



Department of
Environmental
Conservation

Hazardous Waste Regulatory Updates

FedReg 5 Revisions, New EPA Rules & FedReg 6
Michelle Ching, PE
Professional Engineer
Compliance & Technical Support Section

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Agenda

- Status of the current rulemaking FedReg5
- Overview of the Major FedReg5 Rules and Revisions
- Review of the Rules and State Initiatives we plan to include in FedReg6
- Next steps

Status of FedReg 5

- History:
 - Proposed regulations public comment period ended on **August 26, 2019**
 - A response to comments has been prepared.
 - Express terms including revisions based on comments have been prepared.
 - Internal approval process has been initiated

Next Steps:

- File final regulatory package with Department of State.
- DOS will publish final regulations.
- Effective 60 days after filing.

FedReg 5 Summary

- The rule covers the incorporation of 38 federal rules predominantly from 2002 to 2012.
- 10 of those rules are directly related to regulation of Hazardous Waste Combustors
- Key Federal rule revisions within FedReg5 include:

Changes to the Standards for Hazardous Air Pollutants for Hazardous Waste Combustors from September 30, 1999 to present. These changes will result in formally shifting the responsibility for permitting of the six existing hazardous waste combustion units at four facilities in the State to Division of Air Resources (DAR). This reduces duplication in permitting between Clean Air and RCRA requirements. Risk assessment of the units remains under RCRA.



FedReg 5 Summary

TCLP Use with Manufactured Gas Plant (MGP) Waste. The March 13, 2002 Federal Register disallowed the use of the toxicity characteristic leaching procedure (TCLP) to determine whether *MGP waste* is hazardous. More stringent criteria laid out in Program Policy DER-4 is currently followed and proposed amendments would incorporate provisions of DER-4 into the regulations. <http://www.dec.ny.gov/regulations/2594.html>

Universal Waste Rule for mercury containing equipment. This is presently being implemented by a DEC Commissioner Policy, CP-39, which authorizes enforcement discretion to allow regulated parties to handle hazardous waste mercury containing equipment under the universal waste rule provisions in lieu of full hazardous waste regulation and helps implement the state's Mercury-Added Consumer Product Law.

RCRA Burden Reduction Initiative. This rule reduces various paperwork requirements for the regulated community. There are certain aspects that are not proposed for adoption by the State, related to certain State notification and documentation requirements and the State requirement for an independent professional engineer certification, both which will be retained.



FedReg 5 Summary

Methods Innovation Rule. The rule amends a variety of testing and monitoring requirements to allow more flexibility when conducting RCRA related sampling and analysis.

The Cathode Ray Tubes(CRT) Rule. This is presently being implemented by a DEC Commissioner Policy, CP-57, which authorizes an enforcement discretion to allow regulated parties to store used, broken for CRTs and CRT glass removed from CRTs prior to legitimate recycling in compliance with federal regulations.

Alternative Requirements for College Labs. Universities within the State have expressed interest in managing their waste under this federal rule which is an alternate set of regulations that allows eligible academic entities to participate, on a voluntary basis. The alternate regulations add some flexibility while requiring participating labs to develop a Laboratory Management Plan. The rule also increases regulatory incentives for academic laboratories to conduct regular lab cleanups



FedReg 5 Summary

Headworks Exemption Revision. the October 4, 2005 revision of the wastewater treatment exemptions for hazardous waste solvent mixtures adds benzene & 2 ethoxyethanol, allows generators to directly measure solvent chemical levels and extends the eligibility for the de minimis exemption.

Zinc Fertilizer Rule. July 24, 2002, Establishes regulations for zinc fertilizers made from recycled hazardous secondary materials. Standards are consistent with the existing standards in the state's solid waste regulations (6 NYCRR Part 360). Proposed regulations include additional conditions. DEC would also eliminate a current Land Disposal Restrictions (LDR) exemption for K061-derived fertilizers (374-1.3(a)(2)). This change is already in effect nationally.



State-Initiated Changes

- **373-1.5(a)(2)(viii):** These provisions address tank systems, clarifying that both **loading** and **unloading** areas are part of a tank system.
- List of hazards to be prevented includes prevention of spills in addition to prevention of physical hazards.
- Applies to requirements for hazardous waste permit applications.



