

## MARYLAND REGISTER

# Proposed Action on Regulations

### Comparison to Federal Standards Submission and Response

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In accordance with Executive Order 01.01.1996.03 and memo dated July 26, 1996, the attached document is submitted to the Department of Business and Economic Development for review.

The Proposed Action is not more restrictive or stringent than corresponding federal standards.

**COMAR Codification:** 26.13.01.02, .03, .03-1, .04 and .05

**COMAR Codification:** 26.13.02.01, .02, .04, .04-3, .04-4, .05, .06, .10, .15

**COMAR Codification:** 26.13.02.17, .19-1 - .19-6, .19-8 and .23

**COMAR Codification:** 26.13.03.01, .04, .06, .07, and .07-1 -.07-5

**COMAR Codification:** 26.13.04.01 and .02

**COMAR Codification:** 26.13.05.01, .02, .02-2, .05 and .11 - .14

**COMAR Codification:** 26.13.06.01, .02, .05, .19 - .22 and .25

**COMAR Codification:** 26.13.07.02-4, .02-5, .02-8 and .13-2

**COMAR Codification:** 26.13.09.01 - .03

**COMAR Codification:** 26.13.10.03, .04, .18 and .21 - .24

**Corresponding Federal Standard:**

40 CFR Part 260 Subparts A and C; 40 CFR Part 261 Subpart B; 40 CFR 261.32; 40 CFR Part 262 Subpart B, Subpart G, and Subpart

H; 40 CFR Part 263 Subpart B; 40 CFR 264.19; 40 CFR Part 264 Subparts E and K-N; 40 CFR Part 265 Subparts A, B, E, and K-N; 40 CFR Part 266 Subpart G; 40 CFR Part 268; 40 CFR 270.17, .18, and .20; and 40 CFR Part 273 Subparts B-E.

**Discussion/Justification:**

The changes being proposed are intended to maintain consistency between Maryland and federal hazardous waste regulations. The proposed action is not more stringent than corresponding federal requirements.

**TO BE COMPLETED BY DBED**

☐ -Agree

☐ -Disagree

**Comments:**

Name:

Date:

☐ -Submit to Governor's Office

**Governor's Office Response**

**Comments:**

<p><b>Transmittal Sheet</b></p> <p><b>PROPOSED OR REPROPOSED</b></p> <p><b>Actions on Regulations</b></p>	<p><b>Date Filed with AELR Committee</b></p>	<p><b>TO BE COMPLETED BY DSD</b></p>
	<p>05/06/2021</p>	<p>Date Filed with Division of State Documents</p>
		<p>Document Number</p>
		<p>Date of Publication in MD Register</p>

**1. Desired date of publication in Maryland Register: 6/18/2021**

**2. COMAR Codification**

**Title Subtitle Chapter Regulation**

26	13	01	02, .03, .03-1, .04 and .05
26	13	02	01, .02, .04, .04-3, .04-4, .05, .06, .10, .15
26	13	02	17, .19-1 - .19-6, .19-8 and .23
26	13	03	01, .04, .06, .07, and .07-1 -.07-5
26	13	04	01 and .02

26	13	05	01, .02, .02-2, .05 and .11 - .14
26	13	06	01, .02, .05, .19 - .22 and .25
26	13	07	02-4, .02-5, .02-8 and .13-2
26	13	09	01 - .03
26	13	10	03, .04, .18 and .21 - .24

### 3. Name of Promulgating Authority

Department of the Environment

<b>4. Name of Regulations Coordinator</b>	<b>Telephone Number</b>
Ed Hammerberg	(410) 537-3356

### Mailing Address

1800 Washington Blvd.

<b>City</b>	<b>State</b>	<b>Zip Code</b>
Baltimore	MD	21230

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<b>5. Name of Person to Call About this Document</b>	<b>Telephone No.</b>
Edward Hammerberg	410-537-3356

### Email Address

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### 6. Check applicable items:

☒ New Regulations

☒ Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: 3/31/2021.

☒ Repeal of Existing Regulations

☐ Recodification

☐ Incorporation by Reference of Documents Requiring DSD Approval

☐ Reproposal of Substantively Different Text:

: Md. R  
(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

### 7. Is there emergency text which is identical to this proposal:

☐ Yes ☒ No

### 8. Incorporation by Reference

☐ Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

**9. Public Body - Open Meeting**

☐ OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland.

☐ OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

**10. Children's Environmental Health and Protection**

☐ Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

**11. Certificate of Authorized Officer**

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Patricia V. Tipon, Assistant Attorney General, (telephone #410-537-3061) on April 28, 2021. A written copy of the approval is on file at this agency.

**Name of Authorized Officer**

Benjamin H. Grumbles

**Title**

Secretary of the Environment

**Telephone No.**

410-537-4187

**Date**

May 6, 2021

**Title 26**

**DEPARTMENT OF THE ENVIRONMENT**

**Subtitle 13 DISPOSAL OF CONTROLLED HAZARDOUS SUBSTANCES**

**26.13.01 Hazardous Waste Management System: General**

**Subtitle 13 DISPOSAL OF CONTROLLED HAZARDOUS SUBSTANCES**

**26.13.02 Identification and Listing of Hazardous Waste**

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**Subtitle 13 DISPOSAL OF CONTROLLED HAZARDOUS SUBSTANCES**

**26.13.03 Standards Applicable to Generators of Hazardous Waste**

**Subtitle 13 DISPOSAL OF CONTROLLED HAZARDOUS SUBSTANCES**

**26.13.04 Standards Applicable to Transporters of Hazardous Waste**

**Subtitle 13 DISPOSAL OF CONTROLLED HAZARDOUS SUBSTANCES**

**26.13.05 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities**

**Subtitle 13 DISPOSAL OF CONTROLLED HAZARDOUS SUBSTANCES**

**26.13.06 Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities**

**Subtitle 13 DISPOSAL OF CONTROLLED HAZARDOUS SUBSTANCES**

**26.13.07 Permits for CHS Facilities**

**Subtitle 13 DISPOSAL OF CONTROLLED HAZARDOUS SUBSTANCES**

**26.13.09 Land Disposal Restrictions**

**Subtitle 13 DISPOSAL OF CONTROLLED HAZARDOUS SUBSTANCES**

**26.13.10 Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities**

Authority: 26.13.01 - 26.13.07 and 26.13.09: Environment Article, Title 7, Subtitle 2, Annotated Code of Maryland; 26.13.10: Environment Article, §6-905.3 and Title 7, Subtitle 2, Annotated Code of Maryland

**Notice of Proposed Action**

[]

The Secretary of the Environment proposes to (1) Amend Regulations .02, .03, .04 and .05 and adopt new Regulation .03-1 under COMAR 26.03.01 Hazardous Waste Management System: General;

(2) Amend Regulations .01, .02, .04, .04-3, .04-4, .05, .06, .10, .15, .17, .19-6, and .23, repeal Regulations .19-1 – .19-5, and repeal and replace Regulations .19-7 and .19-8 under COMAR 26.13.02 Identification and Listing of Hazardous Waste;

(3) Amend Regulations .01, .04, .06, and .07-4, repeal and replace Regulation .07, and repeal Regulations .07-1 – .07-3 and .07-5 under COMAR 26.13.03 Standards Applicable to Generators of Hazardous Waste;

(4) Amend Regulations .01 and .02 under COMAR 26.13.04 Standards Applicable to Transporters of Hazardous Waste;

(5) Amend Regulations .01, .02, .05 and .11 – .14, and adopt new Regulation .02-2 under COMAR 26.13.05 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities;

(6) Amend Regulations .01, .02, .05, .19, .20, .21, .22 and .25 under COMAR 26.13.06 Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities;

(7) Amend Regulations .02-4, .02-5, .02-8 and .13-2 under COMAR 26.13.07 Permits for CHS Facilities;

(8) Adopt new Regulations .01 - .03 under a new chapter, COMAR 26.13.09 Land Disposal Restrictions; and

(9) Amend Regulations .03, .04, .18, .21, .22, .23 and .24 under COMAR 26.13.10 Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities.

## Statement of Purpose

The purpose of this action is to modify Maryland's hazardous waste regulations to maintain consistency with the federal hazardous waste regulatory program. The main elements of the proposal are the adoption of land disposal restriction regulations from Title 40 Part 268 of the Code of Federal Regulations (40 CFR Part 268), adoption of criteria for what constitutes "legitimate" recycling of hazardous waste, adoption of federal provisions regarding the national electronic manifest system for hazardous waste tracking, adoption of federal requirements on international shipments of hazardous waste, adoption of additional requirements for liners, leak detection, and leachate collection for hazardous waste land disposal units, repeal of provisions that allowed the burning of certain waste materials if they met criteria to be considered "comparable" to commercial fuels (provisions that were vacated at the federal level as a result of a court decision), addition of a waste in the organic chemicals industry category, and revision of "delisting" provisions for hazardous waste to clarify that the State's authority is limited to wastes listed as hazardous by Maryland but not the EPA.

## Comparison to Federal Standards

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

## Estimate of Economic Impact

### I. Summary of Economic Impact.

The proposed action is expected to have only a minimal economic impact. Most of the requirements proposed for adoption are already in effect in Maryland as a matter of federal law (compliance with the federal electronic manifest provisions, land disposal restriction requirements, and requirements on international shipments of hazardous waste.) Other requirements affect limited segments of the regulated community.

### II. Types of Economic Impact.

#### A. On issuing agency:

Implementation costs

Revenue (R+/R-)

Expenditure (E+/E-) Magnitude

(E+)

Minimal

#### B. On other State agencies:

NONE

Not applicable

#### C. On local governments:

NONE

Not applicable

Benefit (+)

Cost (-)

Magnitude

#### D. On regulated industries or trade groups:

(-)

Minimal

#### E. On other industries or trade groups:

NONE

Not applicable

F. Direct and indirect effects on public: (+) Indeterminable

**III. Assumptions.** (Identified by Impact Letter and Number from Section II.)

A. The proposed action is not anticipated to require the hiring of any new staff. Implementation is expected to be able to be accomplished using existing resources. Principal implementation costs include the costs associated with compliance monitoring and compliance assistance.

B. No new requirements would be imposed on these entities. Provisions are already in effect in Maryland as a matter of federal law, with the U.S. Environmental Protection Agency having enforcement authority.

C. No new requirements would be imposed on these entities. Provisions are already in effect in Maryland as a matter of federal law, with the U.S. Environmental Protection Agency having enforcement authority.

D. Other than the listing of a waste from the organic chemicals industry as hazardous, no new requirements would be imposed on these entities. Most of the provisions being proposed are already in effect in Maryland as a matter of federal law, with the U.S. Environmental Protection Agency (EPA) having enforcement authority. The waste listing is not expected to affect Maryland entities – the EPA’s economic impact analysis for the adoption of the federal listing identified only 37 affected facilities nationwide, none of which was located in Maryland.

E. Not applicable.

F. The public will continue to benefit from the safe management of hazardous waste and the associated avoidance of adverse impacts to human health and the environment, but a specific value for any incremental change in this benefit that would result from the proposed action is impossible to quantify.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Edward Hammerberg, Technical Specialist/RCR Supervisor, Maryland Department of the Environment/RMP, 1800 Washington Blvd., Suite 610, Baltimore, MD 21230-1719, or call 410-537-3314, or email to [ed.hammerberg@maryland.gov](mailto:ed.hammerberg@maryland.gov), or fax to 410-537-3321. Comments will be accepted through July 19, 2021. A public hearing has not been scheduled.

**Economic Impact Statement Part C**

A. Fiscal Year in which regulations will become effective: FY 22

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

Federal funds and special funds (Hazardous Substance Control Fund).

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

Most of the proposed actions are already in effect in Maryland as a matter of federal law, with the provisions being implemented by the U.S. Environmental Protection Agency.

G. Small Business Worksheet:

1a. Intended Beneficiaries. The primary beneficiaries are members of the general public who benefit from the safe management of hazardous waste, and businesses that generate hazardous waste who will benefit from increased clarity in the regulatory language and who may be able to take advantage of provisions in the proposal that offer regulatory relief while maintaining protectiveness.

1b. Intended Beneficiaries: Households. Significant changes to households' income or purchasing power are not expected as a result of the proposed action.

1c. Intended Beneficiaries: Businesses. Not applicable – businesses are not the intended beneficiaries of the proposed action.

2a. Other Direct or Indirect Impacts: Adverse. Most of the proposed actions are already in effect in Maryland as a matter of federal law, with the provisions being implemented by the U.S. Environmental Protection Agency. The listing of the additional waste as hazardous, which the State is required to do in order to maintain consistency with the federal hazardous waste regulatory program, is not expected to have a significant impact on small business.

2b. Other Direct or Indirect Impacts: Positive. Significant impacts in this category are not expected.

3. Long-Term Impacts. There are no obvious long run economic impact effects on Maryland small businesses that over time (a) may compound or further aggravate the initial economic impact described above, or (b) may mitigate or offset the initial economic impact described above.

4. Estimates of Economic Impact. Based on the overall minimal economic impact of the proposed action, there are no significant economic impacts that relate directly to : (1) cost of providing goods and services; (2) effect on the work force; (3) effect on the cost of housing; (4) efficiency in production and marketing; (5) capital investment, taxation, competition, and economic development; and (6) consumer choice.



# Title 26 DEPARTMENT OF THE ENVIRONMENT

## Subtitle 13 DISPOSAL OF CONTROLLED HAZARDOUS SUBSTANCES

### Chapter 01 Hazardous Waste Management System: General

Authority: Environment Article, §6-905.3 and Title 7, Subtitle 2, Annotated Code of Maryland

#### **.02 Availability of Information Confidentiality of Information.**

A. Except in accordance with §E or F of this regulation, the [department] *Department* shall protect any information contained in the application, or other records, reports, or plans as confidential upon a showing by any person that the information, if made public, would divulge methods or processes entitled to protection as trade secrets, or proprietary business information relating to processes of production, methods of manufacturing, or production volume which are of financial or commercial value.

B. — E. (text unchanged)

F. *Manifest Information.*

(1) *After August 6, 2014, a person may not assert a claim of business confidentiality with respect to information entered on:*

(a) *A hazardous waste manifest (EPA Form 8700–22);*

(b) *A hazardous waste manifest continuation sheet (EPA Form 8700–22A); or*

(c) *An electronic manifest format that may be prepared and used in accordance with COMAR*

*26.13.03.04A(1)(b) or 40 CFR §262.20(a)(3).*

(2) *EPA, as the designated custodian of the electronic manifest system under federal law:*

(a) *Is responsible for making available to the public any:*

(i) *Electronic manifest that is prepared and used in accordance with COMAR 26.13.03.04A(1)(b) or 40 CFR §262.20(a)(3); and*

(ii) *Paper manifest that is submitted to the system under COMAR 26.13.05.05B(1)(e), COMAR 26.13.06.05A, 40 CFR §264.71(a)(6), or 40 CFR §265(a)(6);*

(b) *Will make the information identified in §F(2)(a) of this regulation for an electronic or paper manifest that has been submitted to the electronic manifest system available to the public:*

(i) *When EPA considers the manifest to be a complete and final document, as specified in §F(2)(b)(ii) of this regulation; and*

(ii) *After 90 days have passed since the delivery of the hazardous waste shipment identified in the manifest to the designated facility, the time at which EPA considers the manifest to be a complete and final document.*

#### **.03 Definitions.**

A. (text unchanged)

B. **Terms Defined.**

(1) — (8) (text unchanged)

(8-1) *"Contained" means held in a unit, including a land-based unit, that meets the criteria of Regulation .04L(4) of this chapter;*

(9) — (16-2) (text unchanged)

(16-3) *"Electronic manifest" (e-manifest) means the electronic format of the hazardous waste manifest that is obtained from EPA's national electronic manifest system and transmitted electronically to the system, and that is the legal equivalent of EPA Forms 8700–22 (manifest) and 8700–22A (continuation sheet).*

(16-4) *"Electronic manifest system" (E-manifest system) means EPA's national information technology system through which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.*

(17) — (30-1) (text unchanged)

(30-2) *"Hazardous secondary material" means a secondary material, such as a spent material, by-product, or sludge, that, if discarded, would be identified as a hazardous waste under COMAR 26.13.02.*

(31) — (43-2) (text unchanged)

(43-3) *Land-based unit.*

(a) *"Land-based unit" means an area where a hazardous secondary material is placed in or on the land before recycling.*

(b) *"Land-based unit" does not include a land-based production unit.*

(44) — (49) (text unchanged)

(50) "Manifest" means the shipping document EPA Form 8700-22, including, if necessary, EPA Form 8700-22A, originated and signed [by the generator or offeror] in accordance with the [instructions in the appendix to 40 CFR Part 262 and the applicable requirements of:

(a) — (c) (text unchanged)

(51) — (66-1) (text unchanged)

(66-2) "Recognized trader" means: a person domiciled in the United States, by site of business, who acts to arrange and facilitate transboundary movements of wastes destined for recovery or disposal operations, either by purchasing from and subsequently selling to United States and foreign facilities, or by acting under arrangements with a United States waste facility to arrange for the export or import of the wastes.

(67) — (70) (text unchanged)

(70—1) Secondary material.

(a) "Secondary material" means a used or residual waste-like material.

(b) "Secondary material" includes:

(i) A by-product, as defined in COMAR 26.13.02.01D;

(ii) A commercial chemical product;

(iii) Sludge;

(iv) Spent material, as defined in COMAR 26.13.02.01D; and

(v) Scrap metal, as defined in COMAR 26.13.02.01D.

(71) — (89-4) (text unchanged)

(89-5) "User of the electronic manifest system" means a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person who:

(a) Is required to use a manifest to comply with:

(i) Any federal or state requirement to track the shipment, transportation, and receipt of hazardous waste or other waste material that is shipped from the site of generation to an off-site designated facility for treatment, storage, recycling, or disposal; or

(ii) Any federal or state requirement to track the shipment, transportation, and receipt of rejected wastes or regulated container residues that are shipped from a designated facility to an alternative facility, or returned to the generator; and

(b) Elects to use the:

(i) Electronic manifest system to obtain, complete, and transmit an electronic manifest format supplied by the EPA electronic manifest system; or

(ii) Paper manifest form and submits information to the electronic manifest system in the form of a paper copy of the manifest or data from a paper copy of the manifest for data processing purposes in accordance with COMAR 26.13.05.05B(1)(e) or COMAR 26.13.06.05A.

(90) — (96) (text unchanged)

### **.03-1 General Provisions for Manifests.**

A. Manifest Copy Submission - Certain Interstate Waste Shipments. If the state in which a waste is generated or the state in which waste will be transported to a designated facility requires that the waste be regulated as a hazardous waste or otherwise tracked through a hazardous waste manifest, the designated facility that receives the waste shall, regardless of the state in which the facility is located:

(1) Complete the facility portion of the applicable manifest;

(2) Sign and date the facility certification;

(3) Submit to the electronic manifest system a final copy of the manifest for data processing purposes; and

(4) Satisfy requirements established and enforced by the federal government to pay the appropriate per manifest fee to EPA for each manifest submitted to the electronic manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements that are specified in Subpart FF of 40 CFR Part 264.

B. Applicability of E-manifest System and User Fee Requirements - Facilities Receiving State-only Regulated Waste.

(1) For the purposes of this section, "state-only regulated waste" means a:

(a) Waste that is not regulated as hazardous under the federal RCRA Subtitle C regulatory program that a state regulates more broadly under its state regulatory program; or

(b) Waste that is regulated as hazardous under the federal RCRA Subtitle C regulatory program that is federally exempt from manifest requirements, but not exempt from manifest requirements under state law.

(2) If a state requires a manifest as defined in Regulation .03B of this chapter to be used under state law to track the shipment and transportation of a state-only regulated waste to a receiving facility, the facility receiving the state-only regulated waste shall:

(a) Comply with the provisions of:

(i) COMAR 26.13.05.05B, regarding use of the manifest; and

(ii) COMAR 26.13.05.05C, regarding manifest discrepancies; and

(b) Satisfy requirements established and enforced by the federal government to pay the appropriate per manifest fee to EPA for each manifest submitted to the electronic manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements that are specified in Subpart FF of 40 CFR Part 264.

#### **.04 Rule-Making Petitions.**

A. — B. (text unchanged)

B-1. Procedures to Amend COMAR 26.13.02 to Exclude a Waste Produced at a Particular Facility.

