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Document No. 4646

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

CHAPTER 61

Statutory Authority: 1976 Code Sections 44‑56‑10 et seq.

61‑79. Hazardous Waste Management Regulations

**Synopsis:**

These amendments of R.61‑79 adopt four final rules published in the Federal Register by the United States Environmental Protection Agency (EPA). These amendments will: establish new requirements that will authorize the use of electronic manifests (or e‑Manifests) as a means to track off‑site shipments of hazardous waste from a generator’s site to the site of the receipt and disposition of the hazardous waste as well as establish a national electronic manifest system; allow the Department to better track exports of Cathode Ray Tubes for reuse and recycling to ensure safe management of these materials; revise several recycling‑related provisions associated with the definition of solid waste used to determine hazardous waste regulation under Subtitle C of the Resource Conservation and Recovery Act; and implement vacaturs ordered by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit), on June 27, 2014, which resulted in the previously authorized comparable fuels and gasification exclusion no longer being in effect. Adoption of these amendments is required to comply with Federal law and will bring R.61‑79 into conformity with the Federal regulation. Legislative review of these amendments will not be required pursuant to S.C. Code Section 1‑23‑120(H). These regulations are also exempt from the requirements of a fiscal impact statement and assessment report pursuant to Sections 1‑23‑110(A)(3)(e) and (f).

See the Section‑by‑Section Discussion of Amendments below and the Statements of Need and Reasonableness and Rationale herein.

A Notice of Drafting was published in the *State Register* on November 27, 2015.

Section‑by‑Section Discussion of Amendments:

**1. The Department has amended R.61‑79 to adopt the “Hazardous Waste Electronic Manifest System; Final Rule,” published on February 7, 2014, at 79 FR 7518‑7563:**

260.10 Definitions. The new definitions: “Electronic manifest (or e‑Manifest);” “Electronic Manifest System (or e‑Manifest System)”; and “User of the electronic manifest system” have been added in alphabetical order.

260.10 Definitions. The definition of “Manifest” has been modified by adding language referencing the electronic manifest and making other stylistic changes to bring this paragraph into conformity with the Federal regulation.

262.20(a)(3). New item (3) has been added to adopt language that describes how a person required to prepare a manifest may use an electronic manifest instead of using the Environmental Protection Agency (EPA) manifest form, provided that the person complies with the requirements for use of electronic manifests and for the reporting of electronic documents to the EPA.

262.24. New section (24) has been added to adopt language that describes how electronic manifest documents obtained from the EPA’s national e‑Manifest system and completed in accordance with the regulation are the legal equivalent of the paper manifest forms (EPA Forms 8700‑22 and 8700‑22A). This section also describes the restriction on use of electronic manifests, the requirement for one printed copy, special procedures when an electronic manifest is unavailable, special procedures for electronic signature methods undergoing tests, and an imposition of a user fee.

262.25. New section (25) has been added to adopt language that describes how electronic signature methods for the e‑Manifest system are a legally valid and enforceable signature under applicable EPA and other Federal requirements pertaining to electronic signatures and is a method that is designed and implemented in a manner that the EPA considers to be as cost‑effective and practical as possible for users of the manifest.

263.20(a)(3). This sentence has been modified to change the phrase “shall not apply until September 5, 2006” to “had an effective date of September 5, 2006.” The second sentence has been modified to change the phrase “shall be applicable until September 5, 2006” to “were applicable until September 5, 2006.”

263.20(a)(4). New item (4) has been added to adopt language that describes how electronic manifest documents obtained from the EPA’s national e‑Manifest system and completed in accordance with the regulation are the legal equivalent of the paper manifest forms (EPA Forms 8700‑22 and 8700‑22A) for participating transporters. Any requirements for a handwritten signature are satisfied by obtaining a valid and enforceable electronic signature within the meaning of 40 CFR 262.25(a). Any 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 system. Any 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, except that to the extent that the 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 Section 177.817, a hazardous waste transporter must carry one printed copy of the electronic manifest on the transport vehicle. Any 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 e‑Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No transporter may be held liable for the inability to produce an electronic manifest for inspection if that transporter can demonstrate that the inability is exclusively due to a technical difficulty with the EPA system for which the transporter bears no responsibility.

263.20(a)(5). New item (5) has been added to adopt language that 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.

263.20(a)(6). New item (6) has been added to adopt language that describes special procedures when an electronic manifest is not available.

263.20(a)(7). New item (7) has been added to adopt language that describes special procedures for electronic signature methods undergoing tests.

263.20(a)(8). New item (8) has been added to adopt language that describes an imposition of a user fee for electronic manifest use.

263.25. New section (25) has been added to adopt language that states that electronic manifest signatures shall meet the criteria described in Section 262.25(a).

264.71(a)(2)(iv). This sentence has been modified to add “(Page 3)” between the words “copy” and “of.”

264.71(a)(2)(v). Subitem (v) has been modified to adopt language that within thirty days of delivery, a facility must send the top copy (Page 1) of the Manifest to the e‑Manifest system for the purposes of data entry and processing. Instead of mailing this paper copy to the EPA, an image file or a data string file and image file may be transmitted to the EPA if they are supported by electronic reporting requirements and the electronic manifest system.

264.71(a)(2)(vi). New subitem (vi) has been added to adopt language that a facility must retain a copy of each manifest for at least three (3) years from the date of delivery.

264.71(f). New subsection (f) has been added to adopt language that describes how electronic manifest documents obtained in accordance with Section 262.20(a)(3) and completed in accordance with the regulation are the legal equivalent of the paper manifest forms bearing handwritten signatures, and satisfy any requirement to obtain, complete, sign, provide, use, or retain a manifest. This section also includes a discussion of electronic signature equivalency, electronic transmittal including accompanying a hazardous waste shipment, and availability to an EPA or state inspector. No owner or operator will be held liable for the inability to produce an electronic manifest for inspection if they can demonstrate that the inability is due exclusively to a technical difficulty with the electronic manifest system for which the owner or operator bears no responsibility.

