

## Interim Procedure for Submitting Notifications under the 2015 Definition of Solid Waste Final Rule

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### 1. What is the purpose of this interim procedure?

The purpose of this interim procedure is to explain how facilities<sup>1</sup> should meet their notification requirement under the 2015 Definition of Solid Waste (DSW) final rule using the existing Subtitle C Site Identification form (EPA form 8700-12).

### 2. What is the 2015 DSW final rule and its notification requirement?

On January 13, 2015, EPA published the DSW final rule (80 FR 1694, January 13, 2015), which excludes certain hazardous secondary materials that are reclaimed from the RCRA Subtitle C hazardous waste regulations, provided certain conditions are met.

Facilities using the final rule exclusions under 40 CFR 261.4(a)(23), (24), or (27) are required to submit notifications using the Site ID form prior to managing hazardous secondary materials under the exclusions and every two years thereafter to the EPA Administrator, or State Director per 40 CFR 260.42. For guidance on this type of notification, see #4, #5, and #7.

Additionally, facilities that have obtained a variance or non-waste determination under 40 CFR 260.30 must also submit notifications per 40 CFR 260.42. For guidance on this type of notification, see #6 and #7.

The final rule also requires persons recycling hazardous secondary materials or hazardous wastes under any RCRA Subtitle C recycling provision to notify the EPA Regional Administrator or State Director if the product of their recycling process has levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product or intermediate but which is still legitimate recycling (40 CFR 260.43(a)(4)(iii)). For guidance on this type of notification, see #8 and #9.

### 3. Why is EPA issuing this interim procedure?

The final rule goes into effect July 13, 2015, in states, territories, and tribal lands that are not authorized for the RCRA Subtitle C hazardous waste program. Additionally, facilities that operate under EPA's previous 2008 DSW rule will need to comply with the new 2015 DSW final rule requirements as well. However, the process to update the Site ID form to

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<sup>1</sup> We use the term "facilities" to refer to hazardous secondary material generators, tolling contractors, toll manufacturers, reclaimers and intermediate facilities managing hazardous secondary materials under RCRA recycling exclusions.

reflect the new 2015 DSW final rule will likely not be completed by the time some facilities are required to notify. Thus, we are issuing this interim procedure to explain how facilities should meet the notification requirement using the existing Site ID form.

#### **4. When must I submit notifications under the final rule exclusions (40 CFR 261.4(a)(23), (24), or (27))?**

Facilities in a state or territory without an authorized RCRA program (i.e., Alaska, Iowa, U.S. Virgin Islands, American Samoa, and the Northern Mariana Islands) and tribal lands are eligible for the new DSW exclusions once the rule becomes effective on July 13, 2015. After this date, facilities in these areas that choose to use the final rule exclusions must submit notification prior to operating under the exclusions. (Note: If a facility has previously submitted a notification under the old 2008 DSW rule, see #5 below.)

Facilities in a state with an authorized RCRA program are not eligible for the DSW exclusions (and thus cannot submit notifications under the final rule) unless and until their state adopts the rule into its own state regulations.

#### **5. What about facilities that have previously submitted a notification under the 2008 DSW rule? Will they have to submit a new notification by July 13, 2015?**

Facilities that have previously submitted a notification under the 2008 DSW final rule (which includes an estimated 100 facilities in Iowa, Illinois, Pennsylvania, Idaho, New Jersey, Puerto Rico and the U.S. Virgin Islands) will not have to submit a new notification by July 13, 2015, but, instead, can simply update their information in their next renotification, due by March 1, 2016.

#### **6. When must I submit notifications under the solid waste variances or non-waste determinations (40 CFR part 260)?**

For the purpose of federal regulation, facilities that have already been granted variances or non-waste determinations under 40 CFR 260.31 or 40 CFR 260.33 would continue to operate under those provisions and would not become subject to the notification under the rule.

Facilities operating in a state or territory without an authorized RCRA program that obtain a variance or non-waste determination after the effective date of the rule, July 13, 2015, must notify before operating under the variance or non-waste determination.

Facilities that are operating in a state or territory with an authorized RCRA program that obtain a variance or non-waste determination after the date the 40 CFR 260.33(e) provision becomes effective in the authorized state must notify before operating under the variance or non-waste determination.

## **7. How should I use the existing Site ID form to submit notifications under the final rule exclusions, variances, and/or non-waste determinations?**

Facilities should submit the required notification information (listed under 40 CFR 260.42) using the existing federal Site ID form (found at <http://www.epa.gov/epawaste/inforesources/data/form8700/8700-12.pdf>) using the following steps:

- ⇒ **STEP 1:** Under “Reason for Submittal,” check the box as follows:
  - If this is the first time the facility has ever submitted a Site ID form, check the box marked “To provide initial Notification...”
  - If this is NOT the first time the facility has submitted a Site ID form, check the box marked “To provide Subsequent Notification...”
- ⇒ **STEP 2:** Complete the Site ID form as applicable for your facility.
- ⇒ **STEP 3:** When you reach the Addendum to the Site ID Form: Notification of Hazardous Secondary Material Activity, complete the Addendum as applicable. However, when completing the Table in Item 2, select from the list of facility codes in Attachment A below rather than using the list in the current Site ID instructions.

