



State of Oregon Department of Environmental Quality

Proposed Federal RCRA Hazardous Waste Rule Considerations

Contact: Ellie Brown, ellie.brown@deq.state.or.us
Oregon Department of Environmental Quality
700 NE Multnomah St., Suite 600
Portland, OR 97232

The following are the federal rules DEQ Hazardous Waste Program is considering for adoption and discussing at the March 30, 2021, meeting.

Modernizing Ignitable Liquids Determinations

[85 FR 40594-40608](#) – Federal Rulemaking July 7, 2020, effective Sept. 8, 2020

Rule Lead: Killian Condon, Hazardous Waste Inspector, Western Region

Support: Chris Bayham, Hazardous Waste Inspector, Western Region

a) **What the rule does:**

- Updates ignitability test methods to, among other things, allow the use of modern laboratory equipment, including non-mercury-containing thermometers;
- Updates cross-references to U.S. Department of Transportation (U.S. DOT) hazardous materials regulations; and
- Codifies existing guidance that defines “aqueous” as at least 50% water by weight, as it pertains to the alcohol-content exclusion.

b) **Oregon impact:** The team is not aware of any negative impacts to the public, businesses, or local and state agencies. Analytical laboratories are likely to benefit from costs gained through approval of additional analytical methods and the ability to use alternatives to mercury-containing thermometers.

c) **Recommendation:** Adopt the rule as written, with one minor amendment. The team proposes DEQ modify EPA rule language pertaining to the alcohol-content exclusion to narrow the exclusion so to apply only to a single alcohol, ethanol (ethyl alcohol), as was originally intended.

d) **Other States:** Only Kentucky has adopted this rule. Washington State will review this rule in spring 2021.

f) **Additional Resources:** [EPA Rule History and Info](#), [McCoy and Associates](#)

Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations

[84 FR 67202-67220](#) – Federal Rulemaking Dec. 9, 2019, effective Feb. 7, 2020

Rule Lead: Brian Allen, Hazardous Waste Inspector, Eastern Region

a) **What the rule does:** Adds an option for generators of waste aerosol cans to manage under the Universal Waste Rule of Title 40, Code of Federal Regulations (40 CFR 273), rather than characterize them as a hazardous waste.

Aerosol cans managed as universal waste (UW) are not subject to the full Resource Conservation and Recovery Act (RCRA) management requirements, and are exempt from 30 CFR parts 260 through 268 as managed to the conditions of this exclusion. The rule does not require generators to store waste aerosol cans in closed containers. The rule is less stringent than existing federal regulations, and adds safety measures not found in the hazardous waste generator requirements.

b) **Oregon impact:** Affects facilities that generate aerosol cans, such as automotive repair, fabricators, manufacturing, industrial machining, printing, publishing, furniture, and military bases. If generators choose to use this exemption, an aerosol management plan must show how they will comply with the requirements.

c) **Fiscal impact:** As the rule adds another option for management, generators of waste aerosol cans may determine their preferred management methods and associated costs.

d) **Other states:** Five states have adopted the federal rule: Georgia, Kentucky, Michigan, North Carolina and Pennsylvania. Washington State anticipates adopting this rule without variation in 2021. In addition, five states have adopted similar state-only universal waste-like aerosol can programs. Colorado, New Mexico, Ohio, and Utah allow generators or universal waste handlers to puncture and drain cans prior to recycling. California has similar rules, but does not allow off-site commercial processors to puncture and drain cans without a permit and notification.

e) **Recommendation:** Adopt the rule as written. Recommend generator guidance to manage the waste in closed containers for additional human health and safety.

f) **Additional Resources:** [EPA Rule History](#), [McCoy and Associates](#)

Safe Management of Recalled Airbags

[83 FR 61552-61563](#) – Federal Rulemaking Nov 30, 2018, effective Nov 30, 2018

Rule Lead: Brian Allen, Hazardous Waste Inspector, Eastern Region
Support: Zeb Bates, Hazardous Waste Inspector, Northwest Region

a) **What the rule does:** Provides better guidance for managing and disposing of nondeployed airbags.

The rule facilitates a more expedited removal of defective Takata airbag inflators from vehicles by dealerships, salvage yards, and other locations for safe and environmentally sound disposal through exempting collection of wastes from the hazardous waste requirements, if conditions are met.

b) **Oregon impact:** No known impacts as the rule improves the management of airbags and allows the regulated community to decide to manage as hazardous waste or under the less stringent rule. DMV ORS 822.135 has a bearing on the rule. The Solid Waste Program and DMV, who both oversee wrecking yards, will need to review and provide input. Technical assistance and outreach to the regulated community will be required.

c) **Fiscal impact:** As the rule offers another regulatory option, there would be a generator savings if adopted. No additional cost or revenue incurred by DEQ's Hazardous Waste Program with prior management of airbags.

