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Background and Technical Support Document

'Draft Amendments

310 CMR 30.000

Hazardous Waste Regulations

January 4, 2023

For Policy Deliberations Only

REGULATORY AUTHORITY:

M.G.L. c. 21C and c. 111, § 150A

I. SUMMARY

MassDEP is proposing to amend 310 CMR 30.000 as part of its ongoing effort to update its federally delegated Resource Conservation and Recovery Act (RCRA) hazardous waste program by adopting and becoming authorized for new EPA regulations. Enacted in 1976, RCRA is the principal federal law governing the disposal of hazardous waste. State authorization is a rulemaking process whereby EPA delegates the primary responsibility of implementing the RCRA hazardous waste program to states in lieu of EPA. Once a state receives this delegated authority, it must regularly update its hazardous waste program by adopting new EPA rules. These adopted rules, or 'state program updates', become enforceable by the state and EPA when EPA publishes its approval in the *Federal Register*. This process ensures national consistency and minimum standards while providing flexibility to states in implementing rules. This regulatory package also includes minor corrections and revisions to existing regulations.

II. BACKGROUND

MassDEP is proposing to adopt several EPA rules, including exemptions for nicotine-containing smoking cessation products and airbag wastes, EPA's universal waste rule for aerosol cans and the federal e-Manifest Rule. MassDEP is also proposing to adopt EPA rules related to confidentiality determinations for hazardous waste export and import documents, expanded public participation for licensed hazardous waste facilities, and technical revisions to wood preservative listings at 310 CMR 30.160.

Several minor revisions described in section 8. below are also being proposed to clarify requirements.

III. DESCRIPTION OF PROPOSED AMENDMENTS

1. Modification to nicotine – P075 - listing

In 2019, EPA published "Management Standards for Hazardous Waste Pharmaceuticals and an Amendment to the P075 Listing for Nicotine" in the *Federal Register*. This rule established sector-specific standards for handling hazardous waste pharmaceuticals in the healthcare industry. As part of this rulemaking, EPA also added an exemption for over-the-counter nicotine replacement therapies (nicotine patches, gums and lozenges). MassDEP is proposing to adopt this exemption.

MassDEP is proposing to adopt the EPA exemption by amending its P075 listing for nicotine at 310 CMR 30.136 to exclude FDA-approved over-the-counter nicotine replacement therapies from the P075 listing for acutely hazardous waste. Specifically, the P075 Acutely Hazardous Wastes listings at 310 CMR 30.136 for “Nicotine, & salts” and “Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-, & salts” are being amended to exclude gums, lozenges and patches that are FDA-approved nicotine replacement therapies. Under this amendment, these products would no longer be regulated as a hazardous waste.

As such, other unused formulations of nicotine will still be classified as P075 when discarded, including:

- E-liquids/e-juices in e-cigarettes, cartridges, or vials,
- Prescription nicotine (e.g., nasal spray, inhaler),
- Legacy pesticides containing nicotine, and
- Nicotine used in research and manufacturing.

MassDEP is not proposing to adopt the EPA Pharmaceutical Rule at 40 CFR Part 266 Subpart P at this time due to concerns over its complexity and enforceability. MassDEP will continue to evaluate the rule and may consider adopting it at a later date.

2. EPA Airbag Waste Exemption

MassDEP is proposing to adopt US EPA’s exemption for airbag waste, without modifications, at 310 CMR 30.104(3)(k).

EPA’s exemption at 40 CFR 261.4(j) applies to airbag waste, which is defined to include any airbag inflator or airbag module that is hazardous waste (including both recalled and non-recalled airbag modules and inflators). An airbag inflator consists of a casing containing an igniter, a booster material and, a gas generant used to inflate an air bag in a car’s supplemental restraint systems. An airbag module is the airbag inflator plus an inflatable bag assembly. Undeployed airbag inflators and airbag modules become classified as hazardous waste because of their characteristics, namely that they are generally reactive (D003) and/or ignitable (D001) due to the propellant in the inflator. (Deployment of the airbag module consumes the propellant and removes the reactivity/ignitability characteristics.)

The exemption is a conditional exemption that provides that airbag waste is not hazardous waste while at an airbag waste handler location (car dealers, repair facilities, collision centers and salvage vendors) or during transport to an airbag waste collection facility or Treatment Storage or Disposal Facility (TSDF). Airbag waste generators can still manage airbag waste under one of the other exemptions listed below or as a hazardous waste.

Under this proposed exemption, handlers must send airbag waste to:

- An airbag waste collection facility under control of a vehicle manufacturer;
- An authorized party administering a recall; or
- A hazardous waste facility.