State-Initiated Changes

371.1(c)(7): Changes to the “C7” notification:

- **removes** notification requirement for certain commonly recycled wastes;
- **clarifies** that parties claiming exemptions must also **maintain documentation** on-site;
- **changes** language to match EPA regulations; and
- **reduces** some duplication.

Print Form

Submit by Email

SAMPLE "C7" NOTIFICATION FOR GENERATORS

May be used by the generator when electronic waste is sent to a collection, consolidation or recycling facility.

To: Training and Technical Support Section Date:
 Bureau of Technical Support
 Division of Environmental Remediation
 New York State Department of Environmental Conservation
 625 Broadway Albany, NY 12233-7020

Generator facility name:

Name and title of person filling out form:

Street Address:

Generator phone number:

intends to use the scrap metal exemption of 6 NYCRR 371.1(g)(1)(iii)(b) for certain used computer monitors, peripherals, central processing units, or other used electronics items that will be shipped from the above address to

Recycler Company Name:

Recycler Address:

where the items will be dismantled, with scrap metal pieces obtained during the dismantling routed to

Name of scrap metal recycling company:

Address of scrap metal recycling company:

Please e-mail the completed notification form to sginfo@gov.dec.state.ny.us. If you are unable to submit by email, please mail to the address listed above or fax to 518-402-9020.
 Please call (518) 402-9553 if you have any questions about how to complete this form.



State-Initiated Changes

- **State Initiatives:** State initiated changes will clarify language, in some cases simplify regulation, or address errors found in the regulations.
- **370.2(b) Acute hazardous waste definition** – updated to match the EPA definition in the Generator Improvements Rule (GIR) published in the November 28, 2016 Federal Register.
- **370.2(b) Small quantity generator definition** – updated to match the EPA definition in the Generator Improvements Rule.

State-Initiated Changes

- **372.2(e)**: Modified the limits for “acute hazardous waste” and “acutely hazardous unwanted material” for consistency with the GIR:
 - 1 quart for acute containerized gases and liquids.
 - 1 kilogram for acute solids
 - (Limit for containerized gases is a state requirement)
- **372.2(e)**: Academic Labs Rule (“Subpart K”): Labs will have 12 months (instead of 6 months in original rule) for regularly scheduled removals of unwanted hazardous material – EPA change in GIR.

State Initiated Changes

- Modified requirements associated with the Wastewater Treatment Unit Exemption to match requirements to generator category



State Changes - Academic Labs Rule

Minor differences from EPA:

- Containers must be labeled with the date that the unwanted material was first determined to be unwanted (EPA 40 CFR 262.206(a)(2)(i) – NYS 6 NYCRR 372.2(e)(7)(i)('b')('1'))
- All individuals working in a laboratory at an eligible academic entity must be notified of the availability of the Laboratory Management Plan. (EPA 262.207; NYS 372.2(e)(8))
- An eligible academic entity must review and revise its Laboratory Management Plan as needed, but in no case less than every five years. (EPA 262.214(d); NYS 372.2(e)(15)(iv))



FedReg 5 Implementation Guidance

Upon Adoption of FedReg 5 the Department will provide the regulated community with additional guidance documents including:

- Small Business Guide
- Fact Sheets
- Certain Rule Specific Guides

Outreach events specifically associated with the Academics Lab Rule will be scheduled.



FedReg 6

Status of FedReg 6

Prepare draft regulations and evaluation documents (explaining the effects)

Next steps:

- Early Public Outreach– webinars and meetings
- **More focused outreach, more detailed information**
- Evaluate comments, revise as needed
- Propose regulations – public meetings and hearing(s)
- Evaluate comments, revise as needed
- Approval process
- Publish final regulations
- Effective 60 days later



Upcoming Outreach – register to attend

February 13 – Rochester area

February 19 – Columbia University (New York City area)

February 25 – Yonkers (Westchester County area)

February 26 – Hauppauge (Long Island area)

March 3 – Rensselaer (Albany area)

Registration information:

<https://www.dec.ny.gov/regulations/117115.html#Outreach>



EPA Rules Included in FedReg 6:

- **Conditional Exclusions for Solvent Contaminated Wipes (Wipes Rule) (78 FR 46448)**
- **Conditional Exclusion for Carbon Dioxide (CO₂) Streams in Geologic Sequestration Activities (79 FR 350).**
- **Hazardous Waste Electronic Manifest Rule (e-Manifest Rule) (79 FR 7518) and User Fee Rule (83 FR 420).**



EPA Rules Included in FedReg 6:

- **Revisions to the Definition of Solid Waste (73 FR 64668)**
as amended by: Revisions to the Definition of Solid Waste (DSW Rule) (80 FR 1694)
- **Hazardous Waste Export-Import Revisions (Export-Import Rule) (81 FR 85696)** – On January 1, 2017 EPA began enforcing nationally, some provisions will be phased in after this date.
- **Hazardous Waste Generator Improvements Rule (GIR) (81 FR 85732).**



EPA Rules Included in FedReg 6:

- **Air Bags Rule (Interim Final Rule)** (83 FR 61552).
- **Pharmaceuticals Rule (40 CFR 266, Subpart P)** (84 FR 5816) – Sewering ban in effect nationwide on August 21, 2019 regardless of adoption status.
- **Aerosol Cans (add to Universal Waste Rule)** – EPA published the final rule on December 9, 2019, and is first effective in non-authorized states on February 7, 2020.



EPA Rules – Upcoming Rule

- **Modernizing Ignitable Liquids Determinations (Update to ignitability test method)** – The current test method for ignitability has been out of date for some time. Rule was proposed by EPA on April 2, 2019. EPA’s regulatory agenda has a March 2020 estimate for a final rule.

State Initiatives

- Define “staging” to eliminate confusion about “no prior storage” with respect to the recycling exemption.
- Add cold crushing option for used oil filters
- Extend secondary containment of liquids provisions to all liquid storage of greater than 185 gallons throughout the state, and include a phase-in period (by quantity or by location?)
- Extend closure requirements to all LQGs statewide.
- Part 364 coordination
- Add paint waste and solar panels to Universal Waste Rule?

Generator Rule: Storage of Liquid HW Over Sole Source Aquifer

Generator rule adds more explicit closure requirements, including notification, for LQGs

- NYS has special protections for storage of liquid HW over three designated sole source aquifers. List needs updating.
- LQG closure - do we want to maintain a two tier approach? (generator rule vs sole source aquifer)
- Secondary containment – continue just sole source aquifer protections, or extend throughout the state? Phase in time – by location, or volume, or combination?

General EPA-NYS Crosswalk

State Regulation (6 NYCRR)	EPA Regulation (40 CFR)	Description
<u>Part 370</u>	Part 260	Hazardous Waste Management System: General
<u>Part 371</u>	Part 261	Identification and Listing of Hazardous Waste
<u>Subpart 372-1</u>	Part 262	Standards Applicable to Generators of Hazardous Waste
<u>Subpart 372-2</u> , <u>Part 364</u>	Part 263	Standards Applicable to Transporters of Hazardous Waste
<u>Subpart 373-1</u> , <u>Part 621</u> , <u>Part 624</u>	Parts 270/124	Hazardous Waste Treatment, Storage and Disposal Facility Permitting Requirements; Uniform Procedures (Part 621) and Permit Hearing Procedures (Part 624)
<u>Subpart 373-2</u>	Part 264	Final Status: Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
<u>Subpart 373-3</u>	Part 265	Interim Status: Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
<u>Subpart 374-1</u>	Part 266	Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities
<u>Subpart 374-2</u>	Part 279	Standards for the Management of Used Oil
<u>Subpart 374-3</u>	Part 273	Standards for Universal Waste Management
<u>Subpart 374-4</u>	No Equivalent	Standards for the Management of Elemental Mercury and Dental Amalgam Wastes at Dental Facilities
<u>Part 376</u>	Part 268	Land Disposal Restrictions and Treatment Standards

Wipes Rule

- “Once a listed waste, always a listed waste”
- Some provisions are more stringent than current DEC Policy DSH-HW-03-09
- Should we consider exempting wipes directed for disposal?
- Possible extra controls:
 - Never any free liquids
 - Notify DEC
 - Retain shipping papers
 - Directly to disposal facility (no transfer facilities)
 - Limit disposal options – waste to energy, incinerations (ban landfill)?

