 54—the professional, scientific and technical services sector.

[1] 80 FR 1694/2, January 13, 2015.

B. Why is EPA issuing a final rule?

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for revising these provisions without prior proposal and opportunity for comment, because these revisions simply undertake the ministerial task of implementing court orders vacating these rules and reinstating the prior versions. As a matter of law, the orders issued by the United States Court of Appeals for the District of Columbia Circuit on July 7, 2017 and amended on March 6, 2018, (1) vacated the 2015 verified recycler exclusion for hazardous waste that is recycled off-site (except for certain provisions); (2) reinstated the transfer-based exclusion from the 2008 rule to replace the now-vacated 2015 verified recycler exclusion; (3) upheld the containment and emergency preparedness provisions of the 2015 rule; (4) vacated Factor 4 of the 2015 definition of legitimate recycling in its entirety; and (5) reinstated the 2008 version of Factor 4 to replace the now-vacated 2015 version of Factor 4.[2] It is, therefore, unnecessary to provide notice and an opportunity for comment on this action, which merely carries out the court's orders.

In addition, EPA finds that it has good cause to make the revisions immediately effective under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), and section 3010(b) of RCRA, 42 U.S.C. 6930(b). Section 553(d) provides that final rules shall not become effective until 30 days after publication in the **Federal Register**, ''except . . . as otherwise provided by the agency for good cause,'' among other exceptions. The purpose of this provision is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *FCC,* 78 F.3d 620, 630 (D.C. Cir. 1996); *see also United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). Thus, in determining whether good cause exists to waive the 30-day delay, an agency should ''balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time

[2] *API* v. *EPA,* 862 F.3d 50 (DC Cir. 2017), *reh'g granted,* No. 09–1038, 2018 U.S. App. LEXIS 5613 (DC Cir. Mar. 6, 2018).

to prepare for the effective date of its ruling.'' *Gavrilovic,* 551 F.2d at 1105. EPA has determined that there is good cause for making this final rule effective immediately because this action merely implements court orders that vacate certain regulatory provisions and reinstate the prior versions. The court issued the mandate for its decision on March 14, 2018, at which point the orders became effective. Delaying the effectiveness of this rulemaking would lengthen the period between the change in the law (*i.e.,* the court's mandate) and the corresponding update to the regulations. Minimizing that time period should reduce the possibility of confusion for the regulated community, state and local governments, and the public. Moreover, the Agency believes that delaying the effectiveness of this rule would not offer any benefits. As a result, EPA is making this rule immediately effective.

II. Statutory Authority

These regulations are promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3006, 3010, and 3017 of the Solid Waste Disposal Act of 1965, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) This statute is commonly referred to as ''RCRA.''

III. Which regulations is EPA removing and replacing?

A. Removal of the 2015 Verified Recycler Exclusion and Reinstatement of the 2008 Transfer-Based Exclusion, With Modifications

In the 2015 DSW rule, EPA replaced the 2008 DSW rule transfer-based exclusion found at 40 CFR 261.4(a)(24)–(25) with the verified recycler exclusion, found at 40 CFR 261.4(a)(24).[3] (The goal of both exclusions was to exempt from regulation off-site recycling of hazardous waste when certain conditions are met). In promulgating the 2015 verified recycler exclusion EPA made four key changes to the language of the 2008 transfer-based exclusion: (1) Removed a prohibition that had made certain spent petroleum catalysts (hazardous waste codes K171 and K172) ineligible for the new recycling exclusions (*i.e.,* these materials became eligible under the 2015 exclusion); (2) added a specific ''contained'' standard for the management of the materials prior to being recycled; (3) added emergency preparedness and response requirements; and (4) replaced a requirement for generators to make a ''reasonable effort'' to audit the recycling facility prior to sending their material to be recycled with a requirement that the recycling facility obtain a variance from the regulations prior to accepting the recyclable materials.

