



State of Oregon Department of Environmental Quality

# Hazardous Waste Federal Rules Alignment 2021

Hazardous Waste Rules Advisory Committee  
Meeting Notes and Committee Recommendations  
March 30, 2021

## Overview and Purpose

The U.S. Environmental Protection Agency authorizes the Oregon Department of Environmental Quality to operate the federal Resource Conservation and Recovery Act, or RCRA, hazardous waste program in lieu of EPA. Oregon must periodically review and adopt new or amended federal rules to retain this federal authority. DEQ last updated its hazardous waste rules in July 2017. In that rulemaking, DEQ incorporated by reference most federal hazardous waste rules enacted through June 30, 2015.

In this rulemaking, DEQ proposes to align its hazardous waste rules with the federal rules. DEQ will do this by incorporating a previously adopted and subsequently amended federal rule, and incorporating new federal rules not previously adopted into Oregon rules. These changes will enable Oregon to ask EPA to continue authorizing Oregon to operate its RCRA hazardous waste program in lieu of EPA. To ensure DEQ issues fair and appropriate civil penalties for non-compliance of the adopted rules, DEQ is also including proposed changes to Division 12 enforcement rules with this rulemaking.

DEQ convened an advisory committee, known as the Hazardous Waste Rules Advisory Committee. DEQ asked the committee to provide comments and recommendations on DEQ's proposed rule recommendations, in addition to fiscal impact questions as required by the Administrative Procedures Act (Oregon Revised Statutes 183.333).

Regarding each proposed rule, DEQ asked the committee:

- Do you agree with DEQ's proposal to adopt the rule by reference or with state-only amendments?
  - If not, what do you recommend?
- Will the rule have a fiscal impact?
  - If so, what is the extent of the fiscal impact?
- Will the rule have a significant adverse impact on small businesses (businesses with fewer than 50 employees)?
  - If so, how can DEQ reduce the economic impact of the rule on small business?

This document includes a summary of the committee's recommendations and responses to the above questions. The public notice for this proposed rulemaking will also include those recommendations. A summary of the key decisions and recommendations is at the end of this document.

The first advisory committee meeting convened virtually via Zoom from 9 a.m. to 3:30 p.m. on Tuesday, March 30, 2021. Two weeks prior to the meeting, DEQ provided the committee with summaries of each rule, recommendations on how DEQ will adopt each rule – by reference or with state-only amendments, and draft fiscal impact statements. The proposed rule recommendations and fiscal impact statements provided to the committee were drafts and subject to further development before DEQ opens public

comment in mid 2021. DEQ will consider all comments before preparing a final rule proposal to present to the Environmental Quality Commission for adoption consideration in November 2021.

**Committee members**

All committee members attended the virtual meeting on March 30, 2021:

<b>Name</b>	<b>Affiliation</b>
Ryan Binford	Department of Veterans Affairs
Keri Bishop	Oregon Health & Science University
Jim Denson	Chemical Waste Management
Jennifer Eisele	Beyond Toxics
Patrick Gottsacker	Intel
Cynthia Holm	Providence Medford Medical Center
Jennifer Losson	Oregon Military Department
Marjorie MartzEmerson	Pacific Northwest Pollution Prevention Resource Center
Max Yoklic	Stoel Rives LLP for Oregon Business and Industry

**Non-committee members**

DEQ staff in attendance:

<b>Name</b>	<b>Role, Title</b>
Ellie Brown	Rulemaking Lead/Facilitator, Senior Hazardous Waste Policy Analyst
Audrey O’Brien	Special Advisor to the Committee, Environmental Partnership Manager
Svetlana Lazarev	Project Manager, Air Quality Modeling Specialist
David Livengood	Project Sponsor, Hazardous Waste Program Manager
Jeannette Acomb	Rule Lead and Project Advisor, Senior Hazardous Waste Policy Analyst
Brian Allen	Rule Lead, Eastern Region Hazardous Waste Inspector
Sarah Wheeler	Rule Lead, Environmental Law Specialist
Killian Condon	Rule Lead, Western Region Hazardous Waste Inspector
Ron Doughten	Materials Management and Hazardous Waste Manager
Jay Collins	Rule Lead, Western Region Hazardous Waste Inspector
Bart Collinsworth	Rule Lead, Eastern Region Hazardous Waste Inspector
Mary Fritzmann	Rule Lead, Hazardous Waste Reporting and Invoicing Specialist
Zeb Bates	Rule Support, Northwest Region Hazardous Waste Inspector
Chris Bayham	Rule Support, Northwest Region Hazardous Waste Inspector
Jeremy Fleming	Rule Support, Northwest Region Hazardous Waste Inspector
Sharon Al-Najran	Hazardous Waste Program Support
Maitri Dirmeyer	Hazardous Waste Program Analyst
Alex Bertolucci	Northwest Region Hazardous Waste Technical Assistance Specialist