264.71 (g). New subsection (g) has been added to adopt language that an owner or operator may participate in the electronic manifest system either by accessing the system from either the owner’s or operator’s electronic equipment or that brought on site by the transporter who delivers the waste shipment.

264.71(h). New subsection (h) has been added to adopt language that describes special procedures applicable to replacement manifests. This section discusses the signatory procedures, the number of copies to the transporter, the time table to send the copies and to whom, and the retention schedule for the paper replacement manifest.

264.71(i). New subsection (i) has been added to adopt language that describes special procedures applicable to electronic signature methods undergoing tests.

264.71(j). New subsection (j) has been added to adopt language that describes the imposition of a user fee for electronic manifest use. The current schedule of electronic manifest user fees shall be published as an appendix to Part 262 of the Chapter.

264.71(k). New subsection (k) has been added to adopt language specifying that electronic manifest signatures shall meet the criteria described in 40 CFR 262.25(a).

265.71(a)(2)(iv). This sentence has been modified to add “(Page 3)” between the words “copy” and “of.”

265.71(a)(2)(v). This section has been modified by removing the existing language and adding that within thirty days of delivery, a facility must send the top copy (Page 1) of the Manifest to the e‑Manifest system for the purposes of data entry and processing. Instead of mailing this paper copy to the EPA, an image file or a data string file and image file may be transmitted to EPA if they are supported by electronic reporting requirements and the electronic manifest system.

265.71(a)(2)(vi). New subitem (vi) has been added to adopt language that a facility must retain a copy of each manifest for at least three years from the date of delivery.

265.71(f). New subsection (f) has been added to adopt language that describes how electronic manifest documents obtained in accordance with Section 262.20(a)(3) and completed in accordance with the regulation are the legal equivalent of the paper manifest forms bearing handwritten signatures, and satisfy any requirement to obtain, complete, sign, provide, use or retain a manifest. This section also includes a discussion of electronic signature equivalency, electronic transmittal including accompanying a hazardous waste shipment, availability to an EPA or state inspector. No owner or operator will be held liable for the inability to produce an electronic manifest for inspection if they can demonstrate that the inability is due exclusively to a technical difficulty with the electronic manifest system for which the owner or operator bears no responsibility.

265.71(g). New subsection (g) has been added to adopt language that an owner or operator may participate in the electronic manifest system either by accessing the system from either the owner’s or operator’s electronic equipment or that brought on site by the transporter who delivers the waste shipment.

265.71(h). New subsection (h) has been added to adopt language that describes special procedures applicable to replacement manifests. This section discusses the signatory procedures, the number of copies to the transporter, the time table to send the copies and to whom, and the retention schedule for the paper replacement manifest.

265.71(i). New subsection (i) has been added to adopt language that describes special procedures applicable to electronic signature methods undergoing tests.

265.71(j). New subsection (j) has been added to adopt language that describes the imposition of a user fee for electronic manifest use. The current schedule of electronic manifest user fees shall be published as an appendix to Part 262 of the Chapter.

265.71(k)(1). New subsection (k) and item (1) have been added to adopt language that electronic manifest signatures shall meet the criteria described in 40 CFR 262.25(a).

**2. The Department has amended R.61‑79 to adopt the “Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule,” published in the Federal Register on June 26, 2014 at 79 FR 36220‑36231.**

260.10 Definitions. The new definition: “CRT exporter,” has been added in alphabetical order.

261.39(a)(5)(i)(F). Sentence has been modified to read, “The name and address of the recycler or recyclers and the estimated quantity of used CRTs to be sent to each facility, as well as the names of any alternate recyclers.”

261.39(a)(5)(x). New subitem (x) has been added to adopt language that describes how CRT exporters must file an annual report with the EPA no later than March 1 of each year, what must be supplied in the report, and the language to be used in a certification signed by the CRT exporter.

261.39(a)(5)(xi). New subitem (xi) has been added to adopt language that describes how annual reports must be submitted to the Office of Enforcement and Compliance Assurance as specified previously in 261.39(a)(5)(ii) and specify that exporters must keep copies of each annual report for a period of at least three (3) years from the due date of the report.

261.41(a). Subsection (a) has been modified to adopt additional language that exporters of used, intact CRTs sent for reuse must send a notification to EPA that would cover export activities extending over a 12‑month or lesser period. The written notification, signed by the exporter, must contain specific information covering the contact information and EPA ID number (if applicable) of the exporter, the estimated frequency or rate at which the CRTs are to be exported and the period of time over which they are to be exported, the estimated total quantity of CRTs, all points of entry to and departure from each transit country through which the CRTs will pass, the length of time and nature of handling there, description of means of transportation, name and address of the ultimate destination facility, a description of the manner in which the CRTs will be used, specific wording for a certification signed by the CRT exporter and information and addresses for notifications submitted by mail and hand‑delivery.

261.41(b). Subsection (b) has been modified to adopt additional language that describes how CRT exporters of used, intact CRTs sent for reuse must handle documentation written in a language other than English.

**3. The Department has amended R.61‑79 to adopt “Revisions to the Definition of Solid Waste,” published on January 13, 2015 at 80 FR 1694‑1814.**

**Checklist A – Changes affecting all non‑waste determinations and variances.**

260.31(c). This paragraph has been modified to adopt language that clarifies when a partial reclamation variance is applicable and identify what factors must be used to make a determination that a partially‑reclaimed material is commodity‑like. Each criterion in this section has been revised to begin with the word “whether” to require that the regulatory authority make a yes or no determination as to whether the material meets each criterion and clarify and incorporate the characteristics of a commodity‑like material.

260.33 Heading. This Heading has been modified to adopt “or for non‑waste determinations.”

260.33(c). New subsection (c) has been added to adopt language that requires facilities to send a notice to the Department in the event of a change in circumstances that affects how a hazardous secondary material meets the relevant criteria upon which a variance or non‑waste determination has been based. The Department may issue a determination that the hazardous secondary material continues to meet the relevant criteria of the variance or non‑waste determination or may require the facility to re‑apply for the variance or non‑waste determination.

