

US EPA ARCHIVE DOCUMENT

RCRA REVISION CHECKLIST 219

Revisions to the Definition of Solid Waste

73 FR 64668-64788

October 30, 2008

(RCRA Cluster XIX, Non-HSWA)

Name of State: _____

State Statutory Authority: _____

Title of Regulations: _____ Effective Date: _____

Date Checklist Completed: _____

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE

PART 260 HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

SUBPART B DEFINITIONS

DEFINITIONS

revise "facility" to add "or for managing hazardous secondary materials prior to reclamation." To the first sentence of paragraph (1)	260.10 "facility"					
add "hazardous secondary material"	260.10 "hazardous secondary material"					
add "hazardous secondary material generated and reclaimed under the control of the generator"	260.10 "hazardous secondary material generated and reclaimed under the control of the generator"					
add "hazardous secondary material generator"	260.10 "hazardous secondary material generator"					
add "intermediate facility"	260.10 "intermediate facility"					
add "land-based unit"	260.10 "land-based unit"					
revise "transfer facility" to add "or hazardous secondary materials"	260.10 "transfer facility"					

SUBPART C RULEMAKING PETITIONS

STANDARDS AND CRITERIA FOR VARIANCES FROM CLASSIFICATION AS A SOLID WASTE

revise section heading by adding "Non-waste determinations and"	260.30 section heading					
add 260.34 to 260.31, standards and criteria	260.30 introductory text					
delete "and"	260.30(b)					

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add new paragraph (d): Hazardous secondary materials that are reclaimed in a continuous industrial process	260.30(d)					
add new paragraph (e): Hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate.	260.30(e)					
revise section heading by adding "non-waste determinations"	260.33 section heading					
revise introductory text by adding "or applications for non-waste determinations."	260.33 introductory text					
revise by adding "or non-waste determinations" to first sentence	260.33(a)					
revise by adding paragraph (c), regarding a change in circumstances, reapplication for determination that material meets 260.34 criteria	260.33(c)					
add new section 260.34; section heading: Standards and criteria for non-waste determinations.	260.34 section heading					
An applicant may apply for a formal determination that a hazardous secondary material is not discarded and therefore not a solid waste. The determinations will be based on the criteria contained in paragraphs (b) or (c) of this section, as applicable. If denied, material may still be eligible for variance or exclusion if following conditions are met:	260.34 (a)					
??1 The State determines the hazardous secondary material meets the criteria in paragraphs (b) or (c) of this section, as applicable;	260.34(a)(1)					
The State requests that EPA review its determination; and	260.34(a)(2)					
EPA approves the State determination.	260.34(a)(3)					

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A non-waste determination may be granted based on whether the hazardous secondary material is legitimately recycled as specified in §260.43 and on the following criteria:	260.34(b) introductory paragraph					
The extent that the management of the hazardous secondary material is part of the continuous primary production process and is not waste treatment;	260.34(b)(1)					
Whether the capacity of the production process would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned;	260.34(b)(2)					
Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and	260.34(b)(3)					
Other relevant factors that demonstrate the hazardous secondary material is not discarded.	260.34(b)(4)					
Non-waste determination may granted if material comparable to a product or intermediate and is not discarded. The determination will be based on legitimate recycling as specified in 260.43 and on the following criteria:	260.34(c) introductory paragraph					
Whether market participants treat the hazardous secondary material as a product or intermediate rather than a waste;	260.34(c)(1)					
Whether the chemical and physical identity of the hazardous secondary material is comparable to commercial products or intermediates;	260.34(c)(2)					

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Whether the capacity of the market would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned;	260.34(c)(3)					
Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and	260.34(c)(4)					
Other relevant factors that demonstrate the hazardous secondary material is not discarded.	260.34(c)(5)					
add new section 260.42; section heading: Notification requirement for hazardous secondary materials.	260.42 section heading					
Hazardous secondary material generators, tolling contractors, toll manufacturers, reclaimers, and intermediate facilities managing hazardous secondary materials which are excluded from regulation under §261.2(a)(2)(ii), §261.4(a)(23), (24), or (25) must send a notification prior to operating under the exclusion(s) and by March 1 of each even numbered year thereafter to the Regional Administrator using EPA Form 8700-12 that includes the following information:	260.42(a)					
The name, address, and EPA ID number (if applicable) of the facility;	260.42(a)(1)					
The name and telephone number of a contact person;	260.42(a)(2)					
The NAICS code of the facility;	260.42(a)(3)					
The exclusion under which the hazardous secondary materials will be managed (e.g., §261.2(a)(2)(ii), §261.4(a)(23),(24), and/or (25));	260.42(a)(4)					

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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);	260.42(a)(5)					
When the facility expects to begin managing the hazardous secondary materials in accordance with the exclusion;	260.42(a)(6)					
A list of hazardous secondary materials that will be managed according to the exclusion (reported as the EPA hazardous waste numbers that would apply if the hazardous secondary materials were managed as hazardous wastes);	260.42(a)(7)					
For each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land-based unit;	260.42(a)(8)					
The quantity of each hazardous secondary material to be managed annually; and	260.42(a)(9)					
The certification (included in EPA Form 8700-12) signed and dated by an authorized representative of the facility.	260.42(a)(10)					
If a hazardous secondary material generator, tolling contractor, toll manufacturer, reclaimer or intermediate facility has submitted a notification, but then subsequently stops managing hazardous secondary materials in accordance with the exclusion(s), the facility must notify the Regional Administrator within thirty (30) days using EPA Form 8700-12.	260.42(b)					