Handlers must:

- Ensure airbag waste shipments comply with all applicable DOT regulations;
- Maintain records of all off-site shipments for 3 years;
- Accumulate no more than 250 airbag modules and airbag inflators (combined) at one time;
- Accumulate airbag waste for no longer than 180 days;
- Package airbag waste in compliance with DOT HAZMAT requirements; and
- Label airbag waste “Airbag Waste-Do Not Reuse.”

Airbag waste managed under exemption does not count towards HW generator status and is exempt from HW transporter requirements from the handler to collection facility or hazardous waste (TSDf) facility.

For each generator shipment, records must contain:

- Name of transporter, date of shipment, name and address of receiving facility and type/quantity of airbag waste (i.e., modules or inflators); and
- Shipping records/receipts.

When an airbag waste collection facility ships airbag waste to a hazardous waste facility (TSDf), it is a hazardous waste generator. Such shipments must have a manifest and meet all applicable hazardous waste requirements.

An Airbag Waste Collection Facility (AWCF) must

- Be under control of a vehicle manufacturer or authorized representative (e.g., a certified auto parts dealer); OR
- Be under control of an authorized party administering a remedy program in response to a recall under National Highway Traffic Safety Administration (NHTSA).

An AWCF accumulates airbag waste for more than 10 days. However, facilities that accumulate airbag waste for less than 10 days are Transfer Facilities under EPA’s rules. However,

Massachusetts does not distinguish between hazardous waste facilities (TSDFs) and Transfer Facilities. As a result, a facility that accumulates airbag waste in Massachusetts for less than ten days would also be considered an AWCf.

Note that Airbag waste may already be eligible for several federal or state hazardous waste exemptions including:

- Recalled airbag waste subject to a DOT preservation order
- Airbag wastes that fail QA/QC programs and are off-spec commercial chemical products: not HW when reclaimed - 40 CFR 261.2(c)(3)
- Airbag items in a vehicle for sale that can be legitimately reused that are a product (recalled airbags cannot be legitimately reused)
- Airbag modules (recalled and non-recalled) in a car that is recycled as scrap metal - 40 CFR 261.6(a)(3)(ii)
- Used airbag modules (not inflators) removed from vehicles that can safely undergo electronic deployment are considered exempt when electronically deployed and recycled for metal value - 40 CFR 261.6(a)(3)(ii)
- Modules containing defective (Takata) inflators not eligible

For more information about this proposed rule go to: <https://www.epa.gov/hw/interim-final-rule-safe-management-recalled-airbags>

3. EPA Universal Waste Rule for Aerosol Cans

MassDEP is proposing to add hazardous waste aerosol cans to its universal waste rule at 310 CMR 30.1000. EPA added aerosol cans to the Universal Waste rule, 40 CFR Part 273, effective February 7, 2020. MassDEP is proposing to adopt this EPA rule without any modifications.

Aerosol cans are widely used for dispensing a broad range of products including paints, solvents, pesticides, and personal care products and account for nearly 40 percent of retail items managed as hazardous waste at large retail facilities.

These streamlined universal waste regulations are expected to:

- Ease regulatory burden on retail stores and others that discard aerosol cans;
- Promote collection/recycling of aerosol cans; and
- Encourage development of municipal/commercial programs to reduce quantity of these wastes going to landfills and combustors.

MassDEP would add aerosol cans to its own Universal Waste Rule at 310 CMR 30.1000.

Under these new rules, universal waste cans must be accumulated in a container that is:

- Structurally sound;
- Compatible with the contents of the cans;
- Lacking evidence of leakage or damage; and
- Protected from heat sources.

Leaking cans must be:

- Packaged in a separate closed container;
- Over-packed with absorbents or immediately punctured and drained in accordance with UW requirements.

A handler that punctures and drains aerosol cans must recycle cans and:

- Use a device and follow procedures designed to safely puncture aerosol cans and contain contents and emissions;
- Maintain a copy of manufacturer's instructions and ensure employees operating device are properly trained;
- Immediately transfer contents from can or puncturing device, if applicable, to a container or tank that meets applicable HW requirements;
- Conduct a HW determination on contents of emptied cans and manage accordingly; and
- Have a written procedure in place and a spill clean-up kit available for any spill or release.

For more information about this rule go to: [https://www.epa.gov/hw/increasing-recycling-adding-aerosol-cans-universal-waste-regulations#:~:text=Aerosol%20cans%20can%20account%20for,\(CFR\)%2C%20part%20273](https://www.epa.gov/hw/increasing-recycling-adding-aerosol-cans-universal-waste-regulations#:~:text=Aerosol%20cans%20can%20account%20for,(CFR)%2C%20part%20273)

3. 'EPA Universal Waste Rule for Aerosol Cans

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4. Adoption of federal E-Manifest Regulations

As part of its ongoing efforts to update its hazardous waste program, MassDEP is proposing to adopt EPA’s e-Manifest rule, without modifications, at 310 CMR 30.310 and 310 CMR 30.405. These amendments will provide consistency between the Massachusetts and federal (EPA) hazardous waste manifest regulations.

