



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Parts 261, 262, and 266**

**[EPA-HQ-OLEM-2023-0081; FRL 8687-03-OLEM]**

**RIN 2050-AH23**

### **Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule; Technical Corrections**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Partial withdrawal of direct final rule.

**SUMMARY:** Because the EPA received adverse comment on eight amendments in the direct final rule published on August 9, 2023, we are withdrawing amendments to specific provisions through correction to the direct final rule.

**DATES:** This correction is effective December 7, 2023.

**FOR FURTHER INFORMATION CONTACT:** Brian Knieser, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304T), 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566-0516, (knieser.brian@epa.gov) or Kathy Lett, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304T), 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566-0517, (lett.kathy@epa.gov).

**SUPPLEMENTARY INFORMATION:** Because the EPA received adverse comment on specific amendments, through this correction, we are withdrawing only those specific amendments from the direct final rule, Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule; Technical Corrections, published on August 9, 2023 (88 FR 54086). We stated in that direct final rule that if we received adverse comment by the close of the comment period

on October 10, 2023, the specific amendments in the direct final rule that are the subject of adverse comment would not take effect, and we would publish a timely withdrawal in the *Federal Register*. Because the EPA subsequently received adverse comment on eight amendments in that direct final rule, we are withdrawing only the eight affected amendments. All other amendments in that direct final rule will go into effect on the effective date (December 7, 2023). The eight specific amendments that are being withdrawn are:

1. Section 261.4(e)(1) introductory text related to sample waste generated or collected for the purpose of conducting treatability studies.
2. Section 262.11(d) introductory text related to identifying hazardous characteristics for listed hazardous wastes when the characteristic is already addressed by the listing.
3. Section 262.11(g) related to identifying hazardous characteristics for listed hazardous wastes when the characteristic is already addressed by the listing.
4. Section 262.16(b)(1) related to the accumulation limit for small quantity generators generating acute hazardous waste.
5. Section 262.17(a)(8)(i) introductory text related to LQG closure notification when closing a waste accumulation unit but not the whole facility.
6. Section 262.17(a)(8)(i)(A) related to LQG closure notification when closing a waste accumulation unit but not the whole facility.
7. Section 262.232(b)(6)(iv) related to adding “RCRA-” to the term “designated facility” to match the language of parallel provisions in this section.
8. Section 266.508(a)(2)(ii) related to allowing applicable EPA hazardous waste numbers (also known as waste codes) in addition to the required PHARMS code in item 13 of the hazardous waste manifest for shipments of hazardous waste pharmaceuticals from a healthcare facility subject to 40 CFR part 266 subpart P.

We are also withdrawing language from this provision that allows the use of PHRM in lieu of PHARMS in item 13 of the hazardous waste manifest.

Except for the amendment to § 262.11 at instruction 25, which is withdrawn in full, because the provisions we are withdrawing appear in amendatory instructions affecting other provisions, we are correcting the corresponding amendments in full minus those provisions withdrawn.

The EPA published a parallel proposed rule on the same day as the direct final rule. The proposed rule invited comment on the substance of the direct final rule. We will address those comments in any subsequent final action, which will be based on the parallel proposed rule also published on August 9, 2023. As stated in the direct final rule and the parallel proposed rule, we will not institute a second comment period on this action.

#### **List of Subjects**

##### *40 CFR Part 261*

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Hazardous waste, Intergovernmental relations, Licensing and registration, Reporting and recordkeeping requirements.

##### *40 CFR Part 262*

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

##### *40 CFR Part 266*

Environmental protection, Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

**Michael S. Regan,**

*Administrator.*

For the reasons stated above, EPA is withdrawing amendments in the direct final rule published August 9, 2023, at 88 FR 54086, by making the following corrections:

**Correction**

In FR Rule Doc. No. 2023-14731, published August 9, 2023, at 88 FR 54086, make the following corrections:

1. On page 54109, in the first column, amendatory instruction 25 amending § 262.11 is removed.

2. Beginning on page 54100 and ending on page 54114, correct amendatory instructions 5 (§ 261.4), 27 (§ 262.16), 28 (§ 262.17), 34 (§ 262.232), and 55 (§ 266.508) to read as follows:

5. Section 261.4 is amended by revising paragraphs (a)(25)(i)(I), (a)(25)(vi) and (vii), and (a)(25)(xi)(D) to read as follows:

**§ 261.4 Exclusions.**

(a) \* \* \*

(25) \* \* \*

(i) \* \* \*

(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 Acknowledgment 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):

\* \* \* \* \*

(vi) The export of hazardous secondary material under this paragraph (a)(25) is

prohibited unless the hazardous secondary material generator receives from EPA an EPA Acknowledgment of Consent documenting the consent of the country of import to the receipt of the hazardous secondary material. 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) Prior to each shipment, the hazardous secondary material generator or a U.S. authorized agent must:

(A) Submit Electronic Export Information (EEI) for each shipment to the Automated Export System (AES) or its successor system, under the International Trade Data System (ITDS) platform, in accordance with 15 CFR 30.4(b).

