

# Hazardous Waste Federal Rules Alignment 2021

## Hazardous Waste Program

March 30, 2021

Virtual Meeting via Zoom

# Overview

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- Agenda and Schedule
- Logistics
- Expectations
- Questions

# Common Terms

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- Resource Conservation and Recovery Act (RCRA)
- Hazardous and Solid Waste Amendments (HSWA)
- Code of Federal Regulations (CFR)
- Adopt by reference
- Program Authorization
- Less/More stringent
- Exemption
- Exclusion

# Modernizing Ignitable Liquids Determinations

Killian Condon, Hazardous Waste Inspector, Western Region

Chris Bayham, Hazardous Waste Inspector, Western Region

# Hazardous Waste Basics

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## Listed:

- P-listed (e.g. P075)
- F-listed (e.g. F032)
- U-listed (e.g. U122)
- State-listed (e.g. X001)

## Characteristic:

- **Ignitable (D001)**
- Corrosive (D002)
- Reactive (D003)
- Toxic (D004-D043)

# Ignitable Liquids Determinations

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How is ignitability determined for a liquid waste?

- SW-846 Test Methods 1010A (Pensky-Martens) and 1020B (Setaflash)
- Methods devised in 1970s and rely on antiquated equipment such as mercury-containing thermometers

# Ignitable Liquids Determinations

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Four primary changes:

1. Add two new liquid flash point methods.
2. Update methods to include non-mercury-containing thermometers.
3. Update cross-references to U.S. Department of Transportation.
4. Codifies U.S. Environmental Protection Agency guidance for alcohol-content exclusion (with state-specific amendments).

# Ignitable Liquids Determinations

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1. Add two new liquid flash point methods and update existing test methods for measuring the flash point of a liquid

- **Description:** Update flash point test methods to reflect updated standards that use nonmercury thermometers, newer heating elements, and allow electric-spark ignition devices. Old methods from 1980s still approved.
- **Impacts:** Slight financial and safety advantages to analytical labs. No known generator impacts.
- **Recommendation:** Adopt by reference.



# Ignitable Liquids Determinations

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2. Update several test methods to allow the use of non-mercury-containing thermometers.

- **Description:** EPA has modified test methods including air sampling, stack testing, and flash point to require the use of non-mercury thermometers. This is somewhat duplicative of 1.
- **Impacts:** Slight financial and safety advantages to analytical labs. No known generator impacts.
- **Recommendation:** Adopt by reference.

# Ignitable Liquids Determinations

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3. Updates cross-references to U.S. DOT hazardous materials regulations.

- **Description:** D001 oxidizers and compressed gases are based on U.S. DOT language (49 CFR). DOT updated its regulatory language, and the corresponding 40 CFR references needs update.
- **Impacts:** None expected.
- **Recommendation:** Adopt by reference.

# Ignitable Liquids Determinations

4. Codifying definition of “aqueous” alcohol-content exclusion.
- **Description:** Exclusion for aqueous waste containing less than 24% alcohol and that aqueous is “at least 50% water by weight.”
  - **Impacts:** None expected. DEQ is not aware of any business using exclusion.
  - **Recommendation:** Adopt with two amendments. 1) Ethyl alcohol only and 2) Ignitable only based on presence of ethyl alcohol:
  - 40 CFR 261.21(a)(1) It is a liquid, other than a solution containing less than 24 percent **ethyl** alcohol by volume, at least 50 percent water by weight, **and no other ignitable constituents**, that has a flash point less than 60 °C (140 °F), as determined by using one of the following ASTM standards:...

# Ignitable Liquids: Recommendations

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- Less stringent - adoption is optional
- Adopt by reference with two amendments

# Ignitable Liquids Determinations

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Questions?

# Ignitable Liquids Determinations

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As with any rulemaking advisory committee, DEQ must ask the following:

- Will the proposed rule have a fiscal impact?
  - If so, what will the extent of that impact will be?
- Will rule changes have a significant adverse impact on small businesses?
  - If so, what can DEQ do to mitigate that impact?

# Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations

Brian Allen, Hazardous Waste Inspector, Eastern Region

# Aerosol Cans

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- EPA adopted the rule in 2018.
- Allows generators to manage this waste under the 40 CFR 273 Universal Waste Rules rather than characterizing as a hazardous waste.
- Aerosol cans managed as Universal Waste are not subject to the full RCRA requirements.
- Exempt from 40 CFR parts 260 through 268 if managed to the conditions of this exemption.



# Aerosol Cans

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At the national level, adding aerosol cans to the Universal Waste Rules:

- Simplifies handling and disposal for generators.
- Ensures that aerosol cans are managed and sent to the appropriate disposal facility.

# Aerosol Cans

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- Thirteen states have already adopted the universal waste aerosol can program.
- Five of these states had already had similar programs in place before the new ruling.
- Washington Department of Ecology is also looking to adopt this rule as written in 2021.

# Aerosol Cans

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## Potential impacts:

- Does not require generators to store waste aerosol cans in closed containers.
- Use of the exemption requires a management plan that will demonstrate compliance.

# Aerosol Cans: Recommendations

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- Less stringent - adoption is optional.
- Adopt by reference.

# Aerosol Cans

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Questions?

# Aerosol Cans

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# User Fees for the Electronic Hazardous Waste Manifest System (e-Manifest) and Amendments to Manifest Regulations

Mary Fritzmann, Hazardous Waste Reporting and Invoicing Coordinator,  
Headquarters

# e-Manifest

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- Allows U.S. Environmental Protection Agency to establish a user fee.
- States must adopt this rule for national consistency.
- Impacts to user community and DEQ.



# e-Manifest

Manifest Submission Type	Fee per Manifest Through Sept. 30, 2019	Fee per Manifest Oct. 1, 2019 – Sept. 20, 2021
Mailed-in paper manifest	\$15	\$25
Scanned image upload	\$10	\$20.
Data + image upload	\$6.50	\$14
Electronic manifest (full electronic & hybrid)	\$5	\$8

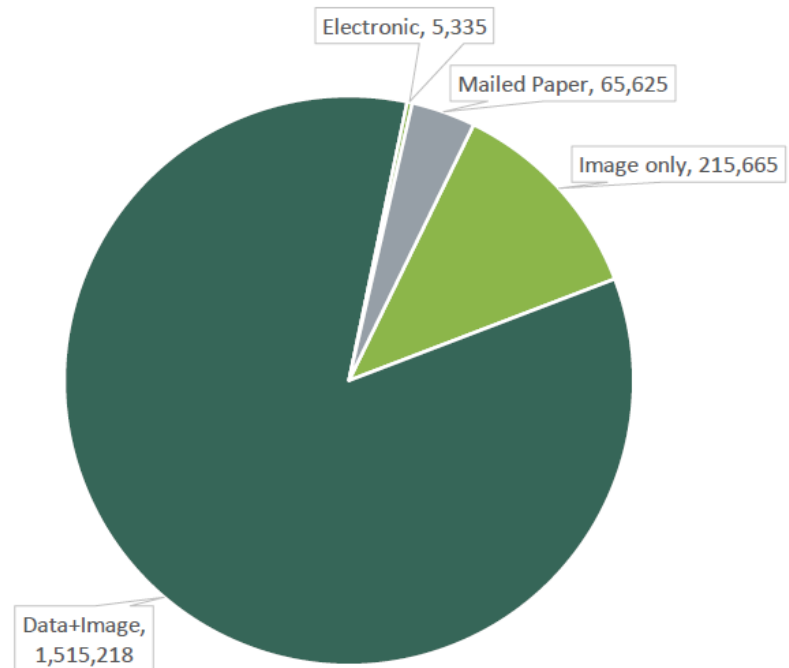
Adapted from EPA

# e-Manifest

## FY 2020 ACTIVITY SUMMARY

## *e-Manifest*

- Submitted manifests: 1.8M
- Submission breakdown:
  - Data+Image: 84%
  - Image: 12%
  - Mail: 4%
  - Electronic: .25%



Manifests FY 2020 Oct 1 – Sep 30

Source: EPA

# e-Manifest: Recommendations

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- States must adopt this rule for national consistency.
- Adoption required: Adopt by reference.