(1) This section establishes procedures under which waste from a particular generating facility may be excluded from the lists in COMAR 26.13.02.15—.19.

(2) For a waste that is listed as a hazardous waste in both Subpart D of 40 CFR Part 261 and COMAR 26.13.02.15—.19:

(a) A person who seeks to exclude the waste from the lists in COMAR 26.13.02.15—.19 shall do so by petitioning the Administrator of the U.S. Environmental Protection Agency, following the procedures in 40 CFR §260.22; and

(b) If the petition submitted in accordance with §B-1(2)(a) of this regulation is successful:

(i) EPA will add the waste to the appropriate table in Appendix IX of 40 CFR Part 261;

(ii) The waste will be excluded from the lists of hazardous wastes in COMAR 26.13.02.15—.19 through the action of COMAR 26.13.02.25.

(3) For a waste that is listed as a hazardous waste in COMAR 26.13.02.15—.19, but not in Subpart D of 40 CFR Part 261:

(a) A person who seeks to exclude the waste from the lists in COMAR 26.13.02.15—.19 shall do so by following the procedures in §C of this regulation; and

(b) If the petition submitted in accordance with §C of this regulation is successful, the Department will identify the waste in COMAR 26.13.02.26.

C. Petitions to Amend COMAR 26.13.02 to Exclude a Waste Produced at a Particular Facility.

(1) A person seeking to exclude a waste identified in §B-1(3) of this regulation that is generated at a particular generating facility from the lists in COMAR 26.13.02.15—.19 may petition for a regulatory amendment under this section and §A of this regulation. [To be], but the petitioner shall only be successful if:

(a) The petitioner [shall demonstrate]demonstrates to the satisfaction of the Secretary that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous or an acutely hazardous waste; [and]

(b) The petitioner satisfies the requirements of §C(3)—C(8) of this regulation; and

[(b)](c) [Based on a complete application, the]Even if the Secretary [shall determine where he ]has a reasonable basis to believe that factors [(including additional constituents) ]other than those for which the waste was listed could cause the waste to be a hazardous waste, the Secretary determines that these factors do not warrant retaining the waste as a hazardous waste[.] subject to the following:

(i) The Secretary's determination shall be based on a petition that is a complete application, in that it includes all information required by this section;

(ii) The other factors considered by the Secretary in evaluating whether the waste should be excluded from the waste listing may include the presence of additional constituents in the waste other than those that caused the waste to be listed; and

(iii) [A waste which is so excluded, however, ] Even if the Secretary concludes that the waste should be excluded from the waste listing, the waste still may be a hazardous waste by operation of COMAR 26.13.02.10—.14.

(2) [The]Procedures.

(a) Subject to §C(2)(b) of this regulation, a person may use the procedures in this section and §A of this regulation [may also be used] to petition the Secretary for a regulatory amendment to exclude from COMAR 26.13.02.03A(2)(b) or B a waste [which]that is described in those sections and is either a waste that:

(i) Is listed in COMAR 26.13.02.15—.19[.];

(ii) [contains]Contains a waste listed in COMAR 26.13.02.15—.19[.]; or

(iii) [is]Is derived from a waste listed in COMAR 26.13.02.15—.19.

(b) The following conditions apply in connection with petitions made under this section:

(i) [This]An exclusion granted in response to the petition may only be issued for a particular generating, storage, treatment, or disposal facility[.];

(ii) The petitioner [must]shall make the same demonstration as required by §C(1) of this regulation, except that [where]if the waste is a mixture of solid waste and one or more listed hazardous wastes or if the waste is derived from one or more hazardous wastes, [his]the petitioner's demonstration may be made with respect to each constituent listed waste or the waste mixture as a whole[.]; and

(iii) A waste which is [so ]excluded as a result of the petition may still be a hazardous waste by operation of COMAR 26.13.02.10—.14.

(3) — (10) (text unchanged)

D. Variances from Classification as a Solid Waste. In accordance with the standards and criteria in §E of this regulation and the procedures in §G of this regulation, the Secretary may determine on a case-by-case basis that the following recycled materials are not solid wastes:

(1) [Materials that are] *Material* accumulated speculatively without sufficient amounts being recycled as defined in COMAR [26.13.02.01C(3)(h)]26.13.02.01D;

(2) Materials that are reclaimed and then reused within the original primary production process in which they were generated; [or]

(3) Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered[.];

(4) *Hazardous secondary materials that are reclaimed in a continuous industrial process; and*

(5) *Hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate.*

E. Standards and Criteria for Variances from Classification as a Solid Waste.

(1) — (2) (text unchanged)

(3) The Secretary[ may]:

(a) *May* grant requests for a variance from classifying as a solid waste those *hazardous secondary* materials that have been *partially* reclaimed but must be reclaimed further before recovery is completed if[, after initial reclamation, the resulting material is commodity-like, even though it is not yet a commercial product, and has to be reclaimed further.] *the partial reclamation has produced a commodity-like material; and*

(b) [This] *Shall* base a determination [will be based ] *that a partially reclaimed material is commodity-like on [the following factors] whether the hazardous secondary material is legitimately recycled, as specified in §L of this regulation, and on whether all of the following decision criteria are satisfied:*

[ (a) The] (i) *Whether the degree of [processing the material has undergone and the degree of further processing that is required] partial reclamation is substantial, as demonstrated by the partial reclamation being accomplished through use of a partial reclamation process other than the process that generated the hazardous waste;*

[ (b) The] (ii) *Whether the partially reclaimed material has sufficient economic value [of the material after it has been reclaimed] so that it will be purchased for further reclamation;*

[ (c) The] (iii) *Whether [degree to which ] the partially reclaimed material is [similar to an analogous raw material] a viable substitute for a product or intermediate produced from virgin or raw materials, and is used in subsequent production steps;*

[ (d) (iv) [The extent to which an end] *Whether there is a market for the partially reclaimed material[ is guaranteed], as demonstrated by there being a known customer or customers engaged in further reclaiming the material, supported by evidence such as records of sales, contracts, or bills of lading or other indicators of subsequent use; and*

[ (e) (v) [The extent to which] *Whether the partially reclaimed material is handled to minimize loss[; and].*

[ (f) Other relevant factors.]

F. (text unchanged)

G. Procedures for Variances from Classification as a Solid Waste or [to be Classified ] *Classification* as a Boiler. The Secretary shall use the following procedures in evaluating applications for variances from classification as a solid waste or applications to classify particular enclosed flame combustion devices as boilers:

(1) (text unchanged)

(2) The Secretary[ shall]:

(a) *Shall* evaluate the application *for the variance* and issue a draft notice tentatively granting or denying the application[.];

(b) [Notification] *Shall provide notification* of this tentative decision [shall be provided ] by newspaper advertisement and radio broadcast in the locality where the recycler is located[.];

(c) *Shall* [The Secretary will ] accept comment on the tentative decision for 45 days[, and may also];

(d) *May* hold a public hearing *on the tentative decision* upon request or at [his ] *the Secretary's* discretion[. The Secretary]; *and*

(e) [will] *Shall* issue a final decision after receipt of comments and after any scheduled hearing.

(3) *If there is a change in circumstances that affects how a hazardous secondary material meets the relevant criteria in §E or §F of this regulation upon which a variance had been based, the applicant shall send a description of the change to the Secretary. The Secretary may issue a determination that the hazardous secondary material continues to meet the relevant criteria of the variance, or may require the applicant to reapply for the variance.*

(4) *Expiration of Variances.*

(a) *The Secretary shall specify a fixed term not to exceed 10 years during which a variance is effective.*

(b) *If a person wishes to continue to operate under a variance, the person shall, no later than 6 months before the end of the fixed term specified under §G(4)(a) of this regulation, reapply for the variance.*

(c) *If a person submits a complete application within 6 months of the end of the fixed term of the variance, the person may continue to operate under the expired variance until receiving a decision on the reapplication from the Secretary.*

(5) A person who receives a variance under this section shall provide notification in accordance with §K of this regulation.

H. — J. (text unchanged)

K. Notification Requirements for Variances from Classification as a Solid Waste.

(1) A person managing a hazardous secondary material under a variance granted in accordance with §D of this regulation shall provide notification in accordance with the requirements of this section.

(2) A person providing notification under §K(1) of this regulation shall:

(a) Provide notification to the Department before operating under the variance and by March 1 of each even-numbered year thereafter using EPA Form 8700-12 or another method acceptable to the Department; and

(b) Include the following information in the notification:

(i) The name, address, and, if applicable, the EPA ID number of the facility;

(ii) The name and telephone number of a contact person;

(iii) The NAICS code of the facility;

(iv) The regulation under which the hazardous secondary material will be managed;

(v) The date when the facility expects to begin managing the hazardous secondary material in accordance with the regulation;

(vi) 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 material were managed as hazardous waste;

(vii) For each hazardous secondary material, whether the hazardous secondary material, or any portion of the hazardous secondary material, will be managed in a land-based unit;

(viii) The quantity of each hazardous secondary material to be managed annually; and

(ix) The certification included in EPA Form 8700-12 signed and dated by an authorized representative of the facility.

(3) If a person managing hazardous secondary materials has submitted a notification, but then subsequently stops managing hazardous secondary materials under a variance granted under §D of this regulation, the person shall notify the Department within 30 days using EPA Form 8700-12. For the purposes of this requirement, a facility is considered to have stopped managing hazardous secondary materials if the facility no longer generates, manages, or reclaims hazardous secondary materials under §D of this regulation and does not expect to manage any amount of hazardous secondary materials for at least 1 year.

L. Legitimate Recycling of Hazardous Secondary Materials.

(1) General Considerations.

(a) The recycling of a hazardous secondary material may qualify for an exclusion or exemption from the hazardous waste regulations only if the recycling is legitimate, as specified in this section.

(b) A hazardous secondary material that is not legitimately recycled is discarded material and is a solid waste.

(c) To demonstrate that an activity claimed to be recycling is legitimate recycling, a person shall:

(i) Address all the requirements of §L(2) of this regulation; and

(ii) Consider the requirements of §L(3) of this regulation.

(d) The Secretary:

(i) Shall determine that an activity claimed to be recycling is legitimate recycling only if all the criteria of §L(2) of this regulation are met; and

(ii) May determine that an activity claimed to be recycling is not legitimate recycling based on consideration of the supplemental factors identified in §L(3) of this regulation.

(2) Mandatory Criteria. In order to be considered legitimate recycling, an activity is required to:

(a) Involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process by:

(i) Contributing valuable ingredients to a product or intermediate;

(ii) Replacing a catalyst or carrier in the recycling process;

(iii) Serving as the source of a valuable constituent that is recovered in the recycling process;

(iv) Being recovered or regenerated by the recycling process; or

(v) Being used as an effective substitute for a commercial product;

(b) Produce a valuable product or intermediate, as indicated by the product or intermediate being:

(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; and

(c) Be conducted in a manner that results in the hazardous secondary material being managed as a valuable commodity when it is under the control of the generator and the recycler, as indicated by the generator and recycler:

(i) Managing the hazardous secondary material in a manner consistent with the management of an analogous raw material, if any, or in an equally protective manner as the typical method of management of an analogous raw material;

(ii) Ensuring that the hazardous secondary material is contained, as described in §L(4) of this regulation, if there is no analogous raw material; and

(iii) Immediately recovering any hazardous secondary material that is released to the environment, with any released secondary hazardous material that is not immediately recovered being subject to regulation as a discarded material.

(3) *Supplemental Factors.*

(a) In evaluating whether an activity that is claimed to be recycling is legitimate recycling, a person shall consider whether the product of the recycling process:

(i) Contains significant concentrations of any hazardous constituents identified in COMAR 26.13.02.24 that are not found in analogous products;

(ii) Contains hazardous constituents identified in COMAR 26.13.02.24 at concentrations that are significantly elevated from those found in analogous products; or

(iii) Exhibits a hazardous characteristic as defined in COMAR 26.13.02.10—.14 that analogous products do not exhibit.

(b) If one or more of the conditions in §L(3)(a) of this regulation is met by a product of a recycling process:

(i) This may be an indication that the process is not legitimate recycling; or

(ii) The process may still be classified as legitimate recycling in consideration of other factors related to the presence of hazardous constituents or the exhibiting of a hazardous characteristic, such as potential exposures to toxics in the product, the bioavailability of the toxics in the product, and other relevant considerations.

(4) *Criteria to be Considered "Contained".*

(a) For the purposes of this section, a hazardous secondary material is considered to be contained if the material is held in a unit, including a land-based unit, that meets the following criteria:

(i) The unit is in good condition;

(ii) The unit has no leaks or other continuing or intermittent releases of hazardous secondary material to the environment, except for releases that are authorized by a permit, such as a permit to discharge to water or air;

(iii) The unit is designed, operated, constructed, and maintained to prevent unpermitted releases to the environment that include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;

(iv) The unit is properly labeled or operated with an inventory log or other system to allow to allow the immediate identification of the hazardous secondary material in the unit;

(v) The unit is operated so that only mutually compatible materials are placed in the unit; and

(vi) The materials being held in the unit are compatible with the materials of construction of the unit.

(b) A hazardous secondary material is presumptively contained if it is held in a unit that meets the standards in COMAR 26.13.05 or 26.13.06 that would be applicable to the hazardous secondary material if it were regulated as a hazardous waste.

**.05 Incorporation by Reference.**

A. (text unchanged)

B. Incorporation of Federal Regulations by Reference.

(1) As qualified by §B(2) of this regulation, certain federal regulations are incorporated by reference as follows:

(a) — (c) (text unchanged)

(d) When used in COMAR [26.13.03.07-5]26.13.03.07, the federal regulations as of July 1, 2019, in 40 CFR §§262.81—262.89 are incorporated by reference;

(e) When used in COMAR 26.13.02, *Appendix VIII of 40 CFR Part 261, as amended, and Appendix IX of 40 CFR Part 261, as amended, [is]are* incorporated by reference;[ and]

(f) When used in COMAR 26.13.01—26.13.10, 49 CFR 171—180, 387, and 396, as amended, are incorporated by reference[.];

(g) When used in COMAR 26.13.02.19-7, the federal regulations as of July 1, 2020 in 40 CFR §261.39(a)(5) are incorporated by reference;

(h) When used in COMAR 26.13.02.19-8 the federal regulations as of July 1, 2020 in 40 CFR §261.41 are incorporated by reference;

(i) When used in COMAR 26.13.03.07, the federal regulations as of July 1, 2020 in 40 CFR Part 262 Subpart H are incorporated by reference;

(j) When used in COMAR 26.13.05.02C(1), the federal regulations as of July 1, 2020 in 40 CFR §264.12(a) are incorporated by reference;

(k) When used in COMAR 26.13.05.11, the federal regulations as of July 1, 2020 in 40 CFR §§264.221(c)(2)(i)—(iv), and .223(b)—(d) are incorporated by reference;

(l) When used in COMAR 26.13.05.12, the federal regulations as of July 1, 2020 in 40 CFR §253(b) and (c) are incorporated by reference;

(m) When used in COMAR 26.13.05.14, the federal regulations as of July 1, 2020 in 40 CFR §§264.301(c)(3)(i)—(v), .301(c)(5), .303(c), and .304(b) are incorporated by reference;

(n) When used in COMAR 26.13.06.19, the federal regulations as of July 1, 2020 in 40 CFR §§265.222 and .223 are incorporated by reference;

(o) When used in COMAR 26.13.06.20, the federal regulations as of July 1, 2020 in 40 CFR §§265.254, .255, and .259 are incorporated by reference;

(p) When used in COMAR 26.13.06.22, the federal regulations as of July 1, 2020 in 40 CFR §§265.302 and .303 are incorporated by reference;

(q) When used in COMAR 26.13.07.13-2A(13), the federal regulations as of July 1, 2020 in Appendix I of 40 CFR §270.42 are incorporated by reference; and

(r) Except as qualified by COMAR 26.13.09.03, when used in used in COMAR 26.13.01—26.13.10, the federal regulations as of July 1, 2020 in 40 CFR Part 268 are incorporated by reference.

(2) References to Other Federal Regulations in Federal Regulations That Have Been Incorporated by Reference.

(a) [For]Unless otherwise noted in this subtitle, for the purposes of this subtitle[,] a reference to a federal regulation within a federal regulation that has been incorporated by reference in §B(1) of this regulation shall be to the analogous provision within the Code of Maryland Regulations.

(b) The following table lists federal regulations and the analogous provisions within the Code of Maryland Regulations:

40 CFR Provision Referenced	State of Maryland Analog to the Referenced 40 CFR Provision
§122.72(c). Note that, although there is a cross-reference to this citation in 40 CFR §265.276, it has been recodified. The current citation for this provision is 40 CFR §270.72(a)(3).	26.13.07.23C(1)(c)
§124.5 — §144.70(f)	(text unchanged)
Part 260	26.13.01
§260.10	(text unchanged)
§260.20	26.13.01.04A
§261.3(c) and (d)	26.13.02.03C and D]
Part 261	26.13.02
Part 261, Subpart C — Part 261, Subpart D	(text unchanged)
§261.2	26.13.02.02
§261.3	26.13.02.03
§261.3(c) and (d)	26.13.02.03C and D
§261.3(f)	26.13.02.03E
§261.3(f)(1)	26.13.02.03E(1)
§261.3(f)(2)	26.13.02.03E(2)
§261.4(a)(2)	26.13.02.04A(2)
§261.21	26.13.02.11
§261.21(a)(1)	26.13.02.11A(1)
§261.21(a)(2)	26.13.02.11A(2)
§261.21(a)(3)	26.13.02.11A(3)
§261.21(a)(4)	26.13.02.11A(4)
§261.22	26.13.02.12

§261.22(a)(1)	26.13.02.12A(1)
§261.22(a)(2)	26.13.02.12A(2)
§261.23 — §261.23(a)(4) and (5)	(text unchanged)
§261.23(a)(1)—[(3) and (6)—](8)	26.13.02.13A(1)—[(3) and (6)—](8)
§261.24	(text unchanged)
§261.31	26.13.02.16
§261.32	26.13.02.17
§261.33	26.13.02.19
Part 261, Appendix VIII — Part 262, Subpart F	(text unchanged)
262.11	26.13.03.02, .02-1, and .02-2
262.15	26.13.03.03-3
262.16	26.13.03.03-4—.03-10, .05E, .05-1, and .05-2
262.17	26.13.03.03-4—.03-11, .05E, .05-1, and .05-2
262.20(e)	<i>Not applicable. No corresponding provision in COMAR 26.13.</i>
§262.23(c) and (d) — Part 264	(text unchanged)
<i>Part 264, Subpart F</i>	26.13.05.06—.06-7
<i>Part 264, Subpart O</i>	26.13.05.16
§264.1	(text unchanged)
§264.13	26.13.05.02D
§264.17(b)	(text unchanged)
§264.73	26.13.05.05D
§264.111 — §264.197	(text unchanged)
§264.221(a)	26.13.05.11D(10)
§264.221(c)	26.13.05.11D(4)
§264.221(d)	26.13.05.11B(6)
§264.221(e)	26.13.05.11D(6)
§264.228 — §264.280	(text unchanged)
§264.301(c)	26.13.05.14B(3)
§264.301(d)	26.13.05.14B(4)
§264.301(e)	26.13.05.14B(5)



§264.310	(text unchanged)
§264.316	26.13.05.14N
[Part 264, Subpart O	26.13.05.16]
§264.351	(text unchanged)
§264.554	<i>Not applicable. No corresponding provision in COMAR 26.13.</i>
§§264.601—264.603 (Part 264, Subpart X) — Part 265	(text unchanged)
<i>Part 265, Subpart F</i>	26.13.06.06
<i>Part 265, Subpart G</i>	26.13.06.12
<i>Part 265, Subpart H</i>	26.13.06.16
<i>Part 265, Subpart J</i>	26.13.06.18
<i>Part 265, Subpart K</i>	26.13.06.19
<i>Part 265, Subpart M</i>	26.13.06.21
<i>Part 265, Subpart O</i>	26.13.06.23
<i>Part 265, Subpart P</i>	26.13.06.24
<i>Part 265, Subpart Q</i>	26.13.06.25
§265.1 — §265.115	(text unchanged)
[Part 265, Subpart G	26.13.06.12 ]
§265.117 — §265.178	(text unchanged)
[Part 265, Subpart J	26.13.06.18 ]
§265.197	(text unchanged)
[Part 265, Subpart K	26.13.06.19 ]
§265.221(a)	26.13.06.19D(1)
§265.221(d)	26.13.06.19D
§265.221(e)	<i>Not applicable. No corresponding provision in COMAR 26.13.</i>
§265.228 — §§265.270—265.282 (Part 265, Subpart M)	(text unchanged)
§265.301(a)	26.13.06.22C
§265.301(c)	26.13.06.22C
§265.301(d)	26.13.06.22C
§265.301(e)	26.13.06.22E
§265.310	26.13.06.22B(3) and 26.13.05.14J

§265.316	26.13.06.21F
§§265.340—265.351 (Part 265, Subpart O) — Part 266	(text unchanged)
§266.20	26.13.10.01
§266.20(b)	26.13.10.01A(3)
[Part 268	No analog. Use 40 CFR 268. ]
§270.14 — §270.62	(text unchanged)
§273.2	26.13.10.07

C. (text unchanged)

## Chapter 02 Identification and Listing of Hazardous Waste

Authority: Environment Article, §6-905.3 and Title 7, Subtitle 2, Annotated Code of Maryland

### .01 Purpose and Scope.

A. — B. (text unchanged)

C. General.

(1) — (2) (text unchanged)

[(3)]D. Definitions. For the purposes of Regulations .02, .04, and .06 of this chapter, *the following terms have the meanings indicated:*

[(a)](1) *By-product.*

(a) "By-product" [is] *means* a material that is not one of the primary products of a production process and is not solely or separately produced by the production process[. Examples are], [process residues ]such as slags, [or ]distillation column bottoms[.], *or other process residues.*

(b) [The term does]"By-product" *does* not include a co-product that is produced for the general public's use and is ordinarily used in the form produced by the process.