260.33(d). New subsection (d) has been added to adopt language that states that variances and non‑waste determinations shall be effective for a fixed term not to exceed ten years. Facilities must reapply no later than six months prior to the end of the term if they want to maintain the variance or non‑waste determination.

260.33(e). New subsection (e) has been added to adopt language that states that facilities receiving a variance or non‑waste determination must provide notification as required in the regulation.

260.42 Heading. New section (42) “Notification requirement for hazardous secondary materials” has been added. This section states that facilities managing hazardous secondary materials under parts of the regulation must send a notification prior to operating and by March 1 of each even‑numbered year to the EPA. The notification must have specific facility and contact information, the NAICS code of the facility, the regulation under which the hazardous secondary materials will be managed, the dates to begin management, a list of hazardous secondary materials to be managed according to the regulation, whether there will be any management in a land‑based unit, the quantity of the material to be managed annually, and signed and dated certification. If a facility managing hazardous secondary materials has submitted a notification but then no longer generates, manages and/or reclaims hazardous secondary materials as described, the EPA must be notified.

**Checklist B – Legitimacy‑related provisions, including prohibition of sham recycling, definition of legitimacy, definition of contained.**

260.10 Definitions. The new definitions: “Contained” and “Hazardous secondary material” have been added in alphabetical order.

260.43. New section “Legitimate recycling of hazardous secondary materials” has been added. This section states that all recycling of hazardous secondary materials must be legitimate and if not, then it is discarded material and is a solid waste. To determine if the recycling is legitimate, persons must address all the requirements listed in this section: must involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process, must produce a valuable product or intermediate, the hazardous secondary material must be managed as a valuable commodity when it is under the generator’s and recycler’s control and the product of the recycling process must be comparable to a legitimate product or intermediate.

261.2(b)(3). This paragraph has been modified by adding “or” at the end of the sentence.

261.2(b)(4). New item (4) has been added to adopt language that refers to sham recycling.

261.2(g). New subsection (g) has been added to adopt language that states that a hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling as defined in R. 61‑79.260.43.

**Checklist C – Speculative Accumulation.**

261.1(c)(8). This paragraph has been modified to adopt the language “Materials must be placed in a storage unit with a label indicating the first date that the material began to be accumulated. If placing a label on the storage unit is not practicable, the accumulation period must be documented through an inventory log or other appropriate method.” Two other stylistic changes have been made to bring this paragraph into conformity with the Federal regulation.

**4. The Department has amended R.61‑79 to adopt the “Vacatur of the Comparable Fuels Rule and the Gasification Rule,” published in the Federal Register on April 8, 2015 at 80 FR 18777‑18780.**

260.10 Definitions. This section has been modified by removing the definition of “Gasification.”

261.4(a)(12)(i). This paragraph has been modified by removing the following language: “gasification (as defined in 40 CFR 260.10).”

261.4(a)(16). Removed and reserved.

261.38. Removed and reserved.

**Instructions:** Amend R.61‑79 pursuant to each individual instruction provided with the text of the amendments below.

**Text:**

**Revise 61‑79.260.10 to add the following definitions in alphabetical order within this section:**

 *“*Contained” means held in a unit (including a land‑based unit as defined in this subpart) that meets the following criteria:

 (1) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit (such as a permit to discharge to water or air) and may 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;

 (2) The unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit; and

 (3) The unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.

 (4) Hazardous secondary materials in units that meet the applicable requirements of 40 CFR parts 264 or 265 are presumptively contained.

 “CRT exporter” means any person in the United States who initiates a transaction to send used CRTs outside the United States or its territories for recycling or reuse, or any intermediary in the United States arranging for such export.

“Electronic manifest (or e‑Manifest)” means the electronic format of the hazardous waste manifest that is obtained from EPA’s national e‑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).

 “Electronic Manifest System (or 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.

 “Hazardous secondary material” means a secondary material (e.g., spent material, by‑product, or sludge) that, when discarded, would be identified as hazardous waste under part 261 of this chapter.

 “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 that:

 (1) 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

 (2) Elects to use the system to obtain, complete and transmit an electronic manifest format supplied by the EPA electronic manifest system, or

 (3) Elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with Section 264.71(a)(2)(v) or Section 265.71(a)(2)(v) of this chapter. These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

**Revise 61‑79.260.10 to delete the definition of “Gasification” and modify the definition of “Manifest” to read:**

 “Manifest” means the shipping document EPA Form 8700‑22 (including, if necessary, EPA Form 8700‑22A), or the electronic manifest, originated and signed in accordance with the applicable requirements of parts 262 through 265 of this chapter.

**Revise 61‑79.260.31(c) to read:**

 (c) The Department 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 the partial reclamation has produced a commodity‑like material. A determination that a partially‑reclaimed material for which the variance is sought is commodity‑like will be based on whether the hazardous secondary material is legitimately recycled as specified in 260.43 of this part and on whether all of the following decision criteria are satisfied:

 (1) Whether the degree of partial reclamation the material has undergone is substantial as demonstrated by using a partial reclamation process other than the process that generated the hazardous waste;

 (2) Whether the partially‑reclaimed material has sufficient economic value that it will be purchased for further reclamation;

 (3) Whether the partially‑reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials which is used in subsequent production steps

 (4) Whether there is a market for partially‑reclaimed material as demonstrated by known customer(s) who are further reclaiming the material (e.g., records of sales and/or contracts and evidence of subsequent use, such as bills of lading);

 (5) Whether the partially‑reclaimed material is handled to minimize loss.

**Revise 61‑79.260.33 section heading to read:**

260.33. Procedures for variances from classification as a solid waste or to be classified as a boiler, or for non‑waste determinations.