Stakeholders and interested parties in attendance:

<b>Name</b>	<b>Affiliation</b>
Margaret Olson	EPA State Coordinator
Interested parties	Various/unknown

There were approximately 40 members of the public in attendance.

## Proposed Rules

The proposed rules discussed during the March 30, 2021 meeting were:

- [Modernizing Ignitable Liquids Determinations](#)
- [Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations](#)
- [User Fees for the Electronic Hazardous Waste Manifest System \(e-Manifest\) and Amendments to Manifest Regulations](#)
- [Automated Export System: Hazardous Waste Export-Import Revision](#)
- [Confidentiality Determinations for Hazardous Waste Export and Import Documents](#)
- [Safe Management of Recalled Airbags](#)

Proposed Division 12 Changes for the Safe Management of Recalled Airbags rule were also presented and discussed.

## Discussion summary

At the beginning of the meeting, DEQ staff explained the advisory committee's role and provided a summary of each of the proposed rules listed above, which the Hazardous Waste Program is considering.

A summary is provided in four parts for each rule:

1. Committee members' discussion, comments, and questions on each proposed rule;
2. Committee members' responses to the fiscal impact questions required by OAR 183.333;
3. Committee members' recommendation on adoption of the proposed rule; and
4. DEQ's responses to comments or questions not addressed at the meeting.

The following are the highlights of the roundtable discussion. *Editor's Note: Bracketed items [ ] have been added for further clarity.*

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## Modernizing Ignitable Liquids Determination

This rule finalizes changes to the hazardous waste regulations that modernize how the hazardous waste characteristic of ignitability is determined under the Resource Conservation and Recovery Act.

There are five primary changes in the proposed rule:

1. Adds two new liquid flash point methods.
2. Updates methods to include non-mercury-containing thermometers.
3. Codifies existing sampling guidance for multiphase wastes.
4. Updates cross-references to U.S. Department of Transportation.
5. Adopts the U.S. EPA guidance for alcohol-content exclusion with state-specific amendments.

DEQ recommends adopting by reference changes 1 through 4 identified above and adopting change 5 with two state-only amendments: 1. Ethyl alcohol only exclusion, and 2. Ignitability based only on the presence of ethyl alcohol.

## **Part 1: Committee discussion, comments, and questions**

The following are the main highlights of the committee members' discussion on the Ignitability rule and its potential fiscal impacts.

### **1. The proposed new methods' effect on analytic laboratories**

- If implemented, the rule provides two methods in addition to the existing three methods. During the federal adoption public comment period, EPA did not receive feedback from laboratories. From a lab perspective, having more methods to choose from is a positive development, as each lab can determine which method(s) best suit their needs.

### **2. How much mercury waste can be anticipated when the labs are not required to use mercury thermometers for ignitability determination?**

- EPA and DEQ did not look into the anticipated waste that could be covered under the Universal Waste rules. Since the rule is aimed at analytical laboratories and is an addition to existing methods, no mercury dumping issue is anticipated and only limited quantities of mercury waste are likely to be generated.

### **3. Will turnaround times increase when using non-mercury thermometers?**

- DEQ's lab has not seen an increase in turnaround time. If the new methods do increase time burden, the older methods can continue to be used.

### **4. There was support for the changes:**

- Adding two new liquid flash point methods and including the non-mercury thermometer option represents significant safety enhancements.

### **5. ODOT cross referencing will clarify matters for some generators**

- No comments received.