[(b)](2) "Excluded scrap metal" [is] *means* processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

[(c)](3) "Home scrap metal" [is] *means* scrap metal as generated by steel mills, foundries, and refineries, and includes, for example, turnings, cuttings, punchings, and borings.

(4) *Material accumulated speculatively.*

(a) "Material accumulated speculatively" *means* a material that is accumulated before being recycled.

(b) "Material accumulated speculatively" *does not include* a material for which the person accumulating the material can show that the material is potentially recyclable and has a feasible means of being recycled, and that during the calendar year which commences on January 1, the amount of material that is recycled or transferred to a different site for recycling equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period, subject to the following:

(i) *The person shall have placed the material in a storage unit that has a label indicating the first date that the material began to be accumulated, or, if placing a label on the storage unit is not practicable, the person shall have documented the accumulation period through an inventory log or other appropriate method;*

(ii) *In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type, such as slags from a single smelting process, that is recycled in the same way, such as by recovering the same material from the recyclable material, or by using the material in the same way;*

(iii) *Materials accumulating in units that would be exempt from regulation under Regulation .04-2 of this chapter are not to be included in making the calculation;*

(iv) *Materials that are already defined as solid wastes are not to be included in making the calculation;* and

(v) *A material is no longer in the category of material being accumulated speculatively once it has been removed from accumulation for recycling.*

[(d)](5) *Processed Scrap Metal.*

[(i)](a) "Processed scrap metal" [is] *means* scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials.

[(ii)](b) "Processed scrap metal" includes, but is not limited to, scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type, and fines, drosses, and related materials which have been agglomerated.

[(iii)](c) "Processed scrap metal" does not include shredded circuit boards being sent for recycling, which are excluded from the definition of solid waste under Regulation .04A(12) of this chapter.

[(e)](6) *Prompt scrap metal*.

(a) "Prompt scrap metal", also known as "industrial scrap metal" or "new scrap metal", [is ]*means* scrap metal as generated by the metal working or metal fabrication industries[, and].

(b) "*Prompt scrap metal*" includes scrap metal such as turnings, cuttings, punchings, and borings.

[(f)](7) *Reclaimed material*.

(a) "Reclaimed material" [is]*means* material that is processed to recover a usable product or is regenerated.

(b) [Examples are]"*Reclaimed material*" includes such things as recovery of lead values from spent batteries and regeneration of spent solvents.

[(g)](8) "Recycled material" [is]*means* material that is used, reused, or reclaimed.

[(h)](9) "Reused or used material" [is ]*means* a material that is employed in either one of the following:

[(i)](a) As an ingredient including use as an intermediate, in an industrial process to make a product, such as distillation bottoms from one process used as feedstock in another process[. However], *except that* a material does not satisfy this condition if distinct components of the material are recovered as separate end products, as when metals are recovered from metal-containing secondary materials[.]; *or*

[(ii)](b) In a particular function or application as an effective substitute for a commercial product such as spent pickle liquor used as phosphorus precipitant and sludge conditioner in wastewater treatment.

[(j)](10) "Scrap metal" [is ]*means* bits and pieces of metal parts such as bars, turnings, rods, sheets, or wire or metal pieces that may be combined together with bolts or soldering such as radiators, scrap automobiles, or railroad box cars, which when worn or superfluous can be recycled.

[(k)](11) "Sludge" has the [same ]meaning [as specified ]*stated* in COMAR 26.13.01.03B(72).

[(k)](12) "Spent material" [is ]*means* any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

[(l) A material is "accumulated speculatively" if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled, and that during the calendar year which commences on January 1, the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type, such as slags from a single smelting process, that is recycled in the same way, for example, from which the same material is recovered or that is used in the same way. Materials accumulating in units that would be exempt from regulation under Regulation .04-2 of this chapter are not to be included in making the calculation. Materials that are already defined as solid wastes also are not to be included in making the calculation. Materials are no longer in this category once they are removed from accumulation for recycling.]

## **.02 Definitions of Solid Waste.**

A. (text unchanged)

B. Materials are solid waste if they are abandoned. For purposes of this subtitle, "abandoned" means:

(1) (text unchanged)

(2) Burned or incinerated; [or]

(3) Accumulated, stored, or treated (but not recycled) before or instead of being abandoned by being disposed of, burned, or incinerated[.]; *or*

(4) *Sham recycled, as explained in §H of this regulation.*

C. — F. (text unchanged)

G. Table 1.

	Use Constituting Disposal (1)	Energy Recovery/ Fuel (2)	Reclamation (3)	Speculative Accumulation (4)
Spent materials — Commercial chemical products exhibiting a characteristic of hazardous waste (text unchanged)				
Scrap metal other than excluded scrap metal,	(*)	(*)	(*)	(*)

which is defined in Regulation [.01C(3)(b)].01D of this chapter				
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NOTE — The terms "spent materials", "sludges", "by-products", and "scrap metal" are defined in Regulation .01 of this chapter.

*H. Sham Recycling.*

(1) *A hazardous secondary material found to be sham recycled, as described in §H(2) of this regulation, is considered discarded and a solid waste.*

(2) *"Sham recycling" means recycling that is not legitimate, as determined in accordance with COMAR 26.13.01.04L.*

**.04 Materials Which Are Not Solid Wastes.**

A. The following materials are not solid wastes for the purpose of this chapter:

(1) — (4) (text unchanged)

(5) Black liquor or other pulping liquors that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is *a material* accumulated speculatively as defined in Regulation [.01C(3)(l)].01D of this chapter;

(6) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is *a material* accumulated speculatively as defined in Regulation [.01C(3)(l)].01D of this chapter;

(7) — (10) (text unchanged)

(11) Excluded scrap metal being recycled, including the following as defined and qualified in Regulation [.01C(3)(c)—(e)].01D of this chapter:

(a) — (c) (text unchanged)

(12) (text unchanged)

(13) [Comparable fuels or comparable syngas fuels that meet the requirements of Regulations .19-1—.19-5 of this chapter]*Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic acid or naphthenic acid if the spent caustic solutions are not:*

(a) *Placed on the land; or*

(b) *Material accumulated speculatively as defined in Regulation .01D of this chapter;*

(14) (text unchanged)

(15) Oil-bearing hazardous secondary materials, that is, sludges, byproducts, or spent materials, that are generated at a petroleum refinery (SIC code 2911), when:

(a) (text unchanged)

(b) The material, *before it is inserted into the petroleum refining process:*

(i) [is]Is not placed on the land[ or]; *and*

(ii) *Is not a material accumulated speculatively*[ accumulated] as defined in Regulation [.01C(3)(l)].01D of this chapter[ before it is inserted into the petroleum refining process];

(c) If the material is inserted into a thermal cracking unit, the coke product does not exhibit a characteristic of hazardous waste defined in Regulations .10—.14 of this chapter; *and*

(d) (text unchanged);

(16) (text unchanged)

(17) Petrochemical recovered oil from an associated organic chemical manufacturing facility that is to be inserted into the petroleum refining process (SIC code 2911) along with normal petroleum refining process streams, subject to the following:

(a) — (c) (text unchanged)

(d) Before the oil generated by the organic chemical manufacturing facility is recycled into the petroleum refining process, it is not:

(i) (text unchanged)

(ii) [Accumulated]*A material accumulated speculatively as defined in Regulation [.01C(3)(l)].01D of this chapter; and*

[(18) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic acid or naphthenic acid if the spent caustic solutions are not:

(a) Placed on the land; or

(b) Accumulated speculatively as defined in Regulation .01C(3)(l) of this chapter; and]

[(19)](18) A used cathode ray tube (CRT) under the following conditions:

(a) A used, intact CRT, as defined in COMAR 26.13.01.03B, that is within the United States [and ]that[ has not been];

(i) [Disposed]*Has not been disposed; [or]and*

(ii) ~~[Accumulated]~~*Is not material accumulated* speculatively, as defined in Regulation [.01C(3)(l)].01D of this chapter, by a CRT collector or a facility engaged in CRT processing;

(b) — (d) (text unchanged)

B. — C. (text unchanged)

#### **.04-3 Samples.**

A. Except as provided in [§B]§§B and D of this regulation, a sample of solid waste or a sample of water, soil, or air, the quantity of which is to be determined by the Department, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirement of this chapter, [or ]COMAR 26.13.03—26.13.07, COMAR 26.13.09, or to the notification requirements of §3010 of the Resource Conservation and Recovery Act, when the sample is being:

(1) — (6) (text unchanged)

B. — C. (text unchanged)

D. *In order to qualify for the exemption in §A(1) and (2) of this regulation, the mass of a sample that will be exported to a foreign country or that will be imported to a U.S. laboratory from a foreign source may not exceed 25 kilograms.*

#### **.04-4 Treatability Study Samples.**

A. Except as provided in [§B]§§B and F of this regulation, persons who generate or collect samples for the purpose of conducting treatability studies as defined in COMAR 26.13.01.03B are not subject to any requirement of COMAR 26.13.02—.04 or to the notification requirements of Section 3010 of RCRA, nor are those samples included in the quantity determinations of Regulation .05 of this chapter and COMAR 26.13.03.03-4C(3) when one of the following conditions is met:

(1) — (3) (text unchanged)

B. — E. (text unchanged)

F. *In order to qualify for the exemption in §A(1) of this regulation, the mass of a sample that will be exported to a foreign laboratory or testing facility or that will be imported to a U.S. laboratory or testing facility from a foreign source may not exceed 25 kilograms.*

#### **.05 Special Requirements for Hazardous Waste Generated by Small Quantity Generators.**

A. Exemptions.

(1) Except for those wastes identified in §§B, C, D, and E(2) of this regulation, and except as specified in §G of this regulation and COMAR 26.13.03.01A-3, if a person generates, in a calendar month, a total of less than 100 kilograms (approximately 220 pounds) of hazardous wastes, those wastes are not subject to regulation under COMAR 26.13.03—26.13.07, 26.13.09, and 26.13.10 and the notification requirements of §3010 of RCRA, provided the generator complies with the requirements of §§B, D, E, and F of this regulation.

(2) In determining quantities under this chapter and COMAR 26.13.03, a generator shall include all hazardous waste generated, except for hazardous waste that is:

(a) Exempt from regulation under Regulations .04-2—.04-5, [.06A(3)(a)].06A-1(1), and .07A(1) of this chapter;

(b) — (c) (text unchanged)

(d) Used oil managed under the requirements of COMAR 26.10.15, 26.11.09, [26.13.02.06A(3)(c)]*Regulation .06A-1(3) of this chapter*, and COMAR 26.13.10;

(e) — (g) (text unchanged)

(3) (text unchanged)

B. — G. (text unchanged)

#### **.06 Requirements for Recyclable Materials.**

A. General.

(1) (text unchanged)

(2) Exemption ~~[From]~~*from* Regulation.

(a) The following recyclable materials are not CHS for purposes of the regulations indicated:

(i) Recyclable materials that are reclaimed to recover economically significant amounts of gold, silver, platinum, palladium, iridium, osmium, rhodium, ruthenium, or any combination of these are not CHS for the purposes of COMAR 26.13.05.01—.04, .05A, D—H, and .06—.24, 26.13.06, and 26.13.07, if these materials are not accumulated speculatively as defined in [Regulation .01C(3)(h)]*Regulation .01D* of this chapter;

(ii) (text unchanged)

(b) The following recyclable materials are not subject to the requirements of this section but are regulated under either COMAR 26.13.05.16, 26.13.06.23, or 26.13.10 and all applicable provisions in COMAR 26.13.07 *and* COMAR 26.13.09:

(i) — (iv) (text unchanged)

A-1. Exclusions.

(1) The following recyclable materials are not CHS for purposes of the regulations indicated:

(a) Industrial ethyl alcohol that is reclaimed is not a CHS for purposes of COMAR 26.13.03—[26.13.07]26.13.09, except [for the requirements specified in §D of this regulation]*that exports and imports are subject to the requirements of subpart H of 40 CFR part 262 as made applicable in COMAR 26.13.03.07* ;

(b) — (c) (text unchanged)

(2) — (3) (text unchanged)

B. — C. (text unchanged)

[D. Industrial Ethyl Alcohol Reclaimed in a Foreign Country.

(1) A person initiating a shipment of industrial ethyl alcohol that is to be reclaimed in a foreign country, and any intermediary arranging for the shipment shall:

(a) Comply with the requirements of COMAR 26.13.03.07-1, .07-2C(1), .07-2C(2)(a)—(e), .07C(4), and .07-2D concerning the responsibilities of a primary exporter;

(b) Export the industrial ethyl alcohol only upon consent of the receiving country, and in conformance with the EPA Acknowledgement of Consent for the shipment obtained under the provisions of COMAR 26.13.03.07B(3); and

(c) Provide a copy of the EPA Acknowledgement of Consent to the transporter who is transporting the shipment for export.

(2) A transporter transporting for export a shipment of industrial ethyl alcohol that is to be reclaimed:

(a) May not accept the shipment if the transporter knows that it does not conform to the EPA Acknowledgement of Consent;

(b) Shall ensure that a copy of the EPA Acknowledgement of Consent accompanies the shipment; and

(c) Shall ensure that the shipment is delivered to the facility designated by the person initiating the shipment.

E. Hazardous waste that is imported from or exported to designated member countries of the Organization for Economic Cooperation and Development (OECD), as defined in COMAR 26.13.03.07-5C, for purpose of recovery is subject to the requirements of COMAR 26.13.03.07-5 if it meets the applicability criteria of COMAR 26.13.03.07-5A.]

#### **.10 General Characteristics of Hazardous Waste.**

A. (text unchanged)

B. A hazardous waste which is identified by a characteristic in Regulations .10—.14 of this chapter is assigned every EPA Hazardous Waste Number that is applicable as set forth in the respective characteristic. This number or these numbers shall be used in complying with the notification requirement of §3010 of RCRA and with certain record keeping and reporting requirements under COMAR 26.13.03—26.13.07 *and* 26.13.09.

C. (text unchanged)

#### **.15 Lists of Hazardous Wastes: General.**

A. — C. (text unchanged)

D. Each hazardous waste listed in Regulations .16—.19 of this chapter is assigned a Hazardous Waste Number which precedes the name of the waste. This number shall be used in complying with the notification requirements, and certain record-keeping and reporting requirements under COMAR 26.13.03—26.13.06 *and* 26.13.09.

E. (text unchanged)

#### **.17 Hazardous Waste from Specific Sources.**

A. As qualified by §B of this regulation, the following solid wastes are listed as hazardous wastes from specific sources unless they are excluded under:

(1) — (2) (text unchanged)

<i>Industry</i>	<i>EPA Hazardous Waste Number</i>	<i>Hazardous Waste</i>	<i>Hazard Code</i>
Wood Preservation — Inorganic Pigments (text unchanged)			
Organic Chemicals	K009 — K175 (text unchanged)		

	K181	<i>Except for wastes demonstrated not to be regulated as K181 using the procedures in §D of this regulation, waste, as qualified by §B(3) of this regulation, waste that consists of nonwastewaters from the production of dyes or pigments or both, including nonwastewaters commingled at the point of generation with nonwastewaters from other processes, that, at the point of generation, contains mass loadings of any of the constituents identified in §C of this regulation that are equal to or greater than the corresponding levels specified in §C of this regulation, as determined on a calendar year basis.</i>	(T)
Pesticides — Secondary Lead (text unchanged)			
Inorganic Chemicals	K071 — K176 (text unchanged)		
	K177	Slag from the production of antimony oxide that is <i>material</i> accumulated speculatively as defined in Regulation [01C(3)(l)].01D of this chapter or disposed of, including slag from the production of intermediates, such as, for example, antimony metal or crude antimony oxide.	(T)
	K178 (text unchanged)		
Ink Formulation — Military (text unchanged)			

B. Qualifiers Concerning Hazardous Waste from Specific Sources.

(1) — (2) (text unchanged)

(3) *The following qualifiers apply to Hazardous Waste Number K181 listed under the organic chemicals industry in the table in §A of this regulation:*

(a) A nonwastewater that otherwise meets the listing for K181 in §A of this regulation does not meet that waste listing if the nonwastewater is:

(i) Disposed in a RCRA Subtitle D landfill unit subject to the design criteria in 40 CFR§258.40 or equivalent state regulations;

(ii) Disposed in a RCRA Subtitle C landfill unit subject to either 40 CFR§264.301, 40 CFR §265.301, or equivalent state regulations;

(iii) Disposed in other RCRA Subtitle D landfill units that meet the design criteria in 40 CFR§258.40, 40 CFR §264.301, 40 CFR§265.301 or equivalent state regulations; or

(iv) Treated in a combustion unit that is permitted under RCRA Subtitle C or is an onsite combustion unit that is permitted under the Clean Air Act.

(b) The scope of "dyes and pigments production" for the purposes of the K181 waste listing includes the manufacture of the following product classes:

(i) Dyes;

(ii) Pigments; or

(iii) FDA certified colors that are classified as azo, triarylmethane, perylene or anthraquinone classes.

(c) In identifying applicable product classes under §B(3)(b) of this regulation:

(i) Azo products include azo, monoazo, diazo, triazo, polyazo, azoic, benzidine, and pyrazolone products;

and

(ii) Triarylmethane products include both triarylmethane and triphenylmethane products.

(d) The K181 listing does not apply to the following wastes:

(i) Wastes that are not generated at a dyes or pigments manufacturing site, such as wastes from the offsite use, formulation, and packaging of dyes or pigments;

(ii) Wastes that are otherwise identified as hazardous under COMAR 26.13.02.11—.14 and 26.13.02.16—.19 at the point of generation; and

(iii) Wastes generated before any annual mass loading limit is met.

#### C. K181 Listing Levels.

(1) Unless the conditions in the K181 listing are met, nonwastewaters are subject to the K181 listing if, during any calendar year, they contain constituents in amounts equal to or exceeding the levels listed in Table 1 in §C(2) of this regulation.

(2) Table 1.

Constituent	Chemical Abstracts Service Number.	Mass levels (kilograms per year)
Aniline	62–53–3	9,300
o-Anisidine	90–04–0	110
4-Chloroaniline	106–47–8	4,800
p-Cresidine	120–71–8	660
2,4-Dimethylaniline	95–68–1	100
1,2-Phenylenediamine	95–54–5	710
1,3-Phenylenediamine	108–45–2	1,200

D. To demonstrate that a nonwastewater does not qualify as for the K181 listing in the organic chemicals industry category, a person shall follow the procedures in 40 CFR §261.32(d).

#### **.19-6 Conditional Exclusion — Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling.**

##### A. General.

(1) — (2) (text unchanged)

(3) Speculative Accumulation. A used, broken CRT or glass from a used CRT that is *material* accumulated speculatively, as [described] *defined* in Regulation [.01C(3)(1)].01D of this chapter, is a solid waste when recycled unless otherwise excluded from the definition of solid waste by Regulation .02 of this chapter.

