

under 40 CFR 260.21, may be used as part of a person's knowledge to determine whether a solid waste exhibits a characteristic of hazardous waste. However, such tests do not, by themselves, provide definitive results. Persons testing their waste must obtain a representative sample of the waste for the testing, as defined at 40 CFR 260.10.

(2) When available knowledge is inadequate to make an accurate determination, the person must test the waste according to the applicable methods set forth in subpart C of 40 CFR part 261 or according to an equivalent method approved by the Administrator under 40 CFR 260.21 and in accordance with the following:

(i) Persons testing their waste must obtain a representative sample of the waste for the testing, as defined at 40 CFR 260.10.

(ii) Where a test method is specified in subpart C of 40 CFR part 261, the results of the regulatory test, when properly performed, are definitive for determining the regulatory status of the waste.

(e) If the waste is determined to be hazardous, the generator must refer to parts 261, 264, 265, 266, 267, 268, and 273 of this chapter for other possible exclusions or restrictions pertaining to management of the specific waste.

(f) *Recordkeeping for small and large quantity generators.* A small or large quantity generator must maintain records supporting its hazardous waste determinations, including records that identify whether a solid waste is a hazardous waste, as defined by 40 CFR 261.3. Records must be maintained for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal. These records must comprise the generator's knowledge of the waste and support the generator's determination, as described at paragraphs (c) and (d) of this section. The records must include, but are not limited to, the following types of information: The results of any tests, sampling, waste analyses, or other determinations made in accordance with this section; records documenting the tests, sampling, and analytical methods used to demonstrate the validity and relevance of such tests; records consulted in order to de-

termine the process by which the waste was generated, the composition of the waste, and the properties of the waste; and records which explain the knowledge basis for the generator's determination, as described at paragraph (d)(1) of this section. The periods of record retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

(g) *Identifying hazardous waste numbers for small and large quantity generators.* If the waste is determined to be hazardous, small quantity generators and large quantity generators must identify all applicable EPA hazardous waste numbers (EPA hazardous waste codes) in subparts C and D of part 261 of this chapter. Prior to shipping the waste off site, the generator also must mark its containers with all applicable EPA hazardous waste numbers (EPA hazardous waste codes) according to § 262.32.

[81 FR 85807, Nov. 28, 2016]

#### § 262.12 [Reserved]

#### § 262.13 Generator category determination.

A generator must determine its generator category. A generator's category is based on the amount of hazardous waste generated each month and may change from month to month. This section sets forth procedures to determine whether a generator is a very small quantity generator, a small quantity generator, or a large quantity generator for a particular month, as defined in § 260.10 of this chapter.

(a) *Generators of either acute hazardous waste or non-acute hazardous waste.* A generator who either generates acute hazardous waste or non-acute hazardous waste in a calendar month shall determine its generator category for that month by doing the following:

(1) Counting the total amount of hazardous waste generated in the calendar month;

(2) Subtracting from the total any amounts of waste exempt from counting as described in paragraphs (c) and (d) of this section; and

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(3) Determining the resulting generator category for the hazardous waste generated using Table 1 of this section.

(b) *Generators of both acute and non-acute hazardous wastes.* A generator who generates both acute hazardous waste and non-acute hazardous waste in the same calendar month shall determine its generator category for that month by doing the following:

(1) Counting separately the total amount of acute hazardous waste and the total amount of non-acute hazardous waste generated in the calendar month;

(2) Subtracting from each total any amounts of waste exempt from count-

ing as described in paragraphs (c) and (d) of this section;

(3) Determining separately the resulting generator categories for the quantities of acute and non-acute hazardous waste generated using Table 1 of this section; and

(4) Comparing the resulting generator categories from paragraph (b)(3) of this section and applying the more stringent generator category to the accumulation and management of both non-acute hazardous waste and acute hazardous waste generated for that month.

TABLE 1 TO § 262.13—GENERATOR CATEGORIES BASED ON QUANTITY OF WASTE GENERATED IN A CALENDAR MONTH

Quantity of acute hazardous waste generated in a calendar month	Quantity of non-acute hazardous waste generated in a calendar month	Quantity of residues from a cleanup of acute hazardous waste generated in a calendar month	Generator category
> 1 kg .....	Any amount .....	Any amount .....	Large quantity generator.
Any amount .....	≥ 1,000 kg .....	Any amount .....	Large quantity generator.
Any amount .....	Any amount .....	> 100 kg .....	Large quantity generator.
≤ 1 kg .....	> 100 kg and < 1,000 kg .....	≤ 100 kg .....	Small quantity generator.
≤ 1 kg .....	≤ 100 kg .....	≤ 100 kg .....	Very small quantity generator.