In its decisions vacating the 2015 verified recycler exclusion and ordering the reinstatement of the 2008 transfer-based exclusion, the court found that the first three provisions noted above were severable from the rest of the verified recycler exclusion and would not be affected by the vacatur. Instead, these provisions are retained in the reinstated transfer-based exclusion found in the revised version of 40 CFR 261.4(a)(24) being finalized with this action. In addition, the export requirements for the transfer-based exclusion found at 40 CFR 261.4(a)(25) are also reinstated.[4] Finally, the following conforming changes are made in response to the vacatur of the verified recycler exclusion and reinstatement of the transfer-based exclusion (1) references to the verified recycler variance process are removed from 40 CFR 260.30 and 40 CFR 260.31, (2) the reference to the financial assurance notification requirement reinstated under the transfer-based exclusion is added back into 40 CFR 260.42(a)(5), and (3) the language in 40 CFR 261.4(a)(25) is updated to reflect the fact that subsequent to the 2015 withdrawal of the transfer-based exclusion, the applicable export definitions were moved to 40 CFR 262.81, and the paper submittal of RCRA export notices and export annual reports was replaced with electronic submittal via EPA's Waste Import Export Tracking System (WIETS). (81 FR 85696, November 28, 2016; 82 FR 41015, August 29, 2017).

B. Removal of the 2015 Factor Four in the Definition of Legitimate Recycling and Reinstatement of the 2008 Factor Four

In the 2015 DSW rule, EPA revised the definition of legitimate recycling found at 40 CFR 260.43, which was originally promulgated in the 2008 DSW rule. In both the 2008 and 2015 versions of the regulation, the legitimacy provision was designed to distinguish between real recycling activities—legitimate recycling—and ''sham'' recycling, an activity undertaken by an entity to avoid the requirements of managing a hazardous secondary material as a hazardous waste. This provision represented the codification of a long-standing policy prohibiting sham recycling which had previously been applied via **Federal Register** preamble and guidance documents, most notably through the 1989 ''Lowrance memo'' which discussed over a dozen factors to be considered.

The existing policy in that 1998 memo was condensed and codified into regulation in 2008 as four separate factors, summarized as follows. Factor 1 addresses the concept that legitimate recycling involves a hazardous secondary material that provides a useful contribution to the recycling process, or to a product or intermediate of the recycling process. Factor 2 addresses the concept that the legitimate recycling process produces a valuable product or intermediate. Factor 3 addresses the concept that under legitimate recycling, the generator and the recycler manages the hazardous secondary material as a valuable commodity when it is under their control. Factor 4 addresses the concept that the product of the recycling process is comparable to a legitimate product or intermediate in terms of hazardous constituents or characteristics. Under the 2008 rule, the first two factors had to be satisfied while the latter two factors had to be considered. In addition, the codified legitimacy test only applied to the then-new Generator-Controlled and Transfer-based exclusions, and to non-waste determinations under 260.34. *See* 40 CFR 260.43(b), (c) (2008).

The 2015 revisions made the following changes to the four legitimacy factors: (1) All four factors were made to apply to all excluded recycling, including recycling exclusions that predated the 2008 rule (2) Factors 3 and 4 became mandatory factors (in the 2008 rule, they were merely factors to be ''considered''), and (3) the substance of Factors 3 and 4 changed to add flexibility since the factors had become mandatory.

In its decisions, the Court vacated Factor 4, but left in place all other 2015 changes to the legitimacy factors. The net result is as follows: (1) The 2015 version of Factor 4 is vacated in its entirety; (2) the 2015 change making the legitimacy factors applicable to all exclusions remains; (3) Factor 3 remains mandatory per the 2015 changes; and (4) the 2008 version of Factor 4 (which

[3] The **Federal Register** citation for the ''2015 DSW rule'' is 80 FR 1694, January 13, 2015, and for the ''2008 DSW rule'' is 73 FR 64668, October 30, 2008.