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add new section 260.43; section heading: Legitimate recycling of hazardous secondary materials regulated under §260.34, §261.2(a)(2)(ii), and §261.4(a)(23), (24), or (25).	260.43 section heading					
Persons regulated under §260.34 or claiming to be excluded from hazardous waste regulation under §261.2(a)(2)(ii), §261.4(a)(23), (24), or (25) because they are engaged in reclamation must be able to demonstrate that the recycling is 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 the requirements of §260.43(b) and must consider the requirements of §260.43(c) below.	260.43(a)					
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, and the recycling process must produce a valuable product or intermediate.	260.43(b)					
The hazardous secondary material provides a useful contribution if it	260.43(b)(1)					
contributes valuable ingredients to a product or intermediate; or	260.43(b)(1)(i)					
replaces a catalyst or carrier in the recycling process; or	260.43(b)(1)(ii)					
is the source of a valuable constituent recovered in the recycling process; or	260.43(b)(1)(iii)					
is recovered or regenerated by the recycling process; or	260.43(b)(1)(iv)					
is used as an effective substitute for a commercial product.	260.43(b)(1)(v)					
The product or intermediate is valuable if it is	260.43(b)(2)					
sold to a third party; or	260.43(b)(2)(i)					

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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.	260.43(b)(2)(ii)					
The following factors must be considered in making a determination as to the overall legitimacy of a specific recycling activity.	260.43(c)					
The generator and the recycler should manage the hazardous secondary material as a valuable commodity.	260.43(c)(1)					
The product of the recycling process does not	260.43(c)(2)					
contain significant concentrations of any hazardous constituents found in Appendix VIII of part 261 that are not found in analogous products; or	260.43(c)(2)(i)					
contain concentrations of any hazardous constituents found in Appendix VIII of part 261 at levels that are significantly elevated from those found in analogous products; or	260.43(c)(2)(ii)					
exhibit a hazardous characteristic (as defined in part 261 subpart C) that analogous products do not exhibit.	260.43(c)(2)(iii)					
In making a determination that a hazardous secondary material is legitimately recycled, persons must evaluate all factors and consider legitimacy as a whole. However, the factors in this paragraph do not have to be met for the recycling to be considered legitimate. Persons can consider the protectiveness of the storage methods, exposure from toxics in the product, the bioavailability of the toxics in the product, and other relevant considerations.	260.43(c)(3)					

PART 261 IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Checklist 219

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SUBPART A GENERAL						
revise paragraph by adding “In addition, for purposes of §§261.2(a)(2)(ii), 261.4(a)(23), and 261.4(a)(24) smelting, melting and refining furnaces are considered to be solely engaged in metals reclamation if the metal recovery from the hazardous secondary materials meets the same requirements as those specified for metals recovery from hazardous waste found in §266.100(d)(1)-(3), and if the residuals meet the requirements specified in §266.112.”	261.1(c)(4)					
revise paragraph by adding ”or that is not excluded by a non-waste determination under §§260.30 and 260.34.	261.2(a)(1)					
renumber 261.2 (a)(2) as 261.2(a)(2)(i)	261.2(a)(2)(i)					
renumber 261.2(a)(2)(i) as 261.2(a)(2)(i)(A)	261.2(a)(2)(i)(A)					
renumber 261.2(a)(2)(ii) as 261.2(a)(2)(i)(B)	261.2(a)(2)(i)(B)					
renumber 261.2(a)(2)(iii) as 261.2(a)(2)(i)(C)	261.2(a)(2)(i)(C)					
renumber 261.2(a)(2)(iv) as 261.2(a)(2)(i)(D)	261.2(a)(2)(i)(D)					

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add new paragraph: A hazardous secondary material is not discarded if it is generated and reclaimed under the control of the generator as defined in §260.10, it is not speculatively accumulated as defined in §261.1(c)(8), it is handled only in non-land-based units and is contained in such units, it is generated and reclaimed within the United States and its territories, it is not otherwise subject to material-specific management conditions under §261.4(a) when reclaimed, it is not a spent lead acid battery (see §266.80 and §273.2), it does not meet the listing description for K171 or K172 in §261.32, and the reclamation of the material is legitimate, as specified under §260.43. (See also the notification requirements of §260.42). (For hazardous secondary materials managed in land-based units, see §261.4(a)(23)).	261.2(a)(2)(ii)					
2 paragraph is revised: Reclaimed. Materials noted with a “–” in column 3 of Table 1 are not solid wastes when reclaimed. Materials noted with an “*” in column 3 of Table 1 are solid wastes when reclaimed unless they meet the requirements of §§261.2(a)(2)(ii), or 261.4(a)(17), or 261.4(a)(23), or 261.4(a)(24) or 261.4(a)(25).	261.2(c)(3)					
add new section 261.4(a)(23) as follows: Hazardous secondary material generated and reclaimed within the United States or its territories and managed in land-based units as defined in §260.10 is not a solid waste provided that:	261.4(a)(23) introductory text					
the material is contained;	261.4(a)(23)(i)					
the material is a hazardous secondary material generated and reclaimed under the control of the generator, as defined in §260.10;	261.4(a)(23)(ii)					

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the material is not speculatively accumulated, as defined in §261.1(c)(8);	261.4(a)(23)(iii)					
the material is not otherwise subject to material-specific management conditions under §261.4(a) when reclaimed, it is not a spent lead acid battery (see §266.80 and §273.2), and it does not meet the listing description for K171 or K172 in §261.32; and	261.4(a)(23)(iv)					
the reclamation of the material is legitimate, as specified under §260.43.	261.4(a)(23)(v)					
In addition, persons claiming the exclusion under this paragraph (a)(23) must provide notification as required by §260.42. (For hazardous secondary material managed in a non-land-based unit, see 261.2(a)(2)(ii)).	261.4(a)(23)(vi)					
add new section 261.4(a)(24) as follows: Hazardous secondary material that is generated and then transferred to another person for the purpose of reclamation is not a solid waste, provided that:	261.4(a)(24) introductory text					
the material is not speculatively accumulated, as defined in §261.1(c)(8);	261.4(a)(24)(i)					
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, and is packaged according to applicable Department of Transportation regulations at 49 CFR Parts 173, 178, and 179 while in transport;	261.4(a)(24)(ii)					