(c) When making the monthly quantity-based determinations required by this part, the generator must include all hazardous waste that it generates, except hazardous waste that:

(1) Is exempt from regulation under 40 CFR 261.4(c) through (f), 261.6(a)(3), 261.7(a)(1), or 261.8;

(2) Is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in 40 CFR 260.10;

(3) Is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under 40 CFR 261.6(c)(2);

(4) Is used oil managed under the requirements of 40 CFR 261.6(a)(4) and 40 CFR part 279;

(5) Is spent lead-acid batteries managed under the requirements of 40 CFR part 266 subpart G;

(6) Is universal waste managed under 40 CFR 261.9 and 40 CFR part 273;

(7) Is a hazardous waste that is an unused commercial chemical product (listed in 40 CFR part 261 subpart D or

exhibiting one or more characteristics in 40 CFR part 261 subpart C) that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity pursuant to §262.213. For purposes of this provision, the term eligible academic entity shall have the meaning as defined in §262.200; or

(8) Is managed as part of an episodic event in compliance with the conditions of subpart L of this part.

(9) Is a hazardous waste pharmaceutical, as defined in §266.500, that is subject to or managed in accordance with 40 CFR part 266 subpart P or is a hazardous waste pharmaceutical that is also a Drug Enforcement Administration controlled substance and is conditionally exempt under §266.506.

(d) In determining the quantity of hazardous waste generated in a calendar month, a generator need not include:

(1) Hazardous waste when it is removed from on-site accumulation, so long as the hazardous waste was previously counted once;

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(2) Hazardous waste generated by on-site treatment (including reclamation) of the generator's hazardous waste, so long as the hazardous waste that is treated was previously counted once; and

(3) Hazardous waste spent materials that are generated, reclaimed, and subsequently reused on site, so long as such spent materials have been previously counted once.

(e) Based on the generator category as determined under this section, the generator must meet the applicable independent requirements listed in § 262.10. A generator's category also determines which of the provisions of §§ 262.14, 262.15, 262.16 or 262.17 must be met to obtain an exemption from the storage facility permit, interim status, and operating requirements when accumulating hazardous waste.

(f) *Mixing hazardous wastes with solid wastes*—(1) *Very small quantity generator wastes*. (i) Hazardous wastes generated by a very small quantity generator may be mixed with solid wastes. Very small quantity generators may mix a portion or all of its hazardous waste with solid waste and remain subject to § 262.14 even though the resultant mixture exceeds the quantity limits identified in the definition of very small quantity generator at § 260.10 of this chapter, unless the mixture exhibits one or more of the characteristics of hazardous waste identified in part 261 subpart C of this chapter.

(ii) If the resulting mixture exhibits a characteristic of hazardous waste, this resultant mixture is a newly-generated hazardous waste. The very small quantity generator must count both the resultant mixture amount plus the other hazardous waste generated in the calendar month to determine whether the total quantity exceeds the very small quantity generator calendar month quantity limits identified in the definition of generator categories found in § 260.10 of this chapter. If so, to remain exempt from the permitting, interim status, and operating standards, the very small quantity generator must meet the conditions for exemption applicable to either a small quantity generator or a large quantity generator. The very small quantity generator must also comply with the appli-

cable independent requirements for either a small quantity generator or a large quantity generator.

(iii) If a very small quantity generator's wastes are mixed with used oil, the mixture is subject to 40 CFR part 279. Any material produced from such a mixture by processing, blending, or other treatment is also regulated under 40 CFR part 279.

(2) *Small quantity generator and large quantity generator wastes*. (i) Hazardous wastes generated by a small quantity generator or large quantity generator may be mixed with solid waste. These mixtures are subject to the following: the mixture rule in §§ 261.3(a)(2)(iv), (b)(2) and (3), and (g)(2)(i); the prohibition of dilution rule at § 268.3(a); the land disposal restriction requirements of § 268.40 if a characteristic hazardous waste is mixed with a solid waste so that it no longer exhibits the hazardous characteristic; and the hazardous waste determination requirement at § 262.11.

(ii) If the resulting mixture is found to be a hazardous waste, this resultant mixture is a newly-generated hazardous waste. A small quantity generator must count both the resultant mixture amount plus the other hazardous waste generated in the calendar month to determine whether the total quantity exceeds the small quantity generator calendar monthly quantity limits identified in the definition of generator categories found in § 260.10 of this chapter. If so, to remain exempt from the permitting, interim status, and operating standards, the small quantity generator must meet the conditions for exemption applicable to a large quantity generator. The small quantity generator must also comply with the applicable independent requirements for a large quantity generator.

[81 FR 85808, Nov. 28, 2016, as amended at 84 FR 5939, Feb. 22, 2019]

### § 262.14 Conditions for exemption for a very small quantity generator.

(a) Provided that the very small quantity generator meets all the conditions for exemption listed in this section, hazardous waste generated by the very small quantity generator is not subject to the requirements of parts