Wipes Rule: Disposal Exemption

- Risk assessment didn't consider transfer facilities;
- Containers – compression can cause liquids to be released;
- Once generator closes container, no way to know if they meet the “no free liquids” performance standard



Carbon Dioxide (CO₂) Sequestration

- Carbon dioxide capture and storage is a process that aims to reduce CO₂ emissions from power plants and other industrial sources.
- Some CO₂ streams may be hazardous wastes.
- New York State is a member state of the Midwest Regional Carbon Sequestration Partnership.



E-Manifest Rule

- EPA's February 7, 2014 **Hazardous Waste Electronic Manifest (e-Manifest) Rule**.
- DEC would continue to collect certain information:
 - State waste codes for PCB-Contaminated wastes;
 - Disposal method codes for fee purposes.
- DEC currently requires, per 372.2(b)(3)(iii), that the generator mail one copy of the manifest form to the generator state, and one copy to the destination state.

Definition of Solid Waste Rule

The idea of the definition of solid waste rule is to

- identify and set standards for materials that would be hazardous waste if disposed but can instead be legitimately recycled, and when recycled are indistinguishable from comparable raw materials or manufacturing intermediates.
- The goal is to put the materials to higher value recycling, to make better use of the resources (example: IPA going for distillation instead of fuel blending)
- States are not required to adopt the exclusions

More stringent provisions include

- Prohibition of sham recycling
- New recordkeeping to demonstrate that the material is not accumulated speculatively



Less stringent provisions include

- Generator-Controlled Exclusion – variance for material recycled under control of the generator
- Transfer-based exclusion (was called verified recycler exclusion)
- Remanufacturing exclusion (high value solvents exclusion)

Legitimate Recycling – Four Factors

1. Hazardous Secondary Material (HSM) provides a useful contribution
2. Product or manufacturing intermediate made from the HSM is valuable
3. HSM is managed as a valuable commodity
4. Recycling product is comparable to a legitimate product or intermediate – no Toxics Along for the Ride (TARs)

DEC considerations

Generator-controlled exclusion:

- Adopt exclusions for recycling on-site and off-site under control of the same generator; not adopt the tolling arrangement provisions

Remanufacturing Exclusion

- Adopt but may be more stringent than EPA

2008 Transfer-Based Exclusion

“Materials transferred for recycling are not solid waste if....”

- Recyclers notify but don't need approval
- Off-site recyclers need financial assurance for closure
- Onus on the generator to ensure that they send their hazardous secondary material to a recycler who will legitimately recycle it
- Lacked key protections – Environmental Justice, preparedness & prevention, containment
- Legitimate recycling definition – 4 factors; factors 3 and 4 were optional



DSW Rule 2015 and 2018 Revisions

- 2015 Rule added a variance procedure to the transfer-based exclusion, and added remanufacturing exclusion
- Most of verified recycler provisions were vacated, EPA returned to 2008+ exclusion (retained preparedness & prevention and containment requirements)
- Factor 4 in definition of Legitimate Recycling (no toxics along for the ride) also vacated.

NYS Options – Transfer-Based Exclusion

- Not adopt
- Receiving facilities must be TSDFs
- Other options may be available if statutory changes can be made to the Industrial Hazardous Waste Siting Law.



Generator Improvement Rule

Some Key Provisions

- Reorganizes the regulations – less cross-referencing
- Hazardous waste determinations – more explicit, adds recordkeeping for SQGs and LQGs
- Generator Categories – can't be different categories for acute vs non-acute hazardous waste
- Labeling – hazards of the waste
- Preparedness and Prevention
- LQG Quick Reference Guide to the Contingency Plan



Generator Improvements Rule

More stringent Provisions Include:

- SQGs and LQGs must re-notify.
- SGQs and LQGs must indicate the hazards of the contents when labeling containers and tanks.
- LQG contingency plan quick reference guide.
- LQG that cannot “clean close” their facility or accumulation unit, must close the unit or facility as a landfill.



