

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 261, 262, and 265**

[SWH-FRL 1680-3]

**Hazardous Waste Management System: General Hazardous Waste Management System; Identification and Listing of Hazardous Waste****AGENCY:** Environmental Protection Agency.**ACTION:** Final amendment and interim final amendments to rule and request for comments.

**SUMMARY:** These amendments modify 40 CFR 261.33(c) and add a new section, 40 CFR 261.7, to EPA's May 19, 1980, hazardous waste management regulations. This new section and the change to § 261.33(c) clarify the situations in which residues of hazardous waste that are contained in drums, barrels, tank trucks or other types of containers must be managed as hazardous wastes under 40 CFR Parts 261 through 265 and 122 through 124.

**DATES:**

**Effective dates:** The effective date for § 261.7 is November 19, 1980.

The effective date for the amendments to § 261.33, § 265.173 and to § 262.51 is May 25, 1981.

**Comment date:** Today's amendments, with the exception of § 261.7(b)(3), which is merely a recodification, are being promulgated as interim final rules. EPA will accept comments on them until January 26, 1981.

**Compliance dates:** See Supplementary Information for details on compliance dates.

**ADDRESSES:** Comments of these amendments should be sent to Docket Clerk (Docket No. 3001), Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Alfred W. Lindsey, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 (202) 755-9185.

**SUPPLEMENTARY INFORMATION:****I. Authority**

These amendments are issued under the authority of Sections 1006, 2002(a), and 3001 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6905, 6912(a), and 6921.

**II. Compliance Dates**

EPA does not consider new § 261.7 to be a "revision" of the Section 3001 regulations within the meaning of Section 3010(b) of RCRA. It is merely a clarification of the May 19, 1980, regulations and does not subject any person to regulatory control who was not already subject to the May regulations. All such persons, of course, should have already notified EPA of their hazardous waste activities on or before August 18, 1980, and if they are hazardous waste treatment, storage or disposal facilities must submit a Part A permit application to EPA on or before November 19, 1980.

Today's amendment to § 261.33(c), which clarifies that EPA considers as hazardous wastes container residues of acutely hazardous materials that are discarded, and does not consider the containers themselves to be hazardous wastes when they are discarded, will require additional persons to notify EPA that they handle these acutely hazardous wastes and will require any treatment, storage or disposal facility which wants to continue to handle such wastes also to submit a Part A permit application and qualify for interim status.

**A. Notification**

Persons who generate, transport, treat, store or dispose of wastes which are newly subject to regulation under Parts 261 through 265, 122 and 124 because of today's revision to § 261.33(c) are not required to notify EPA so long as they previously notified the Agency that they handle a hazardous waste and received an EPA identification number.<sup>1</sup> Persons who have not previously notified EPA and who now generate or handle the wastes newly included by the amendment to § 261.33(c) must now notify EPA of their activities under Section 3010 no later than January 26, 1981. Notification instructions are set forth in 45 FR 12746 (February 26, 1980).

**B. Part A Permit Applications**

The owners or operators of all existing hazardous waste management facilities (see the definition of "existing HWM facility" in 40 CFR 122.3, 45 FR 33421 (May 19, 1980) and 45 FR 67756 (October 14, 1980)) which treat, store or dispose of wastes newly included in these regulations by the amendment to § 261.33(c), and who wish to qualify for

<sup>1</sup>EPA's authority for this action is the recent amendment to Section 3010(a) of RCRA contained in the Solid Waste Disposal Act Amendments of 1980 (Pub. L. 96-452, (October 21, 1980)) which leaves the requirements for notification following revision of the Section 3001 regulations to the discretion of the Administrator.

interim status under Section 3005(e) of RCRA, must file a notification by January 26, 1981, unless they have notified previously (as described in II.A. above), and must file a permit application by May 25, 1981 (see 40 CFR 122.23(a)(1) and (2), 45 FR 33434 (May 19, 1980)).

Owners or operators of facilities who have qualified for interim status and who wish to manage wastes newly included in these regulations by the amendment to § 261.33(c) must submit an amended permit application by May 25, 1981 (see 40 CFR 122.23(c)(1), 45 FR 33434 (May 19, 1980)).