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the material is not otherwise subject to material-specific management conditions under §261.4(a) when reclaimed, it is not a spent lead-acid battery (see §266.80 and §273.2), and it does not meet the listing description for K171 or K172 in §261.32;	261.4(a)(24)(iii)					
the reclamation of the material is legitimate, as specified under §260.43;	261.4(a)(24)(iv)					
the hazardous secondary material generator satisfies all of the following conditions:	261.4(a)(24)(v)					
The material must be contained.	261.4(a)(24)(v)(A)					
Prior to arranging for transport of hazardous secondary materials to a reclamation facility generator must make reasonable efforts to ensure that each reclaimer intends to properly and legitimately reclaim the hazardous secondary material ... The hazardous secondary material generator must affirmatively answer all of the following questions for each reclamation facility and any intermediate facility:	261.4(a)(24)(v)(B)					
Does the available information indicate that the reclamation process is legitimate pursuant to §260.43?	261.4(a)(24)(v)(B)(1)					
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 and have they notified the appropriate authorities that the financial assurance condition is satisfied per §261.4(a)(24)(vi)(F)?	261.4(a)(24)(v)(B)(2)					

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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 be classified as a significant non-complier with RCRA Subtitle C?	261.4(a)(24)(v)(B)(3)					
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?	261.4(a)(24)(v)(B)(4)					
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?	261.4(a)(24)(v)(B)(5)					
generator must maintain for a minimum of three years documentation and certification that reasonable efforts were made. 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:	261.4(a)(24)(v)(C)					
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;	261.4(a)(24)(v)(C)(1)					

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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.”	261.4(a)(24)(v)(C)(2)					
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:	261.4(a)(24)(v)(D)					
Name of the transporter and date of the shipment;	261.4(a)(24)(v)(D)(1)					
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;	261.4(a)(24)(v)(D)(2)					
The type and quantity of hazardous secondary material in the shipment.	261.4(a)(24)(v)(D)(3)					
generator must maintain for no less than three years confirmations of receipt from each reclaimer and, if applicable, each intermediate facility. Confirmations must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the materials and the date the materials were received. This requirement may be satisfied by routine business records; and	261.4(a)(24)(v)(E)					

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Reclaimers of hazardous secondary material excluded from regulation under this exclusion and intermediate facilities as defined in §260.10 satisfy all of the following conditions:	261.4(a)(24)(vi)					
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:	261.4(a)(24)(vi)(A)					
Name of the transporter and date of the shipment;	261.4(a)(24)(vi)(A)(1)					
Name and address of the hazardous secondary material generator and, if applicable, the name and address of the reclaimer or intermediate facility from which the hazardous secondary materials were received;	261.4(a)(24)(vi)(A)(2)					
The type and quantity of hazardous secondary material in the shipment; and	261.4(a)(24)(vi)(A)(3)					
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.	261.4(a)(24)(vi)(A)(4)					
The intermediate facility must send the hazardous secondary material to the reclaimer(s) designated by the hazardous secondary materials generator.	261.4(a)(24)(vi)(B)					

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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.	261.4(a)(24)(vi)(C)					
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.	261.4(a)(24)(vi)(D)					
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.	261.4(a)(24)(vi)(E)					
The reclaimer and intermediate facility has financial assurance as required under subpart H of 40 CFR part 261.	261.4(a)(24)(vi)(F)					

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In addition, all persons claiming the exclusion under this paragraph (24) must provide notification as required under §260.42.	261.4(a)(24)(vii)					
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 §261.4(a)(24)(i)-(v) (excepting (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:	261.4(a)(25)					
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:	261.4(a)(25)(i)					
Name, mailing address, telephone number and EPA ID number (if applicable) of the hazardous secondary material generator;	261.4(a)(25)(i)(A)					

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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;	261.4(a)(25)(i)(B)					
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;	261.4(a)(25)(i)(C)					
The estimated total quantity of hazardous secondary material;	261.4(a)(25)(i)(D)					
All points of entry to and departure from each foreign country through which the hazardous secondary material will pass;	261.4(a)(25)(i)(E)					
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.));	261.4(a)(25)(i)(F)					
A description of the manner in which the hazardous secondary material will be reclaimed in the receiving country;	261.4(a)(25)(i)(G)					
The name and address of the reclaimer, any intermediate facility and any alternate reclaimer and intermediate facilities; and	261.4(a)(25)(i)(H)					

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The name of any transit countries 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 “Acknowledgement of Consent”, “receiving country” and “transit country” are used as defined in 40 CFR 262.51 with the exception that the terms in this section refer to hazardous secondary materials, rather than hazardous waste).	261.4(a)(25)(i)(I)					
Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, DC 20460. Hand-delivered notifications should be delivered to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12th St. and Pennsylvania Ave., N.W., Washington, DC 20004. In both cases, the following shall be prominently displayed on the front of the envelope: “Attention: Notification of Intent to Export.”	261.4(a)(25)(ii)					

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Except for changes to the telephone number in paragraph (i)(A) of this section and decreases in the quantity of hazardous secondary material indicated pursuant to paragraph (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 receiving country to the changes (except for changes to paragraph i(I) of this section and in the ports of entry to and departure from transit countries pursuant to paragraphs (i)(E) of this section) has been obtained and the hazardous secondary material generator receives from EPA an Acknowledgment of Consent reflecting the receiving country's consent to the changes.	261.4(a)(25)(iii)					
Upon request by EPA, the hazardous secondary material generator shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.	261.4(a)(25)(iv)					

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EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraph (i) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by paragraph (i) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.	261.4(a)(25)(v)					
The export of hazardous secondary material under this paragraph is prohibited unless the receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the hazardous secondary material, EPA will send an Acknowledgment of Consent to the hazardous secondary material generator. Where the receiving country 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 transit countries.	261.4(a)(25)(vi)					