Generator Improvements Rule

Less stringent Provisions:

- VSQG allowed to send waste to LQG if both are under control of the same person.
- VSQGs and SQGs are allowed to conduct episodic events, provided that certain conditions are met.
- LQGs are allowed to seek a waiver from the 50-foot setback requirement for ignitable or reactive hazardous waste.

Hazardous Waste Counting

TABLE 1 to 40 CFR § 262.13—Generator Categories Based on Quantity of Waste Generated In A Calendar Month (Source: USEPA)

Quantity of acute hazardous waste generated in a calendar month	Quantity of non-acute hazardous waste generated in a calendar month	Quantity of residues from a cleanup of acute hazardous waste generated in a calendar month	Generator Category
> 1 kg	Any amount	Any amount	LQG
Any amount	≥ 1,000 kg	Any amount	LQG
Any amount	Any amount	> 100 kg	LQG
≤ 1 kg	> 100 kg and < 1,000 kg	≤ 100 kg	SQG
≤ 1 kg	≤ 100 kg	≤ 100 kg	VSQG (CESQG)

New Labeling Requirements (GIR)

Generator Improvements Rule requires that generators mark or label with an indication of the hazards of the contents.

Options include, but aren't limited to:

- Hazardous waste characteristic(s)
- DOT hazard communication consistent with 49 CFR 172 Subpart E or F
- OSHA Hazard Communication Standard consistent with 29 CFR 1910.1200

Includes containers in Satellite Accumulation Areas



Closure Notifications (GIR)

- **Waste Accumulation Units** – must place notice in operating record within 30 days of closure or meet applicable closure performance standards and notify EPA Region 2.
- **Facilities**
 - Must notify EPA Region 2 using Form 8700-12 at least 30 days prior to closure.
 - Must notify EPA Region 2 using Form 8700-12 within 90 days of closure; must clean close or has to close as landfill

Generator Rule: Storage of Liquid HW Over Sole Source Aquifer

Generator rule adds more explicit closure requirements, including notification, for LQGs

- NYS has special protections for storage of liquid HW over sole source aquifers. List needs updating. Expand list of sole source aquifers and or clarify boundaries (hydraulic or EPA boundaries)?
- LQG closure – two tier? (generator rule vs sole source aquifer)
- Secondary containment – continue just sole source aquifer protections, or extend throughout the state? Phase in time – by location, or volume, or combination?

Closure Requirements

	DEC SSA	EPA
Notification	45 days (final closure – what about unit closure?)	EPA (unit – operating record or notification to EPA within 30 days of closing the unit; facility – 30 days)
Public Notice	Yes	No
Certification	w/in 60 days of partial or final closure, PE Cert	EPA 90 days (is this just full closure?) – Site ID form
Date on which they expect to begin closure	within 30 days; or 1 year if reasonable expectation of receiving more waste	Seems to say within 30 days
Date to remove final volume of hazardous waste	Within 90 days after receiving the final volume of hazardous wastes, or the final volume of nonhazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (4) and (5) of this subdivision, at a hazardous waste management unit or facility, or within 90 days after approval of the closure plan, whichever is later	Seems to say within 90 days; the request for extension of time language seems to match ours
Closure performance standard	same	Same; If can't close clean, must close as a landfill
Written closure plan	Maintained onsite, furnished upon request	No

Consolidating Waste (GIR)

When consolidating the contents of two or more containers of the **same hazardous waste** or **two different hazardous wastes that are compatible** into a new container, Transporters must mark the containers of 119 gallons or less with the words “Hazardous Waste” and the applicable hazardous waste codes



Annual Reporting (GIR)

- Facilities that do not store prior to recycling are required to file an Annual Report – 40 CFR 261.6(c)(2)(iv)
- Clarifies that facilities must report all waste generated during a calendar year in which the facility has operated as an LQG at any time during the year.