Owners or operators who do not comply with the notification or permit application requirements are precluded from managing these wastes after May 25, 1981 until they have obtained an RCRA permit under Part 122.

**C. Compliance With the Requirements of Parts 262 Through 265, 122 and 124**

Beginning on May 25, 1981, persons handling wastes newly included by today's amendment to § 261.33(c) must comply with all applicable standards for hazardous waste generators, transporters, and owners and operators of hazardous waste management facilities set forth in 40 CFR Parts 262 through 265, 122 and 124 with respect to these wastes.

**III. Background**

In May of 1980, EPA promulgated regulations implementing Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"). These regulations, among other things, identify and list hazardous waste (Part 261), establish standards for generators and transporters of hazardous waste (Parts 262 and 263), and set management and permit requirements for owners and operators of facilities that treat, store or dispose of hazardous waste (Parts 264 and 265 and Parts 122 and 124). 45 FR 33066 (May 19, 1980). These regulations are designed to ensure the proper handling and management of hazardous wastes from their generation through their ultimate disposition.

Hazardous wastes are often stored or transported in containers.<sup>2</sup> Some of these containers may be full, others partially full. Depending on how a particular hazardous waste is to be managed and whether a container is to be re-used, some containers may be emptied, leaving a residue in the container. Other containers may be

<sup>2</sup>"Container" is defined in 40 CFR 260.10 as "any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled."

cleaned, perhaps creating a rinsate containing hazardous waste.

EPA has received numerous questions about the extent to which partially full, "empty" and cleaned containers, or more precisely, the waste or waste residues in such containers, are regulated under RCRA. Specifically,

(1) What is an "empty container?"

(2) Under what circumstances is a container that has held hazardous waste, but is now "empty," controlled under the RCRA hazardous waste regulations?

(3) How do the small quantity provisions (§ 261.5) and the use, re-use, recycling and reclamation provisions (§ 261.6) apply to container management?

(4) Are container cleaning operations subject to the RCRA facility and permitting requirements?

In response to these questions, EPA is modifying its hazardous waste regulations to better explain the circumstances under which a container which has held hazardous waste (including any of the chemicals listed in § 261.33 (e) and (f), when they are wastes) remains subject to the requirements of Parts 261 through 265, 122 and 124, and the notification requirements of Section 3010 of RCRA. The Agency is doing this by adding a new section of Part 261, § 261.7, which deals exclusively with the issue of when residues in containers will be subject to regulation. This new section will enable persons who deal with container residues to look to one section of the regulations to determine whether they are regulated.

#### IV. The Control of Residues in Empty Containers and the Definition of Empty Container

In the May 1980 regulations the only specific references to containers of hazardous waste in Part 261, which identifies those wastes subject to regulation, are in §§ 261.33(c) and 261.5(c)(3)-(4). Section 261.33(c) provides that any container or inner liner from a container that has been used to hold any acutely hazardous commercial chemical product or manufacturing chemical intermediate listed in § 261.33(e) is a hazardous waste when it is discarded or intended to be discarded, unless it has been triple rinsed or otherwise appropriately cleaned. Sections 261.5(c)(3) and 261.5(c)(4), part of the special requirements for hazardous waste generated by small quantity generators, excluded from regulation certain small containers and a certain amount of inner liners from containers identified in § 261.33(c). Otherwise, the May 1980 Part 261 regulations are silent

on the control of "empty" containers and hazardous waste residues in "empty" containers.

#### A. Full or Partially Full Containers

Under Part 261, all solid waste that is identified or listed as hazardous waste is subject to regulation under Parts 261 through 265, 122 and 124. Thus, the May 19, 1980, regulations clearly regulate hazardous wastes in full or partially full containers.