### **6. Adopting definition of "aqueous" alcohol-content exclusion**

- The adoption of the term "aqueous" and its potential effect on research and Clean Water Act: The City of Portland regulations state any alcohol below 24% in water can be discharged down the drain with prior notification. The term "aqueous" is specific to the ignitable liquids exclusion, and anything covered under the Clean Water Act and National Pollutant Discharge Elimination System agreement is exempt from DEQ's hazardous waste program's authority.

### **7. Unintended consequences and potential implication of codifying "aqueous" as 50% water:**

- Since the definition of "aqueous" is specific to the alcohol content exclusion, far reaching implications are not anticipated.

### **8. The wastewater treatment unit exemption and definition of waste water**

- The wastewater treatment unit exemption applies, as long as the definition of wastewater is met and is not a process chemical solution. The alcohol exemption is unlikely to impact the current wastewater unit exemption.

### **9. Only one other state has adopted this rule, as it is a fairly new federal rule.**

- Oregon amendments are limited in scope, and it looks like there are no, or potentially very few, regulated generators, like the cannabis extraction industry, will be affected by the rule at this

time. Timing is the factor rather than a need for the rule. DEQ anticipates more and more states adopting it.

**10. Question directed to EPA representative: Are any other states considering adopting an ignitability component more stringent than Oregon as part of their rules?**

- Washington and California are likely to have more stringent rules based on the history of their current regulations.

## **Part 2: Fiscal Impact Questions**

The committee discussed DEQ's four questions derived from OAR 183.333. Fiscal impact analysis attempts to project future impact based on currently available information. The committee's summarized responses to the required questions are:

**1. Will the rule have a fiscal impact?**

The introduction of new methods and non-mercury thermometers is likely to have a beneficial fiscal impact. Cross referencing ODOT regulations and adopting the term "aqueous" will have no fiscal impact. State-only amendments will also have no financial impact on the regulated community as DEQ is unaware of any generator taking advantage of the exclusion.

Committee members agreed there would be no identifiable fiscal impact from adopting the Ignitability rule with Oregon-specific amendments. One committee member opposed adopting the amendments as it might make Oregon rules more stringent than those of other states. EPA staff present at the meeting clarified that the state-only amendments would definitely not make Oregon the most stringent, as other states are considering the rule, and will need to adopt, at a minimum, the federal rule, in order to maintain national consistency.

**2. If so, what is the extent of the fiscal impact?**

The committee did not anticipate an identifiable impact.

**3. Will the rule have a significant adverse impact on small businesses (< 50 employees)?**

The committee members agreed there is no significant adverse impact for small businesses by adopting this rule. One committee member expressed concern of potential impacts if small businesses were no longer able to use mercury containing equipment and older test methods. DEQ clarified that this rule adds options for labs, and so each can determine what equipment and methods will work best for them.

**4. If so, how can DEQ reduce the economic impact of the rule on small businesses?**

The committee had no additional recommendations.

## **Part 3: Committee Recommendation**

Several committee members supported DEQ's recommendation to adopt the rule with two Oregon-specific amendments. Two committee members identified as neutral or as abstaining. One committee member identified as unsupportive of the state-amendments, but supportive of the federally proposed rule.

## **Part 4. DEQ's responses to comments or questions not addressed at the meeting**

Are any other states considering adopting an ignitability component more stringent than Oregon as part of their rules? EPA will provide more information before the next meeting.

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

This rule adds hazardous waste aerosol cans to the Universal Waste program under the federal Resource Conservation and Recovery Act (RCRA) regulations. The 2018 EPA adopted rule allows generators to manage waste under the 40 CFR 273 Universal Waste Rules rather than characterize and manage it as hazardous waste. With this rule, aerosol cans managed as Universal Waste are not subject to the full RCRA requirements by not following parts 260 through 268 of 40 CFR if managed to conditions of the exemption. DEQ recommends adopting this rule by reference.

### **Part 1: Committee discussion, comments and questions**

The following are the highlights of the committee members' discussion and comments on the Aerosol Cans rule and its potential fiscal impacts.