**Revise 61‑79.260.33 to add subsection 260.33(c) to read:**

 (c) In the event of a change in circumstances that affect how a hazardous secondary material meets the relevant criteria contained in Section 260.31, Section 260.32, or Section 260.34 upon which a variance or non‑waste determination has been based, the applicant must send a description of the change in circumstances to the Administrator. The Administrator may issue a determination that the hazardous secondary material continues to meet the relevant criteria of the variance or non‑waste determination or may require the facility to re‑apply for the variance or non‑waste determination.

**Revise 61‑79.260.33 to add subsection 260.33(d) to read:**

 (d) Variances and non‑waste determinations shall be effective for a fixed term not to exceed ten (10) years. No later than six (6) months prior to the end of this term, facilities must re‑apply for a variance or non‑waste determination. If a facility re‑applies for a variance or non‑waste determination within six (6) months, the facility may continue to operate under an expired variance or non‑waste determination until receiving a decision on their re‑application from the Administrator.

**Revise 61‑79.260.33 to add subsection 260.33(e) to read:**

 (e) Facilities receiving a variance or non‑waste determination must provide notification as required by Section 260.42 of this chapter.

**Revise 61‑79.260 to add section 260.42 to read:**

**260.42  Notification requirement for hazardous secondary materials.**

 (a) Facilities managing hazardous secondary materials under Sections 260.30, 261.4(a)(23), 261.4(a)(24), or 261.4(a)(27) must send a notification prior to operating under the regulatory provision and by March 1 of each even‑numbered year thereafter to the Regional Administrator using EPA Form 8700‑12 that includes the following information:

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

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

 (3) The NAICS code of the facility;

 (4) The regulation under which the hazardous secondary materials will be managed;

 (5) When the facility began or expects to begin managing the hazardous secondary materials in accordance with the regulation;

 (6) 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 materials were managed as hazardous wastes);

 (7) For each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land‑based unit;

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

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

 (b) If a facility managing hazardous secondary materials has submitted a notification, but then subsequently stops managing hazardous secondary materials in accordance with the regulation(s) listed above, the facility must notify the Regional Administrator within thirty (30) days using EPA Form 8700‑12. For purposes of this section, a facility has stopped managing hazardous secondary materials if the facility no longer generates, manages and/or reclaims hazardous secondary materials under the regulation(s) above and does not expect to manage any amount of hazardous secondary materials for at least 1 year.

**Revise 61‑79.260 to add section 260.43 to read:**

**260.43  Legitimate recycling of hazardous secondary materials.**

 (a) Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste regulations must be legitimate. Hazardous secondary material that is not legitimately recycled is discarded material and is a solid waste. In determining if their recycling is legitimate, persons must address all the requirements of this paragraph.

 (1) Legitimate recycling must involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process. The hazardous secondary material provides a useful contribution if it:

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

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

 (iii) Is the source of a valuable constituent recovered in the recycling process; or

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

 (v) Is used as an effective substitute for a commercial product.

 (2) The recycling process must produce a valuable product or intermediate. The product or intermediate is valuable if it is:

 (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.

 (3) The generator and the recycler must manage the hazardous secondary material as a valuable commodity when it is under their control. Where there is an analogous raw material, the hazardous secondary material must be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material, the hazardous secondary material must be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.

 (4) The product of the recycling process must be comparable to a legitimate product or intermediate:

 (i) Where there is an analogous product or intermediate, the product of the recycling process is comparable to a legitimate product or intermediate if:

 (A) The product of the recycling process does not exhibit a hazardous characteristic (as defined in part 261 subpart C) that analogous products do not exhibit, and

 (B) The concentrations of any hazardous constituents found in appendix VIII of part 261 of this chapter that are in the product or intermediate are at levels that are comparable to or lower than those found in analogous products or at levels that meet widely‑recognized commodity standards and specifications, in the case where the commodity standards and specifications include levels that specifically address those hazardous constituents.

 (ii) Where there is no analogous product, the product of the recycling process is comparable to a legitimate product or intermediate if:

 (A) The product of the recycling process is a commodity that meets widely recognized commodity standards and specifications (for example*,* commodity specification grades for common metals), or

 (B) The hazardous secondary materials being recycled are returned to the original process or processes from which they were generated to be reused (for example, closed loop recycling).

 (iii) If the product of the recycling process has levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product or intermediate per paragraph (a)(4)(i) or (ii) of this section, the recycling still may be shown to be legitimate, if it meets the following specified requirements. The person performing the recycling must conduct the necessary assessment and prepare documentation showing why the recycling is, in fact, still legitimate. The recycling can be shown to be legitimate based on lack of exposure from toxics in the product, lack of the bioavailability of the toxics in the product, or other relevant considerations which show that the recycled product does not contain levels of hazardous constituents that pose a significant human health or environmental risk. The documentation must include a certification statement that the recycling is legitimate and must be maintained on‑site for three years after the recycling operation has ceased. The person performing the recycling must notify the Regional Administrator of this activity using EPA Form 8700‑12.

 (b) [Reserved]

 (c) [Reserved]

**Revise 61‑79.261.1(c)(8) to read:**

 (8) 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 (commencing 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. Materials must be placed in a storage unit with a label indicating the first date that the material began to be accumulated. If placing a label on the storage unit is not practicable, the accumulation period must be documented through an inventory log or other appropriate method. In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type (for example*,* slags from a single smelting process) that is recycled in the same way (i.e.*,* 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 Section 261.4(c) 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, however.

**Revise 61‑79.261.2(b)(3) to read:**

 (3) Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated; or

**Revise 61‑79.261.2(b) to add subitem 261.2(b)(4) to read:**

 (4) Sham recycled, as explained in paragraph (g) of this section.

**Revise 61‑79.261.2 to add item 261.2(g) to read:**

 (g) Sham recycling. A hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling as defined in Section 260.43.