[4] The court characterized the 2008 transfer-based exclusion this way: ''EPA adopted the first edition, the Transfer-Based Exclusion, as part of its 2008 Rule . . . previously codified at 40 CFR 261.4(a)(24)–(25) (2014).'' *API,* 862 F.3d at 64. The court's citation encompasses both the domestic (*i.e.,* paragraph (a)(24) and export (*i.e.,* paragraph (a)(25)) parts of the exclusion. The court then concluded that ''the [2008] Transfer-Based Exclusion is reinstated.'' *Id.* at 75. Consequently, this action includes both paragraphs (a)(24) and (25).

requires only that the factor be ''considered'') replaces the now-vacated 2015 version. In addition, a reference in 40 CFR 261.4(a)(23)(ii)(E) requiring documentation of how ''all four factors in 40 CFR 260.43(a) are met'' has been revised to conform with the court decisions.

IV. When will the final rule become effective?

The revisions to 40 CFR 260.42, 40 CFR 260.43, 40 CFR 261.4(a)(23) and 40 CFR 261.4(a)(24); the reinstatement of 261.4(a)(25), and the removal of 40 CFR 260.30(f) and 260.31(d) are effective immediately.

V. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize a qualified state to administer and enforce a hazardous waste program within the state in lieu of the federal program, and to issue and enforce permits in the state. A state may receive authorization by following the approval process described in 40 CFR 271.21 (see 40 CFR part 271 for the overall standards and requirements for authorization). EPA continues to have independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. An authorized state also continues to have independent authority to bring enforcement actions under state law.

After a state receives initial authorization, new federal requirements and prohibitions promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts and receives authorization for equivalent state requirements. In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new federal requirements and prohibitions promulgated under HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized states. As such, EPA carries out the HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so.

Authorized states are required to modify their programs only when EPA enacts federal requirements that are more stringent or broader in scope than existing federal requirements. Under RCRA section 3009, states may impose standards that are more stringent than those in the federal program (see also 40 CFR 271.1(i)). Therefore, authorized states are not required to adopt new federal regulations that are considered less stringent than previous federal regulations or that narrow the scope of the RCRA program. Previously authorized hazardous waste regulations would continue to apply in those states that do not adopt ''deregulatory'' rules.

B. Effect on State Authorization of D.C. Circuit Court Vacaturs

On March 14, 2018, the D.C. Circuit Court issued its mandate, effectuating the vacaturs as described earlier in this document. The court's vacaturs mean that the vacated provisions of these federal rules are legally null and void and the corresponding regulatory requirements that were previously in effect are reinstated as if the vacated parts of the rules never existed. At the federal level, because the effect of the vacaturs means, in essence, that the vacated provisions of these rules should not have been promulgated, this **Federal Register** action serves to remove the vacated provisions from the federal regulations and replaces them with the regulations that were previously in effect. At the state level, because no state rules were challenged in the litigation, the court decision does not directly affect any state regulations. However, the vacaturs do have an impact on the authorization status of state regulations. The multiple scenarios that exist in the states are discussed below.

1. States Without Final RCRA Authorization

For states and territories that have no RCRA authorization, the vacaturs mean that the reinstated federal rules are now effect in those states and this **Federal Register** action alerts interested parties of the removal of the vacated parts of the rules from the Code of Federal Regulations and their replacement with the previously promulgated provisions.

2. States That Have Final Authorization But Did Not Promulgate Similar Rules

For states and territories that have RCRA authorization but did not adopt the 2015 verified recycler exclusion (and therefore were not authorized for the exclusion), these states are not required to adopt or become authorized for the transfer-based exclusion being reinstated today because the transfer-based exclusion is less stringent than full Subtitle C hazardous waste regulation.

However, states and territories that have RCRA authorization but have not adopted the 2015 definition of legitimate recycling at 40 CFR 260.43 are required to adopt and become authorized for a definition of legitimate recycling that is equivalent to and at least as stringent as the definition being promulgated today.