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
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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 receiving country or transit countries to a notification provided pursuant to paragraph (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 receiving country, the transboundary movement may commence. In such cases, EPA will send an Acknowledgment of Consent to inform the hazardous secondary material generator that the receiving country and any relevant transit countries 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.	261.4(a)(25)(vii)					
A copy of the Acknowledgment of Consent must accompany the shipment. The shipment must conform to the terms of the Acknowledgment of Consent.	261.4(a)(25)(viii)					
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 Acknowledgment of Consent.	261.4(a)(25)(ix)					

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
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Hazardous secondary material generators must keep a copy of each notification of intent to export and each Acknowledgment of Consent for a period of three years following receipt of the Acknowledgment of Consent.	261.4(a)(25)(x)					
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 submitted by mail should be sent to the following address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered reports should be delivered to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12 th St. and Pennsylvania Ave., NW., Washington, D.C. 20004. Such reports must include the following information:	261.4(a)(25)(xi)					
Name, mailing and site address, and EPA ID number (if applicable) of the hazardous secondary material generator;	261.4(a)(25)(xi)(A)					
The calendar year covered by the report;	261.4(a)(25)(xi)(B)					
The name and site address of each reclaimer and intermediate facility;	261.4(a)(25)(xi)(C)					

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
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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, DOT hazard class, the name and US 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;	261.4(a)(25)(xi)(D)					
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."	261.4(a)(25)(xi)(E)					
All persons claiming an exclusion under this paragraph (a)(25) must provide notification as required by §260.42.	261.4(a)(25)(xi)					
SUBPART H FINANCIAL REQUIREMENTS FOR MANAGEMENT OF EXCLUDED HAZARDOUS SECONDARY MATERIALS						
³ Add new Subpart H to Part 261 as follows: Financial Requirements for Management of Excluded Hazardous Secondary Materials	261 Subpart H					

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
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The requirements of this subpart apply to owners or operators of reclamation and intermediate facilities managing hazardous secondary materials excluded under 40 CFR §261.4(a)(24), except as provided otherwise in this section.	261.140(a)					
States and the Federal government are exempt from the financial assurance requirements of this subpart.	261.140(b)					
The terms defined in §265.141(d),(f),(g), and (h) have the same meaning in this subpart as they do in §265.141.	261.141					
The owner or operator must have a detailed written estimate, in current dollars, of the cost of disposing of any hazardous secondary material as listed or characteristic hazardous waste, and the potential cost of closing the facility as a treatment, storage, and disposal facility.	261.142(a)					
The estimate must equal the cost of conducting the activities described in paragraph (a) at the point when the extent and manner of the facility's operation would make these activities the most expensive; and	261.142(a)(1)					
⁴ based on costs of hiring third party	261.142(a)(2)					
⁵⁶ no incorporation of salvage value	261.142(a)(3)					
^{5,6} no incorporation of zero cost	261.142(a)(4)					
adjust closure cost estimate for inflation	261.142(b)					
first adjustment	261.142(b)(1)					
subsequent adjustments	261.142(b)(2)					
revised closure cost estimate	261.142(c)					
⁷ cost estimates to be kept at facility	261.142(d)					

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
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Per §261.4(a)(24)(vi)(F), an owner or operator of a reclamation or intermediate facility must have financial assurance as a condition of the exclusion as required under §261.4(a)(24). He must choose from the options as specified in paragraphs (a) through (e) of this section.	261.143 introductory paragraph					
7 trust fund requirements; trustee must have authority – delete "closure"	261.143(a)(1)					
7 wording identical to 261.151(a)(1); Schedule A update – references to Part 261	261.143(a)(2)					
The trust fund must be funded for the full amount of the current cost estimate before it may be relied upon to satisfy the requirements of this section.	261.143(a)(3)					
compare new estimate to trust fund – from (a)(6), delete after the pay-in period	261.143(a)(4)					
7 release of excess amount – from (a)(7)	261.143(a)(5)					
7 substitution of other financial assurance – from (a)(8)	261.143(a)(6)					
timing of release of funds, reimbursement for closure activities – combines (a)(9) and (a)(10), first sentence of (a)(10) is changed.	261.143(a)(7)					
8 termination of trust if alternate financial assurance or release from 261.143 requirements – from (a)(11)	261.143(a)(8)					
	261.143(a)(8)(i)					
	261.143(a)(8)(ii)					
surety bond guaranteeing payment into a closure trust fund; requirements; obtain from an acceptable surety company	261.143(b)(1)					
8 wording identical to 264.151(b)	261.143(b)(2)					
8 establish standby trust fund	261.143(b)(3)					
trust agreement submitted with surety bond	261.143(b)(3)(i)					

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
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until standby trust fund is funded, following not required:	261.143(b)(3)(ii)					
8 payments into trust fund	261.143(b)(3)(ii)(A)					
8 Schedule A update	261.143(b)(3)(ii)(B)					
annual valuations	261.143(b)(3)(ii)(C)					
notices of nonpayment	261.143(b)(3)(ii)(D)					
surety bond guarantees:	261.143(b)(4)					
Fund the standby trust fund in an amount equal to the penal sum of the bond before loss of the exclusion under §261.4(a)(24) or	261.143(b)(4)(i)					
9 fund equal to penal sum within 15 days of administrative or judicial order	261.143(b)(4)(ii)					
alternate financial assurance following notice of cancellation	261.143(b)(4)(iii)					
when surety becomes liable	261.143(b)(5)					
8 penal sum equal to current closure cost estimate	261.143(b)(6)					
7 penal sum increase or decrease	261.143(b)(7)					
surety may cancel bond after 120 days	261.143(b)(8)					
owner or operator may cancel bond if written consent	261.143(b)(9)					
closure letter of credit; letter must be submitted to Regional Administrator; conditions of letter and who can issue it	261.143(c)(1)					
8 wording identical to 261.151(c)	261.143(c)(2)					
8 establish standby trust fund; meets requirements of 261.143(a) except:	261.143(c)(3)					
originally signed duplicate to Regional Administrator with letter of credit	261.143(c)(3)(i)					
unless standby trust fund is funded, the following are not required:	261.143(c)(3)(ii)					
8 payments into trust fund	261.143(c)(3)(ii)(A)					
8 Schedule A update	261.143(c)(3)(ii)(B)					
annual valuations	261.143(c)(3)(ii)(C)					
notices of nonpayment	261.143(c)(3)(ii)(D)					
letter of credit accompanied by letter from owner/operator; information it must contain – ID number required if issued	261.143(c)(4)					
terms of letter of credit	261.143(c)(5)					

	FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
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8	issued in amount equal to current closure cost estimate except as provided in 261.143(f)	261.143(c)(6)					
	if current closure cost estimate increases to an amount greater than penal sum, then must increase penal sum within 60 days; actions when closure cost decreases	261.143(c)(7)					
	Following a determination by the Regional Administrator that the hazardous secondary materials do not meet the conditions of the exclusion under §261.4(a)(24), the Regional Administrator may draw on the letter of credit.	261.143(c)(8)					
	if no alternate financial assurance, Regional Administrator can draw on letter of credit; procedures for doing so	261.143(c)(9)					
	conditions under which the Regional Administrator will return the letter of credit for termination	261.143(c)(10)					
	substitution of alternate financial assurance	261.143(c)(10)(i)					
8	release from requirements of this section in accordance with 261.143(i)	261.143(c)(10)(ii)					
4, 10	insurance must conform to 261.143(d) requirements; submit certificate to Regional Administrator; insurer requirements	261.143(d)(1)					
8	wording identical to 261.151(e)	261.143(d)(2)					
8	amount of insurance policy	261.143(d)(3)					
	The insurance policy must guarantee that funds will be available whenever needed to pay the cost of removal of all hazardous secondary materials from the unit, to pay the cost of decontamination of the unit, to pay the costs of the performance of activities required under subpart G of 40 CFR parts 264 or 265, as applicable, for the facilities covered by this policy. The policy must also guarantee that once funds are needed, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Regional Administrator, to such party or parties as the Regional Administrator specifies.	261.143(d)(4)					

	FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
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8, 11	owner/operator may request reimbursements; conditions for request; procedures of Regional Administrator if maximum closure cost is greater than face value of policy	261.143(d)(5)					
12	policy must be in full force until Regional Administrator consents to termination; violations	261.143(d)(6)					
	assignment of policy to successor	261.143(d)(7)					
	insurer cannot terminate except for failure to pay; renewal; procedures if failure to pay	261.143(d)(8)					
13	conditions that policy will remain in full force and effect in event that listed circumstances occur	261.143(d)(8)(i)					
		261.143(d)(8)(ii)					
		261.143(d)(8)(iii)					
		261.143(d)(8)(iv)					
		261.143(d)(8)(v)					
7	owner/operator responsibilities and procedures when current closure cost estimate increases/decreases to an amount greater/less than face amount of policy	261.143(d)(9)					
	conditions under which the Regional Administrator will allow termination of policy – in paragraph (ii), change reference to paragraph (i) of this section.	261.143(d)(10)					
		261.143(d)(10)(i)					
		261.143(d)(10)(ii)					
	financial test and corporate guarantee for closure; owner/operator must satisfy 261.143(e)(1)(i) or (ii) requirements to pass financial test	261.143(e)(1)					
	what owner/operator must have:	261.143(e)(1)(i)					
	two of three specified financial ratios	261.143(e)(1)(i)(A)					
	net working capital and tangible net worth relative to closure/post-closure estimates	261.143(e)(1)(i)(B)					
	tangible net worth of at least \$10 million	261.143(e)(1)(i)(C)					

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
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90% of assets in U.S.	261.143(e)(1)(i)(D)					
what owner/operator must have:	261.143(e)(1)(ii)					
bond rating	261.143(e)(1)(ii)(A)					
tangible net worth at least six times sum of closure/post-closure cost estimates and current plugging/abandonment cost	261.143(e)(1)(ii)(B)					
tangible net worth at least \$10 million	261.143(e)(1)(ii)(C)					
90% of assets in U.S.	261.143(e)(1)(ii)(D)					
4,8 definitions of "current closure and post-closure cost estimates" and "current plugging and abandonment cost estimates"	261.143(e)(2)					
To demonstrate that he meets this test, the owner or operator must submit the following items to the Regional Administrator: A letter signed by the owner's or operator's chief financial officer and worded as specified in §261.151(e); and A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and	261.143(e)(3)					
	261.143(e)(3)(i)					
	261.143(e)(3)(ii)					

	FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
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	If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies paragraph (e)(1)(i) of this section that are different from the data in the audited financial statements referred to in paragraph (e)(3)(ii) of this section or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures.....	261.143(e)(3)(iii)					
7	extension of test deadline if owner or operator is undergoing an audit; what submitted letter must do	261.143(e)(4)					
		261.143(e)(4)(i)					
		261.143(e)(4)(ii)					
		261.143(e)(4)(iii)					
		261.143(e)(4)(iv)					
		261.143(e)(4)(v)					
		261.143(e)(4)(vi)					
	updates at close of each fiscal year	261.143(e)(5)					
	owner/operator responsibilities if no longer meets 261.143(e)(1) requirements	261.143(e)(6)					
	what Regional Administrator may do if believes owner/operator no longer meets 261.143(e)(1)	261.143(e)(7)					
	when Regional Administrator may disallow test	261.143(e)(8)					
8	when 261.143(e)(3) items no longer need to be submitted	261.143(e)(9)					
		261.143(e)(9)(i)					
		261.143(e)(9)(ii)					