## **8. When am I required to submit notification that my recycling process has hazardous constituents that are not comparable or unable to be compared to a legitimate product or intermediate, but which is still legitimate recycling?**

Under 40 CFR 260.43(a)(4)(iii), persons recycling hazardous secondary materials or hazardous wastes must notify the EPA Regional Administrator or State Director if the product of their recycling process has levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product or intermediate but which is still legitimate recycling.

Facilities in a state or territory without an authorized RCRA program (i.e., Alaska, Iowa, U.S. Virgin Islands, American Samoa, and the Northern Mariana Islands) and tribal lands, must notify under 40 CFR 260.43(a)(4)(iii) by the rule's effective date, July 13, 2015.

Facilities in a state with an authorized RCRA program must notify by the date the 40 CFR 260.43(a)(4)(iii) provision becomes effective in the authorized state.

## 9. How should I use the existing Site ID form to submit notifications under 40 CFR 260.43(a)(4)(iii)?

Facilities should submit the required notification information using the existing federal Site ID form (found at <http://www.epa.gov/epawaste/inforesources/data/form8700/8700-12.pdf>) using the following steps:

- ⇒ **STEP 1:** Under “Reason for Submittal,” check the box as follows:
  - If this is the first time the facility has ever submitted a Site ID form, check the box marked “To provide initial Notification...”
  - If this is NOT the first time the facility has submitted a Site ID form, check the box marked “To provide Subsequent Notification...”
- ⇒ **STEP 2:** Complete the Site ID form as applicable for your facility.
- ⇒ **STEP 3:** In Item 13 “Comments,” add the following statement:

*“Notifying under 40 CFR 260.43(a)(4)(iii) that 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 but which is still legitimate recycling.”*
- ⇒ **STEP 4:** Add any details, as necessary, to Item 13 “Comments.” Note that 40 CFR 260.43(a)(4)(iii) only requires notification and does not require facilities to submit documentation of legitimacy, but facilities are required to maintain documentation onsite.

## 10. When does EPA expect to complete the changes to the Site ID form?

EPA expects to complete modifications to the Site ID form in late 2016.

## 11. Where should I go for assistance?

You may contact your EPA Region or State using information found at: <http://www.epa.gov/epawaste/comments.htm>, or you may contact Tracy Atagi in the Office of Resource Conservation and Recovery at [atagi.tracy@epa.gov](mailto:atagi.tracy@epa.gov) or (703) 308-8672.

## Attachment A:

### HAZARDOUS SECONDARY MATERIAL (HSM) FACILITY CODES

Facility codes describe the specific regulation a facility uses to manage its hazardous secondary material (HSM) and the type of activity the facility performs under the regulation (e.g., generator, reclaimer). Review the groups and pick the appropriate code. If more than one facility code applies to you, enter each code on a separate row under Item 2 of the Addendum to the Site ID Form.

<b>Generator-controlled Exclusion (40 CFR 261.4(a)(23))</b>	
Code	Facility Code Description
01	<b>HSM Generator reclaiming HSM “on-site”:</b> This code applies if you generate and reclaim hazardous secondary material at your generating facility. <i>See also 40 CFR 261.4(a)(23)(i)(A).</i>
02	<b>HSM Generator transferring HSM to reclaimer within the “same company”:</b> This code applies if you generate hazardous secondary material and send the material for reclamation to a different facility that is either controlled by you or controlled by the same person that controls your generating facility. <i>See also 40 CFR 261.4(a)(23)(i)(B).</i>
03	<b>Reclaimer receiving HSM from HSM generator within the “same company”:</b> This code applies if you receive and reclaim hazardous secondary material from a different facility that either controls you or is controlled by the same person that controls you. <i>See also 40 CFR 261.4(a)(23)(i)(B).</i>
04	<b>Tolling Contractor reclaiming HSM pursuant to a tolling contract:</b> This code applies if you are a tolling contractor that reclaims hazardous secondary material pursuant to a written contract with a toll manufacturer. <i>See also 40 CFR 261.4(a)(23)(i)(C).</i>
05	<b>Toll Manufacturer managing HSM pursuant to a tolling contract:</b> This code applies if you generate and send hazardous secondary material for reclamation to a tolling contractor pursuant to a written contract. <i>See also 40 CFR 261.4(a)(23)(i)(C).</i>