B. — C. (text unchanged)



D. Requirements for Processed CRT Glass. Glass from used CRTs that is destined for recycling at a CRT glass manufacturer or a lead smelter after processing is not a solid waste unless it is *material* accumulated speculatively as [described ]defined in Regulation [.01C(3)(1)].01D of this chapter.

**.19-7 Exports — Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling.**

**A. General.**

(1) This regulation establishes requirements concerning exports of used, broken CRTs being recycled that must be met in order for the used, broken CRTs to be excluded from the definition of solid waste.

(2) The requirements of this regulation are in addition to the requirements of Regulation .19-6 of this chapter.

(3) Processed CRT glass, that is, CRT glass that has been sorted or otherwise managed under the definition of CRT processing in COMAR 26.13.01.03B, is not subject to the export notification requirements of this regulation.

(4) Unsorted CRT glass is considered to be a used, broken CRT for the purposes of this regulation.

**B. A person engaged in the export of used, broken CRTs for recycling:**

(1) Shall comply with applicable requirements of 40 CFR §261.39(a)(5); and

(2) In complying with the requirements of 40 CFR §261.39(a)(5), a person shall:

(a) Comply with provisions in the Code of Federal Regulations as referenced rather than analogous provisions in COMAR; and

(b) Make the required notification to EPA as specified, rather than to the Department.

**.19-8 Used, Intact Cathode Ray Tubes (CRTs) Exported for Recycling or Reuse.**

**A. A used, intact CRT exported for recycling is not a solid waste if the used, intact CRT:**

(1) Is managed in accordance with the requirements concerning notice and consent that apply to used, broken CRTs in Regulation .19-7B of this chapter; and

(2) Is not material accumulated speculatively as defined in Regulation .01D of this chapter.

**B. Notification and Record Keeping.**

(1) As qualified by §B(2) of this regulation, a CRT exporter who exports used, intact CRTs for reuse shall comply with the notification and record keeping requirements of 40 CFR §261.41; and

(2) In complying with the notification requirements of 40 CFR §261.41, a person shall make the required notification to EPA as specified, rather than to the Department.

**.23 Basis for Listing Hazardous Wastes.**

EPA Hazardous Waste Number	Hazardous Constituents For Which Listed
F001 — K178 (text unchanged)	
K181	Aniline, o-anisidine, 4-chloroaniline, p-cresidine, 2,4-dimethylaniline, 1,2-phenylenediamine, 1,3-phenylenediamine.

## 26.13.03 Standards Applicable to Generators of Hazardous Waste

Authority: Environment Article, Title 7, Subtitle 2, Annotated Code of Maryland

**.01 Purpose, Scope, and Applicability.**

**A. — C. (text unchanged)**

D. A farmer who generates waste pesticides which are hazardous wastes and who complies with all of the requirements of Regulation .07-4 of this chapter is not required to comply with other standards in this chapter or COMAR 26.13.05, 26.13.06, [or ]26.13.07, or 26.13.09 with respect to these pesticides.

**E. — J. (text unchanged)**

**.04 The Manifest.**

**A. General Requirements.**

(1) A generator who transports, or offers for transport, hazardous waste for off-site treatment, storage, or disposal, or a treatment, storage, or disposal facility who offers for transport a rejected hazardous waste load[, shall]:

(a) Shall prepare a manifest (OMB control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A[, according to the instructions included in the appendix to 40 CFR Part 262 before the waste is transported off-site.]; or

(b) May, instead of using the manifest forms specified in §A(1)(a) of this regulation, prepare and use an electronic manifest if the person complies with the requirements of:

- (i) *§E-1 of this regulation for use of electronic manifests; and*
- (ii) *40 CFR §3.10 for the reporting of electronic documents to EPA.*

(2) (text unchanged)

(3) A generator may also designate on the manifest one alternate facility which is permitted to handle [his]the generator's waste if an emergency prevents delivery of the waste to the primary designated facility.

(4) A generator whose manifest for an interstate shipment has not been returned to the generator within the prescribed time [(of 45 days)] shall give notice of that to the:

(a) State in which the designated facility is located[,];

(b) [the ]State in which the shipment may have been delivered [(], or to the EPA in the case of an unauthorized [State),]state; and

(c) [to the ]Department.

(5) — (6) (text unchanged)

#### B. Manifest Printing—Requirements for Registrants.

##### (1) General Requirements.

(a) In this section, the following terms have the meanings indicated:

(i) (text unchanged)

(ii) "Approved registrant" means a person that has received approval from the EPA Director of the Office of [Solid Waste ]Resource Conservation and Recovery or other authorized EPA official to print, or have printed, the manifest for use or distribution.

(b) A registrant may not print, or have printed, the manifest for use or distribution unless the registrant has received approval from the EPA Director of the Office of [Solid Waste ]Resource Conservation and Recovery or other authorized EPA official to do so.

[(c) An approved registrant is responsible for:

(i) Ensuring that the organizations identified in the registrant's approved application are in compliance with the procedures described in the approved application; and

(ii) Assigning manifest tracking numbers to its manifests.

(d) The procedures the EPA will follow in determining whether to grant approval to a registrant are found in 40 CFR §262.21(c)—(e).

(e) An approved registrant shall print the manifest and continuation sheet according to the:

(i) Registrant's application as approved under 40 CFR §262.21(c);

(ii) Manifest specifications given in 40 CFR §262.21(f); and

(iii) Paper type, paper weight, and ink color of the manifest instructions, and binding method of the registrant's approved forms.

##### (2) Procedures for Becoming an Approved Registrant.

(a) A registrant shall submit an initial application to become an approved registrant:

(i) To the EPA Director of the Office of Solid Waste; and

(ii) That contains the information specified in 40 CFR §262.21(b).

(b) Following approval by the EPA of the initial application submitted under §B(2)(a) of this regulation, the registrant shall submit the information and sample manifests required by 40 CFR §262.21(d) to the EPA Director of the Office of Solid Waste.

(c) As described in 40 CFR §262.21(j), a registrant may request that the EPA exempt the registrant from the requirement of §B(2)(b) of this regulation to submit form samples.

(d) The procedures the EPA uses in designating a registrant to be an approved registrant are described in 40 CFR §262.21(e).

##### (3) Modifications or Changes After a Registrant has been Designated an Approved Registrant.

(a) Updating of Information in the Initial Application to Become an Approved Registrant.

(i) If an approved registrant would like to update any of the information provided in the registrant's application approved under §B(2)(b) of this regulation, such as updating a company phone number or name of a contact person, the registrant shall revise the application and submit it to the EPA Director of the Office of Solid Waste, along with an indication or explanation of the update, as soon as practicable after the change occurs.

(ii) The procedures the EPA will follow in approving or denying the revision are described in 40 CFR §262.21(h)(1).

(b) New Tracking Number Suffix.

(i) If an approved registrant would like a new tracking number suffix, the registrant shall submit a proposed suffix to the EPA Director of the Office of Solid Waste, along with the reason for requesting the new suffix.

(ii) The procedures the EPA will follow in approving or denying the new suffix are described in 40 CFR §262.21(h)(2).

(c) Typesetting Instead of Using Electronic Files for Printing.

(i) If an approved registrant wants to print manifests or continuation sheets using typesetting instead of continuing to use the electronic file of the forms provided by the EPA, the registrant shall seek approval from EPA as described in 40 CFR §262.21(i).

(ii) The registrant may not use or distribute the typeset forms until the EPA approves them.

(d) Other Changes. An approved registrant shall follow the procedures in 40 CFR §262.21(h)(3) if the registrant would like to change any of the following after having been designated as an approved registrant:

- (i) Paper type;
- (ii) Paper weight;
- (iii) Ink color of the manifest instructions;
- (iv) Binding method of the manifest or continuation sheet; or
- (v) Printing firm that prints the manifests.

(e) As described in 40 CFR §262.21(j), a registrant may request that the EPA exempt the registrant from the requirement in 40 CFR §262.21(h)(3) to submit form samples when seeking approval for changes identified in §B(3)(d) of this regulation.

(f) A registrant may not use or distribute revised manifests until the EPA approves the revised forms.

(4) Notification—Duplicate Tracking Numbers. As soon as an approved registrant becomes aware that the registrant has duplicated tracking numbers on any manifests that have been used or distributed to other parties, the registrant shall notify the EPA Office of Solid Waste by phone or email.

(5) Required Modification of Form. As provided in 40 CFR §262.21(l), the EPA has the authority to require an approved registrant to make modifications if the EPA becomes aware that the approved paper type, paper weight, ink color of the instructions, or binding method of the registrant's form is unsatisfactory.

(6) Suspension or Revocation of Printing Privileges. Using the procedures described in 40 CFR §262.21(m)(2), the EPA may suspend or revoke a registrant's printing privileges if the registrant:

- (a) Has used or distributed forms that deviate from the registrant's approved form samples in regard to paper type, paper weight, ink color of the instructions, or binding method; or
- (b) Exhibits a continuing pattern of behavior in using or distributing manifests that contain duplicate manifest tracking numbers.]

(2) *Approval Process for Registrants.*

(a) *EPA implements the program of review and approval of requests to print, or have printed, the manifest for use or distribution.*

(b) *A person who seeks to print, or have printed, the manifest for use or distribution shall apply to the EPA to become an approved registrant, following the procedures and subject to the requirements in 40 CFR §262.21(a)—(f) and 40 CFR §262.21(h)—(m).*

(c) *EPA is the implementing authority for the requirements referenced in §B(2)(b) of this regulation and does not delegate this authority to states. In complying with §B(2)(b) of this regulation, the person shall comply with the referenced requirements in 40 CFR §262.21 as written, rather than substituting "the Department" for "EPA."*

C. (text unchanged)

D. Number and Distribution of Copies.

(1) The manifest consists of [six ]five preprinted copies and the additional number of photocopies needed so that copies can be distributed as described in §D(2) of this regulation.

(2) Manifest copies shall be distributed as follows:

(a) — (c) (text unchanged)

(d) The designated facility shall forward copies as indicated on the manifest to the:

(i) Generator; and

(ii) [Department, if the generator or designated facility is located in Maryland, in accordance with COMAR 26.13.05.05B;]Electronic manifest system, in accordance with COMAR 26.13.05.05B if the designated facility is located in Maryland, or in accordance with 40 CFR §264.71(a)(2)(v)(B) if the designated facility is not located in Maryland; and

[(iii) Generator state, if the generator state is a state other than Maryland and the generator state requires the designated facility to submit a copy of the manifest; and

(iv) Consignment state, if the consignment state is a state other than Maryland and the consignment state requires the designated facility to submit a copy of the manifest; and]

(e) (text unchanged)

E. Use of the Manifest.

(1) — (6) (text unchanged)

(7) *For rejected shipments of hazardous waste or container residues contained in non-empty containers that are returned to the generator by the designated facility in accordance with the requirements of COMAR 26.13.05.05C, COMAR 26.13.06.05A, or analogous regulations effective in the state in which the destination facility is located, the generator shall:*

(a) *Sign either:*

(i) *Item 20 of the new manifest if a new manifest is used for the returned shipment; or*

(ii) *Item 18c of the original manifest if the original manifest is used for the returned shipment;*

(b) *Provide the transporter with a copy of the manifest;*

(c) *Within 30 days of delivery of the rejected shipment or container residues contained in the non-empty containers, send a copy of the manifest to the designated facility that returned the shipment to the generator; and*

(d) *Retain at the generator's site a copy each manifest for at least 3 years from the date of delivery.*

*E-1. Use of the Electronic Manifest.*

*(1) Legal Equivalence to Paper Manifests. For the purposes of COMAR 26.13.01—10:*

*(a) An electronic manifest that is obtained, completed, and transmitted in accordance with §A(1)(b) of this regulation, and used in accordance with this section instead of using EPA Forms 8700–22 and 8700–22A is the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfies for all purposes any requirement to obtain, complete, sign, provide, use, or retain a manifest;*

*(b) A requirement to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of §E-2 of this regulation;*

*(c) A requirement to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when an electronic manifest is transmitted to the other person by submission to the electronic manifest system;*

*(d) A requirement for a generator to keep or retain a copy of a manifest is satisfied by retention of a signed electronic manifest in the generator's account on the national electronic manifest system if the copy is readily available for viewing and production if requested by an inspector representing the Department or EPA; and*

*(e) If a generator is unable to produce an electronic manifest for inspection in accordance with §E-1(1)(d) of this regulation, the generator is not considered to be in violation of the requirement to have a copy of the manifest readily available if the generator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the generator bears no responsibility.*

*(2) Accessing the Electronic Manifest System. A generator may participate in the electronic manifest system either by accessing the electronic manifest system from the generator's own electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the generator's site by the transporter who accepts the hazardous waste shipment from the generator for off-site transportation.*

*(3) Restriction on use of Electronic Manifests.*

*(a) Except as provided in §E-1(3)(b) of this regulation, a generator may use an electronic manifest for the tracking of waste shipments involving any hazardous waste only if it is known at the time the manifest is originated that all waste handlers named on the manifest participate in the use of the electronic manifest.*

*(b) A generator may sign by hand and retain a paper copy of the manifest signed by hand by the initial transporter, instead of executing the generator copy electronically, thereby enabling the transporter and subsequent waste handlers to execute the remainder of the manifest copies electronically.*

*(4) Requirement for One Printed Copy. To the extent that the U.S. Department of Transportation hazardous materials regulation on shipping papers for carriage by public highway requires shippers of hazardous materials to supply a paper document for compliance with 49 CFR §177.817, a generator originating an electronic manifest shall also provide the initial transporter with one printed copy of the electronic manifest.*

*(5) Special Procedures when the Electronic Manifest System is Unavailable. If a generator has prepared an electronic manifest for a hazardous waste shipment, but the electronic manifest system becomes unavailable for any reason before the time that the initial transporter has signed electronically to acknowledge the receipt of the hazardous waste from the generator, then the generator shall:*

*(a) Obtain and complete a paper manifest and if necessary, a continuation sheet (EPA Forms 8700–22 and 8700–22A) in accordance with the manifest instructions; and*

*(b) Use the paper forms identified in §E-1(5)(a) of this regulation from this point forward for the shipment in accordance with the requirements of §E of this regulation.*

*(6) Special Procedures for Electronic Signature Methods Undergoing Tests. If a generator has prepared an electronic manifest for a hazardous waste shipment, and signs this manifest electronically using an electronic signature method that is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the generator shall also sign with an ink signature the certification of the generator or offeror on the printed copy of the manifest provided under §E-1(4) of this regulation.*

*(7) Post-receipt Manifest Data Corrections.*

*(a) After facilities have certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person named on the manifest, such as a waste handler; and*

*(b) Generators may participate electronically in the post-receipt data corrections process by following the process described in COMAR 26.13.05.05B(11), which applies to corrections made to either paper or electronic manifest records.*

*E-2. Electronic Manifest Signatures. An electronic signature method used in connection with the electronic manifest system is only acceptable if:*

*(1) Use of the method results in the creation of a legally valid and enforceable signature under applicable EPA and other federal requirements pertaining to electronic signatures; and*

*(2) The method has been designed and implemented in a manner that EPA considers to be as cost-effective and practical as possible for the users of the manifest.*

F. (text unchanged)

**.06 Record Keeping and Reporting.**

A. — B. (text unchanged)

C. Exception Reporting.

(1) — (3) (text unchanged)

(4) *For a rejected shipment of hazardous waste or container residues contained in non-empty containers that a designated facility forwards to an alternate facility using a new manifest, following the procedures of COMAR 26.13.05.05C(5)(b)(i)—(ix), the generator shall :*

(a) *Comply with the requirements of §C(1) and (2) of this regulation for the shipment that is forwarding the material from the designated facility to the alternate facility instead of for the shipment from the generator to the designated facility;*

(b) *In complying with §C(1) and (2) of this regulation with respect to the shipment to the alternate facility:*

(i) *Take the required actions based on whether the generator has received, by the specified deadlines, a copy of the manifest with the handwritten signature of the owner or operator of the alternate facility rather than a copy of the manifest with the handwritten signature of the owner or operator of the original designated facility; and*

(ii) *Determine whether the 35-day and 45-day deadlines have passed by comparing the current date to the date that the waste was accepted by the initial transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility.*

D. (text unchanged)

**.07 Transboundary Movements of Hazardous Waste for Recovery or Disposal.**

A. Applicability.

(1) *Except as provided in §A(3) of this regulation, this regulation applies to transboundary movements of hazardous wastes.*

(2) *The requirements identified in §B(1) of this regulation are administered by the U.S. Environmental Protection Agency as a foreign policy matter and are not delegated to the states.*

(3) *State Wastes Excluded from this Regulation.*

(a) *Except for a waste that exhibits one or more of the characteristics of hazardous waste identified in COMAR 26.13.02.10—14, this regulation does not apply to a waste that is listed as a hazardous waste by the State but not by the U.S. Environmental Protection Agency.*

(b) *The waste codes for the wastes referred to in §B(3(a)) of this regulation that are listed as hazardous by the State but not by EPA, and the sections of COMAR where the waste codes are assigned are:*

(i) *MD01, MD02, and MD03, assigned in COMAR 26.13.02.17;*

(ii) *MX01, assigned in COMAR 26.13.02.19D;*

(iii) *M001, assigned in COMAR 26.13.02.19F; and*

(iv) *MT01, assigned in COMAR 26.13.02.19H.*

B. Requirements.

(1) *A person involved in the transboundary movement of hazardous waste shall comply with the requirements of 40 CFR Part 262 Subpart H, as qualified by §B(2) of this regulation.*

(2) *In complying with the requirements of 40 CFR Part 262 Subpart H, a person shall comply with provisions in the Code of Federal Regulations as referenced rather than analogous provisions in COMAR, except in instances when the federal reference includes the qualifier "or the state equivalent".*

**.07-4 Farmers.**

A farmer disposing of waste pesticides from the farmer's own use which are hazardous wastes is not required to comply with the standards of this chapter or other standards in COMAR 26.13.05, 26.13.06,[ or] 26.13.07, or 26.13.09 for those wastes provided the farmer triple rinses each emptied pesticide container in accordance with COMAR 26.13.02.07B(3) and disposes of the pesticide residues on the farmer's own farm in a manner consistent with disposal instructions on the pesticide label.

## **Chapter 04 Standards Applicable to Transporters of Hazardous Waste**

Authority: Environment Article, Title 7, Subtitle 2, Annotated Code of Maryland

**.01 General.**

A. Scope.

(1) — (2) (text unchanged)

(3) *A transporter of hazardous waste shall also comply with COMAR 26.13.03, Standards Applicable to Generators of Hazardous Waste, if [he]the generator:*

(a) — (b) (text unchanged)

(4) — (5) (text unchanged)

(6) *A transporter of hazardous waste that is being imported from or exported to any other country for purposes of recovery or disposal is subject to this chapter and to all other relevant requirements of subpart H of 40 CFR part 262 as made applicable in COMAR 26.13.03.07, including, but not limited to, 40 CFR 262.83(d) and 262.84(d) for movement documents.*

B. — G. (text unchanged)

## **.02 Compliance with the Manifest System and Record Keeping.**

### **A. The Manifest System.**

#### **(1) A transporter:**

(a) May not accept hazardous waste from a generator unless the transporter is also provided with:

(i) [a]A manifest signed in accordance with the provisions of COMAR 26.13.03.04E; or

(ii) *An electronic manifest that is obtained, completed, and transmitted in accordance with COMAR 26.13.03.04A(1)(b), and signed with a valid and enforceable electronic signature as described in COMAR 26.13.03.04E-2; and*

(b) May only accept hazardous waste intended for export that is [not ]subject to [40 CFR Part 262, Subpart H]COMAR 26.13.03.07[.]; if:

(i) *The waste is accompanied by a manifest [is ]signed in accordance with COMAR 26.13.03.04A;*

(ii) *[A copy of the EPA Acknowledgement of Consent accompanies the shipment]For exports occurring under the terms of a consent issued by EPA on or after December 31, 2016, the waste is accompanied by a movement document that includes all information required by 40 CFR §262.83(d); and*

(iii) *A copy of the EPA Acknowledgement of Consent is attached to the shipping paper if the shipment is a bulk shipment by water, or is attached to the manifest if the shipment is neither by rail nor a bulk shipment by water[; and].*

[(c) May not accept hazardous waste intended for export if the waste is not subject to 40 CFR Part 262, Subpart H, and the transporter knows the shipment does not conform to the EPA Acknowledgement of Consent.