In June 2018, EPA launched e-Manifest, a national system for tracking hazardous waste shipments electronically. This system has been in effect in Massachusetts since 2018, and users will not experience a change in how e-Manifest is conducted after these rules go into effect. While most of e-Manifest is administered by EPA, once these rules go into effect in Massachusetts, MassDEP will be able to administer and enforce, as appropriate, the following requirements:

§ 260.4	Copy submission requirements for interstate shipments.
§ 260.5	Applicability of e-Manifest system and fees to facilities receiving state-only regulated wastes.
§ 262.24(c)(1)	Use of mixed paper/electronic manifests.
§ 262.24(h)	Generators and post-receipt data corrections.
§ 263.20(a)(9)	Transporters and post-receipt data corrections.
§ 264.71(a)(2)(v), § 265.71(a)(2)(v)	Receiving facilities' required paper manifest submissions to system.
§ 264.71(j), § 265.71(j)	Imposition of user fees on receiving facilities for their manifest submissions.
§ 264.71(l), § 265.71(l)	Receiving facilities and post-receipt data corrections.

For more information about this rule go to: <https://www.epa.gov/e-manifest/learn-about-hazardous-waste-electronic-manifest-system-e-manifest>

The Department is additionally proposing to delete 310 CMR 30.314 (Manifest Distribution Requirements for Waste Reclaimed Pursuant to a Contractual Agreement) and 30.315 (Manifest Distribution Requirements for Intrastate Shipments of Waste Oil, Intrastate Shipments by Very Small Quantity Generators, Wastes Sent to Research Demonstration and Development Facilities, and Research Study Waste). MassDEP has observed that these provisions are rarely used and may create confusion for generators and hazardous waste facilities that try to simultaneously comply these state-only provisions, the instructions on EPA form 8700-22 and the requirements of EPA's e-Manifest rule that MassDEP is now proposing to adopt. MassDEP is therefore seeking public comment on these provisions and specifically from hazardous waste generators, transporters and facilities that may utilize these provisions on whether the provisions of 310 CMR 30.314 and 30.315 should be removed.

Finally, MassDEP is deleting the requirement at 310 CMR 30.313(4)(b) for generators of shipments to out-of-state facilities to submit a photocopy of Copy 3 to the Department. This requirement is no longer necessary since MassDEP can now access this information through e-Manifest.

5. Confidentiality Determinations for Hazardous Waste Export and Import Documents

MassDEP is proposing to adopt EPA's rule on Confidentiality Determinations for Hazardous Waste Export and Import Documents, without modification, at 310 CMR 30.104(3)(e) and 30.361. This rule would apply a confidentiality determination such that no person can assert confidential business information (CBI) claims for documents related to the export, import, and transit of hazardous waste and export of excluded cathode ray tubes (CRTs). EPA made these changes to apply a consistent approach as between EPA and delegated states in addressing confidentiality claims for export and import documentation. MassDEP is proposing to adopt this rule as EPA identified it as a priority for state authorization.

6. RCRA Expanded Public Participation Rule for Licensed Hazardous Waste Facilities

MassDEP is proposing to adopt EPA's RCRA Expanded Public Participation Rule for Licensed Hazardous Waste Facilities, without modification, at 310 CMR 30.831, 30.833 and 30.837. This action would improve the process for licensing facilities that store, treat, or dispose of hazardous wastes (TSDFs) by providing opportunities for public involvement earlier in the process and by expanding public access to information throughout the permitting process and the operational lives of facilities. This rule will require a prospective applicant to hold an informal public meeting before submitting an application for a (new) RCRA license and to advertise this meeting in the newspaper, through broadcast media, and on a sign posted at or near the property. This rule also directs MassDEP to mail a notice to interested persons when the facility submits its application and, as the agency deems necessary, to require a facility owner or operator to set up an information repository that will hold all information and documents the permitting agency has decided are necessary.

7. Technical Revisions to Wood Preservative hazardous constituents list at 30.160 to update MassDEP's RCRA authorization status with EPA.

US EPA determined that certain constituents contained in wood preservative wastes warrant inclusion in 40 CFR Part 261, Appendix VIII. MassDEP's analog to Appendix VIII is 310 CMR 30.160: Hazardous Constituents.

MassDEP is proposing to amend 310 CMR 30.160 by adding these four wood preservative hazardous constituents:

Potassium pentachlorophenate, Pentachlorophenol, potassium salt
Sodium pentachlorophenate Pentachlorophenol, sodium salt
2,3,4,6tetrachlorophenol, potassium salts
2,3,4,6tetrachlorophenol, sodium salts

Please note there are currently no corresponding hazardous waste listings to these constituents.