(B) Include the following items in the EEI, along with the other information required under 15 CFR 30.6:

(1) EPA license code;

(2) Commodity classification code per 15 CFR 30.6(a)(12);

(3) EPA consent number;

(4) Country of ultimate destination per 15 CFR 30.6(a)(5);

(5) Date of export per 15 CFR 30.6(a)(2);

(6) Quantity of waste in shipment and units for reported quantity, if required reporting units established by value for the reported commodity classification number are in units of weight or volume per 15 CFR 30.6(a)(15); or

(7) EPA net quantity reported in units of kilograms, if required reporting units established by value for the reported commodity classification number are not in units of weight or volume.

\* \* \* \* \*

(xi) \* \* \*

(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 consent number(s) under which the hazardous secondary material was shipped and for each consent number, the total amount of hazardous secondary material shipped and the number of shipments exported during the calendar year covered by the report;

\* \* \* \* \*

27. Section 262.16 is amended by revising the introductory text and paragraphs (b) introductory text, (b)(5) introductory text, and (b)(8)(iv)(A) and (B) to read as follows:

**§ 262.16 Conditions for exemption for a small quantity generator that accumulates hazardous waste.**

A small quantity generator may accumulate hazardous waste on site without a permit or interim status, and without complying with the requirements of parts 124, 264 through 267, and 270 of this chapter, or the notification requirements of section 3010 of RCRA for treatment, storage, and disposal facilities, provided that all the conditions for exemption listed in this section are met:

\* \* \* \* \*

(b) *Accumulation.* The generator accumulates hazardous waste on site for no more than 180 days, unless in compliance with the conditions for exemption for longer accumulation in paragraphs (c), (d), and (e) of this section. The following accumulation conditions also apply:

\* \* \* \* \*

(5) *Accumulation of hazardous waste in containment buildings.* If the waste is

placed in containment buildings, the small quantity generator must comply with 40 CFR part 265 subpart DD. The generator must label its containment buildings with the words “Hazardous Waste” in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, or other persons on site and also in a conspicuous place provide an indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172, subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704). The generator must also maintain:

\* \* \* \* \*

(8) \* \* \*

(iv) \* \* \*

(A) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access (*e.g.*, direct or unimpeded access) to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under paragraph (b)(8)(ii) of this section.

(B) In the event there is just one employee on the premises while the facility is operating, the employee must have immediate access (*e.g.*, direct or unimpeded access) to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required under paragraph (b)(8)(ii) of this section.

\* \* \* \* \*

28. Section 262.17 is amended by revising the introductory text and paragraphs (a)(2), (a)(7)(i)(A), (a)(8)(iii)(A)(4), (b), (c) introductory text, (d), (e), and (f) introductory text to read as follows:

**§ 262.17 Conditions for exemption for a large quantity generator that accumulates hazardous waste.**

A large quantity generator may accumulate hazardous waste on site without a permit or interim status, and without complying with the requirements of parts 124, 264 through 267, and 270 of this chapter, or the notification requirements of section 3010 of RCRA for treatment, storage, and disposal facilities, provided that all of the following conditions for exemption are met:

\* \* \* \* \*

(a) \* \* \*

(2) *Accumulation of hazardous waste in tanks.* If the waste is placed in tanks, the large quantity generator must comply with the applicable requirements of subpart J (except §§ 265.197(c) and 265.200 of this subchapter) as well as the applicable requirements of 40 CFR part 265, subparts AA through CC.

\* \* \* \* \*

(7) \* \* \*

(i)(A) Facility personnel must successfully complete a program of classroom instruction, online training (e.g., computer-based or electronic), or on-the-job training that teaches them to perform their duties in a way that ensures compliance with this part. The large quantity generator must ensure that this program includes all the elements described in the document required under paragraph (a)(7)(iv)(C) of this section.

\* \* \* \* \*

(8) \* \* \*

(iii) \* \* \*

(A) \* \* \*

(4) If the generator demonstrates that any contaminated soils and wastes cannot be practicably removed or decontaminated as required in paragraph (a)(8)(iii)(A)(2) of this section, then the waste accumulation unit is considered to be a landfill and the generator must close the waste accumulation unit and perform postclosure care in accordance with the closure and post-closure care requirements that apply to landfills (§ 265.310 of this subchapter). In addition, for the purposes of closure, post-closure, and financial responsibility, such a waste accumulation unit is then considered to be a landfill, and the generator must meet all of the requirements for landfills specified in 40 CFR part 265, subparts G and H.