#### B. "Empty" Containers

The typical emptying of a container by pouring, pumping, aspirating or other common emptying methods is not capable of removing all residues. So-called "empty" containers hold small amounts of residue unless they have been thoroughly rinsed or otherwise cleaned to remove such residues. Many persons have concluded that unless hazardous waste residues in "empty" containers are excluded by the small quantity generator exclusion of § 261.5, all such residues are fully controlled as hazardous wastes and thus persons handling such containers would, because of the residues have to ship such containers accompanied by a manifest and have a permit (or interim status) for the treatment, storage or disposal of the residues.

The Agency did not intend, however, to regulate hazardous waste residues in "empty" but unrinsed containers, except where the hazardous waste is an acutely hazardous material listed in § 261.33(e). See the preamble discussion at 45 FR 33116, May 19, 1980. EPA believes that, except where the hazardous waste is an acutely hazardous material listed in § 261.33(e), the small amount of hazardous waste residue that remains in individual empty, unrinsed containers does not pose a substantial hazard to human health or the environment. If there are certain situations where this presumption is unjustified, the Agency will consider amendments to the regulations to accommodate them. See the discussion below in section IV.E. of this preamble.

In making this presumption, the Agency considered the amounts of hazardous waste residues contained in "empty" containers from which all hazardous wastes have been removed by common methods of emptying containers: Dumping, pouring, pumping and aspirating and, for containers of contained gas, allowing the pressure in the container to reach atmospheric. Although EPA officials have explained in many public meetings that the only residues in "empty" containers that the Agency intended to regulate were those of acutely hazardous materials listed in

§ 261.33(e), (see 40 CFR 261.33(c), 45 FR 33124, (May 19, 1980)), the Agency did not articulate this in the regulations.

To rectify this omission, the Agency is amending the regulations to expressly specify that the hazardous waste remaining in an "empty" container is not subject to the regulations. See § 261.7(a). On the other hand, the hazardous waste residue in any container that is not considered empty is subject to full regulation as a hazardous waste unless any of the special requirements or exclusions in Part 261 or § 262.34 apply. To implement this clarification EPA is also amending the regulations to provide a definition of "empty container." See § 261.7(b). This definition is in three parts and is keyed to the type of waste in the container, i.e., the methods that must be used to remove the residue from a container for it to be considered empty under § 261.7(b) depend on the material that the container held. What should be clear from § 261.7, however, is that no "empty" containers are subject to regulatory control because no "empty" containers hold residues that are considered hazardous wastes for regulatory purposes.

1. *Containers that have held hazardous wastes other than gases and acutely hazardous materials.* The first part of the definition of "empty container" deals with containers that have held hazardous wastes other than compressed gases and acutely hazardous materials listed in § 261.33(e). For such containers, the definition provides that an empty container is one from which all wastes or other materials have been removed that can be removed using the practices commonly employed to remove materials from that type of container. The definition further provides that no more than 2.5 centimeters (one inch) of residue may remain on the bottom of the container for it to be considered empty. The Agency recognizes that this part of the definition is not perfectly precise and may be subject to interpretation in difficult cases. For example, if the hazardous waste is a two-phase mixture of a liquid and a non-viscous solid or semi-solid and is contained in a drum with a sealed top (with only bung holes provided for filling and emptying the drum), it is very possible that common emptying methods will not remove all of the waste. Common emptying methods might remove the liquid phase and leave the solids or semi-solids adhering to the sides so that there is less than 2.5 centimeters of waste on the bottom of the container. In this example, the Agency would not view the container as an empty container because the total

amount of material in the container would be greater than a 2.5 centimeter layer on the bottom. In spite of its imperfection, the Agency believes this definition is useful and can be made to work with only occasional interpretation for unusual situations. The Agency will render such interpretations when necessary to implement this definition and the related regulatory provisions. Even so, the Agency is open to any advice on how to improve this definition and specifically solicits such advice during the comment period provided for this interim final rule.

2. *Compressed gas containers.* For compressed gas containers, the second part of the definition provides that an empty container is one which has been opened to atmospheric pressure.