**Revise 61‑79.261.4(a)(12)(i) to read:**

 (12)(i) Oil‑bearing hazardous secondary materials (i.e., sludges, byproducts, or spent materials) that are generated at a petroleum refinery (SIC code 2911) and are inserted into the petroleum refining process (SIC code 2911 ‑ including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units (i.e., cokers)) unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil‑bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except, as provided in paragraph (a)(12)(ii) of this section, oil‑bearing hazardous secondary materials generated elsewhere in the petroleum industry (i.e., from sources other than petroleum refineries) are not excluded under this section. Residuals generated from processing or recycling materials excluded under this paragraph (a)(12)(i), where such materials as generated would have otherwise met a listing under subpart D of this part, are designated as F037 listed wastes when disposed of or intended for disposal.

**Revise 61‑79.261.4(a) to delete 261.4(a)(16) text and reserve the section to read:**

 (16) [Reserved]

**Revise 61‑79.261 to delete 261.38 text and reserve the section to read:**

**261.38** [Reserved]

**Revise 61‑79.261.39(a)(5)(i)(F) to read:**

 (F) The name and address of the recycler or recyclers and the estimated quantity of used CRTs to be sent to each facility, as well as the names of any alternate recyclers.

**Revise 61‑79.261.39(a)(5) to add subitem 261.39(a)(5)(x) to read:**

 (x) CRT exporters must file with EPA no later than March 1 of each year, an annual report summarizing the quantities (in kilograms), frequency of shipment, and ultimate destination(s) (for example*,* the facility or facilities where the recycling occurs) of all used CRTs exported during the previous calendar year. Such reports must also include the following:

 (A) The name, EPA ID number (if applicable), and mailing and site address of the exporter;

 (B) The calendar year covered by the report;

 (C) A certification signed by the CRT exporter that states:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”

**Revise 61‑79.261.39(a)(5) to add subitem 261.39(a)(5)(xi) to read:**

 (xi) Annual reports must be submitted to the office specified in paragraph (a)(5)(ii) of this section. Exporters must keep copies of each annual report for a period of at least three (3) years from the due date of the report.

**Revise 61‑79.261.41(a) to read:**

 (a) Persons who export used, intact CRTs for reuse must send a notification to the Regional Administrator. The notification may cover export activities extending over a twelve (12) month or lesser period.

**Revise 61‑79.261.41(a) to add item 261.41(a)(1) to read:**

 (1) The notification must be in writing, signed by the exporter, and include the following information:

 (i) Name, mailing address, telephone number, and EPA ID number (if applicable) of the exporter of the used, intact CRTs;

 (ii) The estimated frequency or rate at which the used, intact CRTs are to be exported for reuse and the period of time over which they are to be exported;

 (iii) The estimated total quantity of used, intact CRTs specified in kilograms;

 (iv) All points of entry to and departure from each transit country through which the used, intact CRTs will pass, a description of the approximate length of time the used, intact CRTs will remain in such country, and the nature of their handling while there;

 (v) A description of the means by which each shipment of the used, intact CRTs will be transported (for example, mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.));

 (vi) The name and address of the ultimate destination facility or facilities where the used, intact CRTs will be reused, refurbished, distributed, or sold for reuse and the estimated quantity of used, intact CRTs to be sent to each facility, as well as the name of any alternate destination facility or facilities;

 (vii) A description of the manner in which the used, intact CRTs will be reused (including reuse after refurbishment) in the foreign country that will be receiving the used, intact CRTs; and

 (viii) A certification signed by the CRT exporter that states:

 “I certify under penalty of law that the CRTs described in this notice are intact and fully functioning or capable of being functional after refurbishment and that the used CRTs will be reused or refurbished and reused. I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”

 (2) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Hand‑delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, William Jefferson Clinton Building, Room 6144, 1200 Pennsylvania Ave. NW., Washington, DC 20004. In both cases, the following shall be prominently displayed on the front of the envelope: “Attention: Notification of Intent to Export CRTs.”

**Revise 61‑79.261.41(b) to read:**

 (b) CRT exporters of used, intact CRTs sent for reuse must keep copies of normal business records, such as contracts, demonstrating that each shipment of exported used, intact CRTs will be reused. This documentation must be retained for a period of at least three years from the date the CRTs were exported. If the documents are written in a language other than English, CRT exporters of used, intact CRTs sent for reuse must provide both the original, non‑English version of the normal business records as well as a third‑party translation of the normal business records into English within thirty (30) days upon request by EPA.

**Revise 61‑79.262.20(a) to add item 262.20(a)(3)**

 (3) Electronic manifest*.* In lieu of using the manifest form specified in paragraph (a)(1) of this section, a person required to prepare a manifest under paragraph (a)(1) of this section may prepare and use an electronic manifest, provided that the person:

 (i) Complies with the requirements in Section 262.24 for use of electronic manifests, and

 (ii) Complies with the requirements of 40 CFR 3.10 for the reporting of electronic documents to EPA.

**Revise 61‑79.262 to add section 262.24 to read:**

**262.24  Use of the electronic manifest.**

 (a) Legal equivalence to paper manifests*.* Electronic manifests that are obtained, completed, and transmitted in accordance with Section 262.20(a)(3), and used in accordance with this section instead of EPA Forms 8700‑22 and 8700‑22A are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

 (1) Any requirement in these regulations 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 262.25.

 (2) Any requirement in these regulations 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 system.

 (3) Any requirement in these regulations for a generator to keep or retain a copy of each manifest is satisfied by retention of a signed electronic manifest in the generator’s account on the national e‑Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or authorized state inspector.

 (4) No generator may be held liable for the inability to produce an electronic manifest for inspection under this section 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.

 (b) A generator may participate in the electronic manifest system either by accessing the electronic manifest system from its 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.

 (c) Restriction on use of electronic manifests*.* A generator may prepare an electronic manifest for the tracking of hazardous waste shipments involving any RCRA 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 electronic manifest system.

 (d) Requirement for one printed copy*.* To the extent the 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 must also provide the initial transporter with one printed copy of the electronic manifest.