d) **Other states:** Twenty-five states have adopted this rule, including Washington, Idaho, Utah and Colorado.

e) **Recommendation:** Adopt the rule as written.

f) **Additional resources:** [EPA FAQ](#), [McCoy & Associates](#)

Hazardous Waste Management System: User Fees for the Electronic Hazardous Waste Manifest System and Amendments to Manifest Regulations

[83 FR 420-462](#) – Federal Rulemaking Jan. 3, 2018, effective June 30, 2018

Rule Lead: Mary Fritzmann, Hazardous Waste Reporting and Invoicing Coordinator, Headquarters

a) **What the rule does:** Allows EPA to establish a methodology to determine and revise user fees and to collect those fees.

In addition, the rule contains three non-fee related matters:

1. Allows for changes to the transporters listed on a manifest while shipment is in route.
2. Defines how data corrections may be made in the database.
3. Amends the "[One-Year Rule](#)" to allow for hybrid manifests.

The rule also includes two provisions states must receive authorization for:

1. Requires hazardous waste receiving facilities, including state-only hazardous waste receiving facilities, to pay fees to EPA for e-Manifest use.
2. Requires receiving facilities to submit a signed copy of the manifest and data to the system.

b) **Oregon impacts:**

- Impacts to hazardous waste receiving facilities include fees and data submittal requirements.
- Program impacts include outreach to the regulated community on guidance.

c) **Fiscal impacts:** Hazardous waste generators may have a fees impact if receiving facilities pass on those fees.

d) **Recommendation:** Adopt the rule as written. DEQ must adopt most provisions of this rule to maintain consistency across the regulated community.

e) **Other States:** Twenty-four states have adopted this rule. Idaho and Washington adopted the rule as written.

f) **Additional resources:** [EPA FAQ](#), [McCoy and Associates](#)

Automated Export System: Hazardous Waste Export-Import Revision **[81 FR 85696-85729](#) – Federal Rulemaking Nov. 28, 2016, effective Dec. 31, 2016**

Rule Lead: Jeannette Acomb, Senior Hazardous Waste Policy Analyst, Headquarters

a) **What the rule does:** Revises existing regulations by providing greater protection to human health and the environment by making requirements more consistent on commerce shipped.

Ninety percent of all of U.S. imports or exports of hazardous wastes are between the U.S. and Canada and Mexico. Under preexisting regulations these imports or exports were less stringent than other international standards. This rule corrects this by making all U.S. hazardous waste import and export requirements the same under 262 subpart H.

Provisions of the rules include:

- All U.S. imports and exports are now subject to international standards;
- Mandates electronic management of all import/export shipments;
- Adds receiver consent to prevent non-compliance shipments of hazardous waste entering a country without destination approval to reduce risks associated with recycling and disposal; and
- Applies a limit of 25 kilograms to all excluded hazardous waste samples imported and exported to limit mass export of “testing samples.”

b) **Oregon Impact:** None as EPA, and not states, regulates imports and exports. There are no associated functions or state fees.

c) **Fiscal Impact:** Applies to importers, exporters and arrangers of these activities. The rule will result in cost savings and greater efficiency for EPA and the regulated community, as well as facilitate transparency with respect to documentation. Unlikely to change fees or present a financial burden to generators.

d) **Recommendation:** Adopt as written. Since EPA and other federal agencies administer import and export requirements as a matter of foreign policy, this is a required adoption to maintain equivalency with the EPA’s program.

e) **Other States:** All states must adopt. So far, 27 states have adopted this rule, including Washington, California, Idaho, Nevada and Colorado.

f) **Additional Resources:** [EPA FAQ](#), [McCoy and Associates](#)

Confidentiality Determinations for Hazardous Waste Export and Import Documents

[82 FR 60894-60901](#) – Federal Rulemaking Dec. 26, 2017, effective June 26, 2018

Rule Lead: Jeannette Acomb, Senior Hazardous Waste Policy Analyst, Headquarters

a) **What the rule does:** Revises existing regulations to require a confidentiality determination that no person can assert confidential business information (CBI) claims for documents related to export, import, and transit of hazardous waste. EPA is applying these changes for increased consistency.