3. States That Adopted Similar Rules But Are Not Yet Authorized for Them

For states that have adopted rules similar to the verified recycler exclusion and the 2015 definition of legitimate recycling, but have not yet been authorized for them, the vacatur of the federal rules will not change the authorization status of the state programs. The authorization status that was established prior to the adoption of the state counterpart rules remains in effect. The vacaturs and subsequent reinstatement of various provisions of the prior federal rules will result in state provisions that are broader in scope than the federal program as it pertains to the specific vacated provisions.

4. States That Adopted Similar Rules and Have Been Authorized for Them

For states that have previously been authorized for rules similar to the verified recycler exclusion and the 2015 definition of legitimate recycling, and have been authorized for them, the effect of the vacaturs is that those previously-authorized state provisions will be considered broader in scope than the federally program as it pertains to the specific vacated provisions.

VI. Statutory and Executive Order (E.O.) Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), the Office of Management and Budget (OMB) waived review of this action. Because this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments. This action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (65 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). Because this final rule is not a significant regulatory action under Executive Order 12866, this final rule is not subject to Executive Order 13771, entitled Reducing Regulations and Controlling Regulatory Costs; Executive Order 13211, entitled Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001); or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This action does not require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

A. Paperwork Reduction Act (PRA)

To implement the court vacatur, EPA submitted an emergency ICR amendment to OMB with OMB control number 2050–0202 (EPA ICR Number 2310.05). You can find a copy of the ICR amendment in the docket for this rule. The ICR amendment reflects changes due to the vacatur, which are expected to affect a total of 105 facilities, resulting in a total net burden reduction of 2,122 hours and $26,132.21 per year. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

B. Congressional Review Act (CRA)

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Because this final action only implements the court vacatur, and the Agency has made a good cause finding that notice and comment is unnecessary, it is not subject to the Congressional Review Act.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Solid waste.

Dated: May 23, 2018.

E. Scott Pruitt,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

§ 260.30 [Amended]

■ 2. Section 260.30 is amended by removing paragraph (f).

§ 260.31 [Amended]

■ 3. Section 260.31 is amended by removing paragraph (d).

■ 4. Section 260.42 is amended by revising paragraph (a) to read as follows:

§ 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 Regional 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.

■ 5. Section 260.43 is amended by revising paragraph (a) and adding paragraph (b) to read as follows:

§ 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 secondary 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.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 6. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

Subpart A—General

■ 7. Section 261.4 is amended as follows:

■ a. Republish paragraph (a) introductory text;

■ b. Revise paragraphs (a)(23) introductory text, (a)(23)(ii), and (a)(24); and

■ c. Add paragraph (a)(25).

The revisions and additions read as follows:

§ 261.4 Exclusions.

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

* * * * *

(23) Hazardous secondary material generated and legitimately reclaimed within the United States or its territories and under the control of the generator, provided that the material complies with paragraphs (a)(23)(i) and (ii) of this section:

* * * * *

(ii)(A) The hazardous secondary material is contained as defined in § 260.10 of this chapter. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of reclamation. Hazardous secondary material managed in a unit with leaks or other continuing or intermittent unpermitted releases is discarded and a solid waste.

(B) The hazardous secondary material is not speculatively accumulated, as defined in § 261.1(c)(8).

(C) Notice is provided as required by § 260.42 of this chapter.

(D) The material is not otherwise subject to material-specific management conditions under paragraph (a) of this section when reclaimed, and it is not a spent lead-acid battery (see §§ 266.80 and 273.2 of this chapter).

(E) Persons performing the recycling of hazardous secondary materials under this exclusion must maintain documentation of their legitimacy determination on-site. Documentation must be a written description of how the recycling meets all three factors in § 260.43(a) and how the factor in § 260.43(b) was considered. Documentation must be maintained for three years after the recycling operation has ceased.

(F) The emergency preparedness and response requirements found in subpart M of this part are met.