(d) May not accept hazardous waste subject to the requirements of 40 CFR Part 262, Subpart H, without a tracking document that includes all information required by 40 CFR §262.84.]

(2) (text unchanged)

(3) The transporter shall:

(a) [ensure] *Ensure* that the manifest accompanies the hazardous waste[ and,];

(b) [for]For exports occurring under the terms of a consent issued by EPA to the exporter on or after December 31, 2016, ensure that a [copy of the EPA Acknowledgement of Consent]movement document that includes all the information required by 40 CFR §262.83(d) also accompanies the hazardous waste[.];and

(c) *In the case of imports occurring under the terms of a consent issued by EPA to the country of export or the importer on or after December 31, 2016, ensure that a movement document that includes all information required by 40 CFR §262.84(d) also accompanies the hazardous waste.*

(4) A transporter who delivers a hazardous waste to another transporter or to the designated facility shall:

(a) (text unchanged)

(b) Retain one copy of the manifest in accordance with §C of this regulation; and

[(c) Within 10 days of delivery of hazardous waste outside of Maryland to another transporter or to a facility, provide to the Department a completed copy of the manifest for that shipment; and]

[(d)](c) (text unchanged)

(5) The requirements of §A(3), (4), and (6) of this regulation do not apply to water (bulk shipment) transporters if:

(a) (text unchanged)

(b) The hazardous waste is accompanied by:

(i) [a]A shipping paper containing all the information required on the manifest, [(excluding the EPA identification numbers, generator certification, and signatures)]; and[.]

(ii) [for]For exports or imports occurring under the terms of a consent issued by EPA on or after December 31, 2016, [an EPA Acknowledgement of Consent]a movement document that includes all information required by 40 CFR §262.83(d) or 262.84(d) ;

(c) — (e) (text unchanged)

(6) [Requirements]Rail Shipments. For shipments involving rail transportation, the requirements of §A(3)—(5) of this regulation do not apply[. The], but the following requirements do apply:

(a) (text unchanged)

(b) Rail transporters shall ensure that:

(i) [a]A shipping paper containing all the information required on the manifest, [(excluding the EPA identification numbers, generator certification, and signatures)], and,

(ii) [for]For exports or imports occurring under the terms of a consent issued by EPA on or after December 31, 2016, [an EPA Acknowledgement of Consent ]a movement document that includes all information required by 40 CFR §262.83(d) or 262.84(d) accompanies the hazardous waste at all times.

(c) — (f) (text unchanged)

(7) Transporters who transport hazardous waste out of the [State to a foreign destination]United States shall:

(a) — (c) (text unchanged)

(d) [Give a copy of the manifest to a U.S. Customs official at the point of departure from the United States.]For paper manifests only, send a copy of the manifest to the e-manifest system in accordance with the allowable methods specified in 40 CFR §264.71(a)(2)(v).

*A-1. Use of Electronic Manifest.*

*(1) Legal Equivalence to Paper Forms for Participating Transporters. For the purposes of COMAR 26.13.01—.10:*

*(a) An electronic manifest that is obtained, completed, and transmitted in accordance with COMAR 26.13.03.04A(1)(b), and used in accordance with this section instead of using EPA Forms 8700–22 and 8700–22A is the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfies for all purposes any requirement to obtain, complete, sign, provide, use, or retain a manifest;*

*(b) A requirement to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of COMAR 26.13.03.04E-2;*

*(c) A requirement to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person by submission to the electronic manifest system;*

*(d) A requirement for a manifest to accompany a hazardous waste shipment:*

*(i) Except as provided in §A-1(1)(d)(ii) of this regulation, is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment; and*

*(ii) Includes a requirement for a transporter to carry one printed copy of the electronic manifest on the transport vehicle to the extent that the U.S. Department of Transportation hazardous materials regulation on shipping papers for carriage by public highway requires transporters of hazardous materials to carry a paper document to comply with 49 CFR §177.817;*

*(e) A requirement for a transporter to keep or retain a copy of a manifest is satisfied by the retention of an electronic manifest in the transporter's account on the national electronic manifest system if the copy is readily available for viewing and production if requested by an inspector representing the Department or EPA; and*

*(f) If a transporter is unable to produce an electronic manifest for inspection in accordance with §A-1(1)(e) of this regulation, the generator is not considered to be in violation of the requirement to have a copy of the manifest readily available if the generator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the generator bears no responsibility.*

*(2) Accessing the Electronic Manifest System. A transporter may participate in the electronic manifest system either by accessing the electronic manifest system from the transporter's own electronic equipment, or by accessing the electronic manifest system from the equipment provided by a participating generator, by another transporter, or by a designated facility.*

*(3) Special Procedures when the Electronic Manifest System is Unavailable. If, after a manifest has been originated electronically and signed electronically by the initial transporter, the electronic manifest system should become unavailable for any reason, then:*

*(a) The transporter in possession of the hazardous waste when the electronic manifest becomes unavailable shall reproduce:*

*(i) A copy of the printed manifest that is carried on the transport vehicle in accordance with §A-1(1)(d)(ii) of this regulation, or obtain and complete another paper manifest for this purpose; and*

*(ii) Sufficient copies of the document identified in §A-1(3)(a)(i) of this regulation to provide the transporter and all subsequent waste handlers with a copy for their files, plus two additional copies that will be delivered to the designated facility with the hazardous waste;*

*(b) On each printed copy being used to substitute for the unavailable electronic manifest, the transporter shall include:*

*(i) A notation in the Special Handling and Additional Description space (Item 14) that the paper manifest is a replacement manifest for a manifest originated in the electronic manifest system;*

*(ii) If not pre-printed on the replacement manifest, the manifest tracking number of the electronic manifest that is replaced by the paper manifest; and*

*(iii) A brief explanation of why the electronic manifest was not available for completing the tracking of the shipment electronically;*

*(c) A transporter signing a replacement manifest to acknowledge receipt of the hazardous waste shall ensure that each paper copy is individually signed and that a legible handwritten signature appears on each copy; and*

*(d) From the point at which the electronic manifest is no longer available for tracking the waste shipment, each transporter shall ensure that the paper replacement manifest copies are carried, signed, retained as records, and given to a subsequent transporter or to the designated facility, following the instructions, procedures, and requirements that apply to the use of all other paper manifests.*

*(4) Special Procedures for Electronic Signature Methods Undergoing Tests. If a transporter using an electronic manifest signs this manifest electronically using an electronic signature method that is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the transporter shall:*

*(a) Sign the electronic manifest electronically and also sign with an ink signature the transporter acknowledgement of receipt of materials on the printed copy of the manifest that is carried on the vehicle in accordance with §A-1(1)(d)(ii) of this regulation;*

(b) Present the printed copy of the manifest bearing the generator's and transporter's ink signatures to the designated facility to sign in ink to indicate the receipt of the waste materials or to indicate discrepancies; and  
(c) After the owner or operator of the designated facility has signed the printed manifest copy with the owner or operator's ink signature, deliver the printed manifest copy to the designated facility with the waste materials.

(5) *Post-receipt Manifest Data Corrections.*

(a) After a facility has certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person named on the manifest, such as a waste handler; and

(b) A transporter may participate electronically in the post-receipt data corrections process by following the process described in COMAR 26.13.05.05B(11), which applies to corrections made to either paper or electronic manifest records.

**B. Compliance with the Manifest.**

(1) (text unchanged)

(2) *Emergency Condition.* If the hazardous waste cannot be delivered in accordance with §B(1) of this regulation because of an emergency condition other than rejection of the waste by the designated facility, then:

(a) [the]The transporter shall contact the generator for further directions and shall revise the manifest according to the generator's instructions[.]; and

(b) The requirements of §B(5)—(7) of this regulation apply.

(3) — (4) (text unchanged)

(5) *Emergency Condition - Transporters without Agency Authority.*

(a) If, as described in §B(2) of this regulation, hazardous waste is not delivered to the next designated transporter in accordance with §B(1)(c) of this regulation, and the current transporter is without contractual authorization from the generator to act as the generator's agent with respect to transporter additions or substitutions, then the current transporter shall contact the generator for further instructions before making any revisions to the transporter designations on the manifest.

(b) The current transporter may, after receiving further instructions from the generator in accordance with §B(5)(a) of this regulation, and receiving authorization from the generator to make proposed revisions to the transporter designations on the manifest, make revisions to the transporter designations on the manifest if :

(i) The hazardous waste is not delivered in accordance §B(1)(c) of this regulation because of an emergency condition; or

(ii) The current transporter proposes to change the transporter or transporters designated on the manifest by the generator or proposes to add a new transporter during transportation, with the reason for the proposed change being the facilitation of a response to an emergency or for the purposes of transportation efficiency, convenience, or safety.

(6) *Emergency Condition - Transporters with Agency Authority.* If, as described in §B(2) of this regulation, hazardous waste is not delivered to the next designated transporter in accordance with §B(1)(c) of this regulation, and the current transporter has authorization from the generator to act as the generator's agent, then the current transporter may change the transporter or transporters designated on the manifest, or add a new transporter, during transportation without the generator's prior, explicit approval, if

(a) The current transporter is authorized by a contractual provision that provides explicit agency authority for the transporter to make such transporter changes on behalf of the generator;

(b) The transporter enters in Item 14 of each manifest for which a change under this authority is made, the following statement of its agency authority: "Contract retained by generator confers agency authority on initial transporter to add or substitute additional transporters on generator's behalf"; and

(c) The change in designated transporters is necessary to respond to an emergency, or for purposes of transportation efficiency, convenience, or safety.

(7) *Emergency Condition - Generator Liability.* The grant by a generator of authority to a transporter to act as the agent of the generator with respect to changes to transporter designations under §B(6) of this regulation does not affect the generator's liability or responsibility for complying with any applicable requirement under COMAR 26.13.01—10, or grant any additional authority to the transporter to act on behalf of the generator.

**C. (text unchanged)**

**D. Electronic Manifest Signatures.** An electronic signature method used in connection with the electronic manifest system is only acceptable if:

(1) Use of the method results in the creation of a legally valid and enforceable signature under applicable EPA and other federal requirements pertaining to electronic signatures; and

(2) The method has been designed and implemented in a manner that EPA considers to be as cost-effective and practical as possible for the users of the manifest.

## **Chapter 05 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities**



## **.01 General.**

### **A. Purpose, Scope, and Applicability.**

- (1) (text unchanged)
  - (2) The standards in this chapter apply to:
    - (a) — (c) (text unchanged)
    - (d) As specified in COMAR 26.13.10.30, the storage of military munitions classified as a solid waste under COMAR 26.13.10.27B; [and]
    - (e) The treatment and disposal of hazardous waste military munitions[.];
    - (f) *Owners or operators of all facilities that treat, store, or dispose of hazardous wastes referred to in 40 CFR Part 268.*
  - (3) The requirements of this chapter do not apply to:
    - (a) — (f) (text unchanged)
    - (g) The owner or operator of an elementary neutralization unit or a wastewater treatment unit, [unless the unit is used to treat waste from off-site;] *subject to the following:*
      - (i) *For a wastewater treatment unit, the exclusion from the requirements of this chapter does not apply with respect to treatment of a hazardous waste from off site, other than waste delivered to a unit via sanitary sewer in accordance with the requirements of the Clean Water Act; and*
      - (ii) *The owner or operator shall comply with the requirements of Regulation .02H of this chapter if the owner or operator is using the unit to treat a characteristic hazardous waste by dilution to remove the hazardous characteristic from the waste before land disposal, and the waste is either an ignitable hazardous waste described in §A(3)(g)(iii) of this regulation, or a reactive hazardous waste; and*
      - (iii) *The provisions of §A(3)(g)(ii) of this regulation regarding ignitable hazardous waste apply to an ignitable waste other than a waste in the D001 High TOC Subcategory defined in 40 CFR §268.40;*
    - (h) — (l) (text unchanged)
- B. — D. (text unchanged)

## **.02 General Facility Standards.**

### **A. — B. (text unchanged)**

### **C. Required Notices.**

- (1) The owner or operator of a facility that *is arranging or* has arranged to receive hazardous waste *subject to 40 CFR Part 262 Subpart H* from a foreign source shall [notify the Secretary in writing at least 4 weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required]:
  - (a) *Submit the notices required in 40 CFR §264.12(a); and*
  - (b) *In complying with 40 CFR §264.12(a), comply with provisions in the Code of Federal Regulations as referenced rather than analogous provisions in COMAR.*

### **D. General Waste Analysis.**

#### **(1) Chemical and Physical Analysis.**

(a) Before an owner or operator treats, stores, or disposes of any hazardous waste, or non-hazardous waste if applicable under Regulation .07D(6) of this chapter, the owner or operator shall obtain a detailed chemical and physical analysis of a representative sample of the waste. At a minimum, this analysis shall contain all the information which is needed to treat, store, or dispose of the waste in accordance with the requirements of this chapter, COMAR 26.13.09, or with the conditions of a permit issued pursuant to COMAR 26.13.07.

(b) — (d) (text unchanged)

#### **(2) Written Analysis. The owner or operator shall:**

(a) — (b) (text unchanged)

(c) Assume that the plan required by §D(2) of this regulation specifies, at a minimum:

(i) — (v) (text unchanged)

(vi) When applicable, the methods which will be used to meet the additional waste analysis requirements for specific waste management methods as specified in §H of this regulation [and], Regulations .14N and .16D of this chapter, *and COMAR 26.13.09; and*

(d) (text unchanged)

(3) *Special Requirements for Surface Impoundments. The owner or operator of a surface impoundment exempted from land disposal restrictions under 40 CFR §268.4(a) shall ensure that the waste analysis plan required by §D(2) of this regulation includes the procedures and schedules for the:*

(a) *Sampling of impoundment contents;*

(b) *Analysis of test data; and*

(c) *Annual removal of residues specified in §D(4) of this regulation.*

(4) *The requirement of §D(3)(c) of this regulation applies to surface impoundment residues that are regulated as hazardous waste because they exhibit a characteristic of hazardous waste or they have not been delisted under COMAR 26.13.01.04B-1, and that either:*

(a) *Do not meet the applicable treatment standards of Subpart D of 40 CFR Part 268; or*

(b) In the absence of treatment standards in Subpart D of 40 CFR Part 268, are prohibited from land disposal under:

- (i) 40 CFR §268.32 or RCRA Section 3004(d); or
- (ii) 40 CFR §268.33(f).

E. — J. (text unchanged)

**.02-2 Construction Quality Assurance Program.**

A. This regulation applies to the owner or operator of a:

- (1) Surface impoundment that is subject to the requirements of Regulation .11D(4) or .11D(5) of this chapter;
- (2) Waste pile that is subject to the requirements of Regulation .12D(1) or .12D(2) of this chapter; or
- (3) Landfill unit that is subject to the requirements of Regulation .14B(3) or .14B(4) of this chapter.

B. The owner or operator of a land disposal unit identified in §A of this regulation shall:

- (1) Incorporate into facility operations a construction quality assurance program that:

(a) Ensures that the constructed unit meets or exceeds all design criteria and specifications in the facility permit; and

(b) Has been developed and implemented under the direction of a construction quality assurance officer who is a registered professional engineer; and

(2) As qualified by §C of this regulation, ensure that the construction quality assurance program meets the requirements of 40 CFR §264.19(a)(2), (b), and (c).

C. In complying with the requirements of 40 CFR §264.19, the owner or operator shall:

- (1) Substitute "Secretary" for "Regional Administrator"; and

(2) Substitute the corresponding regulation or regulations identified in COMAR 26.13.01.05B(2) for the provisions in other sections of the Code of Federal Regulations that are cited within 40 CFR §264.19.

D. Certification. The owner or operator of a unit identified in §A if this regulation:

(1) May not accept waste into the unit until the owner or operator has submitted to the Department by certified mail or hand delivery a certification signed by the construction quality assurance officer that the:

- (a) Approved construction quality assurance plan has been successfully carried out;

(b) Unit meets the requirements of:

- (i) Regulation .11D(4) or .11D(5) of this chapter;
- (ii) Regulation .12D(1) or .12D(2) of this chapter; or
- (iii) Regulation .14B(3) or .14B(4) of this chapter; and

(c) Procedure of COMAR 26.13.07.15C(2) and (3) regarding inspection by the Department has been carried out; and

(2) Shall furnish documentation supporting the construction quality assurance officer's certification to the Department upon request.

**.05 Manifest System, Record Keeping, and Reporting.**

A. (text unchanged)

B. Use of Manifest System.

(1) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or the owner or operator's agent, shall:

- (a) — (d) (text unchanged)

[(e) Send a completed copy of the manifest to:

- (i) The Department within 10 days after receipt of the hazardous waste; and
- (ii) The generator state if the generator state requires the destination facility to submit a copy of the manifest;]

(e) Comply with the following requirements for handling paper manifests:

(i) Transmit the top copy (page 1) and any continuation sheets to the electronic manifest system for data entry and processing by either transmitting an image file of page 1 of the manifest and any continuation sheet, or transmitting both a data file and the image file corresponding to page 1 of the manifest and any continuation sheet;

(ii) Make the transmittal required by §B(1)(e)(i) of this regulation within 30 days of the date of delivery to the facility; and

(iii) Submit copies to the electronic manifest system by directing the copies to the electronic mail submission address specified on the U.S. Environmental Protection Agency's electronic manifest program website's directory of services.

- (f) (text unchanged)

(g) For hazardous waste [imported from a foreign source, mail a copy of the manifest, within 30 days of delivery of the waste, to the address given in 40 CFR §264.71(a)(3)]subject to 40 CFR Part 262 Subpart H from a foreign source:

(i) Additionally, list the relevant consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest, matched to the relevant list number for the waste from block 9b, using, if additional space is needed, one or more Continuation Sheet (EPA Form 8700–22A); and

(ii) *Send a copy of the manifest within 30 days of delivery to EPA using the addresses listed in 40 CFR §262.82(e) until the facility can submit such a copy to the e-manifest system in accordance with §B(1)(e) of this regulation.*

(2) — (3) (text unchanged)

[(4) Hazardous Waste Received at a Recovery Facility from a Foreign Source.

(a) For the purposes of this subsection:

(i) "Competent authorities" has the meaning stated in 40 CFR §262.81(a);

(ii) "Concerned countries" has the meaning stated in 40 CFR §262.81(b);

(iii) "Notifier" has the meaning stated in 40 CFR §262.81(g);

(iv) "Recovery facility" has the meaning stated in 40 CFR §262.81(j); and

(v) "Tracking document" means a document that meets the requirements of 40 CFR §262.84, which is incorporated by reference in COMAR 26.13.01.05B(1)(d).

(b) The owner or operator of a facility that has received hazardous waste subject to COMAR 26.13.03.07-5, which deals with international agreements concerning shipments of hazardous waste, shall provide a copy of the tracking document bearing all required signatures, within 3 working days of receipt of the shipment to:

(i) The notifier;

(ii) The U.S. EPA at the address given in 40 CFR §264.71(d); and

(iii) The competent authorities of all other concerned countries.

(c) A person required to distribute copies of a tracking document under §B(4)(b) of this regulation shall maintain the original of the signed tracking document at the facility for at least 3 years.]