\* \* \* \* \*

(b) *Accumulation time limit extension.* A large quantity generator who accumulates hazardous waste for more than 90 days is subject to the requirements of 40 CFR parts 124, 264 through 268, and part 270 of this chapter, and the notification requirements of section 3010 of RCRA for treatment, storage, and disposal facilities, unless it has been granted an extension to the 90-day period. Such extension may be granted by EPA if hazardous wastes must remain on site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis.

(c) *Accumulation of F006.* A large quantity generator who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the EPA hazardous waste number F006, may accumulate F006 waste on site for more than 90 days, but not more than 180 days without being subject to parts 124, 264 through 267, and 270 of this chapter, and the notification requirements of section 3010 of RCRA for treatment, storage, and disposal facilities, provided that it complies with all of the following additional conditions for exemption:

\* \* \* \* \*

(d) *F006 transported over 200 miles.* A large quantity generator who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the EPA hazardous waste number F006, and who must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more for off-site metals recovery, may accumulate F006 waste on site for more than 90 days, but not more than 270 days without being subject to parts 124, 264 through 267, and 270 of this chapter, and the notification requirements of section 3010 of RCRA for treatment, storage, and disposal facilities, if the large quantity generator complies with all of the conditions for exemption of paragraphs (c)(1) through (4) of this section.

(e) *F006 accumulation time extension.* A large quantity generator accumulating F006 in accordance with paragraphs (c) and (d) of this section who accumulates F006 waste on site for more than 180 days (or for more than 270 days if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more), or who accumulates more than 20,000 kilograms of F006 waste on site is an operator of a storage facility and is subject to the requirements of 40 CFR parts 124, 264, 265, 267, and 270, and the notification requirements of section 3010 of RCRA for treatment, storage, and disposal facilities, unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by EPA if F006 waste must remain on site for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste must remain on site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the Regional Administrator on a case-by-case basis.

(f) *Consolidation of hazardous waste received from very small quantity*

*generators*. Large quantity generators may accumulate on site hazardous waste received from very small quantity generators under control of the same person (as defined in § 260.10 of this subchapter), without a storage permit or interim status and without complying with the requirements of parts 124, 264 through 268, and 270 of this chapter, and the notification requirements of section 3010 of RCRA for treatment, storage, and disposal facilities, provided that they comply with the following conditions. “Control,” for the purposes of this section, means the power to direct the policies of the generator, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person shall not be deemed to “control” such generators.

\* \* \* \* \*

34. Section 262.232 is amended by revising the paragraphs (a)(5), (b)(4) introductory text, and (b)(4)(ii)(C) to read as follows:

**§ 262.232 Conditions for a generator managing hazardous waste from an episodic event.**

(a) \* \* \*

(5) The very small quantity generator must comply with the hazardous waste manifest provisions of subpart B of this part and the recordkeeping provisions for small quantity generators in § 262.44 when it sends its episodic event hazardous waste off site to a designated facility, as defined in § 260.10 of this subchapter.

\* \* \* \* \*

(b) \* \* \*

(4) *Accumulation by small quantity generators*. A small quantity generator is prohibited from accumulating hazardous wastes generated from an episodic event on drip pads and in containment buildings. When accumulating hazardous waste generated from an episodic event in containers and tanks, the following conditions apply:

\* \* \* \* \*

(ii) \* \* \*

(C) Use inventory logs, monitoring equipment or other records to identify the date upon which each episodic event begins; and

\* \* \* \* \*

55. Section 266.508 is amended by revising paragraphs (a)(1)(iii)(C) and (a)(2)(i) to read as follows:

**§ 266.508 Shipping non-creditable hazardous waste pharmaceuticals from a healthcare facility of evaluated hazardous waste pharmaceuticals from a reverse distributor.**

(a) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(C) Lab packs that will be incinerated in compliance with § 268.42(c) of this subchapter are not required to be marked with EPA hazardous waste numbers (i.e., hazardous waste codes), except D004, D005, D006, D007, D008, D010, and D011, where applicable. A nationally recognized electronic system, such as bar coding or radio frequency identification tag, may be used to identify the applicable EPA hazardous waste numbers (i.e., hazardous waste codes).

\* \* \* \* \*

(2) \* \* \*

(i) A healthcare facility shipping noncreditable hazardous waste pharmaceuticals is not required to list all applicable EPA hazardous waste numbers (i.e., hazardous waste codes) in Item 13 of EPA Form 8700–22.

\* \* \* \* \*