3. *Containers that have held acutely hazardous materials.* For containers that have held any of the acutely hazardous materials listed in § 261.33(e), the third part of the definition provides that an empty container is one that has been triple rinsed with an appropriate solvent, or cleaned using another method shown to achieve equivalent removal or, in the case of a container, has had the inner liner removed. This part of the definition of empty container has been shifted from 40 CFR 261.33(c)(1)-(3) in order to combine in one section of the regulations all provisions dealing with the issue of when container residues must be managed as hazardous waste. It was explained in the preamble to the May 19, 1980, regulations. See 45 FR 33115-16.

#### C. Interim Final Promulgation

Because the first two parts of the definition of empty container (§ 261.7(b)(1)-(2)) are new regulatory provisions, EPA is promulgating them in interim final form and will accept comments on them for 90 days. Section 261.7(a), which clarifies when container residues must be managed as hazardous wastes, also is new and also is being promulgated in interim final form with a 90 day comment period. EPA believes that use of advance notice and comment procedures for these amendments would be impracticable and contrary to the public interest, and therefore finds that good cause exists for adopting these regulations in interim final form (see 5 U.S.C. 553(b)(B)). Section IV.D. below, entitled "Effective Date," discusses the confusion and disruption that would result were EPA not to promulgate these amendments in interim final form with a November 19, 1980, effective date.

The third part of the definition of empty container, § 261.7(b)(3), is merely

recodified and is being promulgated as a final regulation.

#### D. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect six months after their promulgation. The purpose of this requirement is to allow persons handling hazardous wastes sufficient lead time to prepare to comply with major new regulatory requirements. For the new § 261.7 promulgated today, however, the Agency believes that an effective date six months after promulgation would cause substantial and unnecessary disruption in the implementation of the regulations and would be counterproductive for the regulated community and the public.

The regulatory provisions that these amendments modify take effect on November 19, 1980. Beginning on that date, in the absence of the effectuation of these amendments, all hazardous waste residues down to very minute quantities arguably would have to be managed as hazardous wastes. The clarifications in § 261.7 have been requested by the regulated community and will eliminate the confusion that has existed concerning when container residues must be managed as hazardous wastes. Section 261.7 does not subject any persons or activities to regulation which were not covered by the May 19 regulations. The section only serves to exclude certain residues of hazardous waste from regulatory control. Persons handling excluded residues thus need not comply with any hazardous waste management requirements for those residues. In the absence of this new section, these persons arguably would have to comply with all applicable regulations in Parts 261 through 265, 122 and 124 on November 19, 1980. This lessening of regulatory requirements surely is not the type of revision to regulations that Congress had in mind when it provided a six-month delay between the promulgation and the effective date of revisions to regulations. Consequently the Agency is setting an effective date of November 19, 1980.

#### E. Options Under Consideration for Regulating Hazardous Waste Residues in "Empty" Containers

As discussed in section IV.B. of this preamble, EPA believes that the small amount of hazardous waste residue that remains in individual empty, unrinsed containers does not pose a substantial hazard to human health or the environment. EPA is concerned, however, that drum reconditioners and other facilities that clean large numbers of "empty" containers may accumulate

and treat or dispose of significant amounts of unregulated residues which may pose a substantial hazard to human health or the environment. EPA is currently considering three options to deal with this possible problem.

1. *Triple rinsing for all containers.* The option which EPA considers the most equitable and which appears to offer the greatest protection to human health and the environment is to require that all containers be triple rinsed before they are considered empty. This would ensure that the only residues that would be unregulated under the Part 262 through 265, 122 and 124 regulations would be trace amounts that would remain in a container after triple rinsing or an equivalent cleaning operation. If a container that hadn't been triple rinsed were transported, it would have to be accompanied by a manifest, unless the residue in the container were excluded from regulation by the small quantity generator exclusion (§ 261.5) or by the use, re-use, recycling or reclamation provisions of § 261.6, and could only be shipped to a treatment, storage or disposal facility with a permit or interim status. Under § 261.7(a), as promulgated today, container residues (other than those of acutely hazardous materials listed in § 261.33(e)) of less than an inch are not subject to the RCRA Subtitle C requirements. If all containers had to be triple rinsed before the remaining residue were not regulated, the potential for environmental and health problems that exists under the current version of § 261.7 could be eliminated.