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
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requirement may be met by guarantee; conditions which guarantor and guarantee must meet	261.143(e)(10)					
Following a determination by the Regional Administrator that the hazardous secondary materials at the owner or operator's facility covered by this guarantee do not meet the conditions of the exclusion under §261.4(a)(24), the guarantor will dispose of any hazardous secondary material as hazardous waste and close the facility in accordance with closure requirements found in parts 264 or 265 of this chapter, as applicable, or establish a trust fund as specified in § 261.143(a) in the name of the owner or operator in the amount of the current cost estimate.	261.143(e)(10)(i)					
Same language as part 265 counterpart	261.143(e)(10)(ii)					
Same language as part 265 counterpart	261.143(e)(10)(iii)					
7 use of multiple financial mechanisms; conditions which must be met	261.143(f)					
use of financial mechanism for multiple facilities; conditions which must be met	261.143(g)					
<i>Removal and Decontamination Plan for Release</i>	261.143(h) title					
An owner or operator of a reclamation facility or an intermediate facility who wishes to be released from his financial assurance obligations under §261.4(a)(24)(vi)(F) must submit a plan for removing all hazardous secondary material residues to the Regional Administrator at least 180 days prior to the date on which he expects to cease to operate under the exclusion.	261.143(h)(1)					
The plan must include, at least:	261.143(h)(2)					

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
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For each hazardous secondary materials storage unit subject to financial assurance requirements under §261.4(a)(24)(vi)(F), a description of how all excluded hazardous secondary materials will be recycled or sent for recycling, and how all residues, contaminated containment systems (liners, etc), contaminated soils, subsoils, structures, and equipment will be removed or decontaminated as necessary to protect human health and the environment, and	261.143(h)(2)(A)					
A detailed description of the steps necessary to remove or decontaminate all hazardous secondary material residues and contaminated containment system components, equipment, structures, and soils including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to protect human health and the environment; and	261.143(h)(2)(B)					
A detailed description of any other activities necessary to protect human health and the environment during this timeframe, including, but not limited to, leachate collection, run-on and run-off control, etc; and	261.143(h)(2)(C)					
A schedule for conducting the activities described which, at a minimum, includes the total time required to remove all excluded hazardous secondary materials for recycling and decontaminate all units subject to financial assurance under §261.4(a)(24)(vi)(F) and the time required for intervening activities which will allow tracking of the progress of decontamination.	261.143(h)(2)(D)					

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
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<p>The Regional Administrator will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications to the plan no later than 30 days from the date of the notice. He will also, in response to a request or at his discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the plan. The Regional Administrator will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Regional Administrator will approve, modify, or disapprove the plan within 90 days of its receipt. If the Regional Administrator does not approve the plan, he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The Regional Administrator will approve or modify this plan in writing within 60 days. If the Regional Administrator modifies the plan, this modified plan becomes the approved plan. The Regional Administrator must assure that the approved plan is consistent with §261. A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.</p>	261.143(h)(3)					
<p>14 Within 60 days of completion of the activities described for each hazardous secondary materials management unit, the owner or operator must submit to the Regional Administrator, by registered mail, a certification that all hazardous secondary materials have been removed from the unit and the unit has been decontaminated in accordance with the specifications in the approved plan. The certification must be signed by the owner or operator and by a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Regional Administrator, upon request, until he releases the owner or operator from the financial assurance requirements for §261.4(a)(24)(vi)(F).</p>	261.143(h)(4)					

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
<i>Release of the owner or operator from the requirements of this section. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that all hazardous secondary materials have been removed from the facility or a unit at the facility and the facility or a unit has been decontaminated in accordance with the approved plan per paragraph (h), the Regional Administrator will notify the owner or operator in writing that he is no longer required under §261.4(a)(24)(vi)(F) to maintain financial assurance for that facility or a unit at the facility, unless the Regional Administrator has reason to believe that that all hazardous secondary materials have not been removed from the facility or unit at a facility or that the facility or unit has not been decontaminated in accordance with the approved plan. The Regional Administrator shall provide the owner or operator a detailed written statement of any such reason to believe that all hazardous secondary materials have not been removed from the unit or that the unit has not been decontaminated in accordance with the approved plan.</i>	261.143(i)					
15 coverage for sudden accidental occurrences; ways liability insurance may be demonstrated	261.147(a)					
liability insurance meeting the following:	261.147(a)(1)					
5,8 attachment of Hazardous Secondary Material Facility Liability Endorsement or Certificate of Liability Insurance; required wording; submittal of signed duplicate original	261.147(a)(1)(i)					
minimum requirements insurer must meet	261.147(a)(1)(ii)					
meet financial test or use guarantee for liability coverage as specified in 261.147(f)&(g)	261.147(a)(2)					
requirements may be met by obtaining letter of credit for liability coverage	261.147(a)(3)					
requirements may be met by obtaining surety bond for liability coverage	261.147(a)(4)					

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
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requirements may be met by obtaining trust fund for liability coverage	261.147(a)(5)					
liability coverage may be demonstrated by combination of mechanisms; amount of coverage must total at least the minimum amounts required by 261.147; specification of "primary" and "excess" coverage	261.147(a)(6)					
notify Regional Administrator in writing whenever:	261.147(a)(7)					
claims reduce amount of financial assurance for liability coverage	261.147(a)(7)(i)					
Certification of Valid Claim for bodily injury or property damages caused by sudden or non-sudden accidental occurrence is entered between the owner or operator and a third-party claimant	261.147(a)(7)(ii)					
final court order establishing judgment for bodily injury or property damage caused by sudden or non-sudden accidental occurrence is issued against the owner or operator or an instrument providing financial assurance	261.147(a)(7)(iii)					
¹⁶ coverage for nonsudden accidental occurrences; ways coverage may be demonstrated	261.147(b)					
demonstrate by having liability insurance with the following requirements:	261.147(b)(1)					
^{8, 17} attachment of Hazardous Waste Facility Liability Endorsement or Certificate of Liability Insurance; required wording; submittal of signed duplicate original	261.147(b)(1)(i)					
minimum requirements for insurer	261.147(b)(1)(ii)					
pass financial test or use guarantee for liability coverage as specified in 261.147(f)&(g)	261.147(b)(2)					
requirements may be met by obtaining letter of credit for liability coverage	261.147(b)(3)					