 (e) Special procedures when electronic manifest 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 prior to the time that the initial transporter has signed electronically to acknowledge the receipt of the hazardous waste from the generator, then the generator must 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 in the appendix to this part, and use these paper forms from this point forward in accordance with the requirements of Section 262.23.

 (f) 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 which 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 generator/offeror certification on the printed copy of the manifest provided under paragraph (d) of this section.

 (g) Imposition of user fee. A generator who is a user of the electronic manifest may be assessed a user fee by EPA for the origination of each electronic manifest. EPA shall maintain and update from time‑to‑time the current schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to this part.

**Revise 61‑79.262 to add section 262.25 to read:**

**262.25  Electronic manifest signatures.**

 Electronic signature methods for the e‑Manifest system shall:

 (a) Be a legally valid and enforceable signature under applicable EPA and other Federal requirements pertaining to electronic signatures; and

 (b) Be a method that is designed and implemented in a manner that EPA considers to be as cost‑effective and practical as possible for the users of the manifest.

**Revise 61‑79.263.20(a)(3) to read:**

 (3) Compliance Date for Form Revisions. The revised Manifest form and procedures in 260.10, 261.7, 263.20, and 263.21, had an effective date of September 5, 2006. The Manifest form and procedures in 260.10, 261.7, 263.20, and 263.21, contained in 260 to 265, edition revised as of July 1, 2004, were applicable until September 5, 2006.

**Revise 61‑79.263.20(a) to add new item 263.20(a)(4) to read:**

 (4) Use of electronic manifest—legal equivalence to paper forms for participating transporters. Electronic manifests that are obtained, completed, and transmitted in accordance with 262.20(a)(3) of this chapter, and used in accordance with this section instead of EPA Forms 8700‑22 and 8700‑22A, are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, carry, provide, give, use, or retain a manifest.

 (i) Any requirement in these regulations 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 40 CFR 262.25.

 (ii) Any requirement in these regulations 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 system.

 (iii) Any requirement in these regulations 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, except that to the extent that the 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, a hazardous waste transporter must carry one printed copy of the electronic manifest on the transport vehicle.

 (iv) Any requirement in these regulations 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 e‑Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or authorized state inspector.

 (v) No transporter may be held liable for the inability to produce an electronic manifest for inspection under this section if that transporter can demonstrate that the inability to produce the electronic manifest is exclusively due to a technical difficulty with the EPA system for which the transporter bears no responsibility.

**Revise 61‑79.263.20(a) to add new item 263.20(a)(5) to read:**

 (5) 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.

**Revise 61‑79.263.20(a) to add new item 263.20(a)(6) to read:**

 (6) Special procedures when electronic manifest is not available. If after a manifest has been originated electronically and signed electronically by the initial transporter, and the electronic manifest system should become unavailable for any reason, then:

 (i) The transporter in possession of the hazardous waste when the electronic manifest becomes unavailable shall reproduce sufficient copies of the printed manifest that is carried on the transport vehicle pursuant to paragraph (a)(4)(iii)(A) of this section, or obtain and complete another paper manifest for this purpose. The transporter shall reproduce sufficient copies 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.

 (ii) On each printed copy, the transporter shall include 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, shall include (if not pre‑printed on the replacement manifest) the manifest tracking number of the electronic manifest that is replaced by the paper manifest, and shall also include a brief explanation why the electronic manifest was not available for completing the tracking of the shipment electronically.

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

 (iv) From the point at which the electronic manifest is no longer available for tracking the waste shipment, the paper replacement manifest copies shall be 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.

**Revise 61‑79.263.20(a) to add new item 263.20(a)(7) to read:**

 (7) Special procedures for electronic signature methods undergoing tests*.* If a transporter 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 transporter shall 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 paragraph (a)(4)(iii)(A) of this section. This printed copy bearing the generator’s and transporter’s ink signatures shall also be presented by the transporter to the designated facility to sign in ink to indicate the receipt of the waste materials or to indicate discrepancies. After the owner/operator of the designated facility has signed this printed manifest copy with its ink signature, the printed manifest copy shall be delivered to the designated facility with the waste materials.

**Revise 61‑79.263.20(a) to add new item 263.20(a)(8) to read:**

 (8) Imposition of user fee for electronic manifest use. A transporter who is a user of the electronic manifest may be assessed a user fee by EPA for the origination or processing of each electronic manifest. EPA shall maintain and update from time‑to‑time the current schedule of electronic manifest user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to part 262 of this Chapter.

**Revise 61‑79.263 to add section 263.25 to read:**

**263.25  Electronic manifest signatures.**

 (a) Electronic manifest signatures shall meet the criteria described in Section 262.25 of this chapter.

**Revise 61‑79.264.71(a)(2)(iv) to read:**

 (iv) Within 30 days of delivery, send a copy (Page 3) of the manifest to the generator.

**Revise 61‑79.264.71(a)(2)(v) to read:**

 (v) Within thirty (30) days of delivery, send the top copy (Page 1) of the Manifest to the e‑Manifest system for purposes of data entry and processing. In lieu of mailing this paper copy to EPA, the owner or operator may transmit to the EPA system an image file of Page 1 of the manifest, or both a data string file and the image file corresponding to Page 1 of the manifest. Any data or image files transmitted to EPA under this paragraph must be submitted in data file and image file formats that are acceptable to EPA and that are supported by EPA’s electronic reporting requirements and by the electronic manifest system.

**Revise 61‑79.264.71(a)(2) to add subitem 264.71(a)(2)(vi) to read:**

 (vi) Retain at the facility a copy of each manifest for at least three (3) years from the date of delivery.

**Revise 61‑79.264.71 to add subsection 264.71(f) to read:**

 (f) Legal equivalence to paper manifests*.* Electronic manifests that are obtained, completed, and transmitted in accordance with Section 262.20(a)(3) of this chapter, and used in accordance with this section in lieu of the paper manifest form are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

 (1) Any requirement in these regulations 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 40 CFR 262.25.