# e-Manifest

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Questions?

# e-Manifest

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As with any rulemaking advisory committee, DEQ must ask the following:

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# Hazardous Waste Export-Import Revision and Confidentiality Determinations for Hazardous Waste Export and Import Documents

Jeannette Acomb, Senior Hazardous Waste Policy Analyst, Headquarters

# Export and Import

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Amends existing regulations to include:

- Subjects all United States to international standards.
- Mandates electronic management of all shipments.
- Adds receiver consent.
- Applies 25-kilogram test sample limit.

# Export - Import

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Rule prohibits confidential business information (CBI) claims on shipping documentation

Documentation includes:

- Contracts
  - Notifications
  - Confirmations
  - Disposal documentation
- Applies to transporters, sending and receiving facilities, and treatment, storage or disposal facilities related to imports and exports.



# Export - Import

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- Fiscal: U.S. Environmental Protection Agency claims cost savings and great efficiency due to electronic filing.
- Note: If paper, maybe adds about \$214 per shipper yearly fees.
- Oregon Impact: None. EPA regulates imports and exports.

# Export – Import: Recommendation

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- Adoption required: Adopt by reference.

# Export - Import

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Questions?

# Export - Import

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As with any rulemaking advisory committee, DEQ must ask the following:

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# Safe Management of Recalled Airbags

Brian Allen, Hazardous Waste Inspector, Eastern Region

Zeb Bates, Hazardous Waste Inspector, Northwest Region

# Recalled Airbags

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What does this rule do?

- Improves management of airbags – allows handlers to decide if they want to manage as hazardous waste or under the exclusion.
- Undeployed airbag inflators and airbag modules are generally reactive (D003) and or ignitable (D001) due to the propellant contained in the inflator, and therefore hazardous waste when discarded.

# Recalled Airbags

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- Facilitate a more expedited removal of defective airbag inflators.
- Promote safe and environmentally sound disposal.
- Exempt the collection of airbag waste from hazardous waste requirements when certain conditions are met.

*Includes all air bag modules/inflators, not just those that contain sodium azide.*

# Recalled Airbags

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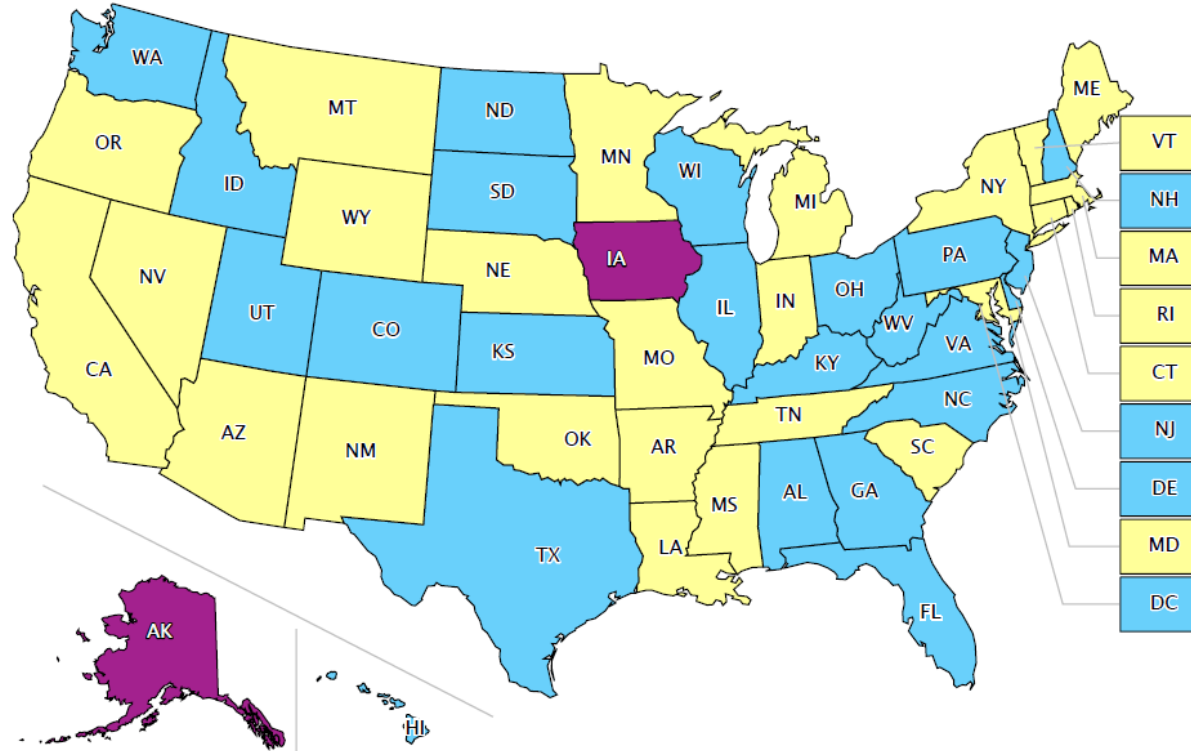
Conditions for exemption:

- No more than 250 bags at any time.
- Storage accumulation must be less than 180 days.
- Containers must be labeled “Airbag Waste-Do Not Reuse.”
- Sent only to an authorized collection center.
- Maintain records for three years.



# Recalled Airbags

26 states have already adopted the new rule.



- Authorized
- Adopted
- Administered by EPA Region
- Neither Adopted nor Authorized

Source: [EPA](#)

# Recalled Airbags

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Potential impacts:

- Need to adopt sham recycling provisions under Definition of Solid Waste rule to ensure recycling activities are being managed properly and that illegitimate and dangerous management is defined.

# Recalled Airbags: Recommendations

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- Rule is less stringent, optional.
- Adopt by reference.

# Recalled Airbags

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Questions?

# Recalled Airbags

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As with any rulemaking advisory committee, DEQ must ask the following:

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# Division 12 Enforcement

Sarah Wheeler, Environmental Law Specialist  
Office of Compliance and Enforcement

# Division 12

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## Oregon Administrative Rules (OAR) Chapter 340, Division 12

*OAR 340-012-0026 – 340-012-0170*

- Rules that direct how DEQ issues penalties.
- Division 12 rules do not impose requirements on regulated facilities.

# Division 12

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The goals of enforcement are to:

- **Protect** public health and the environment.
- Obtain and maintain **compliance** with applicable environmental statutes and the department's permits, rules and orders.
- **Deter** future violators and violations.
- Ensure an **appropriate** and **consistent** statewide enforcement program.



# Division 12

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Revisions to Division 12 are included in this rulemaking to:

- Ensure DEQ can issue fair and appropriate civil penalties for noncompliance with the adopted rules.
- Meet the goals of enforcement.

# Division 12

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When a penalty assessment is warranted, Division 12 provides a formula for DEQ to apply the facts and law to determine the appropriate amount of penalty for any given violation:

$$\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$$

# Division 12

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$$\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$$

**BP** = base penalty

**P** = prior significant actions

**H** = history of correcting those priors

**O** = the duration or repeated nature of the violation

**M** = mental state

**C** = efforts to correct or mitigate the violation

**EB** = economic benefit

# Division 12

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**BP (base penalty)** is a function of three elements:

1. Penalty Matrix, ranging from \$1,000 to \$12,000 and based upon the type of responsible party (generator status).
2. Classification of the violation. Class I is the most serious, Class III is the least.
3. Magnitude or the impact of the violation.

# Division 12

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DEQ evaluated all proposed rules and recommends specific changes to Division 12 for these rules:

- Safe Management of Recalled Airbags.
- Generator Improvements Rule.
- Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine.
- Definition of Solid Waste.

# Recalled Airbags: Division 12

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- **340-012-0068**

## **Hazardous Waste Management and Disposal Classification of Violations**

### (1) Class I:

(t) Reuse in vehicles of defective airbag modules or defective airbag inflators subject to a recall.

### (2) Class II:

(u) Failing to comply with recalled airbag management and disposal requirements, unless otherwise classified.

# Recalled Airbags: Division 12

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Questions?

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- Timeline and next steps
  - Questions?

*Thank  
You*