(24) Hazardous secondary material that is generated and then transferred to another person for the purpose of reclamation is not a solid waste, provided that:

(i) The material is not speculatively accumulated, as defined in § 261.1(c)(8);

(ii) The material is not handled by any person or facility other than the hazardous secondary material generator, the transporter, an intermediate facility or a reclaimer, and, while in transport, is not stored for more than 10 days at a transfer facility, as defined in § 260.10 of this chapter, and is packaged according to applicable Department of Transportation regulations at 49 CFR parts 173, 178, and 179 while in transport;

(iii) The material is not otherwise subject to material-specific management conditions under paragraph (a) of this section when reclaimed, and it is not a spent lead-acid battery (see §§ 266.80 and 273.2 of this chapter);

(iv) The reclamation of the material is legitimate, as specified under § 260.43 of this chapter;

(v) The hazardous secondary material generator satisfies all of the following conditions:

(A) The material must be contained as defined in § 260.10. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of recycling. Hazardous secondary material managed in a unit with leaks or other continuing releases is discarded and a solid waste.

(B) Prior to arranging for transport of hazardous secondary materials to a reclamation facility (or facilities) where the management of the hazardous secondary materials is not addressed under a RCRA part B permit or interim status standards, the hazardous secondary material generator must make reasonable efforts to ensure that each reclaimer intends to properly and legitimately reclaim the hazardous secondary material and not discard it, and that each reclaimer will manage the hazardous secondary material in a manner that is protective of human health and the environment. If the hazardous secondary material will be passing through an intermediate facility where the management of the hazardous secondary materials is not addressed under a RCRA part B permit or interim status standards, the hazardous secondary material generator must make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator, and the hazardous secondary material generator must perform reasonable efforts to ensure that the intermediate facility will manage the hazardous secondary material in a manner that is protective of human health and the environment. Reasonable efforts must be repeated at a minimum of every three years for the hazardous secondary material generator to claim the exclusion and to send the hazardous secondary materials to each reclaimer and any intermediate facility. In making these reasonable efforts, the generator may use any credible evidence available, including information gathered by the hazardous secondary material generator, provided by the reclaimer or intermediate facility, and/or provided by a third party. The hazardous secondary material generator must affirmatively answer all of the following questions for each reclamation facility and any intermediate facility:

(*1*) Does the available information indicate that the reclamation process is legitimate pursuant to § 260.43 of this chapter? In answering this question, the

hazardous secondary material generator can rely on their existing knowledge of the physical and chemical properties of the hazardous secondary material, as well as information from other sources (*e.g.,* the reclamation facility, audit reports, etc.) about the reclamation process.

(*2*) Does the publicly available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator notified the appropriate authorities of hazardous secondary materials reclamation activities pursuant to § 260.42 of this chapter and have they notified the appropriate authorities that the financial assurance condition is satisfied per paragraph (a)(24)(vi)(F) of this section? In answering these questions, the hazardous secondary material generator can rely on the available information documenting the reclamation facility's and any intermediate facility's compliance with the notification requirements per § 260.42 of this chapter, including the requirement in § 260.42(a)(5) to notify EPA whether the reclaimer or intermediate facility has financial assurance.

(*3*) Does publicly available information indicate that the reclamation facility or any intermediate facility that is used by the hazardous secondary material generator has not had any formal enforcement actions taken against the facility in the previous three years for violations of the RCRA hazardous waste regulations and has not been classified as a significant non-complier with RCRA Subtitle C? In answering this question, the hazardous secondary material generator can rely on the publicly available information from EPA or the state. If the reclamation facility or any intermediate facility that is used by the hazardous secondary material generator has had a formal enforcement action taken against the facility in the previous three years for violations of the RCRA hazardous waste regulations and has been classified as a significant non-complier with RCRA Subtitle C, does the hazardous secondary material generator have credible evidence that the facilities will manage the hazardous secondary materials properly? In answering this question, the hazardous secondary material generator can obtain additional information from EPA, the state, or the facility itself that the facility has addressed the violations, taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials.