2. *Regulation of the residue when it is removed from the container.* Another option EPA is considering is to add the words "until it is removed from the container" to § 261.7(a)(1) so that the section would read: "Any hazardous waste remaining in a container or an inner liner removed from a container that is empty, as defined in paragraph (b) of this section, is not subject to regulation under Parts 261 through 265, Part 122 or 124 of this chapter or to the notification requirements of Section 3010 of RCRA until it is removed from the container."

Such language would mean that the hazardous waste residue in an empty container could be transported, treated, stored or disposed of without being subject to RCRA regulation while it remained in the container, but that the residue would be regulated if it were removed from the container. This solution would be less burdensome to the regulated community than requiring triple rinsing of all containers that have held hazardous waste, but it would not offer as much protection of human

health and the environment because residues that remained in empty containers would be unregulated. It would require facilities about which EPA is most concerned, i.e., those container cleaning facilities which accumulate large amounts of container residues, to properly manage the residues as hazardous wastes once they were removed from the container. EPA would consider the person who removed the waste to be the generator. Persons who removed only small quantities of residues could qualify for the small quantity generator exclusion, if they also did not have large quantities of other hazardous wastes. One problem with this approach, though, would be how persons removing residues from empty containers that had been shipped to them would receive notice that the residues were hazardous wastes because, until their removal, the residues would be unregulated, and thus could be shipped without a manifest while they remained in their containers.

3. *Limitation on the amount of unregulated residue.* A third option EPA is considering is to regulate only persons who handle large amounts of hazardous waste residue in, or removed from, empty containers. The Agency could accomplish this by limiting the amounts of unregulated residue a person could manage during a particular period of time without becoming subject to hazardous waste management controls. All container residues handled by persons who regularly deal with large amounts of such residues could be regulated.

EPA solicits comments and data on whether the residues left unregulated by § 261.7 may pose a substantial hazard to human health or the environment and, if so, whether commenters favor one of the three options outlined above, or some other alternative to deal with the problem.

#### V. Clarification of 40 CFR 261.33

Section 261.33(c) lists containers that hold residues of certain acutely hazardous commercial chemical products, manufacturing chemical intermediates, and off-specification products as hazardous wastes if and when they are discarded or intended to be discarded. EPA is making certain clarifying changes to this section.

##### A. Clarifying Changes Including Regulation of Residues Rather Than Containers

First, as mentioned above, today's amendments move the provisions of § 261.33(c)(1)-(3) to § 261.7(b). Second, EPA also is changing the remaining wording of § 261.33(c) and the title of

§ 261.33 to clarify that it is the hazardous material residue in a container, rather than the container itself, that is controlled under the regulations if and when the residue is discarded or intended to be discarded. This avoids the problems that can result from a literal reading of the regulations if the container, rather than the residue, is considered a hazardous waste. Read literally, for example, § 262.34(a) would require that a container, if the container itself were considered a hazardous waste, be placed within another container for temporary accumulation.

This change to the wording of § 261.33(c), although merely a clarification of the Agency's intent in the May 19, 1980, regulations, does alter the substance of the requirement in one respect. Although § 261.33(a) implies that any amount of a listed acutely hazardous material is a hazardous waste when it is discarded or intended to be discarded, § 261.33(c) in the May 19 regulations implies that a container or liner that previously held an acutely hazardous material listed in § 261.33(e) becomes a hazardous waste only if and when the container or liner—as opposed to the hazardous waste residue—is "discarded or intended to be discarded." Under one reasonable interpretation of § 261.33(c), a container which is re-used by anyone or sent to a reconditioner for cleaning and subsequent re-use would not be subject to the hazardous waste management regulations because it was not "intended to be discarded." When the residue, rather than the container, is considered the hazardous waste, as it is under the amended § 261.33(c), a container holding a regulated residue, i.e., a container that is not "empty," that is sent to a reconditioner for cleaning and re-use must be accompanied by a manifest and may only be sent to a person with a RCRA permit or interim status for the treatment, storage or disposal of the waste in question. Because this amendment to § 261.33(c) may extend regulatory control to some persons whose activities were not previously regulated under RCRA, EPA is providing time for these persons to notify under Section 3010 of RCRA and to submit permit applications pursuant to 40 CFR Part 122. See the discussion above in section II of this preamble entitled "Compliance Dates."