*(4) After receiving a shipment of hazardous waste from a foreign source subject to 40 CFR Part 262 Subpart H, the owner or operator of a facility shall comply with the requirements of 40 CFR §264.71(d) regarding the waste tracking system for imports and exports that is maintained by EPA under authority that is not delegated to the states.*

(5) (text unchanged)

(6) *Legal Equivalence to Paper Manifests. For the purposes of COMAR 26.13.01—.10:*

(a) *An electronic manifest that is obtained, completed, and transmitted in accordance with COMAR 26.13.03.04A(1)(b), and used in accordance with this section instead of using the paper manifest form is the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfies for all purposes any requirement to obtain, complete, sign, provide, use, or retain a manifest;*

(b) *A requirement for the owner or operator of a facility to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of COMAR 26.13.03.04E-2;*

(c) *A requirement to give, provide, send, forward, or return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person;*

(d) *A requirement for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment;*

(e) *A requirement for a facility owner or operator to keep or retain a copy of a manifest is satisfied by retention of the facility's electronic manifest copy in the facility's account on the national electronic manifest system if the copy is readily available for viewing and production if requested by an inspector representing the Department or EPA; and*

(f) *If a facility owner or operator is unable to produce an electronic manifest for inspection in accordance with §B(6)(e) of this regulation, the owner or operator is not considered to be in violation of the requirement to have a copy of the manifest readily available if the owner or operator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the owner or operator bears no responsibility.*

(7) *Accessing the Electronic Manifest System. A facility owner or operator may participate in the electronic manifest system either by accessing the electronic manifest system from the owner or operator's own electronic equipment, or by accessing the electronic manifest system from portable equipment brought to the owner's or operator's site by the transporter who delivers the waste shipment to the facility.*

(8) *Special Procedures Applicable to Replacement Manifests. If a facility receives hazardous waste that is accompanied by a paper replacement manifest for a manifest that was originated electronically, the following procedures apply to the delivery of the hazardous waste by the final transporter:*

(a) *Upon delivery of the hazardous waste to the designated facility, the owner or operator shall sign and date each copy of the paper replacement manifest by hand in Item 20 (Designated Facility Certification of Receipt) and note any discrepancies in Item 18 (Discrepancy Indication Space) of the paper replacement manifest;*

(b) *The owner or operator of the facility shall give back to the final transporter one copy of the paper replacement manifest;*

(c) *Within 30 days of delivery of the waste to the designated facility, the owner or operator of the facility shall send one signed and dated copy of the paper replacement manifest to the generator, and send an additional signed and dated copy of the paper replacement manifest to the electronic manifest system; and*

(d) The owner or operator of the facility shall retain at the facility one copy of the paper replacement manifest for at least 3 years from the date of delivery.

(9) *Special Procedures Applicable to Electronic Signature Methods Undergoing Tests.* If an owner or operator using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the owner or operator shall:

(a) Also sign with an ink signature the facility's certification of receipt or discrepancies on the printed copy of the manifest provided by the transporter; and

(b) Upon executing the owner or operator's ink signature on the printed copy of the manifest provided by the transporter, the owner or operator shall retain this original copy among the facility's records for at least 3 years from the date of delivery of the waste.

(10) *Electronic Manifest Signatures.* An electronic signature method used in connection with the electronic manifest system is only acceptable if:

(a) Use of the method results in the creation of a legally valid and enforceable signature under applicable EPA and other federal requirements pertaining to electronic signatures; and

(b) The method has been designed and implemented in a manner that EPA considers to be as cost-effective and practical as possible for the users of the manifest.

(11) *Post-receipt Manifest Data Corrections.*

(a) After a facility has certified to the receipt of hazardous wastes by signing Item 20 of the manifest, any post-receipt data corrections may be submitted at any time by any interested person shown on the manifest, such as a waste handler.

(b) An interested person shall make all corrections to manifest data by electronic submission, either by directly entering corrected data to the web-based service provided in the electronic manifest system for corrections, or by an upload of a data file containing data corrections relating to one or more previously submitted manifests.

(c) A person submitting a correction shall include the following information as part of the submission:

(i) The manifest tracking number and date of receipt by the facility of each original manifest for which data are being corrected;

(ii) The item number of each original manifest that is the subject of a submitted correction; and

(iii) For each item number with corrected data, the data previously entered and the corresponding data as corrected by the correction submission.

(d) A person submitting a correction:

(i) Shall include as part of the submission a statement that the person submitting the corrections certifies that to the best of the person's knowledge or belief, the corrections that are included in the submission will cause the information reported about the previously received hazardous wastes to be true, accurate, and complete;

(ii) Shall execute the certification statement with a valid electronic signature; and

(iii) May submit a batch upload of data corrections under one certification statement.

*Agency Note:* The U.S. Environmental Protection Agency assesses an owner or operator who is a user of the electronic manifest system a user fee as prescribed in 40 CFR §264.311 and determined in 40 CFR §1312. EPA periodically updates the schedule of user fees and publishes the updated fee schedule to ensure that the e-manifest user community is aware of the revisions, as provided in 40 CFR §264.1313. An owner or operator subject to these user fees is required by EPA to make user fee payments in accordance with the requirements of 40 CFR §264.1314, subject to the informal fee dispute resolution process of 40 CFR §264.1316, and subject to the sanctions for delinquent payments under 40 CFR §264.1315.

#### C. Manifest Discrepancies.

(1) — (6) (text unchanged)

(7) For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility shall also comply with the exception reporting requirements in COMAR 26.13.03.06C.

[(7)](8) (text unchanged)

#### D. Operating Record.

(1) (text unchanged)

(2) The owner or operator shall record following information as it becomes available, and maintain it in the operating record until closure of the facility:

(a) (text unchanged)

(b) Information on the inventory of hazardous waste at the facility, including:

(i) — (iii) (text unchanged)

(iv) For disposal facilities, a map or diagram of each cell or disposal area on which has been recorded the location and quantity of each hazardous waste[.];

(c) Records and results of waste analysis performed as specified in:

(i) Regulations .02D and H, .14N, and .16D of this chapter[.]; and

(ii) 40 CFR §268.4(a) and 40 CFR §268.7;

(d) Summary reports and details of all incidents that require implementing the contingency plan as specified in Regulation .04G(10) of this chapter[.];

(e) Records and results of inspections as required by Regulation .02F(4) of this chapter, [(except *that* these data need be kept only 3 years)].;

(f) For off-site facilities, notices to generators as specified in Regulation .02C(3) of this chapter[.];

(g) All closure cost estimates under Regulation .08 of this chapter and for disposal facilities all post-closure cost estimates under Regulation .08 of this chapter[.];

(h) Monitoring, testing, or analytical data, and corrective action when required by Regulations .06—.06-7, .10D, .10-2, .10-4, .11F, .12E, .13G, I, K, .14C, I, .16I, and .16-1C of this chapter[.];

(i) A certification by the owner or operator at least annually, that the permittee has a program in place to reduce the volume and toxicity of hazardous waste that he generates to the degree determined by the permittee to be economically practicable; and the proposed method of treatment, storage, or disposal is that practicable method currently available to the permittee which minimizes the present and future threat to human health and the environment[.];

(j) *Records of:*

(i) *The quantities and date of placement for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted under 40 CFR §268.5, a petition under 40 CFR §268.6, or a certification under 40 CFR §268.8;*

(ii) *Monitoring data required in support of a petition under 40 CFR §268.6 that is required to be maintained by 40 CFR §268.6(b)(5); and*

(iii) *The applicable notice required by a generator under 40 CFR §268.7(a);*

(k) *For an off-site treatment facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator under 40 CFR §268.7 or 40 CFR §268.8;*

(l) *For an on-site treatment facility, the information contained in the notice, except for the manifest number, and the certification and demonstration if applicable, required by the generator or the owner or operator under 40 CFR §268.7 or 40 CFR §268.8;*

(m) *For an off-site land disposal facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under 40 CFR §268.7 or 40 CFR §268.8, whichever is applicable;*

(n) *For an on-site land disposal facility, the information contained in the notice required by the generator or owner or operator of a treatment facility under 40 CFR §268.7, except for the manifest number, and the certification and demonstration if applicable, required under 40 CFR §268.8, whichever is applicable;*

(o) *For an off-site storage facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under 40 CFR §268.7 or 40 CFR §268.8; and*

(p) *For an on-site storage facility, the information contained in the notice, except the manifest number, and the certification and demonstration if applicable, required by the generator or the owner or operator under 40 CFR §268.7 or 40 CFR §268.8.*

(3) *Special Requirements for Surface Impoundments. The owner or operator of a surface impoundment exempted from land disposal restrictions under 40 CFR §268.4(a) shall ensure that the waste analysis plan required by §D(2) of this regulation includes procedures and schedules for the:*

(a) *Sampling of impoundment contents;*

(b) *Analysis of test data; and*

(c) *Annual removal of residues specified in §D(4) of this regulation that have not been delisted under COMAR 26.13.01.04B-1 or that exhibit a characteristic of hazardous waste.*

(4) *The requirement of §D(3)(c) of this regulation applies to residues that:*

(a) *Do not meet applicable treatment standards of 40 CFR Part 268 Subpart D; or*

(b) *In the absence of any applicable treatment standards in 40 CFR Part 268 Subpart D, are prohibited from land disposal under:*

(i) *40 CFR §268.32 or §3004(d) of RCRA; or*

(ii) *40 CFR §268.33(f).*

E. — H. (text unchanged)

## **.11 Surface Impoundments.**

A. (text unchanged)

B. General Design Requirements.

(1) — (2) (text unchanged)

(3) A surface impoundment shall be designed to prevent discharge into the land and ground water, and to surface water, [(except for discharges authorized by a State discharge permit)], during the life of the impoundment by use of a containment system which complies with §D of this regulation. The Secretary shall include the design of the containment system as a term and condition of the permit.

(4) — (5) (text unchanged)

(6) The Secretary:

(a) *May exempt the owner or operator [would be exempted from ]from the requirements of §B(3)[.] of this regulation[,] if the Secretary finds, based on a demonstration by the owner or operator, [the]that alternate design and*

operating practices, together with location characteristics, will prevent the migration of the hazardous constituents [(see COMAR 26.13.05.06-1B)], *as identified in Regulation .06-1B of this chapter*, into the ground water or surface water at any future time[.]; *and*

(b) *Shall, [In]in* deciding whether to grant an exemption, [the Secretary will ]consider:

[(a)](i)—[(d)](iv) (text unchanged)

(7) (text unchanged)

C. (text unchanged)

D. Containment Systems.

(1) — (3) (text unchanged)

(4) The owner or operator of each new surface impoundment, each new surface impoundment unit at an existing facility, each replacement of an existing surface impoundment unit, and each lateral expansion of an existing surface impoundment unit, shall install *a liner system consisting of two or more liners and a leachate collection and removal system between the liners[.] subject to the following:*

(a) The liners and leachate collection system shall protect human health and the environment[.];

(b) The requirements of this section shall apply with respect to all waste received after the issuance of the permit[.];

(c) The [requirement for the installation of two or more liners in this subsection may be satisfied by the installation of] *liner system shall include:*

(i) [a]A top liner designed, operated, and constructed of materials to prevent the migration of any constituent into the liner during the period the facility remains in operation, including any post-closure monitoring period[.]; *and*

(ii) [a]A composite lower liner that meets the requirements of §D(4)(d) of this regulation;

(d) *The composite lower liner required by §D(4)(c)(ii) of this regulation shall meet the following requirements:*

(i) *Be* designed, operated, and constructed to prevent the migration of any constituent through the liner during [this]*the period[.] of facility operation and post-closure care;*[ For the purpose of the preceding sentence, a lower liner shall be deemed to satisfy this requirement if it is]

(ii) *Consist of at least two components;*

(iii) *Include an upper component that is designed and constructed of materials to prevent the migration of hazardous constituents into this component during the active life of the facility and the post-closure care period; and*

(iv) *Include a lower component that is designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur, with the lower component being constructed of at least a 3-foot thick layer of recompacted clay or other natural material with a hydraulic conductivity of no more than  $1 \times 10^{-7}$  (power) centimeter per second.*

(5) Section D(4) of this regulation does not apply if the owner or operator demonstrates to the Secretary and the Secretary finds for the surface impoundment, that alternative design and operating practices, together with location characteristics, will:

(a) [prevent]*Prevent* the migration of any hazardous constituent into the ground water or surface water at least as effectively as the liners and leachate collection systems[.] *required by §D(4) of this regulation; and*

(b) *Allow detection of leaks of hazardous constituents through the top liner at least as effectively as the system described in §D-1(1)—(3) of this regulation.*

(6) The double liner requirement set forth in §D(4), of this regulation, may be waived by the Secretary for any monofill, if the monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and the wastes do not contain constituents which would render the wastes hazardous for reasons other than the toxicity characteristic in COMAR 26.13.02, and one of the following applies:

(a) All of the following:

(i) (text unchanged)

(ii) The monofill is located more than 1/4 mile from an underground source of drinking water as that term is defined in 40 CFR §144.3; *and*

(iii) The monofill is in compliance with generally applicable ground water monitoring requirements for facilities with permits under COMAR 26.13.07; *or*

(b) (text unchanged)

(7) — (9) (text unchanged)

(10) Liner systems shall be:

(a) (text unchanged)

(b) Constructed on a foundation capable of providing support to the liner or liners and resistance to the pressure head above the liner or liners to prevent failure of the liner or liners due to settlement, compression, or uplift [(see "Lining of Water Impoundment and Disposal Facilities", EPA/870, September 1980 for data and discussion of liner system materials, design, construction, operation, and maintenance)]; *and*

(c) (text unchanged)

(11) (text unchanged)

*D-1. Leachate Collection and Removal System.*

- (1) This section establishes requirements for a leachate collection and removal system that is:
  - (a) Required to be installed between liners by §D(4) of this regulation;
  - (b) Immediately above the bottom composite liner when a containment system includes multiple leachate collection and removal systems; or
  - (c) Both.
- (2) A leachate collection and removal system identified in §D-1(1) of this regulation is:
  - (a) Also a leak detection system; and
  - (b) Required to be capable of detecting, collecting, and removing leaks.
- (3) Except as provided in §D-1(4) of this regulation, the facility owner or operator shall ensure that the leachate collection and removal system is designed, constructed, and operated in accordance with the provisions of 40 CFR §264.221(c)(2)(i)—(iv), §264.221(c)(3), and 264.221(c)(4).
- (4) The Secretary may approve alternative design and operating practices to those specified in §D-1(3) of this regulation if the owner or operator demonstrates to the Secretary that the proposed alternate design and alternate operating practices, along with location characteristics, will:
  - (a) Prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the liners and leachate collection and removal system specified in §D-1(3) of this regulation; and
  - (b) Allow detection of leaks of hazardous constituents through the top liner at least as effectively.

#### *D-2. Action Leakage Rate.*

- (1) This section establishes requirements concerning the maximum design flow rate that the leak detection system required by §§D(4) and D-1 of this regulation can remove without the fluid head on the bottom liner exceeding 1 foot.
- (2) For the purposes of this section, "action leakage rate" means the maximum design flow rate described in §D-2(1) of this regulation.
- (3) The owner or operator shall provide the Department with the information that the Department considers necessary for the specification of a valid action leakage rate that incorporates an adequate margin of safety to allow for uncertainties, as specified in §D-2(4) of this regulation.
- (4) For a surface impoundment subject to §D of this regulation; the Department shall specify an action leakage rate that:
  - (a) Includes an adequate safety margin, considering:
    - (i) Uncertainties in the design, construction, operation, and location of the leak detection system;
    - (ii) The characteristics of the waste and leachate;
    - (iii) The likelihood that other sources may contribute to liquids in the leak detection system, and the amounts of these liquids; and
    - (iv) Proposed response actions; and
  - (b) If exceeded, obligates the owner or operator to respond as specified in §D-3 of this regulation.
- (5) To determine if the action leakage rate has been exceeded, the owner or operator shall:
  - (a) Convert the weekly or monthly flow rate from the monitoring data obtained in accordance with §F(5) of this regulation to an average daily flow rate in gallons per acre per day for each sump; and
  - (b) Unless the Department approves a different calculation:
    - (i) Each week, during the active life and closure period for the unit, calculate the average daily flow rate for each sump; and
    - (ii) For a unit closed in accordance with §G(2) of this regulation, calculate, each month, the average daily flow rate during the post-closure care period if monthly monitoring is required under §F(5) of this regulation.

#### *D-3. Response Action Plan.*

- (1) Before managing waste in a surface impoundment that is subject to §D(4) of this regulation, the owner or operator shall:
  - (a) Develop a response action plan that meets the requirements of §D-3(2) of this regulation; and
  - (b) Obtain the approval of the Department for the response action plan.
- (2) The owner or operator shall ensure that the response action plan:
  - (a) At a minimum describes the actions specified in 40 CFR §264.223(b), except that, in complying with 40 CFR §264.223(b), the owner or operator shall substitute "the Department" for "the Regional Administrator"; and
  - (b) Incorporates the procedures specified in 40 CFR §264.223(c).
- (3) If the action leakage rate specified under §D-2 of this regulation is exceeded, then the owner or operator shall respond as specified in the approved response action plan.

E. (text unchanged)

#### *F. Inspections and Testing.*

##### *(1) Liners.*

- (a) (text unchanged)
- (b) During construction [or]and installation, liner systems shall be inspected for uniformity, damage, and imperfections [(for example,]such as holes, cracks, thin spots, and foreign materials[)].
- (c) (text unchanged)
- (d) [Manufactured]Immediately after construction or installation of a liner:

(i) *Manufactured* liner materials [(for example,]such as membranes, sheets, and coatings[)] shall be inspected to ensure tight seams and joints and the absence of tears or blisters[.]; and

(ii) *Soil-based and admixed liners and covers shall be inspected for imperfections, including lenses, cracks, channels, root holes, or other structural non-uniformities that may cause an increase in the permeability of the liner or cover.*

(2) The owner or operator shall inspect:

(a) A surface impoundment which contains free liquids at least once each operating day to ensure compliance with §C(1)—(3), of this regulation, and to detect any leaks or other failures of the impoundment[.];

(b) Each surface impoundment including dikes, berms, and vegetation surrounding the dike, at least once a week and after storms to[ detect]:

(i) *Detect* any evidence of or potential for leaks from the impoundment;

(ii) *Detect* severe erosion or other signs of deterioration in dikes[,] or other containment devices;

(iii) *Detect* deterioration, malfunctions, or improper operation of overtopping control systems; and

(iv) [to ensure]Ensure compliance with §C(4) of this regulation.

(3) — (4) (text unchanged)

(5) *The owner or operator shall:*

(a) *Comply with the requirements of 40 CFR §264.226(d) concerning the recording of information about removal of liquids from the leak detection sump; and*

(b) *In complying with 40 CFR §264.226(d), substitute "Secretary" for "Regional Administrator".*

G. — H. (text unchanged)

I. Special Requirements for Ignitable or Reactive Waste. [Ignitable]A person may not place ignitable or reactive waste [may not be placed] in a surface impoundment, unless the waste and impoundment satisfy all applicable requirements of 40 CFR Part 268, and the:

(1) — (2) (text unchanged)

J. — K. (text unchanged)

## **.12 Waste Piles.**

A. (text unchanged)

B. Design and Operating Requirements.

(1) — (2) (text unchanged)

(3) *The owner or operator shall:*

(a) *Install two or more liners and a leachate collection and removal system above and between these liners for each:*

(i) *New waste pile unit;*

(ii) *Lateral expansion of a wastes pile unit; and*

(iii) *Replacement of an existing waste pile unit; and*

(b) *Ensure that the liners and leachate collection and removal system meet the requirements of §D of this regulation.*

[(3)](4)—[(6)](7) (text unchanged)

[(7)](8) The Secretary [will]shall specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

C. (text unchanged)

D. Containment Systems.

[(1) A containment system shall be designed, constructed, maintained, and operated to prevent discharge into the land, surface water, or ground water during the life of the waste pile. This includes the following:

(a) The system shall consist of a leachate and run-off collection and control system, and either:

(i) A base underlying and in contact with the waste pile that is made of a liner or liners which will prevent discharge into the land, surface water, or ground water during the life of the pile based on the liner or liners' thickness, the permeability of the liner or liners and the characteristics of the waste or leachate to which the liner or liners will be exposed. The liner or liners shall be of sufficient strength and thickness to prevent failure due to puncture, cracking, tearing, or other physical damage from equipment used to place waste in or on the pile, or to clean and expose the liner surface for inspection.

(ii) A base as in §D(1)(a)(i), of this regulation, except that the liner or liners need not be of sufficient strength and thickness to prevent failure due to physical damage from equipment used to clean and expose the liner surface for inspection, and a leachate detection, collection, and removal system beneath the base to detect, contain, collect, and remove any discharge from the base. The leachate detection, collection, and removal system shall be placed above the water table to ensure the detection of any discharge through the base, to prevent any discharge of ground water into the leachate detection, collection, and removal system, and to protect the structural integrity of the base.

(b) A highly impermeable liner beneath the drainage layer is a necessary part of the leachate detection, collection, and removal system. The ground water table may be controlled to comply with this requirement.

(2) A waste pile base shall be constructed:



(a) Of materials that have appropriate chemical properties and strength and of sufficient thickness to prevent failure due to pressure of and physical contact with the waste to which they are exposed, climatic conditions, and the stress of installation; and

(b) On a foundation capable of providing support to the liner or liners and to loads placed or moving above the liner or liners to prevent failure of the liner or liners due to settlement or compression.

(3) A containment system shall be protected from plant growth which could puncture any component of the system.