Provisions of this rule include:

- No CBI documentation claims by any person for import/export of cathode ray tubes (CRTs), spent lead acid batteries (SLABs), universal waste (UW) or hazardous waste for recycling or disposal.
- No CBI documentation claims for any import/export contracts, notifications of intent to import/export, confirmations of receipt of recovery or disposal of hazardous wastes, transporters, receiving facilities, or treatment, storage or disposal facilities related to exports and imports.

b) **Oregon Impact:** None, as EPA, and not states, regulates imports and exports. There are no associated functions or state fees.

c) **Fiscal Impact:** Applies to importers, exporters, and arrangers of these activities. The rule will result in cost savings and greater efficiency for EPA and the regulated community, as well as facilitate transparency with respect to documentation. Unlikely to change fees or present a financial burden to generators.

d) **Recommendation:** Adopt as written. Since EPA and other federal agencies administer import and export requirements as a matter of foreign policy, this is a required adoption to maintain equivalency with the EPA's program.

e) **Other States:** All states must adopt. Twenty-six states adopted this rule, which does not include our nearest neighbors California and Washington.

f) **Additional Resources:** [EPA FAQ](#)

Introduction to Division 12

DEQ assesses penalties according to Oregon Administrative Rules (OAR) Chapter 340, Division 12. DEQ is including revisions to Division 12 in this rulemaking to ensure DEQ can issue fair and appropriate civil penalties for non-compliance with the adopted rules.

Division 12 Enforcement Goals as stated under [OAR 340-012-0026](#):

(1) The goals of enforcement are to:

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

DEQ endeavors to address violations in order of priority, based on the actual or potential impact to human health or the environment, using increasing levels of enforcement as necessary to achieve these goals. For most documented violations, DEQ issues a warning letter. For violations that remain uncorrected after a warning letter, and for more serious violations, DEQ issues penalties and compliance orders. The penalty assessment and order can be appealed through the administrative process outlined in ORS Chapter 183 and OAR Chapter 340, Division 11.

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. That formula, found in OAR 340-012-0045, is:

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

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

1. Penalty Matrix (OAR 340-012-0140) ranges from \$1,000 to \$12,000 and is based upon the type of responsible party, e.g. Large Quantity Generator (LQG), Small Quantity Generator (SQG), Conditionally Exempt Small Quantity Generator (CEG), or Treatment, Storage, and Disposal (TSD) facilities. Highest penalty matrix for LQG/TSD/transporter (\$12K); then SQG (\$8K), then CEG and default catch-all (\$3K).
2. Classification of the violation (OAR 340-012-0053 and -0068). Class I is the most serious, Class III is the least.
3. Magnitude or the impact of the violation (OAR 340-012-0130 and 0135(4)). Magnitude is “the extent and effects of a respondent's deviation from statutory requirements, rules, standards, permits or orders.” Magnitude reflects the violation’s actual impact to the environment or risk of impact, and the importance of the requirement violated in the overall regulatory scheme. Major magnitude has a more significant impact; minor has less.

Applying these three elements to the facts will result in a variety of base penalties. For instance, if a large quantity generator (LQG) commits a Class I, major magnitude violation, the base penalty will be \$12,000. Towards the other end of the spectrum, a CEG committing a Class II, minor magnitude violation would result in a base penalty of \$375. The base penalty is then multiplied by the aggravating and mitigating factors.

Aggravating and mitigating factors (OAR 340-012-0145):

P is “prior significant actions” in same media at all facilities owned or operated by the same respondent within the state of Oregon, within past 10 years

H is history of correcting those priors

O represents the duration or repeated nature of the violation (ongoing or number of occurrences)

M is the mental state – range of 0 to 10, 10 being “flagrant” mental state

C is the efforts to correct or mitigate the violation – meant to encourage corrective action and efforts to prevent violations from recurring in the future

Finally, **EB** is the economic benefit gained through avoiding or delaying compliance costs, as set forth in OAR 340-012-0150.

DEQ evaluated all of the proposed rules with respect to Division 12 needs, and recommends making specific changes to Division 12 for the following rules:

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

The elements of Division 12 proposed for amendment to align with these proposed rules include:

- Housekeeping
 - E.g., Conditionally Exempt Generator (CEG) needs to be updated to Very Small Quantity Generator (VSQG) to align with the Generator Improvement Rule (at OAR 340-012-0140(4)(K), (N))
- Classifications
 - E.g., adding a Class I for reuse of defective recalled airbags and a Class II for other, unclassified violations of the recalled airbag rule and a (proposed revisions at OAR 340-012-0068(1)(t) & (2)(u))
- Magnitude
 - E.g., potentially adding selected magnitudes for mismanagement of hazardous secondary materials to align with the Definition of Solid Waste rule (at OAR 340-012-0135(4))
- Penalty Matrix
 - E.g., adding specifying matrix that applies to health care facilities and reverse distributors to align with the pharmaceutical rules (at OAR 340-012-0140)

To the extent Division 12 does not specifically reflect a particular rule, there are catch-all provisions in all the relevant provisions. See OAR 340-012-0053 (classification); OAR 340-012-0130 (magnitude); 340-012-0140(4)(a)(A) (penalty matrix). For those rules not specifically addressed in the proposed Division 12 amendments, DEQ considered the existing Division 12 rules sufficient.

DEQ is not recommending any amendments to the aggravating and mitigating factors, and economic benefit (EB) at this time.

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.