On the other hand, if the residue of an acutely hazardous waste listed in § 261.33 itself is to be beneficially used, re-used, recycled or reclaimed, it is not being discarded and it never becomes a hazardous waste and thus is not subject to the hazardous waste management regulations. For example, if a container

that has held an acutely hazardous material listed in § 261.33(e) is to be re-used to contain the same material listed in § 261.33(e) that it previously held (and the initial residue is not discarded), or to contain some other material where the mixing of the other material with the residue of the § 261.33(e) material constitutes a beneficial use or re-use of that residue, then the acutely hazardous residue in the container or liner is not discarded and thus is not a hazardous waste. EPA has added a "comment" to § 261.33(c) to remind readers of the regulation that unless residues are beneficially used or re-used, or legitimately recycled or reclaimed, or are being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, EPA considers the residue to be intended for discard and thus a hazardous waste.

##### B. Interim Final Promulgation

EPA believes that use of advance notice and comment procedures for the clarification to § 261.33(c) would be impracticable and contrary to the public interest, and therefore finds that good cause exists for adopting this change in interim final form (see 5 U.S.C. 553(b)(B)). Delay in promulgating this clarification could cause significant harm to the regulated community and the general public. Without this clarification, confusion exists over whether the provisions of § 261.33(a) or § 261.33(c) govern container residues of acutely hazardous materials that are discarded or intended to be discarded. EPA intended that all such residues be controlled as hazardous wastes, but, as discussed above, one reasonable interpretation of § 261.33(c) is that such residues are not considered hazardous wastes if the containers that hold such residues are not discarded. To give notice to the regulated community of how EPA intended § 261.33(c) to work, and to protect the public against the possible mismanagement of the acutely hazardous material residues that may remain in unlined containers that are re-used, EPA is promulgating its clarification to § 261.33(c) in interim final form. EPA will accept comments on this change for 90 days and will make any further changes deemed necessary as a result of those comments.

##### C. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect six months after their promulgation. The purpose of this requirement is to allow persons handling hazardous wastes sufficient lead time to prepare to comply with major new regulatory requirements. EPA

agrees that the amendment to § 261.33(c) should take effect six months after its promulgation. The amendment will subject some people to the hazardous waste management regulations whose activities were not subject to regulation under the May 19, 1980, regulations. Two classes of people may be brought under regulation for the first time by this amendment. The first class of people are those who for the first time will be considered generators. These are people whose only hazardous wastes are container residues of acutely hazardous materials (that are discarded) from containers that are re-used. Although it was not EPA's intent to allow these residues to go unregulated under the May 19 regulations, EPA agrees that a reasonable reading of § 261.33(c) would so allow. Thus, the change to that section will bring some people under the hazardous waste management regulatory system for the first time as generators and these persons need time to plan to meet the regulatory requirements of Part 262.

The other class of people affected by today's amendment are owners and operators of container cleaning facilities which receive containers which are not considered empty under new § 261.7, i.e., which hold residues of regulated acutely hazardous materials. They will, under the interpretation of § 261.33(c) discussed above, be considered treatment, storage or disposal facilities for the first time under today's amendment. The owners and operators of these facilities will have to prepare to meet the applicable Part 265 standards, if they are eligible for interim status.

The effective date for today's amendment to § 261.33(c) is May 25, 1981. Section II of this preamble, entitled "Compliance Dates" sets forth the dates by which persons who are subject to regulation for the first time by today's amendment to § 261.33(c) or who wish to handle wastes newly regulated by today's clarification must notify EPA and submit a new or revised Part A permit application.

Until the amendment to § 261.33(c) is effective, the provisions of § 261.33(c), as promulgated on May 19, 1980, will remain in effect. Until the amendment to § 261.33(c) is effective, persons handling residues of acutely hazardous materials in containers that are not discarded or intended to be discarded will not be considered subject to Part 262 through 265, 122 and 124 requirements.