<b>Verified Recycler Exclusion (40 CFR 261.4(a)(24))</b>	
Code	Facility Code Description
06	<b>HSM Generator transferring HSM off-site to a permitted or verified recycling facility:</b> This code applies if you generate and send hazardous secondary material for reclamation to an off-site permitted or verified recycler facility.
07	<b>Permitted Reclaimer receiving HSM from off-site:</b> This code applies if you have a RCRA Part B permit, or operate under interim status standards, and reclaim hazardous secondary material received from an off-site hazardous secondary material generator or other facility. (If you do not have a RCRA Part B permit and are not operating under interim status standards and, instead, have obtained a variance to receive hazardous secondary material under this exclusion, use code 17 below.)
08	<b>Permitted Intermediate facility:</b> This code applies if you have a RCRA Part B permit, or operate under interim status standards, and receive hazardous secondary material from an off-site hazardous secondary material generator or another facility and you store it for more than ten days. This code does not apply if you generate or reclaim the hazardous secondary material. (If you do not have a RCRA Part B permit and are not operating under interim status standards and, instead, have obtained a variance to receive hazardous secondary material under this exclusion, use code 18 below.)
10	<b>HSM Generator importing HSM from a foreign entity to send to recycling:</b> This code applies if you import hazardous secondary material from a foreign entity and send the material for reclamation to a permitted or verified recycling facility.

11	<b>HSM Generator AND Permitted Reclaimer of imported HSM:</b> This code applies if you import hazardous secondary material from a foreign entity and reclaim the material at your facility under a RCRA Part B permit or under interim status standards. (If you do not have a RCRA Part B permit and are not operating under interim status standards and, instead, have obtained a variance to receive hazardous secondary material under this exclusion, use code 19 below.)
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### Remanufacturing Exclusion (40 CFR 261.4(a)(27))

12	<b>HSM Generator transferring HSM off-site to a remanufacturer:</b> This code applies if you generate and send hazardous secondary material to a remanufacturer in the pharmaceutical, basic organic chemical, plastics and resins, and/or paint and coatings manufacturing sectors.
13	<b>Remanufacturer receiving HSM from off-site:</b> This code applies if you remanufacture hazardous secondary material received from an off-site domestic hazardous secondary material generator. You must be in the pharmaceutical, basic organic chemical, plastics and resins, and/or paint and coatings manufacturing sectors to use this code.

### Non-waste Determinations and Solid Waste Variances (40 CFR 260.30)

14	<b>Variance for Materials that are Accumulated Speculatively:</b> This code applies if you operate under an approved variance from EPA or your State for materials that are accumulated speculatively without sufficient amounts being recycled ( <i>see 40 CFR 260.31(a)</i> ).
15	<b>Variance for Materials that are Reclaimed and then Reused within the Original Production Process:</b> This code applies if you operate under an approved variance from EPA or your State for materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated ( <i>see 40 CFR 260.31(b)</i> ).
16	<b>Variance for Materials that are Partially-Reclaimed:</b> This code applies if you operate under an approved variance from EPA or your State for 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 ( <i>see 40 CFR 260.31(c)</i> ).
17	<b>Variance for HSM transferred for reclamation and managed at a verified reclamation facility:</b> This code applies if you operate under an approved variance from EPA or your State for hazardous secondary materials that are transferred to you for reclamation under 40 CFR 261.4(a)(24) ( <i>see 40 CFR 260.31(d)</i> ). (If you have not obtained a variance to receive hazardous secondary material under this exclusion and, instead, have a RCRA Part B permit or operate under interim status standards, use code 07 above.)
18	<b>Variance for HSM transferred and managed at a verified intermediate facility:</b> This code applies if you operate under an approved variance from EPA or your State for hazardous secondary materials that are transferred to you for storage greater than 10 days under 40 CFR 261.4(a)(24) ( <i>see 40 CFR 260.31(d)</i> ). (If you have not obtained a variance to receive hazardous secondary material under this exclusion and, instead, have a RCRA Part B permit or operate under interim status standards as an intermediate facility, use code 08 above.)
19	<b>Variance for HSM imported AND managed at a verified reclamation facility:</b> This code applies if you operate under an approved variance from EPA or your State for hazardous secondary materials that are imported to you for reclamation at your site under 40 CFR 261.4(a)(24) ( <i>see 40 CFR 260.31(d)</i> ). (If you have not obtained a variance to receive hazardous secondary material under this exclusion and, instead, have a RCRA Part B permit or operate under interim status standards, use code 07 above.)
20	<b>Non-waste determination for HSM reclaimed in a continuous industrial process:</b> This code applies if you operate under an approved non-waste determination from EPA or your State for hazardous secondary material which is reclaimed in a continuous industrial process ( <i>see 40 CFR 260.34(b)</i> ).
21	<b>Non-waste determination for HSM that are indistinguishable from a product or intermediate:</b> This code applies if you operate under an approved non-waste determination from EPA or your State for hazardous secondary materials which is indistinguishable in all relevant aspects from a product or intermediate ( <i>see 40 CFR 260.34(c)</i> ).