LQG Consolidation

Topic	GIR requirements
Who is exempt from TSDF permitting?	LQGs under control of the same “person”
Part 360 requirements	Meet 360 as well
Notification	File Notification of Hazardous Waste Activity with EPA
Labeling - CESQG	CESQGs label the waste as “hazardous waste” and indication of hazards.
Recordkeeping	maintains records of shipments received from the CESQGs for three years
Accumulation Time Limit	90 day clock for the CESQG waste begins when waste is received from the CESQG
Other	Comply with all LQG requirements for that waste and their own generated HW, even if they would otherwise be a CESQG or LQG

Generator Rule: Episodic Generation: Summary

- Notification: 30 days before planned, within 72 hrs. of unplanned.
- One per year. Can petition for second of the other type.
- Duration: all waste must be gone within 60 days of the start
- Labeling “Episodic Hazardous Waste,” date that the event started, identify the hazard for the waste.
- Records retention: 3 years.

Episodic Generation – Issues

- Notification – to DEC as well as EPA; when for unplanned
- Distinguishing between normal and episodic generation
- Outreach – non-traditional generators may not even know they have hazardous waste
- Additional Issues:
 - Documentation needed for fees/annual reports
 - Consider secondary containment of liquids.

Air Bag Rule

- Gas-generating airbag systems (both Takata and non-Takata) contain an explosive propellant that causes airbag waste to exhibit the hazardous waste characteristics of ignitability and reactivity. D001 and D003

Recalled Airbags (such as recalled Takata airbags) removed from vehicles:

- Cannot be safely reused or deployed outside of the vehicle*;
- Do not qualify for exemptions and exclusions *;
- Conditional exemption is intended to help accelerate the removal of recalled airbags from vehicles and the safe management of undeployed airbags that are removed from vehicles



New York State - Airbags

- Can't currently offer used undeployed airbags for sale – even across state lines;

DEC Enforcement Directive signed July 5, 2019; includes state notification requirement.

Conditional exemption

- Reduced requirements for airbags sent for safe disposal.
- Airbags managed under the special exemption won't be counted towards generator status.
- Airbags may be deployed while still installed in a vehicle that will be recycled for scrap metal value – deploying installed airbags in vehicles that will go for scrap metal recycling is considered exempt treatment.
- Generator can electronically deploy non-defective airbag modules outside of the vehicle and direct the metal for recycling under the hazardous scrap metal exemption; CESQGs can electronically deploy non-defective airbags.

Subpart P—Hazardous Waste Pharmaceuticals

Areas of Discussion:

1. Sewer Ban
2. Amendment to the Listing of P075 for Nicotine
3. Overall Pharmaceutical Rule EPA Subpart P



Sewer Ban

Goes into effect on August 21, 2019 throughout US regardless of state adoption. (HSWA authority)

40 CFR 266.505 prohibits sewerage of hazardous waste pharmaceuticals.

Ban applies to all defined healthcare facilities and reverse distributors including CESQGs.



Amendment of P075 Definition

Listing for nicotine and pyridine adds a parenthetical;

“this listing does not include patches, gums and lozenges that are FDA-approved over-the-counter nicotine replacement therapies.”

Use of this definition is allowed in NY through an enforcement discretion letter.



Pharms Rule: Nicotine Listing

Nicotine P075 Listing		
No Longer Part of Listing	Still Included in the Listing, Regulated as Pharmaceuticals*	Still Included in Listing
<p>FDA-approved over-the counter nicotine replacement therapies (OTC NRTs)</p> <ul style="list-style-type: none"> • Nicotine Patches • Nicotine Gums • Nicotine Lozenges 	<ul style="list-style-type: none"> • Prescription nicotine (e.g., nasal spray, inhaler) • E-liquids packaged for retail use in ENDS • Finished product ENDS, including components & parts sealed in final packaging intended for consumer use <p>(ENDS means Electronic Nicotine Delivery System) *If generated by a health care facility</p>	<ul style="list-style-type: none"> • E-liquids used by manufacturers of tobacco products • E-liquids sold or distributed for further manufacturing, mixing or packaging into a finished e-delivery system • Legacy pesticides containing nicotine • Nicotine used in research and manufacturing • Other unused formulations



PART 266 Subpart P—Hazardous Waste Pharmaceuticals

266.500 - Definitions for this subpart.

266.501 - Applicability.

266.502 - Standards for healthcare facilities managing non-creditable hazardous waste pharmaceuticals.