- 1. Regarding leftover contents in aerosol cans and release**
  - Committee recommend guidance to manage waste in closed containers.
  - Since EPA did not specify the requirement for unpunctured aerosol cans be placed in a closed leak-proof container, DEQ recommends adding such guidance to a fact sheet as a best management practice to further protect human health.
- 2. Will the current rule on containers (stored in a trash can with lid) be expanded?**
  - If adopted, there will be no additional requirements for aerosol containers. If there is evidence of leakage, cans have to be put into a closed container.
- 3. Does the new universal exemption include requirement of a puncture device?**
  - It does, as long as it has an unspecified feature to control emissions.
- 4. What type of containers is DEQ recommending?**
  - DEQ will recommend containers meet US and Oregon Occupational Safety and Health Administration and EPA standards. DEQ recommends adopting the rule by reference, and will offer guidance on the recommended types of storage containers.
- 5. Aerosol cans tend to get knocked over, a lid is definitely recommended.**
  - Aerosol management plan requires following the management standards on safe puncturing, safe clean-up of spills, and collection of other waste. Puncturing facilities may be used.
- 6. Passing through states that haven't adopted the rules?**
  - Needs to be labeled as hazardous waste. Shipping requirements are likely to be the same.
- 7. A DEQ provided aerosol can management plan template may be helpful. Might add information to the factsheet about designation of aerosol cans depending on what states they can pass through.**
  - DEQ will consider this when developing guidance materials.

- 8. What changes might this have to the drum attached to the puncture equipment?**
- Still need to make a hazardous waste determination on the residue and manage it accordingly.
- 9. What does adoption by reference mean? Will the user have to look up additional information in the federal rule or will the information be available through DEQ?**
- A bit of both; DEQ will make reference to the EPA rule in the state rule with citations. Fact sheets and educational opportunities for generators will be provided by DEQ.
- 10. Will this lead to increased air permits fees if universal waste recyclers start mass puncturing?**
- DEQ does not anticipate this being an issue. Most of the inspected facilities are already puncturing their aerosol cans in a well ventilated area with an air control device. Unpunctured aerosol cans are considered hazardous right now. DEQ has not identified if they will have to pay air-related fees. If a puncturing device is used, the business will need to check with the air program during the Intent to Construct notifications. Overall, if aerosol cans are managed appropriately under the Universal Waste rules, it should decrease business' fees.
- 11. A concern was raised regarding how Cleaner Air Oregon rules might expand on insignificant activities which may be triggered by in-house puncturing and create a significant impact to businesses.**
- An aerosol can puncturing machine does not clearly fall into one of the Air Quality insignificant categorical activities listed in Division 200. Since puncturing activity almost certainly is a source of emissions, businesses would be required to submit a notice of Intent to Construct (Air Quality Form 104) for a permit writer to assess rule or requirement applicability. Depending on how many cans are being crushed and how many are empty prior to puncturing, it most likely would be a Type I Construction notification, which is de minimis, and takes about 10 days to assess applicability. If enough cans are being punctured to emit over 1 ton of Volatile Organic Compounds (VOCs) emissions, it becomes a Type II with review or approval turnaround time of 60 days.

## **Part 2: Fiscal Impact Questions**

The committee discussed DEQ's four questions derived from OAR 183.333. Fiscal impact analysis attempts to project future impact based on currently available information. The committee's responses are summarized below:

### **1. Will the rule have a fiscal impact?**

Most committee members agreed there will be no fiscal impact. Some concerns were voiced:

- Lowering fees in one area may lead to increased fees elsewhere, however the fiscal impact should be minimal.
- Fiscal impact depends on how the recycling and puncturing is managed currently.
- More inspections and procedures may contribute to fiscal impact.
- Safety of in-house puncturing is a concern for human health.
- Educating generators about the requirements around safe management will be critical.
- One member of the committee remained neutral and will seek more information from their logistics department before providing input.

**2. If so, what is the extent of the fiscal impact?**

The committee identified no significant impact. The generators have a choice to follow the hazardous waste rules or the Universal Waste rules. Cost shifting may depend on how individual businesses choose to manage their waste.

**3. Will the rule have a significant adverse impact on small businesses (with fewer than 50 employees)?**

Most committee members agreed the adoption of the aerosol cans rule will not have an adverse fiscal impact on small businesses. Some training and safety concerns were voiced, and will be built into DEQ educational materials. There was also a concern Cleaner Air Oregon rules on expanded insignificant activities may trigger in-house puncturing and create a potential impact.

**4. If so, how can DEQ reduce the economic impact of the rule on small businesses?**

The committee identified a DEQ-developed training template would help small businesses plan their management strategy and mitigate any potential impact.

