

DRAFT 07/07/2021, rev. 9/13/2021

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, General Provisions 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. The proposed revisions to Chapter 1 incorporate both mandatory and optional EPA revisions to the rules to be adopted by the State of Wyoming using incorporation by reference (IBR) and address revisions to the Code of Federal Regulations, Title 40, “Protection of the Environment” (40 CFR), Parts 124, 260-268, 270, 273, and 279 that were promulgated between January 31, 2018 and July 7, 2020. The exception is the adoption of the Definition of a Solid Waste (DSW) rule which was originally promulgated in 2015, was under litigation which has been resolved, and is now being adopted. The remaining rules include the Safe Management of Airbag Waste; Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine; Increasing Recycling by Adding Aerosol Cans to the Universal Waste Regulation; and Modernizing Ignitable Liquids Determinations. Chapter 1 details which

44 parts of the 40 CFR have been adopted by reference, as well as exceptions in each section. In
45 addition, Appendix A, Table 1-1 provides a detailed list of the more stringent and broader in
46 scope provisions for the State, relative to 40 CFR. The revisions also clarify and restructure
47 sections in the Chapter. This revision will be the second update of the HWRR since the State
48 began to use IBR to ensure that its rules are consistent with EPA's, except where more stringent
49 or broader in scope.

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

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

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59 **Public Outreach**

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61 WDEQ/SHWD conducted public outreach, including emailed presentations and phone calls with
62 parties affected by these rules and regulations including pharmacies, hospitals, automotive
63 dealerships, and RCRA permitted facilities. Outreach was conducted from December of 2019 to
64 May of 2020. Based on the outreach, the WDEQ/SHWD found that the public and the regulated
65 community support the adoption of the new rules for the Wyoming HWRR.

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67 **References:**

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69 EPA compiles lists of related regulatory changes into various checklists that States may use to
70 incorporate the changes by reference. EPA checklists may be found at the following link:

71 [https://www.epa.gov/rcra/rule-checklists-applications-state-authorization-under-resource-](https://www.epa.gov/rcra/rule-checklists-applications-state-authorization-under-resource-conservation-and-recovery-act)
72 [conservation-and-recovery-act](https://www.epa.gov/rcra/rule-checklists-applications-state-authorization-under-resource-conservation-and-recovery-act)

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74 EPA's federal regulations, found in Title 40 of the Code of Federal Regulations, may be found at
75 the following link:

76 <https://www.govinfo.gov/help/cfr>

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

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

82 Bolded items below are checklists this rulemaking will adopt. Checklists marked "Category O"
83 are optional for States to adopt; checklists marked "Category M" are mandatory for states to
84 adopt.

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Checklist	Category*	Published	Promulgation and Effective Dates	Title
233¹	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
(233A)	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
(233B)	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
(233C)	M	80 FR 1694 and 80 FR 24644	Promulgated 1/13/15, effective 7/13/15, and May 30, 2018,	Defines speculative accumulation
(233D2)	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
(233E)	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

87 ¹The Definition of a Solid Waste, Checklist 233, was not adopted in the previous set of rules (May 3, 2019) due to the
88 contentious nature of the rule. However, litigation regarding this matter has been resolved, and the State is now adopting this
89 rule.
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91 *M = Mandatory rule revision, O = Optional rule revision

92 Promulgation = Date the rule formally became a law

93 Effective Date = Date the rule takes effect

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

94 *M= Mandatory revision, O= Optional revision
 95 Promulgation = Date the rule formally became a law
 96 Effective Date = Date the rule takes effect
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98 **Modifications Recommended by the Wyoming Water and Waste Advisory Board (WWAB)**

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

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 104 The WWAB moved to forward the rules on to the Environmental Quality Council with the minor
 105 edits provided during the meeting.
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 108 **Effect of the Rule Revisions**

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

- 112 1. HWRR will be up-to-date with current 40 CFR as of July 7, 2020.
 113 2. The revised HWRR will be consistent with those previously adopted by the State.
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115 The Council anticipates that adoption by IBR of rule revisions to update the current HWRR to 40
 116 CFR as of July 7, 2020 will benefit the State in the following ways:

- 117 1. Maintains state primacy.

118 2. The State of Wyoming will be up-to-date with the current provisions of 40 CFR, Parts 124,
119 260-268, 270, 273, and 279 as of July 7, 2020.

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121 **Conclusion**

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

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128 EXECUTED THIS _____ DAY OF _____, 2021

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FOR THE ENVIRONMENTAL QUALITY COUNCIL

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Chairperson