(*4*) Does the available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator have the equipment and trained personnel to safely recycle the hazardous secondary material? In answering this question, the generator may rely on a description by the reclamation facility or by an independent third party of the equipment and trained personnel to be used to recycle the generator's hazardous secondary material.

(*5*) If residuals are generated from the reclamation of the excluded hazardous secondary materials, does the reclamation facility have the permits required (if any) to manage the residuals? If not, does the reclamation facility have a contract with an appropriately permitted facility to dispose of the residuals? If not, does the hazardous secondary material generator have credible evidence that the residuals will be managed in a manner that is protective of human health and the environment? In answering these questions, the hazardous secondary material generator can rely on publicly available information from EPA or the state, or information provided by the facility itself.

(C) The hazardous secondary material generator must maintain for a minimum of three years documentation and certification that reasonable efforts were made for each reclamation facility and, if applicable, intermediate facility where the management of the hazardous secondary materials is not addressed under a RCRA part B permit or interim status standards prior to transferring hazardous secondary material. Documentation and certification must be made available upon request by a regulatory authority within 72 hours, or within a longer period of time as specified by the regulatory authority. The certification statement must:

(*1*) Include the printed name and official title of an authorized representative of the hazardous secondary material generator company, the authorized representative's signature, and the date signed;

(*2*) Incorporate the following language: ''I hereby certify in good faith and to the best of my knowledge that, prior to arranging for transport of excluded hazardous secondary materials to [insert name(s) of reclamation facility and any intermediate facility], reasonable efforts were made in accordance with § 261.4(a)(24)(v)(B) to ensure that the hazardous secondary materials would be recycled legitimately, and otherwise managed in a manner that is protective of human health and the environment, and that such efforts were based on current and accurate information.''

(D) The hazardous secondary material generator must maintain at the generating facility for no less than three (3) years records of all off-site shipments of hazardous secondary materials. For each shipment, these records must, at a minimum, contain the following information:

(*1*) Name of the transporter and date of the shipment;

(*2*) Name and address of each reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent;

(*3*) The type and quantity of hazardous secondary material in the shipment.

(E) The hazardous secondary material generator must maintain at the generating facility for no less than three (3) years confirmations of receipt from each reclaimer and, if applicable, each intermediate facility for all off-site shipments of hazardous secondary materials. Confirmations of receipt must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (*e.g.,* financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt);

(F) The hazardous secondary material generator must comply with the emergency preparedness and response conditions in subpart M of this part.

(vi) Reclaimers of hazardous secondary material excluded from regulation under this exclusion and intermediate facilities as defined in § 260.10 of this chapter satisfy all of the following conditions:

(A) The reclaimer and intermediate facility must maintain at its facility for no less than three (3) years records of all shipments of hazardous secondary material that were received at the facility and, if applicable, for all shipments of hazardous secondary materials that were received and subsequently sent off-site from the facility for further reclamation. For each shipment, these records must at a minimum contain the following information:

(*1*) Name of the transporter and date of the shipment;

(*2*) Name and address of the hazardous secondary material generator

and, if applicable, the name and address of the reclaimer or intermediate facility which the hazardous secondary materials were received from;

(*3*) The type and quantity of hazardous secondary material in the shipment; and

(*4*) For hazardous secondary materials that, after being received by the reclaimer or intermediate facility, were subsequently transferred off-site for further reclamation, the name and address of the (subsequent) reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent.

(B) The intermediate facility must send the hazardous secondary material to the reclaimer(s) designated by the hazardous secondary materials generator.

(C) The reclaimer and intermediate facility must send to the hazardous secondary material generator confirmations of receipt for all off-site shipments of hazardous secondary materials. Confirmations of receipt must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (*e.g.,* financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt).

(D) The reclaimer and intermediate facility must manage the hazardous secondary material in a manner that is at least as protective as that employed for analogous raw material and must be contained. An ''analogous raw material'' is a raw material for which a hazardous secondary material is a substitute and serves the same function and has similar physical and chemical properties as the hazardous secondary material.