**Part 3: Committee Recommendation**

Most of the committee members supported DEQ’s recommendation to adopt the Aerosol Cans rule by reference with developed guidance to include a lid on a container. One member was neutral and will submit a written comment.

**Part 4. DEQ’s responses to comments or questions not addressed at the meeting.**

There were no unanswered questions.

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

This rule establishes the methodology that EPA uses in setting and revising user fees in order to recover the full costs of the electronic manifest system. The rule allows EPA to establish a user fee. States must adopt this rule for national consistency. The rule has been in affect since June 30, 2018.

DEQ recommends adopting this mandatory rule by reference.

**Part 1: Committee discussion, comments and questions**

The following are the highlights of the committee members’ discussion and comments on the e-Manifest rule and its fiscal impacts.

- EPA is the administrator of the fees, DEQ will have no part in collecting fees.
- Regulatory oversight ability will improve with the adoption of the e-manifest rule.
- Labor intensity of the initial transition will fall onto the RCRA permitted treatment, storage and disposal facilities (TSDFs) and recyclers receiving wastes. The facilities are required to report the data to EPA and pay fees.



- Transition time, education, and additional assistance for facilities to go fully electronic will be needed and provided by EPA and DEQ.
- TSDFs have 30 days to upload data. What would be the expectation of maintaining a paper copy on site? Answer: There would be no print requirement, as everything would be online.
- There are two RCRA permitted TSDFs in Oregon.

## **Part 2: Fiscal Questions**

The committee discussed DEQ's four questions derived from OAR 183.333. Fiscal impact analysis attempts to project future impact based on currently available information. The committee's responses are summarized below:

### **1. Will the rule have a fiscal impact?**

- Most committee members agreed there will be a small to moderate fiscal impact to generators and permitted facilities in terms of fees, as they may be passed through from TSDFs to generators.
- The learning curve will create fiscal impacts, as training from EPA or DEQ may be needed.
- Oregon's adoption of the e-manifest rule will not have any additional impacts to the management of wastes or the structure of federal rule fees.
- Very small quantity generators (VSQGs) are not required to use a RCRA manifest at this time.

### **2. If so, what is the extent of the fiscal impact?**

More time to quantify the extent is needed. Two committee members will submit quantified impact estimates at a later date.

### **3. Will the rule have a significant adverse impact on small businesses (with fewer than 50 employees)?**

Most committee members agreed the adoption of the e-manifest will have some fiscal impact on generators and permitted facilities in terms of fees.

### **4. If so, how can DEQ reduce the economic impact of the rule on small businesses?**

- DEQ can provide training and potentially utilize grant funding to mitigate any potential fiscal impact to small businesses.
- As with any major initiative, there may be problems for TSDFs, as there has been significant efforts to convert to electronic processing as required.
- Generators might not be able to fill out their own e-manifests without training.
- The transition is time consuming and arduous.
- VSQGs are not required to use manifests at this time.

## **Part 3: Committee Recommendations**

The committee members agreed with DEQ's recommendation of adopting the mandatory e-Manifest rule by reference.

## **Part 4. DEQ's responses to comments or questions not addressed at the meeting**

There were no unanswered questions.

## **Automated Export System: Hazardous Waste Export-Import Revision and Confidentiality Determinations for Hazardous Waste Export and Import Documents**

These rules establish improved export and import shipment tracking; one consolidated and streamlined set of requirements applicable to all imports and exports; mandatory electronic reporting to EPA; and adds receiver consent to the electronic export information submitted to U.S. Customs and Border Protection (CBP), and applies a 25-kg test sample limit. The rule will provide cost savings and greater efficiency due to electronic filing. As a matter of national policy, all imports and exports under these rules are administered by EPA and not states.

DEQ recommends adoption of this mandatory rule by reference.

### **Part 1: Committee discussion, comments and questions**

The following are the highlights of the committee members' discussion and comments on Import/Export rules and potential fiscal impacts.

#### **1. Will import/export rule affect only Oregon pesticides?**

- State-only pesticides are already a part of the state authorization program as well as all DEQ hazardous waste state-only wastes. State-only pesticides would be shipped the same as regular hazardous waste.