266.503 - Standards for healthcare facilities managing potentially creditable hazardous waste pharmaceuticals.

266.504 - Healthcare facilities that are very small quantity generators for both hazardous waste pharmaceuticals and non-pharmaceutical hazardous waste.

266.505 - Prohibition of sewerage hazardous waste pharmaceuticals.



PART 266 Subpart P—Hazardous Waste Pharmaceuticals cont.

266.506 - Conditional exemption for hazardous waste pharmaceuticals that are also controlled substances and household hazardous waste pharmaceuticals collected in a take-back event or program.

266.508 - Shipping non-creditable hazardous waste pharmaceuticals from a healthcare facility or evaluated hazardous waste pharmaceuticals from a reverse distributor.

266.509 - Shipping potentially creditable hazardous waste pharmaceuticals from a healthcare facility or a reverse distributor to a reverse distributor.

266.510 - Standards for the management of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals at reverse distributors.



Part 266 Subpart P Applicability

Part 266 Subpart P is considered more stringent, and therefore is NOT optional for:

- States to adopt
- Healthcare facilities and reverse distributors

Hazardous waste pharmaceuticals must be managed under Part 266 Subpart P by:

- All reverse distributors
- All healthcare facilities that generate above VSQG amounts of hazardous waste



New Definitions within Subpart P

Include:

Pharmaceutical

Healthcare Facility

Reverse Distributor

Long-Term Care Facility



Types of HW Pharmaceuticals

There are 3 types of *Hazardous Waste Pharmaceuticals*:

- Non-creditable hazardous waste pharmaceutical (TSDF)
- Potentially creditable hazardous waste pharmaceutical (Reverse Distributor)
- Evaluated hazardous waste pharmaceutical (TSDF)



Healthcare Facility Standards

- Notification: all healthcare facilities must submit a one-time notification that they are operating under Subpart P (using Site ID Form: 8700-12)
 - Facilities that are not required to submit a biennial report for their other hazardous waste must notify within 60 days of the rule going into effect
 - Non-authorized states: notifications will be due in October 20, 2019
 - Facilities that are required to submit a biennial report may notify on their normal biennial reporting cycle
 - Non-authorized states: notifications will be due with March 1, 2020 BR
- Training: all personnel managing non-creditable hazardous waste pharmaceuticals must be thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies



Options for VSQG Healthcare Facilities

Healthcare Facilities that are VSQGs are not subject to Part 266 Subpart P, except the sewer prohibition but can:

- Opt into Subpart P and comply with all its provisions, OR
- Use the optional provisions of Part 266 Subpart P:
 1. A VSQG healthcare facility can continue to send potentially creditable hazardous waste pharmaceuticals to a reverse distributor
 2. A VSQG healthcare facility can send its hazardous waste pharmaceuticals off-site to another facility, provided the receiving facility is either:
 - A healthcare facility operating under Part 266 Subpart P and meets certain conditions, OR
 - An LQG operating under Part 262 and meets the conditions for off-site consolidation



Options for VSQG Healthcare Facilities Cont.

3. A long term care facility which is a VSQG can dispose of its hazardous waste pharmaceuticals in an on-site collection receptacle that complies with DEA regulations
 - Note: DEC collection receptacles can only be used for controlled substances that are from the ultimate user.
4. A long-term care facility with 20 beds or fewer will be presumed to be a VSQG and not subject to Subpart P, except the sewer prohibition.
 - Note: long-term care facilities with >20 beds may also be VSQGs