(4) A containment system shall have a containment life equal to or greater than the life of the pile.]

(1) Except as provided in §D(2) and D(3) of this regulation, the owner or operator shall ensure that a waste pile subject to this regulation includes a containment system that:

(a) Incorporates two or more liners and a leachate collection and removal system above and between the liners, with the leachate collection and removal system also serving as a leak detection system;

(b) Is designed, constructed, and operated in accordance with the requirements of 40 CFR §264.251(c)(1)—(c)(5), except that, in meeting these requirements, the owner or operator shall substitute "Secretary" for "Regional Administrator".

(2) The Secretary may approve alternative designs and operating practices to those specified in §D(1) of this regulation if the owner or operator demonstrates to the Secretary that the proposed designs and operating practices, together with location characteristics, will:

(a) Will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as the liners and leachate collection and removal systems specified in §D(1) of this regulation; and

(b) Will allow detection of leaks of hazardous constituents through the top liner at least as effectively.

(3) The requirements of §D(1)(a) of this regulation do not apply to a monofil that has been granted a waiver by the Secretary in accordance with Regulation .11D(6) of this chapter.

#### *D-1. Action Leakage Rate.*

(1) This section establishes requirements concerning the maximum design flow rate that the leak detection system required by §D(1)(a) of this regulation can remove without the fluid head on the bottom liner exceeding 1 foot.

(2) For the purposes of this section, "action leakage rate" means the maximum design flow rate described in §D-1(1) of this regulation.

(3) The owner or operator shall provide the Department with the information that the Department considers necessary for the specification of a valid action leakage rate that incorporates an adequate margin of safety to allow for uncertainties, as specified in §D-1(4) of this regulation.

(4) For a waste pile subject to §D(1) of this regulation; the Department shall specify an action leakage rate that:

(a) Includes an adequate safety margin, considering:

(i) Uncertainties in the design, construction, operation, and location of the leak detection system;

(ii) The characteristics of the waste and leachate;

(iii) The likelihood that other sources may contribute to liquids in the leak detection system, and the amounts of these liquids; and

(iv) Proposed response actions; and

(b) If exceeded, obligates the owner or operator to respond as specified in §D-2 of this regulation.

(5) To determine if the action leakage rate has been exceeded, the owner or operator shall:

(a) Convert the weekly flow rate from the monitoring data obtained in accordance with §E(3) of this regulation to an average daily flow rate in gallons per acre per day for each sump; and

(b) Unless the Department approves a different calculation, calculate the average daily flow rate for each sump on a weekly basis during the active life and closure period for the unit.

#### *D-2. Response Action Plan.*

(1) Before managing hazardous waste in a waste pile that is subject to §D(1) or D(2) of this regulation, the owner or operator shall:

(a) Develop a response action plan that meets the requirements of §D-2(2) of this regulation; and

(b) Obtain the approval of the Department for the response action plan.

(2) The owner or operator shall ensure that the response action plan:

(a) At a minimum describes the actions specified in 40 CFR §264.253(b), except that, in complying with 40 CFR §264.253(b), the owner or operator shall substitute "Department" for "Regional Administrator"; and

(b) Incorporates the procedures specified in 40 CFR §264.253(c).

(3) If the action leakage rate specified under §D-2 of this regulation is exceeded, then the owner or operator shall respond as specified in the approved response action plan.

#### *E. Inspections and Testing.*

(1) [During construction or installation of the waste pile base, except] Except in the case of an existing portion of a waste pile exempt from the requirements of §B(1)[.] of this regulation, the owner or operator shall, during construction and immediately after installation, inspect:

(a) Liner systems and covers [shall be inspected] for uniformity, damage, and imperfections [(for example,) such as holes, cracks, thin spots, and foreign materials[]];

(b) Manufactured liner materials and covers [(for example], *such as* membranes, sheets, and coatings)] shall be inspected ], to ensure tight seams and joints and the absence of tears or blisters; and

(c) Soil-based and admixed liners and covers [shall be inspected ]for imperfections including lenses, cracks, channels, root holes, or other structural non-uniformities that may cause an increase in the permeability of the liner or cover.

[(2) Except as otherwise provided in §E(3), of this regulation, the owner or operator of a waste pile shall include in the inspection plan required under Regulation .02 of this chapter. A schedule of inspection of the devices controlling wind dispersal (if required) and run-on, and the waste pile containment system under §D of this regulation. The inspection schedule shall include periodic removal of the waste pile and testing of the underlying base to ensure that it has not deteriorated to the point where it is no longer capable of containment, is already leaking, or is otherwise in disrepair.

(3) If it is impractical to remove the waste pile and test the underlying base periodically because of the size of the pile or the type of base used (for example, a synthetic membrane which could be damaged during waste removal), the owner or operator may omit the pile base inspection from his inspection plan, provided that the pile has a leachate detection, collection, and removal system as specified in §D(1)(a)(ii) of this regulation.]

[(4)](2) While a waste pile is in operation, [it shall be inspected ]*the owner or operator shall inspect the pile weekly and after storms to detect evidence of any of the following:*

(a) — (d) (text unchanged)

(3) *For a waste pile required to have a leak detection system under §D(1) of this regulation, the owner or operator shall record the amount of liquid removed from each leak detection sump at least once each week during the active life and closure period of the waste pile.*

F. (text unchanged)

G. Special Requirements for Ignitable or Reactive Waste. [Ignitable]A person may not place ignitable or reactive waste [may not be placed ]in a pile unless *the waste and waste pile satisfy all applicable requirements of 40 CFR Part 268, and:*

(1) — (2) (text unchanged)

H — J. (text unchanged)

### **.13 Land Treatment.**

A. — K. (text unchanged)

L. Special Requirements for Ignitable or Reactive Waste. The owner or operator may not apply ignitable or reactive waste to the treatment zone unless *the waste and the treatment zone meet all applicable requirements of 40 CFR Part 268, and the waste is:*

(1) — (2) (text unchanged)

M. — N. (text unchanged)

### **.14 Landfills.**

A. (text unchanged)

B. Design and Operating Requirements.

(1) — (2) (text unchanged)

(3) The owner or operator of each new landfill, each new landfill unit at an existing facility, each replacement of an existing landfill unit, and each lateral expansion of an existing landfill unit, shall install two or more liners and a leachate collection *and removal* system above and between the liners[.], *subject to the following:*

(a) The liners and leachate collection systems shall protect human health and the environment[.];

(b) The [requirement for the installation of two or more liners in this subsection may be satisfied by the installation of a] *liner system shall include:*

(i) A top liner designed, operated, and constructed of materials to prevent the migration of any constituent into the liner during the period the facility remains in operation, including any post-closure monitoring period[.]; and

(ii) [a lower ]A *composite bottom liner, consisting of at least two components, that satisfies the requirements of §B(3)(c) and (d) of this regulation;*

(c) *The upper component of a composite bottom liner shall be designed[, operated,] and constructed to prevent the migration of any constituent [through]into the [liner]upper component during [this ]the active life of the landfill and the post-closure care period[.];*

(d) *The lower component of a composite bottom liner shall be:*

(i) *Designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur; and*

(ii) [For the purposes of the preceding sentence, a lower liner shall be considered to satisfy this requirement if it is constructed]Constructed of at least a 3-foot thick layer of recompact clay or other natural material with a hydraulic conductivity of no more than  $1 \times 10^{-7}$  centimeter per second[.];

(e) *The liners shall meet the requirements of §B(1)(a) of this regulation; and*

(f) *The leachate collection and removal system immediately above the top liner shall be designed, constructed, operated, and maintained:*

(i) *To collect and remove leachate from the landfill during the active life and post-closure care period;*

(ii) *In accordance with conditions specified by the Department in the facility permit to ensure that the leachate depth over the liner does not exceed 30 centimeters (1 foot); and*

(iii) *In compliance with the requirements of 40 CFR §264.301(c)(3)(iii) and (iv), and the requirements of §D of this regulation.*

(4) [Section B(3)] *The Secretary may approve substitution of alternative design and operating practices for the requirements of §B(3) of this regulation [will not apply] if the owner or operator demonstrates to the Secretary [and the Secretary finds for the landfill, ]that alternative design and operating practices, together with location characteristics, will:*

(a) [prevent ]*Prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as the liners and leachate collection and removal systems specified in §B(3) and D of this regulation[.]; and*

(b) *Allow detection of leaks of hazardous constituents through the top liner at least as effectively as the leak detection system required by §D(2) of this regulation.*

(5) — (10) (text unchanged)

C. *Monitoring and Inspection. The owner or operator shall:*

(1) [During] *Inspect, during construction or installation, liners, except in the case of existing portions of liners exempt from §B[.] of this regulation, and cover systems [(for example, ]such as membranes, sheets, or coatings[)] shall be inspected[ for uniformity, damage, and imperfections [(for example], such as holes, cracks, thin spots, or foreign materials[.];*

(2) [Immediately]*Inspect, immediately after construction or installation:*

(a) *Synthetic liners and covers[ shall be inspected] to ensure tight seams and joints and the absence of tears, punctures, or blisters; and*

(b) *Soil-based and admixed liners and covers[ shall be inspected] for imperfections including lenses, cracks, channels, root holes, or other structural non-uniformities that may cause an increase in the permeability of the liner or cover[.];*

[(2)](3) *While a landfill is in operation,[ it shall be inspected] inspect the landfill weekly and after storms to detect evidence of any of the following:*

(a) — (c) (text unchanged)

(d) *The presence of leachate in and proper functioning of leachate collection and removal systems, when present[.]; and*

(4) *For a landfill required to have a leak detection system under §B(3) or §B(4) of this regulation:*

(a) *During the active live and closure period, record the amount of liquids removed from each leak detection sump at least once each week; and*

(b) *After the final cover is installed, record the amount of liquid removed from each leak detection system sump in accordance with the schedule specified in 40 CFR §264.303(c), substituting "Secretary" for "Regional Administrator".*

D. *Leachate Collection and Removal System and Leak Detection.*

(1) *This section establishes requirements for a leachate collection and removal system required by §B(3) of this regulation.*

(2) *A leachate collection and removal system identified in §D(1) of this regulation is:*

(a) *Also a leak detection system; and*

(b) *Required to be capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or leachate during the active life and post-closure care period.*

(3) *Except as provided in §B(4) of this regulation, the owner or operator shall ensure that a leak detection system is, at a minimum, designed, constructed, and operated in compliance with the requirements of 40 CFR §264.301(c)(3)(i)—(v), 40 CFR §264.301(c)(4), and 40 CFR §264.301(c)(5).*

E. *Action Leakage Rate.*

(1) *This section establishes requirements concerning the maximum design flow rate that the leak detection system required by §B(3) or §B(4) of this regulation can remove without the fluid level on the bottom of the liner exceeding 1 foot.*

(2) *For the purposes of this section, "action leakage rate" means the maximum design flow rate described in §E(1) of this regulation.*

(3) *The owner or operator shall provide the Department with information that the Department considers necessary for the specification of a valid action leakage rate that incorporates an adequate margin of safety to allow for uncertainties, as described in §E(4) of this regulation.*

(4) *For a landfill subject to §B(3) of this regulation, the Department shall specify an action leakage rate that:*

(a) *Includes an adequate safety margin, considering:*

(i) *Uncertainties in the design, construction, operation, and location of the leak detection system;*

(ii) *The characteristics of the waste and leachate;*

(iii) *The likelihood that other sources may contribute to liquids in the leak detection system, and the amounts of these liquids from other sources; and*

- (iv) *Proposed response actions; and*
- (b) *If exceeded, obligates the owner or operator to respond as provided in §F of this regulation.*
- (5) *To determine if the action leakage rate has been exceeded, the owner or operator shall:*
  - (a) *Convert the weekly or monthly flow rate from the monitoring data obtained in accordance with §C(4) of this regulation to an average daily flow rate in gallons per acre per day for each sump; and*
  - (b) *Unless the Department approves a different calculation:*
    - (i) *Each week, during the active life and closure period, calculate the average daily flow rate for each sump; and*
    - (ii) *Monthly during the post-closure care period if monthly monitoring is required under 40 CFR §264.303(c).*

**F. Response Action Plan.**

- (1) *Before managing waste in a landfill subject to §B(3) or §B(4) of this regulation, the owner or operator shall:*
  - (a) *Develop a response action plan that:*
    - (i) *Specifies the actions that will be taken if the action leakage rate has been exceeded; and*
    - (ii) *Meets the requirements of §F(2) of this regulation; and*
  - (b) *Obtain the approval of the Department for the response action plan.*
- (2) *The owner or operator shall ensure that the response action plan:*
  - (a) *At a minimum, describes the actions specified in 40 CFR §264.304(b), except that, in complying with 40 CFR §264.304(b), the owner or operator shall substitute "the Department" for "the Regional Administrator"; and*
  - (b) *Incorporates the procedures in 40 CFR §264.303(c).*
- (3) *If the action leakage rate specified under §E of this regulation is exceeded, the owner or operator shall respond as specified in the approved response action plan.*

[D.]G.—H. (Reserved)

I. (text unchanged)

**J. Closure and Post-Closure Care.**

- (1) (text unchanged)
- (2) *After final closure, the owner or operator shall comply with all post-closure requirements, contained in Regulation .07G—J of this chapter, including maintenance and monitoring throughout the post-closure care period. The owner or operator shall:*
  - (a) — (c) (text unchanged)
  - (d) *Prevent run-on and run-off from eroding or otherwise damaging the final cover; [and]*
  - (e) *Protect and maintain surveyed benchmarks used in complying with §I of this regulation[.];*
  - (f) *Maintain and monitor the leak detection system in accordance with 40 CFR §264.301(c)(3)(iv), 40 CFR §264.301(c)(4), and §C(4) of this regulation; and*
  - (g) *Comply with all applicable leak detection system requirements of this chapter.*

K. (text unchanged)

**L. Special Requirements for Ignitable or Reactive Waste.**

- (1) *Except as provided in [§L(2)]§L(1)(b)(ii) of this regulation, a person may not place ignitable or reactive waste [may not be placed ]in a landfill, unless:*
  - (a) *[the ]The waste is treated, rendered, or mixed before or immediately after placement in [a]the landfill so that:*

[1](i) *The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under COMAR 26.13.02.11 or .13; and*

[2](ii) *Regulation .02H(2) of this chapter is complied with.*

- (2) *Except for prohibited wastes as described in COMAR 26.13.09.02B that remain subject to treatment standards in Subpart D of 40 CFR Part 268, a person may place a container of an ignitable waste in a landfill without meeting the requirements of §L(1) of this regulation if the waste is:*

(a) *Disposed of in a manner that protects the waste from any materials or conditions that may cause the waste to ignite;*

(b) *Contained within a nonleaking container;*

(c) *Carefully handled and placed so as to avoid heat, sparks, rupture, or any other condition that might cause ignition of the waste;*

(d) *Covered daily with soil or other noncombustible material to minimize the potential for ignition of the waste; and*

(e) *Not disposed of in cells that contain or will contain other wastes that that may generate heat sufficient to cause ignition of the waste.*

M. — P. (text unchanged)

## **Chapter 06 Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities**

## **.01 General.**

### **A. Purpose, Scope, and Applicability.**

(1) — (3) (text unchanged)

(4) The requirements of this chapter do not apply to:

(a) — (f) (text unchanged)

(g) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in COMAR 26.13.01.03B, [unless the unit is used to treat waste from off-site;] *subject to the following:*

(i) *For a wastewater treatment unit, the exclusion from the requirements of this chapter does not apply with respect to treatment of a hazardous waste from off site, other than waste delivered to a unit via sanitary sewer in accordance with the requirements of the Clean Water Act; and*

(ii) *The owner or operator shall comply with the requirements of COMAR 26.13.05.02H if the owner or operator is using the unit to treat a characteristic hazardous waste by dilution to remove the hazardous characteristic from the waste before land disposal, and the waste is either an ignitable hazardous waste described in §A(3)(g)(iii) of this regulation, or a reactive hazardous waste; and*

(iii) *The provisions of §A(4)(g)(ii) of this regulation regarding ignitable hazardous waste apply to an ignitable waste other than a waste in the D001 High TOC Subcategory defined in 40 CFR §268.40;*

(h) — (k) (text unchanged)

(5) — (6) (text unchanged)

(7) *Applicability of Land Disposal Restrictions.*

(a) *The requirements of this chapter apply to owners and operators of facilities that treat, store, or dispose of hazardous waste referred to in 40 CFR Part 268; and*

(b) *The standards in 40 CFR Part 268 are considered material conditions or requirements of the interim status requirements of this chapter.*

B. — C. (text unchanged)

## **.02 General Facility Standards.**

A. — G. (text unchanged)

*H. Construction Quality Assurance Program. The owner or operator of a surface impoundment subject to Regulation .19 of this chapter, a waste pile subject to Regulation .20 of this chapter, or a landfill subject to regulation .22 of this chapter shall comply with the requirements of COMAR 26.13.05.02-2.*

## **.05 Manifest System, Record Keeping, and Reporting.**

A. (text unchanged)

B. For the purpose of complying with this regulation, the owner or operator of a facility subject to this chapter shall:

(1) In place of the requirement of COMAR 26.13.05.05D(2)(c), record and maintain in the operating record the results of waste analyses, waste determinations, and trial tests performed as specified in:

(a) Regulations .02 and .22F of this chapter[.];

(b) COMAR 26.13.05.10B, with which the owner or operator is required to comply in Regulation .18A of this chapter[.];

(c) COMAR 26.13.05.11E, with which the owner or operator is required to comply in Regulation .19B(3) of this chapter[.];

(d) COMAR 26.13.05.12C, with which the owner or operator is required to comply in Regulation .20B(2) of this chapter[.]; and

(e) (text unchanged)

(2) — (5) (text unchanged)

C. (text unchanged)

## **.19 Surface Impoundments.**

A.—C. (text unchanged)

D. Design Requirements.

(1) (text unchanged)

(2) The owner or operator of a unit identified in §D(1) of this regulation shall install two or more liners and a leachate collection system between the liners in accordance with the requirements of COMAR 26.13.05.11D(4)—(8) and COMAR 26.13.05.11D-1.

E.—F. (text unchanged)

*F-1. Action Leakage Rate and Response Actions.*

(1) *This section applies to the owner or operator of a surface impoundment unit identified in 40 CFR §265.221(a).*

(2) *The owner or operator shall:*

(a) *Comply with the requirements of 40 CFR §265.222 and 40 CFR §265.223, subject to §F-1(2)(b) of this regulation; and*

(b) *In complying with 40 CFR §265.222 and 40 CFR §265.223, substitute "Secretary" for "Regional Administrator".*

G. Inspections. The owner or operator of a surface impoundment shall[ inspect]:

(1) [At]*Inspect*, at least once each operating day:

(a) The freeboard level to ensure compliance with COMAR 26.13.05.11C(2)[.]; or

(b) The compliance with alternate design features or operating plans that serve to prevent overtopping if freeboard is allowed to be less than 60 centimeters in accordance with §C of this regulation;[ and]

(2) [At]*Inspect*, at least once a week, the surface impoundment, including dikes and vegetation surrounding the dikes, to detect any leaks, deterioration, or failures in the impoundment[.];

(3) *Comply with the requirements of 40 CFR §265.226(b) concerning the recording of information about the removal of liquids from leak detection system sumps, subject to §G(4) of this regulation; and*

(4) *In complying with 40 CFR §265.226(b), substitute "Secretary" for "Regional Administrator".*

H. (text unchanged)

## **.20 Waste Piles.**

A. (text unchanged)

B. An owner or operator of a waste pile subject to this regulation shall comply with:

(1) — (4) (text unchanged)

(5) COMAR 26.13.05.12H, concerning special requirements for incompatible wastes;[ and]

(6) COMAR 26.13.05.12I(1) and (2), concerning closure and post-closure care[.]; and

(7) *The notification requirement of Regulation .19E of this chapter with respect to the waste pile.*

C. (text unchanged)

D. Design Requirements—Liners and Leachate Collection Systems.

(1) (text unchanged)

(2) The owner or operator of a unit identified in §D(1) of this regulation shall comply with the requirements of COMAR 26.13.05.12B and D for liners and leachate collection systems or equivalent protection.