(E) Any residuals that are generated from reclamation processes will be managed in a manner that is protective of human health and the environment. If any residuals exhibit a hazardous characteristic according to subpart C of 40 CFR part 261, or if they themselves are specifically listed in subpart D of 40 CFR part 261, such residuals are hazardous wastes and must be managed in accordance with the applicable requirements of 40 CFR parts 260 through 272.

(F) The reclaimer and intermediate facility have financial assurance as required under subpart H of 40 CFR part 261,

(vii) In addition, all persons claiming the exclusion under this paragraph (a)(24) of this section must provide notification as required under § 260.42 of this chapter.

(25) Hazardous secondary material that is exported from the United States and reclaimed at a reclamation facility located in a foreign country is not a solid waste, provided that the hazardous secondary material generator complies with the applicable requirements of paragraph (a)(24)(i)–(v) of this section (excepting paragraph (a)(24)(v)(B)(*2*) of this section for foreign reclaimers and foreign intermediate facilities), and that the hazardous secondary material generator also complies with the following requirements:

(i) Notify EPA of an intended export before the hazardous secondary material is scheduled to leave the United States. A complete notification must be submitted at least 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 hazardous secondary material generator, and include the following information:

(A) Name, mailing address, telephone number and EPA ID number (if applicable) of the hazardous secondary material generator;

(B) A description of the hazardous secondary material and the EPA hazardous waste number that would apply if the hazardous secondary material was managed as hazardous waste and the U.S. DOT proper shipping name, hazard class and ID number (UN/NA) for each hazardous secondary material as identified in 49 CFR parts 171 through 177;

(C) The estimated frequency or rate at which the hazardous secondary material is to be exported and the period of time over which the hazardous secondary material is to be exported;

(D) The estimated total quantity of hazardous secondary material;

(E) All points of entry to and departure from each foreign country through which the hazardous secondary material will pass;

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

(G) A description of the manner in which the hazardous secondary material will be reclaimed in the country of import;

(H) The name and address of the reclaimer, any intermediate facility and any alternate reclaimer and intermediate facilities; and

(I) The name of any countries of transit through which the hazardous secondary material will be sent and a description of the approximate length of time it will remain in such countries and the nature of its handling while there (for purposes of this section, the terms ''EPA Acknowledgement of Consent'', ''country of import'' and ''country of transit'' are used as defined in 40 CFR 262.81 with the exception that the terms in this section refer to hazardous secondary materials, rather than hazardous waste):

(ii) Notifications must be submitted electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system.

(iii) Except for changes to the telephone number in paragraph (a)(25)(i)(A) of this section and decreases in the quantity of hazardous secondary material indicated pursuant to paragraph (a)(25)(i)(D) of this section, when the conditions specified on the original notification change (including any exceedance of the estimate of the quantity of hazardous secondary material specified in the original notification), the hazardous secondary material generator must provide EPA with a written renotification of the change. The shipment cannot take place until consent of the country of import to the changes (except for changes to paragraph (a)(25)(i)(I) of this section and in the ports of entry to and departure from countries of transit pursuant to paragraphs (a)(25)(i)(E) of this section) has been obtained and the hazardous secondary material generator receives from EPA an EPA Acknowledgment of Consent reflecting the country of import's consent to the changes.

(iv) Upon request by EPA, the hazardous secondary material generator shall furnish to EPA any additional information which a country of import requests in order to respond to a notification.

(v) EPA will provide a complete notification 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 paragraph (a)(25)(i) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by paragraph (a)(25)(i) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(vi) The export of hazardous secondary material under this paragraph (a)(25) is prohibited unless the country of import consents to the intended export. When the country of import

consents in writing to the receipt of the hazardous secondary material, EPA will send an EPA Acknowledgment of Consent to the hazardous secondary material generator. Where the country of import objects to receipt of the hazardous secondary material or withdraws a prior consent, EPA will notify the hazardous secondary material generator in writing. EPA will also notify the hazardous secondary material generator of any responses from countries of transit.