### **Part 2: Fiscal Questions**

The committee discussed DEQ's four questions derived from OAR 183.333. Fiscal impact analysis attempts to project future impact based on currently available information. The committee's responses are summarized below:

#### **1. Will the rule have a fiscal impact?**

- The rule will provide cost savings and greater efficiency due to electronic filing.
- There will be a small fee for choosing to file a paper copy instead of electronic.
- The regulation will be done by EPA.
- All committee members agreed adopting the Import/Export rules will have no fiscal impact.

#### **2. If so, what is the extent of the fiscal impact?**

No adverse fiscal impact is anticipated.

#### **3. Will the rule have a significant adverse impact on small businesses (with fewer than 50 employees)?**

All committee members agreed the adoption of the Import/Export rules will not have any adverse impact on small businesses.

#### **4. If so, how can DEQ reduce the economic impact of the rule on small businesses?**

None identified.

### **Part 3: Committee recommendation for Import/Export rules**

All committee members support adoption of the mandatory rules by reference.

## **Part 4: DEQ's responses to comments or questions not addressed at the meeting**

A committee member asked whether there was any impact on the Basel Convention for the Hazardous Waste Export-Import Revision. DEQ did not have a response at that time. EPA representative offered to research this question, and follow up with DEQ.

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### **Safe Management of Recalled Airbags**

This 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 by exempting from hazardous waste requirements, ensuring certain conditions are met. The rule improves management of airbags and allows handlers to decide if they want to manage as hazardous waste or under this exclusion.

DEQ recommends adoption of the less stringent optional Recalled Airbags rule by reference.

### **Part 1: Committee discussion, comments and questions**

The following are the highlights of the committee members' discussion and comments on the Recalled Airbags rule and its potential fiscal impacts.

- Definition of sham recycling will be recommended for adoption within the Definition of Solid Waste (DSW) rule by reference and direct inclusion. Sham recycling changes will be included in more detail during the DSW rule discussion.
- Recalled airbags have not been an issue in Oregon.
- Violations associated with this rule adoption are also proposed under DEQ's Division 12 for amending the enforcement regulations.

### **Part 2: Fiscal Questions**

The committee discussed DEQ's four questions derived from OAR 183.333. Fiscal impact analysis attempts to project future impact based on currently available information. The committee's responses are summarized below:

#### **1. Will the rule have a fiscal impact?**

Committee members agreed the proposed rule, being less stringent, will not have a fiscal impact. Generators can still manage recalled airbags as hazardous waste, should they choose.

#### **2. If so, what is the extent of the fiscal impact?**

The committee did not identify any fiscal impacts.

#### **3. Will the rule have a significant adverse impact on small businesses (with fewer than 50 employees)?**

All committee members agreed the adoption of the rule will not have any adverse impact on small businesses.

#### **4. If so, how can DEQ reduce the economic impact of the rule on small businesses?**

The committee recommends DEQ help educate generators.

### **Part 3: Committee Recommendations**

Committee members support adoption of the optional Recalled Airbags rule by reference.

### **Part 4: DEQ's responses to comments or questions not addressed at the meeting**

There were no unanswered questions or outstanding comments.

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### **DEQ's Division 12 Enforcement Proposed Amendments**

Oregon Administrative Rules (OAR) Chapter 340, Division 12: 340-012-0026 through 340-012-0170. Division 12 rules do not impose requirements on regulated facilities. The proposed changes are necessary so that DEQ can enforce the proposed rules once adopted.

Proposed: A new Class I violation for sham recycling and a Class II violation for failing to comply with recalled airbag management and disposal requirements.

### **Committee discussion, comments and questions**

The following are the highlights of the committee members' discussion and comments on proposed changes to Division 12 rules related to the Recalled Airbags rule.

- 1. Were the proposed changes to division 12 posted on the website?**
  - Yes, for the Recalled Airbags only.
- 2. Committee members requested the ability to see all proposed Division 12 rule changes at once.**
  - [Link](#) to the Division 12 rules was provided in response to this comment.
- 3. A compiled list of all Division 12 changes prior to each meeting was requested.**
  - It would be premature to present Division 12 changes prior discussing the associated proposed rule(s). DEQ appreciates the committee's patience in allowing us to present and discuss a proposed rule before discussing the proposed Division 12 changes that a rule may require.
  - DEQ did check with DMV for potential conflicts with this rule adoption, and identified no matching or conflicting rules.
  - Sham recycling changes will be covered in more detail during the third committee meeting when the proposed Definition of Solid Waste rule will be discussed.
  - DEQ will create educational materials and provide training for generators on all Division 12 changes.