 (2) Any requirement in these regulations to give, provide, send, forward, or to return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person.

 (3) Any requirement in these regulations 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.

 (4) Any requirement in these regulations for an owner or operator to keep or retain a copy of each manifest is satisfied by the retention of the facility’s electronic manifest copies in its account on the e‑Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or authorized Department inspector.

 (5) No owner or operator may be held liable for the inability to produce an electronic manifest for inspection under this section 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.

**Revise 61‑79.264.71 to add subsection 264.71(g) to read:**

 (g) An owner or operator may participate in the electronic manifest system either by accessing the electronic manifest system from the owner’s or operator’s 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.

**Revise 61‑79.264.71 to add subsection 264.71(h) to read:**

 (h) 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:

 (1) Upon delivery of the hazardous waste to the designated facility, the owner or operator must 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,

 (2) The owner or operator of the facility must give back to the final transporter one copy of the paper replacement manifest,

 (3) Within thirty (30) days of delivery of the waste to the designated facility, the owner or operator of the facility must 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

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

**Revise 61‑79.264.71 to add subsection 264.71(i) to read:**

 (i) 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 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. Upon executing its ink signature on this printed copy, the owner or operator shall retain this original copy among its records for at least three (3) years from the date of delivery of the waste.

**Revise 61‑79.264.71 to add subsection 264.71(j) to read:**

 (j) Imposition of user fee for electronic manifest use*.* An owner or operator who is a user of the electronic manifest format may be assessed a user fee by EPA for the origination or processing of each electronic manifest. An owner or operator may also be assessed a user fee by EPA for the collection and processing of paper manifest copies that owners or operators must submit to the electronic manifest system operator under Section 264.71(a)(2)(v). EPA shall maintain and update from time‑to‑time the current schedule of electronic manifest system user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to part 262 of this chapter.

**Revise 61‑79.264.71 to add subsection 264.71(k) to read:**

 (k) Electronic manifest signatures. Electronic manifest signatures shall meet the criteria described in Section 262.25 of this chapter.

**Revise 61‑79.265.71(a)(2)(iv) to read:**

 (iv) Within 30 days of delivery, send a copy (Page 3) of the manifest to the generator.

**Revise 61‑79.265.71(a)(2)(v) to read:**

 (v) Within thirty (30) days of delivery, send the top copy (Page 1) of the Manifest to the electronic manifest system for purposes of data entry and processing. Instead of mailing this paper copy to EPA, the owner or operator may transmit to the system operator an image file of Page 1 of the manifest, or both a data string file and the image file corresponding to Page 1 of the manifest. Any data or image files transmitted to EPA under this paragraph must be submitted in data file and image file formats that are acceptable to EPA and that are supported by EPA’s electronic reporting requirements and by the electronic manifest system.

**Revise 61‑79.265.71(a)(2) to add subitem 265.71(a)(2)(vi) to read:**

 (vi) Retain at the facility a copy of each manifest for at least three (3) years from the date of delivery.

**Revise 61‑79.265.71 to add subsection 265.71(f) to read:**

 (f) Legal equivalence to paper manifests*.* Electronic manifests that are obtained, completed, and transmitted in accordance with Section 262.20(a)(3) of this chapter, and used in accordance with this section in lieu of the paper manifest form are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

 (1) Any requirement in these regulations 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 40 CFR 262.25.

 (2) Any requirement in these regulations to give, provide, send, forward, or to return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person.

 (3) Any requirement in these regulations 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.

 (4) Any requirement in these regulations for an owner or operator to keep or retain a copy of each manifest is satisfied by the retention of the facility’s electronic manifest copies in its account on the e‑Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or authorized Department inspector.

 (5) No owner or operator may be held liable for the inability to produce an electronic manifest for inspection under this section 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.

**Revise 61‑79.265.71 to add subsection 265.71(g) to read:**

 (g) An owner or operator may participate in the electronic manifest system either by accessing the electronic manifest system from the owner’s or operator’s 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.

**Revise 61‑79.265.71 to add subsection 265.71(h) to read:**

 (h) 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:

 (1) Upon delivery of the hazardous waste to the designated facility, the owner or operator must 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,

 (2) The owner or operator of the facility must give back to the final transporter one copy of the paper replacement manifest,

 (3) Within thirty ()30 days of delivery of the waste to the designated facility, the owner or operator of the facility must 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

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

**Revise 61‑79.265.71 to add subsection 265.71(i) to read:**

 (i) 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 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. Upon executing its ink signature on this printed copy, the owner or operator shall retain this original copy among its records for at least three (3) years from the date of delivery of the waste.

**Revise 61‑79.265.71 to add subsection 265.71(j) to read:**

 (j) Imposition of user fee for electronic manifest use*.* An owner or operator who is a user of the electronic manifest format may be assessed a user fee by EPA for the origination or processing of each electronic manifest. An owner or operator may also be assessed a user fee by EPA for the collection and processing of paper manifest copies that owners or operators must submit to the electronic manifest system operator under Section 264.71(a)(2)(v). EPA shall maintain and update from time‑to‑time the current schedule of electronic manifest system user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to part 262 of this chapter.

**Revise 61‑79.265.71 to add subsection 265.71(k) to read:**

 (k) Electronic manifest signatures*.* Electronic manifest signatures shall meet the criteria described in Section 262.25 of this chapter.

**Statement of Need and Reasonableness:**

This Statement of Need and Reasonableness was determined by staff analysis pursuant to S.C. Code Section 1‑23‑115(C)(1)‑(3) and (9)‑(11).

DESCRIPTION OF REGULATION:

Purpose: The purpose of these amendments is to maintain State consistency with regulations of the EPA, which promulgated amendments to 40 CFR 260 through 265, between February 7, 2014, and April 8, 2015.

Legal Authority: The legal authority for R.61‑79 is S.C. Code Section 44‑56‑30.

