

DRAFT 07/07/2021

BEFORE THE  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

IN THE MATTER OF HAZARDOUS WASTE )  
RULES AND REGULATIONS, CHAPTER 1, IBR Update 2 )  
WYOMING HAZARDOUS WASTE )  
MANAGEMENT STANDARDS )

**STATEMENT OF PRINCIPAL REASONS**

**Background**

The State of Wyoming (State) Department of Environmental Quality, Solid and Hazardous Waste Division (WDEQ/SHWD), pursuant to the authority vested in it by Wyoming Statute (W.S.) § 35-11-503(a)(v) and (d), proposes that the Environmental Quality Council (Council) revise Chapter 1 of the Wyoming Hazardous Waste Rules and Regulations (HWRR) to incorporate changes since the last HWRR adopted by the State on May 3, 2019. The existing HWRR use Incorporation By Reference (IBR) of the Code of Federal Regulations, Title 40, Parts 124, 260-268, 270, 273, and 279. The following is a statement of WDEQ/SHWD’s principal reasons for adopting these rules, as required by *Tri-State Generation & Transmission Ass’n v. Env’tl. Quality Council*, 590 P.2d 1324, 1330-32 (Wyo. 1979).

**Purpose and Intent of Proposed Revisions**

The proposed revisions to the Wyoming HWRR, Chapter 1 include the addition of new rules or revisions as defined in Checklists 233, 240, 241, 242, and 243 from the U.S. Environmental Protection Agency (EPA) which have been promulgated and finalized by EPA since May 3, 2019, the last date of adoption of the HWRR, IBR Update 1. The WDEQ/SHWD intends to adopt the rules to ensure that the HWRR are up-to-date with the federal rules as of July 7, 2020. This revision will be the second update of the HWRR since the State began to use IBR to ensure that its rules are consistent with EPA’s, except where more stringent or broader in scope.

**Compliance with Federal Regulations (W.S. § 35-11-503(a)(v))**

The proposed rule revisions are designed to be equivalent to federal regulations except where State provisions are more stringent or broader in scope. The federal regulations incorporated by reference include 40 CFR Parts 124, 260-268, 270, 273 and 279. These rule changes meet or exceed the minimum requirements of federal laws and regulations, while maintaining state primacy as required by W.S. § 35-11-503(d)(i).

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**Public Outreach**

WDEQ/SHWD conducted public outreach, including emailed presentations and phone calls with parties affected by these rules and regulations including pharmacies, hospitals, automotive dealerships, and RCRA permitted facilities. Outreach was conducted from January 2020 to May of 2020. Based on the outreach, the WDEQ/SHWD found that the public and the regulated community support the adoption of the new rules for the Wyoming HWRR.

**References:**

EPA compiles lists of related regulatory changes into various checklists that States may use to incorporate the changes by reference. EPA checklists may be found at the following link:  
<https://www.epa.gov/rcra/rule-checklists-applications-state-authorization-under-resource-conservation-and-recovery-act>

EPA’s federal regulations, found in Title 40 of the Code of Federal Regulations, may be found at the following link:  
<https://www.govinfo.gov/help/cfr>

Individual sections within the Wyoming HWRR detail which parts and subparts of 40 CFR are not incorporated by reference in Wyoming.

**EPA Checklists Which Modify the Chapter 1, IBR Update 1 HWRR**

Bolded items below are checklists this rulemaking will adopt. Checklists marked “Category O” are optional for States to adopt; checklists marked “Category M” are mandatory for states to adopt.

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<b>Checklist</b>	<b>Category*</b>	<b>Published</b>	<b>Promulgation and Effective Dates</b>	<b>Title</b>
<b>233<sup>1</sup></b>	M, some sections O	80 FR 1694 and 80 FR 24644	Promulgated 1/13/15, effective 7/13/15, and May 30, 2018, WY must adopt Checklists A, B, and C, Checklist D2 and E are optional (see below)	Revisions to the Definition of Solid Waste
<b>(233A)</b>	M	80 FR 1694 and 83 FR 24664	Promulgated 1/13/15, effective 7/13/15, and May 30, 2018,	Standards and criteria for variance classification of a solid waste
<b>(233B)</b>	M	80 FR 1694 and 80 FR 24644	Promulgated 1/13/15, effective 7/13/15 and May 30, 2018,	Legitimacy, related provisions, including prohibition of sham recycling, definitions of legitimacy, definition of contained
<b>(233C)</b>	M	80 FR 1694 and 80 FR 24644	Promulgated 1/13/15, effective 7/13/15, and May 30, 2018,	Defines speculative accumulation
<b>(233D2)</b>	O	80 FR 1694 and 83 FR 24664	Promulgated 1/13/15, effective 7/13/15, and May 30, 2018,	DSW exclusions and non-waste determination
<b>(233E)</b>	O	80 FR 1694 and 80 FR 24644	Promulgated 1/13/15, effective 7/13/15, and May 30, 2018,	Remanufacturing exclusion. Less stringent for all states. Adds definition of remanufacturing, revised definition of reclaimed

<sup>1</sup>The Definition of a Solid Waste, Checklist 233, was not adopted in the previous set of rules (May 3, 2019) due to the contentious nature of the rule. However, litigation regarding this matter has been resolved, and the State is now adopting this rule.

\*M = Mandatory rule revision, O = Optional rule revision

Promulgation = Date the rule formally became a law

Effective Date = Date the rule takes effect

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Checklist	Category*	Published	Promulgation and Effective Dates	Title
240	O	83 FR 61552	Promulgated 11/30/18, effective 11/30/18	Safe Management of Airbag Waste
241	M	84 FR 5816	Promulgated 2/22/19, effective 8/21/19	Management of Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine
242	O	84 FR 67202	Promulgated 12/9/19, effective 2/7/20	Universal Waste Regulations: Addition of Aerosol Cans
243	O	85 FR 40594	Promulgated 7/7/20, effective 9/8/20	Modernizing Ignitable Liquids Determinations

81 \*M= Mandatory revision, O= Optional revision  
 82 Promulgation = Date the rule formally became a law  
 83 Effective Date = Date the rule takes effect  
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85 **Modifications Recommended by the Wyoming Water and Waste Advisory Board (WWAB)**

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 87 On June 29, 2021, the WWAB recommended minor changes to the draft IBR Update 2 of the  
 88 HWRR rules including correction of typographical errors and clarification of text and  
 89 definitions.

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 91 The WWAB moved to forward the rules on to the Environmental Quality Council with the minor  
 92 edits provided during the meeting.

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 95 **Effect of the Rule Revisions**

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 97 The Council anticipates that the proposed Wyoming HWRR revisions will benefit the regulated  
 98 community in the following ways:

- 99 1. HWRR will be up-to-date with current 40 CFR as of July 7, 2020.  
 100 2. The revised HWRR will be consistent with those previously adopted by the State.

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 102 The Council anticipates that adoption by IBR of rule revisions to update the current HWRR to 40  
 103 CFR as of July 7, 2020 will benefit the State in the following ways:

- 104 1. Maintains state primacy.

105 2. The State of Wyoming will be up-to-date with the current provisions of 40 CFR, Parts 124,  
106 260-268, 270, 273, and 279 as of July 7, 2020.

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108 **Conclusion**

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110 The Council has determined that the adoption of these Wyoming HWRR revisions is necessary  
111 to update the State of Wyoming hazardous waste management standards to comply with federal  
112 regulations and carry out the responsibilities of the Department of Environmental Quality.

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115 EXECUTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021

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FOR THE ENVIRONMENTAL QUALITY COUNCIL

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Chairperson