(vii) For exports to OECD Member countries, the receiving country may respond to the notification using tacit consent. If no objection has been lodged by any country of import or countries of transit to a notification provided pursuant to paragraph (a)(25)(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. In such cases, EPA will send an EPA Acknowledgment of Consent to inform the hazardous secondary material generator that the country of import and any relevant countries of transit have not objected to the shipment, and are thus presumed to have consented tacitly. Tacit consent expires one (1) calendar year after the close of the thirty (30) day period; renotification and renewal of all consents is required for exports after that date.

(viii) A copy of the EPA Acknowledgment of Consent must accompany the shipment. The shipment must conform to the terms of the EPA Acknowledgment of Consent.

(ix) If a shipment cannot be delivered for any reason to the reclaimer, intermediate facility or the alternate reclaimer or alternate intermediate facility, the hazardous secondary material generator must re-notify EPA of a change in the conditions of the original notification to allow shipment to a new reclaimer in accordance with paragraph (iii) of this section and obtain another EPA Acknowledgment of Consent.

(x) Hazardous secondary material generators must keep a copy of each notification of intent to export and each EPA Acknowledgment of Consent for a period of three years following receipt of the EPA Acknowledgment of Consent. They may satisfy this recordkeeping requirement by retaining electronically submitted notifications or electronically generated Acknowledgements in their 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 authorized state inspector. No hazardous secondary material generator may be held liable for the inability to produce a notification or Acknowledgement for inspection under this section if they 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 hazardous secondary material generator bears no responsibility.

(xi) Hazardous secondary material generators must file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency and ultimate destination of all hazardous secondary materials exported during the previous calendar year. Annual reports must be submitted electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. Such reports must include the following information:

(A) Name, mailing and site address, and EPA ID number (if applicable) of the hazardous secondary material generator;

(B) The calendar year covered by the report;

(C) The name and site address of each reclaimer and intermediate facility;

(D) By reclaimer and intermediate facility, for each hazardous secondary material exported, a description of the hazardous secondary material and the EPA hazardous waste number that would apply if the hazardous secondary material was managed as hazardous waste, the DOT hazard class, the name and U.S. EPA ID number (where applicable) for each transporter used, the total amount of hazardous secondary material shipped and the number of shipments pursuant to each notification;

(E) A certification signed by the hazardous secondary material generator 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.''

(xii) All persons claiming an exclusion under this paragraph (a)(25) must provide notification as required by § 260.42 of this chapter.

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[FR Doc. 2018–11578 Filed 5–29–18; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 71

[Docket No. CDC–2016–0068]

RIN 0920–AA63

Control of Communicable Diseases; Technical Correction

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Final rule; correcting amendment.

SUMMARY: The Centers for Disease Control and Prevention (CDC) in the Department of Health and Human Services (HHS) announces a technical correction to the final rule published on July 10, 2017. The July 10, 2017, technical correction provided amendments to a final rule published on January 19, 2017, but contained an error. HHS/CDC is therefore submitting a new correction to correct that error.

DATES: This correcting amendment is effective May 30, 2018.

FOR FURTHER INFORMATION CONTACT: Jennifer Buigut, Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–E03, Atlanta, Georgia 30329. Telephone: (404) 498–1600.

SUPPLEMENTARY INFORMATION: On January 19, 2017, HHS/CDC published a final rule (82 FR 6890) that included several non-substantive errors. On July 10, 2017, HHS/CDC published a technical correction (82 FR 31728) to correct errors made in the final rule. However, one new error was inadvertently created by including an instruction to change a word in the title of 42 CFR 71.5 dealing with vessels from ''voyage'' to ''flight.'' HHS/CDC therefore, is publishing this correction notice amendment to fix the publication error that was made in the previous technical correction notice.

Section 553(b)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an