Plan for Implementation: Upon publication in the *State Register* as a final regulation, an electronic copy of R.61‑79, that includes these latest amendments, will be published on the Department’s Regulation Development website at: <http://www.scdhec.gov/Agency/RegulationsAndUpdates/LawsAndRegulations/>. At this site, click on the Land and Waste Management category and scroll down to R.61‑79. Subsequently, this regulation will be published on the S.C. Legislature website in the S.C. Code of Regulations. Printed copies will be made available at cost by request through the DHEC Freedom of Information Office. The Department will also send an email to stakeholders and affected facilities and to other interested parties.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

 1. The Department has amended R.61‑79 to adopt the “Hazardous Waste Electronic Manifest System; Final Rule,” published on February 7, 2014, at 79 FR 7518‑7563. The rule establishes new requirements that will authorize the use of electronic manifests (or e‑Manifests) as a means to track off‑site shipments of hazardous waste from a generator’s site to the site of the receipt and disposition of the hazardous waste. This final rule also implements certain provisions of the Hazardous Waste Electronic Manifest Establishment Act, Pub. L. 112‑195, which directs the EPA to establish a national electronic manifest system (or e‑Manifest system), and to impose reasonable user service fees as a means to fund the development and operation of the e‑Manifest system. This rule announces, consistent with the mandate of the Hazardous Waste Electronic Manifest Establishment Act (section 2(g)(2)), that the final electronic manifest requirements promulgated will be implemented in all states on the same effective date for the national e‑Manifest system. Adoption of this rule is required to comply with Federal law and will bring R. 61‑79 into conformity with the Federal regulation.

 2. The Department has amended R.61‑79 to adopt the “Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule,” published on June 26, 2014, at 79 FR 36220‑36231. The rule revises certain export provisions of the CRT final rule published on July 28, 2006 (71 FR 42928). The revisions will allow the Department to better track exports of CRTs for reuse and recycling in order to ensure safe management of these materials. Adoption of this rule is required to comply with Federal law and will bring R. 61‑79 into conformity with the Federal regulation.

 3. The Department has amended R.61‑79 to adopt the “Revisions to the Definition of Solid Waste,” published on January 13, 2015, at 80 FR 1694‑1814. The rule revises several recycling‑related provisions associated with the definition of solid waste used to determine hazardous waste regulation under Subtitle C of the Resource Conservation and Recovery Act. The purpose of these revisions is to ensure that the hazardous secondary materials recycling regulations, as implemented, encourage reclamation in a way that does not result in increased risk to human health and the environment from discarded hazardous secondary material. Adoption of the sections of the rule that cover changes affecting all non‑waste determinations and variances, legitimacy‑related provisions, including prohibition of sham recycling, definition of legitimacy, definition of contained and speculative accumulation are required to comply with Federal law and will bring R. 61‑79 into conformity with the Federal regulation.

 4. The Department has amended R.61‑79 to adopt the “Vacatur of the Comparable Fuels Rule and the Gasification Rule,” published on April 8, 2015, at 80 FR 18777‑18780. The EPA is revising regulations associated with the comparable fuels exclusion and the gasification exclusion, originally issued by EPA under the Resource Conservation and Recovery Act (RCRA). These revisions implement vacaturs ordered by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit), on June 27, 2014. For states that have previously been authorized for the comparable fuels and gasification rules (to include South Carolina), the effect of the vacaturs is that the previously authorized comparable fuels and gasification exclusion will no longer be in effect. Adoption of this rule is required to comply with Federal law and will bring R. 61‑79 into conformity with the Federal regulation.

DETERMINATION OF COSTS AND BENEFITS:

These regulatory amendments are exempt from the requirements of a Preliminary Fiscal Impact Statement or a Preliminary Assessment Report because the changes are necessary to maintain compliance with Federal regulations and law.

There should be no increased cost to the State or its political subdivisions resulting from this revision. Amendments to R. 61‑79 will establish new requirements authorizing the use of electronic manifests for tracking off‑site shipments of hazardous waste from a generator’s site to the site of the receipt and disposition of the waste, allowing the Department to better track exports of Cathode Ray Tubes for reuse and recycling to ensure safe management of the materials, ensuring that the hazardous secondary materials recycling regulations encourage reclamation in a way that does not result in increased risk to human health and the environment from discarded hazardous secondary materials, and revising regulations associated with the comparable fuels exclusion and the gasification exclusion by implementing vacaturs ordered by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit), on June 27, 2014. For states that have previously been authorized for the comparable fuels and gasification rules (to include South Carolina), the effect of the vacaturs is that the previously authorized comparable fuels and gasification exclusion will no longer be in effect.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates relative to the costs to the State or its political subdivisions.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

The revisions to R.61‑79 will provide continued protection of the environment and public health.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

If the Regulation is not implemented, there will be a detrimental effect on the environment and public health because the EPA’s delegation of authority to the State to implement environmental protection programs would be compromised. As a delegated State program, the EPA requires that the State’s regulations be at least as stringent as, and equivalent to the Federal regulations. Adoption of these revisions will ensure equivalency with Federal requirements.

**Statement of Rationale:**

R.61‑79 contains requirements for hazardous waste management, including identification of waste, standards for generators, transporters, and owners/operators of treatment, storage, and disposal (TSD) facilities, procedures for permits for TSD facilities, investigation and cleanup of hazardous waste, and closure/post‑closure requirements. The regulation is promulgated pursuant to the S.C. Hazardous Waste Management Act, Section 44‑56‑30. As an authorized state program, the regulation must be equivalent to and consistent with the U.S. EPA’s regulations under RCRA, 42 U.S.C. Section 6901 *et. seq*. The EPA periodically promulgates regulations that are either mandatory for authorized state programs to adopt or maintain program equivalency, or are optional for states because the changes are less stringent than the current Federal regulation. R.61‑79 has been amended numerous times since it was first promulgated in 1984 to adopt Federal regulations that are mandatory for an authorized state to adopt to maintain program equivalency.