E. (text unchanged)

F. *Action Leakage Rate and Response Actions.*

(1) *This section applies to the owner or operator of a waste pile identified in 40 CFR §265.254.*

(2) *The owner or operator shall:*

(a) *Comply with the requirements of 40 CFR §265.255 and 40 CFR §265.259, subject to §F(2)(b) of this regulation; and*

(b) *In complying with 40 CFR §265.255 and 40 CFR §265.259, substitute "Secretary" for "Regional Administrator".*

## **.21 Land Treatment.**

A. (text unchanged)

B. For the purposes of this regulation:

(1) — (3) (text unchanged)

(4) In 40 CFR §265.281, substitute "An owner or operator may not apply ignitable or reactive waste to a land treatment zone unless all applicable [federal] requirements of 40 CFR part 268 are met, and:" for "The owner or operator must not apply ignitable or reactive waste to the treatment zone unless the waste and treatment zone meet all applicable requirements of 40 CFR part 268"; and

(5) (text unchanged)

## **.22 Landfills.**

A.—B. (text unchanged)

C. Design Requirements.

(1) (text unchanged)

(2) The owner or operator of a unit identified in §C(1) of this regulation shall:

(a) [install ]*Install* two or more liners and a leachate collection and removal system above and between the liners; and

(b) *Ensure that the installation of the liners and the installation and operation of the leachate collection and removal system are conducted in accordance with the requirements of COMAR 26.13.05.14B(3)—(5).*

D.—E. (text unchanged)

E-1. *Action Leakage Rate and Response Actions.*

(1) *This section applies to the owner or operator of a landfill identified in 40 CFR §265.301(a).*

(2) *The owner or operator shall:*

(a) *Comply with the requirements of 40 CFR §265.302 and 40 CFR §265.303, subject to §E-1(2)(b) of this regulation; and*

(b) *In complying with 40 CFR §265.302 and 40 CFR §265.303, substitute "Secretary" for "Regional Administrator".*

E-2. *Monitoring and Inspection.* The owner or operator of a landfill that is subject to §E-1 of this regulation shall:

(1) *Comply with the requirements of 40 CFR §265.304, subject to §E-2(2) of this regulation; and*

(2) *In complying with 40 CFR §265.304, substitute "Secretary" for "Regional Administrator".*

F. Special Requirements for Liquid Wastes and Containers.

(1) [A] *Except as provided in §F(3) of this regulation, a person may not place waste containing free liquids in a landfill, including bulk waste, noncontainerized waste, or waste in containers.*

(2) — (3) (text unchanged)

**.25 Chemical, Physical, and Biological Treatment.**

A. Except as provided in §B of this *regulation and COMAR 26.13.01.05B(2)*, an owner or operator who treats hazardous waste using chemical, physical, or biological methods shall comply with 40 CFR §§265.400—265.406[, which is incorporated by reference in COMAR 26.13.01.05B(1)(b)].

B. (text unchanged)

**Chapter 07 Permits for CHS Facilities**

Authority: Environment Article, Title 7, Subtitle 2, Annotated Code of Maryland

**.02-4 Specific Information Requirements for Surface Impoundments.**

A. (text unchanged)

B. For facilities that store, dispose of, or treat hazardous waste in surface impoundments, except as otherwise provided in COMAR 26.13.05.11, the permit applicant shall submit detailed plans and specifications accompanied by an engineering report which shall collectively include the following information:

(1) — (4) (text unchanged)

(5) Detailed design drawings and specifications of liner or liners and the leachate detection, collection, and removal system and the basis of design and design analysis to comply with COMAR 26.13.05.11B(3), (4), (5), and D(2), (3), (4) and (5);

(6) — (17) (text unchanged)

(18) A list of the hazardous wastes placed or to be placed in each surface impoundment[.];

(19) *If the leak detection system is located in a saturated zone, detailed plans and an engineering report explaining the leak detection system's design and operation, and the location of the saturated zone in relation to the leak detection system;*

(20) *The construction quality assurance plan required by COMAR 26.13.05.02-2;*

(21) *If required under COMAR 26.13.05.11D-2, a proposed action leakage rate with rationale and supporting information; and*

(22) *If required under COMAR 26.13.05.11D-3, a response action plan.*

**.02-5 Specific Information Requirements for Waste Piles.**

A. (text unchanged)

B. For facilities that store or treat hazardous waste in waste piles, except as otherwise provided in COMAR 26.13.05.12, the permit applicant shall provide the following information:

(1) — (4) (text unchanged)

(5) As part of the inspection plan submitted under Regulation .02D(19) of this chapter, a description of how each waste pile, including the *double liner system, leachate collection and removal system, leak detection system, cover system*, and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of COMAR 26.13.05.12D and E;

(6) — (11) (text unchanged)

(12) If the permit applicant seeks an exemption from the requirements of COMAR 26.13.05.12B and D, and .06 — .06-7, as provided by COMAR 26.13.05.12A(2) or .06A(3)(b), an explanation of how the standards of COMAR 26.13.05.12A(2) will be complied with or detailed plans and an engineering report describing how the requirements of COMAR 26.13.05.06A(3)(b) will be met[.];

(13) *If the leak detection system is located in a saturated zone, detailed plans and an engineering report explaining the leak detection system's design and operation, and the location of the saturated zone in relation to the leak detection system;*

(14) *The construction quality assurance plan required by COMAR 26.13.05.02-2;*

(15) *If required under COMAR 26.13.05.12D-1, a proposed action leakage rate with rationale and supporting information; and*

(16) *If required under COMAR 26.13.05.11D-2, a response action plan.*

**.02-8 Specific Information Requirements for Landfills.**

A. (text unchanged)

B. For facilities that dispose of hazardous waste in landfills, except as otherwise provided in COMAR 26.13.05.01, the permit applicant shall provide the following information:

(1) (text unchanged)

(2) A detailed plan and an engineering report that:

(a) Describe how the landfill is or will be designed, constructed, operated, and maintained to comply with the requirements of COMAR 26.13.05.02-2 and COMAR 26.13.05.14B; and

(b) Provide information on the following items as specified in COMAR 26.13.05.14B:

- (i) (text unchanged)
- (ii) If an exemption from the requirements for a liner and a leachate collection and removal system is sought as provided by COMAR 26.13.05.14B(2) or B(4), detailed plans and engineering hydrogeologic reports as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;
- (iii) — (vi) (text unchanged);
- (3) A description of how each landfill, including the *double liner system, leachate collection and removal system; leak detection system*, [and] cover [systems] *system, and appurtenances for control of run-on and run-off* will be inspected in order to meet the requirements of COMAR 26.13.05.14C(1)[ and (2)]—C(4) as part of the inspection plan submitted under Regulation .02D(19) of this chapter;
- (4) — (7) (text unchanged)
- (8) A waste management plan for EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027 that:
  - (a) (text unchanged)
  - (b) Addresses the:
    - (i) — (iii) (text unchanged)
    - (iv) Effectiveness of additional treatment, design, or monitoring techniques[.];
- (9) *If the leak detection system is located in a saturated zone, detailed plans and an engineering report explaining the leak detection system's design and operation, and the location of the saturated zone in relation to the leak detection system;*
- (10) *The construction quality assurance plan required by COMAR 26.13.05.02-2;*
- (11) *If required under COMAR 26.13.05.14E, a proposed action leakage rate with rationale and supporting information; and*
- (12) *If required under COMAR 26.13.05.14F, a response action plan.*

### **.13-2 Specific Changes Eligible for Processing as a Minor Permit Modification.**

A. Except as provided in Regulations .13-1 and .13-3 of this chapter, only modifications to accomplish the following may be processed as minor modifications:

- (1) — (10) (text unchanged)
  - (11) The removal or amendment of a permit provision restricting the receipt of waste munitions from off-site to allow the continued acceptance of waste military munitions in accordance with Regulation .13-1C of this chapter; [and]
  - (12) Replacement of a containment building with a containment building that meets the same design standards if:
    - (a) (text unchanged)
    - (b) The replacement containment building meets the same conditions in the permit as the unit it is replacing[.];
- and
- (13) *Any other change identified in 40 CFR §270.42 Appendix I as a class 1 modification or a class 1 modification requiring prior agency approval.*

## **Chapter 09 Land Disposal Restrictions**

*Authority: Environment Article, Title 7, Subtitle 2, Annotated Code of Maryland*

### **.01 Purpose and Scope.**

A. *This chapter:*

- (1) *Identifies certain requirements associated with the management of hazardous wastes that are to be land disposed;*
- (2) *Applies to:*
  - (a) *Generators of hazardous waste;*
  - (b) *Transporters of hazardous waste; and*
  - (c) *Owners and operators of hazardous waste facilities;*
- (3) *Does not apply to a hazardous waste that is listed in COMAR 26.13.02.16—.19 but is not listed in 40 CFR §§261.30—261.34, unless the waste:*
  - (a) *Exhibits a characteristic of hazardous waste; or*
  - (b) *Is otherwise subject to the requirements identified in Regulation .03 of this chapter.*

### **.02 Definitions.**

A. *In this chapter, the following terms have the meanings indicated.*

B. *Terms Defined.*

- (1) *"Prohibited characteristic" means a characteristic of hazardous waste identified under COMAR 26.13.02.08 that will cause a solid waste to become a prohibited waste if the waste exhibits that characteristic.*
- (2) *"Prohibited waste" means a hazardous waste that either:*
  - (a) *Is prohibited from land disposal by this chapter; or*
  - (b) *May be land disposed despite not meeting a treatment standard established by this chapter because of an exemption granted:*
    - (i) *Under this chapter; or*



(ii) By EPA under 40 CFR Part 268.

(3) "Restricted waste" means a hazardous waste for which restrictions on land disposal are established by this chapter.

### **.03 Specific Requirements**

A. As qualified by §B of this regulation, a hazardous waste generator, a hazardous waste transporter, and an owner or operator of a hazardous waste facility shall comply with the requirements of 40 CFR Part 268.

B. In complying with 40 CFR Part 268, a person shall:

(1) Substitute "Secretary" for "Administrator" and "Regional Administrator", except in:

(a) 40 CFR §268.5, which relates to case-by-case extensions of effective dates;

(b) 40 CFR §268.6, which relates to petitions to allow land disposal of certain prohibited wastes;

(c) 40 CFR §268.13, which relates to deadlines imposed on EPA;

(d) 40 CFR §268.40(b) and 40 CFR §268.42(b), which relate to approval of alternate treatment methods; and

(e) 40 CFR §268.44(a)—(g), which relate to approvals of variances from treatment standards;

(2) Substitute "Department" for "EPA", except when "EPA" is being used as a modifier, as in "EPA Publication", or "EPA Hazardous Waste Number";

(3) Interpret the terms "prohibited characteristic", "prohibited waste", and "restricted waste" to have the meanings given in Regulation .02B of this chapter; and

(4) Refer to the table in COMAR 26.13.01.05B(2) to identify references to provisions in COMAR that should be substituted for corresponding references to federal regulations that are made in 40 CFR Part 268.

## **Chapter 10 Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities**

Authority: Environment Article, §6-905.3 and Title 7, Subtitle 2, Annotated Code of Maryland

### **.03 Recyclable Materials Utilized for Precious Metal Recovery.**

A. (text unchanged)

B. Persons who generate, transport, or store recyclable materials regulated by this regulation are subject to the following requirements:

(1) — (2) (text unchanged)

(3) For precious metal imported to or exported from other countries for recovery[:], 40 CFR Part 262 Subpart H and COMAR 26.13.05.02C.

[(a) COMAR 26.13.03.07-5 and 26.13.05.02C(4), if the precious metal is exported to or imported from designated OECD member countries, as defined in COMAR 26.13.03.07-5C; and

(b) COMAR 26.13.03.07 - .07-3, if the precious metal is exported to or imported from countries that are not designated OECD member countries as defined in COMAR 26.13.03.07-5C.]

C. (text unchanged)

D. [Recyclable materials that are]A recyclable material that is subject to this regulation that [are]is material accumulated speculatively, as defined in COMAR [26.13.02.01C(3)]26.13.02.01D, [are]is subject to all applicable provisions of COMAR 26.13.03 — 26.13.10.

### **.04 Spent Lead-Acid Batteries Being Reclaimed.**

A. — B. (text unchanged)

C. Management Requirements - General.

(1) — (2) (text unchanged)

(3) Persons who export batteries to be reclaimed through regeneration or any other means in a foreign country shall comply with §J of this regulation.

(4) Persons who transport batteries to export them to be reclaimed through regeneration or any other means in a foreign country shall comply with §K of this regulation.

D. Requirements - Reclamation by Regeneration. Persons who manage spent batteries that are to be reclaimed through regeneration, such as by electrolyte replacement[:],

(1) [are] Are exempt from the following requirements with respect to management of those batteries, including the regeneration:

[(1)](a) (text unchanged)

[(2)](b) COMAR 26.13.04[ - 26.13.07]—26.13.09; and

[(3)](c) The notification requirements of §3010 of RCRA[:]; and

(2) Are subject to the requirements of COMAR 26.13.02

E. Requirements - Permitted Facilities That Reclaim Spent Batteries. Owners or operators of facilities that store spent batteries before reclaiming them by a means other than regeneration are subject to the following requirements:

(1) — (3) (text unchanged);

(4) All applicable provisions of COMAR 26.13.05.01 - .12, except for:

(a) — (b) (text unchanged)

(c) COMAR 26.13.05.05C, which concerns manifest discrepancies; [and]

- (5) All applicable provisions of COMAR 26.13.07 and .09[.]; and
- (6) *If the batteries are imported from a foreign country, 40 CFR Part 262 Subpart H.*

F. Requirements - Interim Status Facilities That Reclaim Spent Batteries. Owners or operators of interim status facilities that store spent batteries before reclaiming them by a means other than regeneration are subject to the following requirements:

- (1) — (3) (text unchanged)
- (4) All applicable provisions of COMAR 26.13.06, except for:
  - (a) — (b) (text unchanged)
  - (c) COMAR 26.13.05.05C, which concerns manifest discrepancies, and which the owner or operator would otherwise be required to comply with by COMAR 26.13.06.05; [and]
- (5) All applicable provisions of COMAR 26.13.07 and .09[.]; and
- (6) *If the batteries are imported from a foreign country, 40 CFR Part 262 Subpart H.*

G. Requirements - Reclamation Without Storage. Persons who reclaim spent batteries by a method other than regeneration and do not store the spent batteries before reclaiming them are:

- (1) [exempt] *Exempt* from the following requirements with respect to those batteries:
  - [(1)](a) — [(2)](b) (text unchanged)
  - [(3)](c) The notification requirements of §3010 of RCRA[.]; and
- (2) *Subject to:*
  - (a) *applicable requirements of COMAR 26.13.09; and*
  - (b) *If the batteries are imported from a foreign country, 40 CFR Part 262 Subpart H.*

H. Requirements - Storage Before Reclamation by Persons Other Than the Reclaimer. Persons who store spent batteries that are to be reclaimed by a method other than regeneration, and who do not themselves reclaim the batteries are:

- (1) [exempt] *Exempt* from the following requirements with respect to those batteries:
  - [(1)](a) — [(2)](b) (text unchanged)
  - [(3)](c) The notification requirements of §3010 of RCRA[.]; and
- (2) *Subject to:*
  - (a) *Applicable requirements of COMAR 26.13.09; and*
  - (b) *If the batteries are imported from a foreign country, 40 CFR Part 262 Subpart H.*

I. Requirements - Generation, Collection, and Transport of Batteries That Will Be Reclaimed. Persons who generate, collect, or transport spent batteries that will be reclaimed by a method other than regeneration, or who perform any combination of these activities, are:

- (1) [exempt] *Exempt* from the following requirements with respect to those batteries:
  - [(1)](a) — [(2)](b) (text unchanged)
  - [(3)](c) The notification requirements of §3010 of RCRA[.]; and
- (2) *Subject to the applicable requirements of COMAR 26.13.09.*

J. Requirements - Exports of Batteries that Will be Reclaimed. Persons who export batteries to be reclaimed through regeneration or any other means in a foreign country are:

- (1) *Exempt from the following requirements with respect to those batteries:*
  - (a) *COMAR 26.13.03, except for COMAR 26.13.03.02, which concerns hazardous waste determination;*
  - (b) *COMAR 26.13.04—.07 and .09; and*
  - (c) *The notification requirements of §3010 of RCRA; and*
- (2) *Subject to 40 CFR Part 262 Subpart H.*

K. Requirements - Transport of Batteries that Will be Exported and Reclaimed. Persons who transport batteries in the U.S. to export them to be reclaimed through regeneration or any other means in a foreign country are:

- (1) *Exempt from the following requirements with respect to those batteries:*
  - (a) *COMAR 26.13.04—26.13.07 and .09; and*
  - (c) *The notification requirements of §3010 of RCRA; and*
- (2) *Subject to 40 CFR Part 262 Subpart H.*

## **.18 Small Quantity Handlers of Universal Waste — Shipments.**

A. — B. (text unchanged)

C. Exports. A small quantity handler of universal waste that sends universal waste to a *foreign* destination [outside the United States] *is subject to the requirements of 40 CFR Part 262 Subpart H[.].*

[(1) Other than to those countries of the Organization for Economic Cooperation and Development (OECD) specified in COMAR 26.13.03.07-5C(1), shall:

- (a) Comply with the requirements applicable to a primary exporter in COMAR 26.13.03.07-1A, 26.13.03.07-2C(2)(a)—(e), 26.13.03.07-2C(4), and 26.13.03.07-2D;
- (b) Export the universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent, as defined in 40 CFR Part 262, Subpart E; and
- (c) Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter of the shipment for export.

(2) That is one of the OECD member countries specified in COMAR 26.13.03.07-5C(1) shall comply with the requirements of 40 CFR Part 262, Subpart H.]

**.21 Large Quantity Handlers of Universal Waste — General Management Standards.**

A. — E. (text unchanged)

F. Tracking Universal Waste Shipments.

(1) Receipt of Shipments.

(a) (text unchanged)

(b) The record required by §F(1)(a) of this regulation may take the form of a log, invoice, manifest, bill of lading, *movement document* or other shipping document.

(c) (text unchanged)

(2) Shipments Off-Site.

(a) (text unchanged)

(b) The record required by §F(2)(a) of this regulation may take the form of a log, invoice, manifest, bill of lading, *movement document* or other shipping document.

(3) text unchanged

G. (text unchanged)

**.22 Standards for Universal Waste Transporters.**

A. — F. (text unchanged)

G. Exports. A universal waste transporter transporting a shipment of universal waste to a foreign destination [outside the United States which is:] *is subject to the requirements of 40 CFR Part 262 Subpart H.*

[(1) In one of the countries of the Organization for Economic Cooperation and Development (OECD) specified in 40 CFR §262.58(a)(1), shall comply with the requirements of COMAR 26.13.03.07-5;

(2) Not in one of the countries of the Organization for Economic Cooperation and Development (OECD) specified in 40 CFR §262.58(a)(1):

(a) May not accept a shipment if the transporter knows that the shipment does not conform to the EPA Acknowledgment of Consent;

(b) Shall ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment; and

(c) Shall ensure that the shipment is delivered to the facility that has been designated by the person initiating the shipment.]

**.23 Standards for Destination Facilities.**

A. — B. (text unchanged)

C. Tracking Universal Waste Shipments.

(1) Receipt of Shipments.

(a) (text unchanged)

(b) The record required by §C(1)(a) of this regulation may be a log, invoice, manifest, bill of lading, *movement document* or other shipping document.

(c) (text unchanged)

(2) (text unchanged)

**.24 Universal Waste — Import Requirements.**

A. Applicability.

(1) This regulation establishes requirements for persons managing universal waste [outside the United States] *that is imported from a country outside the United States into the United States.*

(2) (text unchanged)

(3) *A person subject to this regulation is subject to the requirements of 40 CFR Part 262 Subpart H and the applicable requirements of §B of this regulation.*

B. For the management of universal waste that is imported into the United States:

(1) (text unchanged)

(2) A universal waste handler is subject to the following requirements, depending upon whether the handler is classified as a small quantity handler of universal waste or a large quantity handler of universal waste:

(a) (text unchanged)

(b) Large quantity handlers of universal waste are subject to the requirements of Regulations .19—.21 of this chapter; *and*

(3) An owner or operator of a destination facility is subject to the requirements of Regulation .23 of this chapter; *and*].

[(4) Persons managing universal waste that is imported from an OECD country, as specified in COMAR 26.13.03.07-5C(1), are subject to the requirements of:

(a) §B(1)—(3) of this regulation; and

(b) COMAR 26.13.03.07-5.]