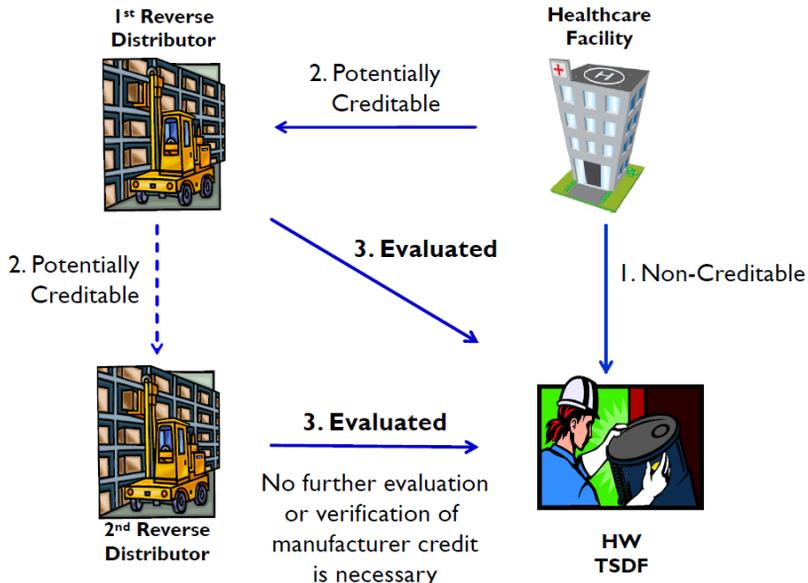


Empty Containers

- New empty container standards apply to
 - Containers with hazardous waste pharmaceuticals –acute & non-acute
 - Healthcare facilities and reverse distributors subject to Part 266 Subpart P and
 - Anyone else with containers of hazardous waste pharmaceuticals
- Residues remaining in “RCRA empty” containers are not regulated as hazardous waste
- Can be used to determine whether a healthcare facility is subject to Part 266 Subpart P
- Four different standards for different types of containers found in a healthcare setting
- Triple rinsing of containers with acute hazardous waste pharmaceuticals is not required/allowed anymore



3 Types of HW Pharmaceuticals



Shipments of HW Pharmaceuticals

Non-Creditable & Evaluated Hazardous Waste Pharmaceuticals

- Both must be sent to a TSDf
- Both must be sent with manifest and hazardous waste transporter
- Non-creditable: healthcare facility must use “PHRM” code on manifest in item 13 (other hazardous waste codes are allowed but not required)
- Evaluated: reverse distributor must list all hazardous waste codes on manifest

Potentially Creditable Hazardous Waste Pharmaceuticals

- Can be sent to a reverse distributor before going to a TSDf
- Manifest and hazardous waste transporter are NOT required
- Common carrier (e.g., UPS, USPS, FedEx) is acceptable
- Shipper must receive delivery confirmation from reverse distributor
 - 35 days from date the shipment was sent
 - Electronic delivery confirmation that common carriers use will typically be sufficient



Universal Waste Rule Amendments



Universal Waste Rule Revisions

- Aerosol Cans
- Waste Paint
- Solar Panels

Solar panels will be considered in FedReg6; we may proceed with aerosol cans and paint waste as a separate rulemaking.



Aerosol Cans

- May be hazardous waste due to contents and/or due to propellant
- Fire and explosion hazard from containers still under pressure



EPA's Aerosol Can Rule

Handlers may:

- sort aerosol cans by type;
- consolidate intact aerosol cans in larger containers;
- remove actuators to reduce the risk of accidental release;
- When following certain conditions, are allowed to puncture and drain aerosol cans when the emptied cans are to be recycled.

Accumulation:

- Container storage performance standards;
- Temperature control;
- Follow written procedures for puncturing, including procedures for segregation incompatible waste



Paint Waste

- New state product stewardship law will require take-back system, likely to take effect in 2021
- New law covers architectural paint sold in 5-gallon or smaller container from consumers (consumers include businesses)
- Oil-based paints may be an ignitable hazardous waste
- Universal waste classification would facilitate collection from non-households
- What standards should be applicable?
- What universe – should other types of paint waste such as marine paints and other specialty paints be included in universal waste rule?



Questions

Name one State Initiative in FedReg5?

In what locations of the state is secondary containment currently required for LQGs?

Has FedReg5 been Adopted?

Which Rule within FedReg5 includes at least 10 federal register notices?



Contact Information

Please send all written comments and questions to:
HWregs@dec.ny.gov

Michelle Ching:

Phone: 518-402-8651

michelle.ching@dec.ny.gov

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Website Links

Hazardous Waste Management Regulatory Revisions

<https://www.dec.ny.gov/regulations/117108.html>

Hazardous Waste Revisions Under Consideration

<https://www.dec.ny.gov/regulations/117115.html>