#### VI. Special Small Quantity Provisions

If any container is not considered empty under § 261.7(b), then the hazardous waste remaining in the container is subject to full regulation

unless the generator of the waste qualifies for the special requirements for hazardous waste generated by small quantity generators established in § 261.5 or for one of the other special provisions in the regulations.

In response to numerous comments and questions on § 261.5, EPA has amended it in a separate rulemaking. Containers and inner liners are no longer specifically mentioned in the amended § 261.5 because of the change to § 261.33(c) discussed above. Because EPA considers the residue of the acutely hazardous material, rather than the container or inner liner, to be the hazardous waste, § 261.5 no longer specifies a number of containers or an amount of inner liners containing § 261.33(e) residues that a small quantity generator may generate and still come within the special requirements. See § 261.5(c)(3) and § 261.5(c)(4), May 19, 1980.

Under amended § 261.5, a generator with § 261.33(c) container residues is subject to full Subtitle C regulation if the amount of such hazardous waste residue he generates in a calendar month exceeds an exclusion level specified in § 261.5. If the sum of all of his acutely hazardous waste, including his § 261.33(c) residues, is less than 1 kilogram, that waste is excluded from regulation unless he generates more than 1000 kilograms of other hazardous waste in a calendar month, in which case all of his acutely hazardous waste is also subject to regulation that month. If he generates more than one kilogram of acutely hazardous waste in a calendar month, including § 261.33(c) residues, all of that hazardous waste is regulated. Container residues of other than § 261.33(e) materials that are subject to regulation because they measure more than one inch in an individual container (see § 261.7) must be counted toward the 1000 kilogram exclusion in § 261.5. The preamble to the amendments to § 261.5 discusses the application of that section in further detail.

#### VII. Use, Re-use, Recycling and Reclamation Provisions

There is an important distinction to be drawn between wastes listed in § 261.33 and other listed wastes, with respect to the re-use provisions of the regulations. The use, re-use, recycling, and reclamation provisions of § 261.6 do not apply to any materials listed in § 261.33, including container residues, because § 261.6 only applies to hazardous waste, and materials listed in § 261.33 become hazardous wastes only when they are discarded or are intended to be discarded. Thus, these materials are not

hazardous wastes if they are used, re-used, recycled or reclaimed.

On the other hand, hazardous waste container residues, other than those listed in § 261.33, which are regulated because they are in containers that are not empty, i.e., which don't meet the provisions of § 261.7(b) (1) or (2), can qualify for the special requirements in § 261.6 just as any other hazardous waste can.

#### VIII. Container Cleaning Operations

Some persons have read the definition of treatment in § 260.10 to encompass all container cleaning operations. Commenters were particularly concerned that the triple rinsing or other cleaning operations prescribed in § 261.33(c) (1) and (2) constituted treatment of the hazardous waste which adhered to the container.

##### A. Triple Rinsing

Triple rinsing, a procedure sanctioned in the regulations, is carried out with the express purpose of removing the waste from the container. The usual intent is simply to remove the waste and not to treat it, and the procedure is not usually "designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize . . ." it. Therefore, most triple rinsing does not meet the definition of treatment in Section 1004 of RCRA and § 260.10, and is, therefore, not subject to the requirements of Parts 264 and 265. The rinsate, however, is a hazardous waste if it meets one of the characteristics or if it contains a listed waste which remains subject to regulations via the mixing rule. See § 261.3(a)(2)(ii). Also, any treatment of the rinsate would almost certainly meet the definition of treatment in RCRA and such secondary treatment operations would be subject to the requirements of Parts 264 and 265.

##### B. Other Forms of Container Cleaning

Forms of container cleaning other than triple rinsing may constitute treatment because the intent and design of the operations involve not only removal of the waste from the container but also modification of the physical or chemical composition or character of the waste to render it less hazardous or non-hazardous. This is the case where drums are incinerated or "burned out." In this case, the burning operation is designed to remove and destroy the wastes. In other cases, chemicals are added to drums, again, not only to remove the waste, but to react with the wastes and destroy or detoxify them. These processes meet the RCRA definition of "treatment" and are thus

subject to the requirements of Parts 264 and 265.