EPA Background info: <https://www.epa.gov/rcra/state-authorization-rule-checklists-125-through-134-hazardous-waste-rulemakings-published#128>

8. Miscellaneous Changes and Corrections

a. Changes related to provisions for obtaining an EPA ID number. Hazardous waste generators in Massachusetts can no longer “register” with MassDEP to obtain a “state-only” (MV) generator identification number. References to “registering,” therefore, are being proposed for deletion.

The process for all generators of state-only and RCRA hazardous waste to obtain an EPA ID number is now done through EPA's RCRAinfo industry application:

<https://www.mass.gov/doc/instructions-how-to-apply-for-an-epa-hazardous-waste-id/download>

b. Revisions related to the Academic Labs Rule at 310 CMR 30.501(2)(f)-(g), 310 CMR 30.601(2)(f)-(g), 310 CMR 30.601(2)(f)-(g) and 310 CMR 30.801(15). These changes correct cross-references that were incorrect in the rule as adopted in 2019.

c. Correction of Waste Oil Regulation at 310 CMR 253(5)(a) and (b): This revision clarifies that waste oil generator status is determined by the total amount of waste oil (MA01) and used oil fuel (MA98) combined. The current regulation incorrectly states that regulated recyclable material must be counted. Waste oil generator status is calculated separately from the amount of RCRA hazardous waste and regulated recyclable material that may be generated at the same site.

d. Updated references to Bureau of Air and Waste regarding Contingency and Emergency Plan sections: 310 CMR 30.341(1)(e)7.a.ii. and 310 CMR 30.341(1)(e)7.f.

e. Clarification that either a Sponsor or Transporter for a Household Hazardous Waste (HHW) Event must provide an EPA ID number and sign the Manifest: 310 CMR

30.392(6)(b)-(c). Under the current regulations, only the transporter may obtain an EPA ID number for a household hazardous waste (HHW) event and sign the manifest. Under this proposed change, the sponsor (e.g., a municipal public works department) would have the option to obtain an EPA ID number and sign the hazardous waste manifest for the hazardous waste collected at the event, instead of the transporter.

f. MassDEP is proposing revisions to the public hearing and public meeting provisions at 310 CMR 30.296(1) for Class C Permits and 30.837(2) and 30.852(4) for Class 2 and Class 3 hazardous waste facility license modifications:

This language would allow virtual hearings and is intended to address the reality that public assembly is sometimes not advisable during a pandemic and often virtual hearings allow for easier stakeholder participation. With this amendment, MassDEP would work with environmental justice communities and other local stakeholders on whether public hearings or meetings should be held in person or virtually, or use a hybrid format of in-person and virtual attendance, depending on the specific circumstances.

IV. IMPACTS OF PROPOSED AMENDMENTS

Economic Impacts

The proposed regulations that conditionally exempt nicotine-containing smoking cessation products, airbag waste and aerosol cans will provide Massachusetts hazardous waste generators with new, more cost-effective disposal options. The e-Manifest Rule will have no new economic impact since EPA has implemented this federal rule in Massachusetts since 2018. The hazardous waste export and import document rule narrows which documents are eligible for confidentiality determinations and should have no economic impact. The expanded public participation rule for new licensed hazardous waste facilities may lengthen the license application process but will have minimal economic impact. Finally, the technical revisions to the hazardous constituents list at 310 CMR 30.160 and other minor revisions being proposed that clarify requirements related to EPA identification numbers, the academic labs rule and waste oil generator status calculations will have no economic impact.

Impacts on Massachusetts Municipalities

Pursuant to Executive Order 145, state agencies must assess the fiscal impact of new regulations on the Commonwealth's municipalities. The proposed amendments, which MassDEP is obligated to adopt as a RCRA-authorized state, will have a neutral to positive impact on municipalities.

Massachusetts Environmental Policy Act (MEPA)

Pursuant to 301 CMR 11.03(12) (Massachusetts Environmental Policy Act Regulations), MassDEP is not required to file an Environmental Notification Form (ENF) regarding the proposed amendments. The proposed regulations do not reduce standards for environmental

protection, nor do they reduce opportunities for public participation in review processes or public access to information generated or provided in accordance with the regulations.

V. PUBLIC HEARING AND COMMENT

MassDEP will hold a public hearing on the proposed amendments in accordance with M.G.L c. 30A. MassDEP will accept written comments for 10 days after the public hearing.

The public hearing notice and proposed amendments are available on MassDEP's website at:

<http://www.mass.gov/eea/agencies/massdep/service/regulations/proposed-and-recently-promulgated-regulations.html>. For further information, please contact

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