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DEQ thanked the committee and the public for participating and commenting on the proposed rules and fiscal impacts. Meeting was adjourned.

Next Rules Advisory Committee meeting is from 9 a.m. to 4 p.m. on Tuesday, April 27, 2021.

## Summary of Committee's Recommendations

### Ignitability

Several committee members supported DEQ's recommendation to adopt the rule with two Oregon-specific amendments. Two committee members identified as neutral or as abstaining.

**Fiscal impacts:** Committee identified no negative fiscal impacts associated with adopting the rule. One committee member expressed concern of potential impacts if small businesses were no longer able to use mercury containing equipment and older test methods. DEQ clarified this rule adds options for labs, and so each can determine what equipment and methods will work best for them.

### Aerosol Cans

Most committee members supported DEQ's recommendation to adopt the rule by reference with developed guidance to include a lid on a container. One member was neutral pending more information and will submit a written comment.

**Fiscal impacts:** Most committee members agreed the adoption of the aerosol cans rule will not have an adverse fiscal impact on small businesses. Some members voiced training and safety concerns, and staff shared DEQ educational materials with cover these.

### E-Manifest

Committee recommended adopting the mandatory rule by reference.

**Fiscal impacts:** Most committee members agreed the adoption of the e-manifest rule will have some fiscal impact on generators and permitted facilities in terms of fees. A suggestion DEQ can mitigate the impacts by providing training and potentially using grant funding.

### Import/Export Rules

Committee recommended adopting the mandatory rules by reference.

**Fiscal impacts:** No adverse fiscal impacts anticipated.

### Recalled Airbags

All committee members supported DEQ's recommendation to adopt the optional Recalled Air bags rule by reference.

**Fiscal impacts:** Committee members agreed the proposed rule, being less stringent, will not have a fiscal impact.

## Summary of Committee Meeting Follow-up

**Ignitability:** EPA confirmed there are many other states currently looking at adoption of this rule and will provide particular state names.

**Aerosol Cans:** Several members requested DEQ require closed containers for spent aerosol cans. The management of containers of this sort would fall under National Fire Protection Association or OSHA regulation, and DEQ would only provide recommendations within a factsheet without jurisdiction. The regulated community would need to adhere to all other pertinent regulations.

The following is from the OSHA regulations on aerosols:

1910.106(a)(13)

Flammable aerosol shall mean a flammable aerosol as defined by Appendix B to §1910.1200— Physical Hazard Criteria. For the purposes of paragraph (d) of this section, such aerosols are considered Category 1 flammable liquids.

1910.106(f)(1)(i)

Category 1 or 2 flammable liquids, or Category 3 flammable liquids with a flashpoint below 100 °F (37.8 °C). Category 1 or 2 flammable liquids, or Category 3 flammable liquids with a flashpoint below 100 °F (37.8 °C), shall be stored in closed containers, or in storage tanks above ground outside of buildings, or underground in accordance with paragraph (b) of this section.

Appendix B to §1910.1200 B.3 FLAMMABLE AEROSOLS B.3.1

Definition: Aerosol means any non-refillable receptacle containing a gas compressed, liquefied or dissolved under pressure, and fitted with a release device allowing the contents to be ejected as particles in suspension in a gas, or as a foam, paste, powder, liquid or gas.

More information is on OSHA's website [here](#).

It appears the above OSHA regulations would require generators to conduct an appropriate determination for each type of spent aerosols - full, partial or empty - and manage them accordingly.

**Import/Export Rules:** The United States signed the Basel Convention in 1990. The U.S. Senate provided its advice and consent to ratification in 1992. The US, however, has not ratified the Convention because it does not have sufficient domestic statutory authority to implement all of its provisions. Since US is not part of Basel, EPA doesn't see how DEQ's proposed hazardous waste import and export rules might have any impact on the Basel Convention provisions.

### **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](mailto:deqinfo@deq.state.or.us).