*C. Facilities Which Handle Only "Empty" Containers*

Section 261.7 clarifies that container cleaning facilities which handle only "empty" containers are not currently subject to regulation unless they generate a waste that meets one of the characteristics in Subpart D. The mixture rule (§ 261.3(a)(2)(ii)) is inapplicable to any residues excluded from regulation by 261.7(a)(1), which would be the only residues with which a facility that handles only "empty" containers would deal.

*D. Facilities Which Handle "Non-Empty" Containers*

Any facility that handles any "non-empty" containers, i.e., containers which don't meet the definition of "empty" in 261.7(b), is managing regulated hazardous waste.

If the facility is the generator of the hazardous waste, i.e., the container residue, then the small quantity generator exclusion (§ 261.5) and the non-permitted accumulation time provision (§ 262.34) are available to the facility as a generator. Unless one of those provisions is applicable, though, all treatment, storage and disposal of regulated residues must be carried out in accordance with all applicable Part 264 or 265 standards at a facility with a permit or interim status. Note also that any regulated residue of a listed hazardous waste is subject to the mixture rule, so that rinse waters or solvents containing these residues also are considered hazardous wastes, unless they have been delisted in accordance with the procedures in §§ 260.20 and 260.22.

**IX. Request for Comments**

EPA invites comments on all aspects of the interim final amendments promulgated today and all of the issues discussed in this preamble. The Agency is providing a 90-day comment period and will carefully consider all comments received during that period.

**X. Regulatory Impacts**

The clarification to § 261.33(c) will bring a small number of additional persons under regulation as generators, transporters, or owners or operators of treatment, storage or disposal facilities. EPA is unable to estimate the number of such persons and thus cannot accurately estimate the increased impacts of the clarification.

The effect of the promulgation of

§ 261.7 is to reduce the overall costs, economic impact and reporting and recordkeeping impacts of EPA's hazardous waste management regulations. This is achieved by clarifying that container residues of hazardous waste, measuring an inch or less, except residues of certain acutely hazardous materials, are not subject to the regulations. The Agency is unable to estimate these cost and impact reductions.

Dated: November 19, 1980.

Douglas M. Costle,  
*Administrator.*

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

1. Add the following new section to Part 261:

**§ 261.7 Residues of hazardous waste in empty containers.**

(a)(1) Any hazardous waste remaining in either (i) an empty container or (ii) an inner liner removed from an empty container, as defined in paragraph (b) of this section, is not subject to regulation under Parts 261 through 265, or Part 122 or 124 of this chapter or to the notification requirements of Section 3010 of RCRA.

(2) Any hazardous waste in either (i) a container that is not empty or (ii) an inner liner removed from a container that is not empty, as defined in paragraph (b) of this section, is subject to regulation under Parts 261 through 265, and Parts 122 and 124 of this chapter and to the notification requirements of Section 3010 of RCRA.

(b)(1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified in § 261.33(c) of this chapter, is empty if:

(i) all wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating, and

(ii) no more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner.

(2) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(3) A container or an inner liner removed from a container that has held a hazardous waste identified in § 261.33(c) of this chapter is empty if:

(i) the container or inner liner has

been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

(ii) the container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(iii) in the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed.

2. Revise the title of § 261.33 and paragraph (c) to read as follows:

**§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.**

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded:

(c) Any residue remaining in a container or an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (e) of this section, unless the container is empty as defined in § 261.7(b)(3) of this chapter. [Comment: Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, EPA considers the residue to be intended for discard, and thus a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to a drum reconditioner who reconditions the drum but discards the residue.]

**§ 265.173 [Amended]**

3. Delete the first sentence of the "Comment" to § 265.173.

**§ 262.51 [Amended]**

4. Change the reference for triple rinsing in § 262.51 from "§ 262.33(c)" to "§ 261.7(b)(3)."

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