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
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requirements may be met by obtaining surety bond for liability coverage	261.147(b)(4)					
removed	261.147(b)(4)(i)					
	261.147(b)(4)(ii)					
	261.147(b)(4)(iii)					
requirements may be met by obtaining trust fund for liability coverage	261.147(b)(5)					
liability coverage may be demonstrated by combination of mechanisms; amount of coverage must total at least the minimum amount required by 261.147; specifying "primary" and "excess" coverage	261.147(b)(6)					
notify Regional Administrator in writing whenever:	261.147(b)(7)					
claims reduce amount of financial assurance for liability coverage	261.147(b)(7)(i)					
Certification of Valid Claim for bodily injury or property damages caused by sudden or non-sudden accidental occurrence is entered between the owner or operator and a third-party claimant	261.147(b)(7)(ii)					
final court order establishing judgment for bodily injury or property damage caused by sudden or non-sudden accidental occurrence is issued against the owner or operator or an instrument providing financial assurance	261.147(b)(7)(iii)					
18 requests for variance from 261.147(a) or (b) requirements; form of variance requirements	261.147(c)					
18, 19 adjustments to required financial responsibility levels by Regional Administrator; criteria which must be used	261.147(d)					

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
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14 <i>Period of coverage.</i> Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that all hazardous secondary materials have been removed from the facility or a unit at the facility and the facility or a unit has been decontaminated in accordance with the approved plan per §261.143(h), the Regional Administrator will notify the owner or operator in writing that he is no longer required under §261.4(a)(24)(vi)(F) to maintain liability coverage for that facility or a unit at the facility, unless the Regional Administrator has reason to believe that that all hazardous secondary materials have not been removed from the facility or unit at a facility or that the facility or unit has not been decontaminated in accordance with the approved plan.	261.147(e)					
<i>Financial test for liability coverage.</i>	261.147(f)					
financial test for liability coverage; criteria of 261.147(f)(1)(i) or (ii) must be met	261.147(f)(1)					
what the owner or operator must have:	261.147(f)(1)(i)					
	261.147(f)(1)(i)(A)					
	261.147(f)(1)(i)(B)					
	261.147(f)(1)(i)(C)					
	261.147(f)(1)(ii)					
	261.147(f)(1)(ii)(A)					
	261.147(f)(1)(ii)(B)					

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
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	261.147(f)(1)(ii)(C)					
	261.147(f)(1)(ii)(D)					
The phrase “amount of liability coverage” as used in paragraph (f)(1) of this section refers to the annual aggregate amounts for which coverage is required under paragraphs (a) and (b) of this section and the annual aggregate amounts for which coverage is required under paragraphs (a) and (b) of 40 CFR 264.147 and 265.147.	261.147(f)(2)					
three items the owner or operator must submit	261.147(f)(3)					
A letter signed by the owner's or operator's chief financial officer and worded as specified in §261.151(f). If an owner or operator is using the financial test to demonstrate both assurance as specified by §261.143(e), <i>and</i> liability coverage, he must submit the letter specified in §261.151(f) to cover both forms of financial responsibility; a separate letter as specified in §261.151(e) is not required.	261.147(f)(3)(i)					
	261.147(f)(3)(ii)					

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies paragraph (f)(1)(i) of this section that are different from the data in the audited financial statements referred to in paragraph (f)(3)(ii) of this section or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of the comparison, and the reasons for any difference.	261.147(f)(3)(iii)					
extension of test deadline if owner or operator is undergoing an audit; what submitted letter must do	261.147(f)(4)					
	261.147(f)(4)(i)					
	261.147(f)(4)(ii)					
	261.147(f)(4)(iii)					
	261.147(f)(4)(iv)					
	261.147(f)(4)(v)					
	261.147(f)(4)(vi)					

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
updated information	261.147(f)(5)					
evidence of liability coverage if 261.147(f)(1) requirements not met	261.147(f)(6)					
Regional Administrator may disallow test; cause for disallowance	261.147(f)(7)					
8 guarantee for liability coverage; requirements guarantor must meet	261.147(g)(1)					
payment by guarantor if owner or operator fails to satisfy a judgment	261.147(g)(1)(i)					
removed and reserved	261.147(g)(1)(ii)					
corporations incorporated in U.S.	261.147(g)(2)(i)					
21 corporations incorporated outside U.S.	261.147(g)(2)(ii)					
letter of credit for liability coverage	261.147(h)					
8 requirements may be satisfied by obtaining irrevocable standby letter of credit that conforms to 261.147(h) requirements and submitting copy to Regional Administrator	261.147(h)(1)					
criteria for financial institution issuing letter of credit	261.147(h)(2)					
8 wording of letter of credit must be identical to wording specified in 261.151(j)	261.147(h)(3)					
establishment and use of standby trust fund by owner or operator using letter of credit	261.147(h)(4)					
8 wording of standby trust fund must be identical to wording specified in 261.151(m)	261.147(h)(5)					
surety bond for liability coverage	261.147(i)					
8 requirements may be satisfied by obtaining surety bond conforming to 261.147(i) requirements and submitting copy to Regional Administrator	261.147(i)(1)					
criterion for surety company issuing bond	261.147(i)(2)					
8 wording of surety bond must be identical to wording specified in 261.151(k)	261.147(i)(3)					
conditions under which surety bond may be used	261.147(i)(4)					
	261.147(i)(4)(i)					

