

2020 Hazardous Waste Rulemaking

June 9, 2020 Meeting Questions and Comments

Questions¹

1. Will aerosol cans be considered universal waste?

Response: Yes, EPA added hazardous waste aerosol cans to those “universal wastes” regulated under title 40 of the Code of Federal Regulations (CFR), part 273. ADEQ is proposing to adopt this rule, making it effective in Arizona.

2. Should we expect any changes/issues with managing HSM?

Response: Hazardous Secondary Materials (HSM) are excluded from the definition of solid waste (DSW) and hazardous waste regulations provided they meet EPA’s criteria for legitimate recycling and are not speculatively accumulated. The requirements for HSM generated and reclaimed under the control of the generator are found at 40 CFR 261.4(a)(23). The requirements for HSM reclaimed by recycler (known as the transfer-based exclusion) are found at 40 CFR 261.4(a)(24). ADEQ is proposing to adopt these regulations.

3. As a municipality, will there be changes in managing HHW?

Response: There is no change related to managing household hazardous waste (HHW).

4. When is the expected date of adoption of Pharma Rule, DSW, Aerosols?

Response: ADEQ’s current schedule for completion is early January 2021.

5. Must the aerosol containers that are managed as Universal Waste be manifested or included on a BOL (Bill of Lading)? Are they regulated under USDOT (United States Department of Transportation)?

Response: Universal waste regulations do not require small or large quantity handlers of universal waste to use a manifest for transportation off site. Small quantity handlers of universal waste are not required to keep records of their off-site shipments (40 CFR 273.19). Large

¹ Some questions edited for clarity or spelling and/or grouped into common question themes.

quantity handlers of universal waste must follow the tracking requirements in 40 CFR 273.39, which include keeping a record of each off-site shipment of universal waste from the handler to other facilities. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document.

If the universal waste being offered for off-site transportation it must meet the USDOT's definition of hazardous material, then USDOT regulations apply.

6. If an aerosol is considered hazardous for reasons beyond ignitability (i.e. waste codes other than D001), will it still be considered universal waste under the new rule?

Response: Yes. The applicability of aerosols is defined in 40 CFR 273.6: "An aerosol can is a hazardous waste if the aerosol can exhibits one or more of the characteristics identified in part 261, subpart C, of this chapter or the aerosol can contains a substance that is listed in part 261, subpart D, of this chapter." Therefore, the rule does not limit a universal waste aerosol can to specifically D001.

7. Will you be adopting the nicotine exclusion with subpart P (nicotine patches, gums, lozenges are NOT P075)?

Response: Yes, ADEQ will adopt the nicotine exclusion into the Arizona rules.

EPA's pharmaceuticals management rule exempts FDA-approved over-the-counter nicotine replacement therapies (i.e., patches, gums and lozenges) from regulation as a RCRA hazardous waste (specifically, these wastes are exempt from the RCRA Hazardous Waste Code P075 for nicotine). Therefore, under the federal hazardous waste regulations, generators of these wastes (e.g., retail stores) may discard them as non-hazardous waste.

8. Who is the POC for submitting the Request for Approval to Manage Aerosols as Universal Waste? And what needs to be on the submittal?

Response: Your request can be submitted via email to

HazWasteInspections@azdeq.gov

Please include the following:

1. Company name/EPA ID number
2. Address
3. A detailed description of your process and how your process will meet the new requirements.
4. Please provide as much detail as possible.

9. Could you please give an industry or practical example of how 260.34 will work if adopted?

Response: If ADEQ adopts 40 CFR 260.34 as shown in the proposed draft, it would not seek authorization for the section, and EPA would make the final decision for the two types of non-waste determinations described in that section. An EPA decision would happen in one of two ways because ADEQ would adopt the section by reference, but keep “EPA” as meaning “EPA”. A facility could either apply directly to EPA, or it could apply to ADEQ, in which case ADEQ’s decision would have to be approved by EPA. (See 260.34(a)(3)). EPA currently makes the final decision for other types of variances and non-waste determinations in the 260.20 and 260.30 series of EPA regulations. 40 CFR 260.34 applies to a facility seeking a non-waste determination for a hazardous secondary material (HSM) which is reclaimed in a continuous industrial process or non-waste determinations for HSM which is indistinguishable in all relevant aspects from a product or intermediate if the applicant demonstrates that the HSM is comparable to a product or intermediate and is not discarded.

