

claimed. Grab sampling is acceptable for this purpose.

(B) Analytical methods that the claimant will use to determine, for wastewaters and nonwastewaters, the total concentration of each constituent on appendix X to this part except for those constituents which the claimant has determined should not be present under § 261.36(b)(1)(i).

(iii) The claimant must conduct sampling and analysis in accordance with the plan.

(iv) The results of the sampling and analysis must show, for both wastewaters and nonwastewaters, that all total constituent concentrations in the waste are at or below the exemption levels in appendix X to this part 261 and, for nonwastewaters, that all leachable constituent concentrations are either:

(A) At or below exemption levels in Appendix X to this part 261, as determined by testing an extract using test method 1311 (the Toxicity Characteristic Leaching Procedure, set out in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846)), or

(B) Estimated to be at or below exemption levels using the equation $\{[(A \times B) + (C \times D)] / [B + (20 \times D)]\}$ leach exit level, where A=concentration of the analyte in the liquid portion of the sample; B=Volume of the liquid portion of the sample; C=Concentration of the analyte in the solid portion of the sample; D=Weight of the solid portion of the sample.

(2) *Treatment requirements.* Any waste that exits using an exit level on Table B to appendix X to this part 261 must meet the treatment standard for such a constituent under § 268.40 of this chapter, regardless of whether or not the waste is intended for land disposal, unless the claimant meets the exemption requirements in § 261.36(e).

(3) *Public Notice.* The claimant must submit for publication in a major newspaper of general circulation, local to the claimant, a notice entitled "Notification of Exemption Claim for Listed Hazardous Wastes Containing Low Concentrations of Hazardous Constituents Under the Resource Conservation and Recovery Act" containing the following information:

(i) The name, address, and RCRA ID number of the claimant's facility;

(ii) The applicable EPA Hazardous Waste Code of the waste for which the exemption is claimed and the narrative description associated with the listing from this part 261 subpart D;

(iii) A brief, general description of the manufacturing, treatment, or other

process or operation producing the waste;

(iv) An estimate of the average and maximum monthly and annual quantities of the waste claimed to be exempt;

(v) The name and mailing address of the agency to which the claimant is submitting the notification required under § 261.36(b)(4).

(4) *Notification to implementing agency.* Prior to managing any waste as exempt under this section, the claimant must send to the Director via certified mail or other mail service that provides written confirmation of delivery a notification of the exemption claim meeting the following requirements:

(i) The name, address, and RCRA ID number of the person claiming the exemption;

(ii) The applicable EPA Hazardous Waste Codes;

(iii) A brief description of the process that generated the waste;

(iv) An estimate of the average and maximum monthly and annual quantities of each waste claimed to be exempt;

(v) Documentation for any claim that a constituent is not present as described under § 261.36 (b)(1)(i);

(vi) The results of all analyses and estimates of constituent concentrations required under § 261.36(b)(1)(iv) and all quantitation limits achieved;

(vii) Documentation that any waste that exits using a constituent exit level from Table B to Appendix X to this part has met the applicable treatment standards in § 268.40 of this chapter, unless the claimant is also claiming the exemption under § 261.36(e);

(viii) Evidence that the public notification requirements of § 261.36(b)(3) have been satisfied; and

(ix) The following statement signed by the person claiming the exemption or his authorized representative:

"Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of 40 CFR 261.36(b) have been met for all waste identified in this notification. Copies of the records and information required at 40 CFR 261.36(d)(7) are available at the claimant's facility. Based upon my inquiry of the individuals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(c) *Effectiveness of exemption.* No claim shall take effect until the claimant receives confirmation of delivery for the notification required under § 261.36 (b)(4).

(d) *Conditions for maintaining the exemption.* To maintain any exemption claimed pursuant to this section, the claimant must satisfy the following conditions:

(1) *Changes in information.* The claimant must submit to the Director any change in any information submitted under § 261.36(b)(4) within ten business days of the claimant's first knowledge of the change.

(2) *Schedule for retesting.* The claimant must retest the waste for which the exemption was claimed on the following schedule:

(i) For the first three years of the exemption, the claimant must:

(A) Test wastes generated at the time the exemption is claimed in volumes greater than 10,000 tons/year on a quarterly basis;

(B) Test wastes generated at the time the exemption is claimed in volumes greater than 1000 tons/year but less than 10,000 tons/year must on a semi-annual basis;

(C) Test wastes generated at the time the volume is claimed in volumes less than 1000 tons/year on an annual basis.

(ii) After the first three years of an exemption, the claimant must retest the waste for which the exemption was claimed on an annual basis.

(3) For every retest the claimant must prepare and comply with a sampling and analysis plan meeting the requirements of § 261.36(b)(1)(ii) and determine the concentration of:

(i) Each constituent from Table A to appendix X to this part that was detected in the initial test within an order of magnitude below either its total or leachable exemption level and each constituent from Table B to appendix X of this part that is identified as a basis for listing the waste on appendix VII to this part or is listed as a regulated hazardous constituent for the waste in the table of "Treatment Standards for Hazardous Wastes" in § 268.40 of this chapter; and

(ii) Any other constituent that the claimant has reason to believe may be newly present in the waste since the most recent test.

(4) *Exemption levels.* The concentrations of all constituents tested must meet the criteria set out in § 261.36(b)(1)(iv).

(5) *Treatment requirements.* Any waste exiting by using an exit level for a hazardous constituent from Table B to appendix X to this part must meet the treatment requirements for such a constituent under § 268.40 of this chapter prior to exit regardless of whether or not the waste is intended for land disposal, unless the claimant meets