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
	261.147(i)(4)(ii)					
trust fund for liability coverage	261.147(j)					
8 requirements may be satisfied by establishing trust fund conforming to 261.147(j) requirements and submitting an originally signed duplicate of trust agreement to Regional Administrator	261.147(j)(1)					
criteria for trustee	261.147(j)(2)					
trust fund must be funded for full amount of liability coverage it is to provide; requirements if fund is reduced below full amount; definition of "full amount"	261.147(j)(3)					
8 wording of trust fund must be identical to wording specified in 261.151(l)	261.147(j)(4)					
8, 22 incapacity through bankruptcy of owner or operator or guarantor	261.148(a)					
8, 22 incapacity of financial institution by bankruptcy or authority suspension	261.148(b)					
8, 22, 23 use of state required mechanisms, EPA evaluation of such mechanisms	261.149(a)					
If State required mechanism is found acceptable, but has a funds shortfall, may increase funds available as long as total meets required amount	261.149(b)					
22 acceptability of state assumption of responsibility	261.150(a)					
If State's assumption is found to be acceptable, but has a funds shortfall, may increase funds available as long as total meets required amount	261.150(b)					
24 required wording for a trust agreement	261.151(a)(1)					
certification of acknowledgment	261.151(a)(2)					
required wording for a financial guarantee bond	261.151(b)					
required wording for an irrevocable standby letter of credit	261.151(c)					

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
required wording for a certificate of insurance for closure or post-closure care	261.151(d)					
required wording for letter from chief financial officer (financial assurance)	261.151(e)					
required wording for letter from chief financial officer (liability coverage)	261.151(f)					
required wording for corporate guarantee for closure or post-closure care	261.151(g)(1)					
required wording for corporate guarantee for liability coverage	261.151(g)(2)					
required wording for hazardous waste facility liability endorsement	261.151(h)					
required wording for hazardous waste facility certificate of liability insurance	261.151(i)					
wording for letter of credit for liability coverage	261.151(j)					
wording for surety bond	261.151(k)					
wording for trust agreement	261.151(l)(1)					
certification of acknowledgment	261.151(l)(2)					
wording for standby trust agreement	261.151(m)(1)					
wording for certification of acknowledgment to accompany trust agreement	261.151(m)(2)					

PART 270 – EPA Administered Permit Programs: The Hazardous Waste Permit Program

Subpart D – Changes to Permits

PERMIT MODIFICATION AT THE REQUEST OF THE PERMITTEE

add entry 10 in the table under section L as shown below:	270.42, Appendix I					
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Modifications	Class
A. General Permit Provisions.	
9. Changes to remove permit conditions applicable to a unit excluded under the provisions of §261.4.	¹ 1
10. Changes in the expiration date of a permit issued to a facility at which all units are excluded under the provisions of §261.4.	¹ 1

¹Class 1 modifications requiring prior Agency approval.

¹ Provisions 260.34(a)(1), (2), and (3) apply to States which are not authorized for this rule, and may not be necessary for states to adopt.

² Column 3 of Table 1 of this section is revised according to 261.2(c)(3).

³ Subpart H of part 261 is adapted from Subpart H of Part 265. Where the regulatory text in Part 261 is entirely new or significantly changed from its counterpart in Part 265, it will be fully replicated in the checklist. If the text is largely the same, it will have the regulatory explanation from the Consolidated Checklist, with any minor changes noted.

⁴ Closure is removed as the type of activity.

⁵ Insert “hazardous secondary materials”.

⁶ The reference to 265.5113 is in error, and should be changed to 265.113.

⁷ Delete “closure” from “closure cost estimate” or “closure trust fund”.

⁸ Change internal reference to Part 261 analog.

⁹ Delete “final” before “closure”.

¹⁰ From the part 265 provision, delete the two middle sentences starting with “By the effective date....assurance as specified in this section”

¹¹ In first sentence after “final closure” add “under 40 CFR parts 264 or 265, as applicable”.

¹² From the part 265 provision, change the reference to paragraph (d)(10) of this section to (i)(10).

¹³ From the part 265 provision, add to the beginning of 261.143(d)(8)(ii), the following: “conditional exclusion or”.

¹⁴ For the analogous part 265 provision, the term “an independent registered professional engineer” was replaced by “a qualified Professional Engineer” in the April 4, 2006 Burden Reduction Rule (71 FR, 16862, checklist 213).

¹⁵ Language in the first sentence is changed from part 265 to apply to “An owner or operator of a hazardous secondary material reclamation facility or an intermediate facility subject to financial assurance requirements under §261.4(a)(24)(vi)(F), or a group of such facilities”

¹⁶ Language in the first sentence is changed from part 265 to apply to “An owner or operator of a hazardous secondary material reclamation facility or intermediate facility with land-based units, as defined in §260.10, which are used to manage hazardous secondary materials excluded under §261.4(a)(24) or a group of such facilities”

¹⁷ Replace “Hazardous Waste Facility” with “Hazardous Secondary Material Facility”

¹⁸ Delete last two sentences RE permit modification requests.

¹⁹ Delete “disposal” in first sentence, “landfill” in third sentence.

²⁰ There is an error in this text – remove “closure and post-closure” from the text.

²¹ There is an error, the reference in (B) should be changed to the part 261 analog, but this is 261.151(g)(2), not (h)(2).

²² There is no counterpart reference in part 261 to 265.145.

²³ Clarify facility as a “reclamation or intermediate facility” and no reference to post-closure care.

²⁴ Section 261.151 is adapted from section 264.151, except that there is no analog to 264.151(c). The numbering of 261.151 is adjusted accordingly, and thus, the analog to 261.151(e) is paragraph (f) in 264.151.