10. Can you confirm if DSW (Definition of Solid Waste) includes exporting for recycling?

Response: Yes, the export requirements for the transfer-based exclusion are included in EPA’s DSW rule at 40 CFR 261.4(a)(25). ADEQ proposes to adopt this rule.

11. When/Can generators manage aerosols as universal waste.

Response: ADEQ’s adoption of EPA’s aerosol can rule should be effective in early January 2021. However, if you wish to manage aerosols as universal waste before that date, please see the response to Question 8 above.

12. How will the pharmaceutical rule impact the P2 requirements since there will be no more quantity status requirements?

Response: After the Pharmaceuticals Management rule is effective in Arizona (currently planned for January 2021), FDA-approved nicotine replacement therapies will no longer need the P075 hazardous waste code. ADEQ recommends that you re-evaluate whether or not you meet Arizona’s P2 Planning Program thresholds. You can do this here: [P2 screening tool](#).

13. Is it correct that we can continue to puncture aerosol cans and place the cans in scrap metal?

Response: Yes, it is still acceptable to puncture aerosol cans in order to recycle the can. EPA's rule contains specific requirements for this activity at 40 CFR 273.13(e)(4) for small quantity handlers and 40 CFR 273.33(e)(4) for large quantity handlers.

Puncturing and draining an aerosol can, if performed for the purpose of recycling (*e.g.*, for scrap metal recycling), is considered part of the recycling process and is exempt from hazardous waste permitting requirements. However, until this rulemaking goes into effect, facilities receiving hazardous waste aerosol cans from off site would require a permit for storage prior to the recycling activity. If an organization would like to seek enforcement discretion while we pursue this rule adoption please submit request to:

HazWasteInspections@azdeq.gov

Please include the following:

1. Company name/EPA ID number
2. Address
3. A detailed description of your process and how your process will meet the new requirements.
4. Please provide as much detail as possible.

14. Is the process for aerosol management the same for VSQGs?

Response: Very Small Quantity Generators (VSQGs) will not face any new restrictions from the addition of hazardous waste aerosol cans to the universal waste rule. VSQG waste that qualifies as universal waste under the definition could be managed through the universal waste rules. The EPA federal register states, "This rule will affect persons who generate, transport, treat, recycle, or dispose of hazardous waste aerosol cans, unless those persons are households or very small quantity generators (VSQGs)."

15. What documents would ADEQ require for pre-2008 inspection reports and determinations?

Response: ADEQ will not require documents for pre-2008 recycling exclusions to remain valid. In some situations, ADEQ could require speculative accumulation records, or documents for recycling processes with certain legitimacy characteristics. These documents would not be a condition for the validity of the exclusion.



HAZARDOUS WASTE RULEMAKING

In accordance with EPA's preamble language from the 2015 Notice of Final Rulemaking (80 FR 1735), a facility's responsibilities under an existing exclusion may be impacted by two new requirements. If applicable, documents related to 1) a new recordkeeping requirement for speculative accumulation; and (2) a documentation, certification, and notification requirement for recycling processes which are legitimate despite having levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product.

Comments²:

1. The rules do not alter pre-2008 solid waste exclusions, determinations, and variances. However, we note that in addition to variances and determinations under the formal procedures of 40 C.F.R. § 260.30, EPA stated in the 2015 DSW final rule preamble that the DSW final rules also do not alter “determinations made in letters of interpretations and inspection reports.” 80 Fed. Reg. at 1735.

It is important that ADEQ recognize this additional limitation on the codification of the “legitimate recycling criteria” in its preamble to the proposed rule. As examples of such determinations, our clients have relied on a 2002 ADEQ interpretation of the regulatory status of certain “mineral processing” streams after the D.C. Circuit’s decision in the Association of Battery Recyclers case, and evaluations of the regulatory status of its streams as evaluated in ADEQ and EPA inspection reports.

2. Not covered under the Pharmaceutical rule are the stronger prescription nicotine items like inhalers and also e-cigarettes.

3. Looks like there is a typo right above 261.4(a)(25) reference- should be 261.4(a)(24), not 261.24.

² Some comments edited for clarity or spelling.