



COLORADO

Solid & Hazardous Waste Commission

Department of Public Health & Environment

NOTICE OF PROPOSED RULEMAKING HEARING BEFORE THE COLORADO SOLID AND HAZARDOUS WASTE COMMISSION

SUBJECT:

For consideration of the amendments to 6 CCR 1007-3, Parts 260 and 262, along with the accompanying Statement of Basis and Purpose, the following will be considered:

Amendment of 6 CCR 1007-3, Parts 260 and 262 - Regulations Pertaining to Hazardous Waste - Confidentiality Determinations for Hazardous Waste Export and Import Documents

These modifications are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in Section 25-15-302(2), C.R.S.

These amendments revise existing regulations of the Colorado Hazardous Waste Regulations (6 CCR 1007-3) regarding the export and import of hazardous wastes from and into the United States. These amendments correspond to the Environmental Protection Agency (EPA) rule that was published in the Federal Register on December 26, 2017 (82 FR 60894-60901), and the amendments to §260.2(c) included in the Hazardous Waste E-Manifest rule published in the Federal Register on February 7, 2014 (79 FR 7518-7563). As part of this rulemaking, Colorado is revising §260.2 to correspond to 40 CFR §260.2 (Availability of information; confidentiality of information). These amendments include moving the incorporation by reference provisions currently found in §260.2 of the state regulations and consolidating the information into §260.11 (Incorporation by reference).

Any information that is incorporated by reference in these proposed rules is available for review at the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division and any state publications depository library.

Pursuant to C.R.S. §24-4-103(3), a notice of proposed rulemaking was submitted to the Secretary of State on April 14, 2020. Copies of the proposed rulemaking will be mailed to all persons on the Solid and Hazardous Waste Commission's mailing list on or before the date of publication of the notice of proposed rulemaking in the Colorado Register on April 25, 2020.

The proposed rulemaking materials may also be accessed at <https://www.colorado.gov/pacific/cdphe/shwc-rulemaking-hearings>.

WRITTEN TESTIMONY



Any alternative proposals for rules or written comments relating to the proposed amendment of the regulation will be considered. The Solid and Hazardous Waste Commission will accept written testimony and materials regarding the proposed alternatives. **The commission strongly encourages interested parties to submit written testimony or materials to the Solid and Hazardous Waste Commission Office, via email to cdphe.hwcrequests@state.co.us by Wednesday, May 6, 2020, at 11:59 p.m. Written materials submitted in advance will be distributed to the commission members prior to the day of the hearing.** Submittal of written testimony and materials on the day of the hearing will be accepted, but is strongly discouraged.

HEARING SCHEDULE:

DATE: Tuesday, May 19, 2020
TIME: 9:00 a.m.
PLACE: Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Building A, Sabin Conference Room
Denver, CO 80246

-OR-

Due to possible social distancing requirements due to COVID-19, the meeting will be held online only at:

https://zoom.us/meeting/register/v5Yvdeusrz0vvIb7_LvFlaHucqX8a1ILEQ

Please check for the official location of the meeting on the commission's website:

<https://www.colorado.gov/pacific/cdphe/shwc>

Oral testimony at the hearing regarding the proposed amendments may be limited.



Brandy Valdez Murphy, Administrator



1 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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4 Solid and Hazardous Waste Commission/Hazardous Materials and
5 Waste Management Division

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8 6 CCR 1007-3

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11 HAZARDOUS WASTE

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14 Confidentiality Determinations for Hazardous Waste Export and Import Documents

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17 1) The Table of Contents for Part 260 is amended by revising the listings for sections
18 260.2 and 260.11 to read as follows:

19
20
21 PART 260 - HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

22
23 Subpart A - General

24 Sec.

25 260.1 Purpose, scope applicability, and effective date.

26 260.2 ~~Incorporation by Reference.~~ Availability of information; confidentiality of information.

27 260.3 Use of number and gender.

28
29 Subpart B - Definitions

30
31 260.10 Definitions.

32 260.11 ~~References.~~ Incorporation by reference.

33 260.12 Sampling and Analytical Methods.

34
35 *****

38 **2) Section 260.2 is amended to read as follows:**

39 **§ 260.2 Incorporation by Reference.** Availability of information; confidentiality of information.

40 ~~(a) References to material incorporated by reference in these regulations refer to 1993 editions unless~~
41 ~~otherwise expressly noted, and do not include any later amendments or editions.~~

42 ~~(b) Information concerning all materials or regulations incorporated by reference in 6 CCR 1007-3 may be~~
43 ~~obtained by contacting:~~

44
45 ~~Regulatory and Program Authorization Coordinator~~
46 ~~Colorado Department of Public Health and Environment~~
47 ~~Hazardous Materials & Waste Management Division~~
48 ~~4300 Cherry Creek Drive South~~
49 ~~Denver, CO 80246-1530~~

50
51 ~~(c) Materials or regulations incorporated by reference in these regulations are available for examination at~~
52 ~~the state publications depository libraries.~~

53
54 (a) Any information provided to EPA under 40 CFR parts 260 through 266 and 268 will be made available
55 to the public to the extent and in the manner authorized by the Freedom of Information Act, 5 U.S.C.
56 section 552, section 3007(b) of RCRA and EPA regulations implementing the Freedom of Information Act
57 and section 3007(b), and 40 CFR part 2, as applicable. Any information provided to the Department
58 pursuant to these regulations will be made available to the public to the extent and in the manner set forth
59 in the Colorado Open Records Act, C.R.S., Title 24, Article 72 (CORA).

60
61 (b) Except as provided under paragraphs (c) and (d) of this section, any person who submits information
62 to EPA in accordance with 40 CFR parts 260 through 266 and 268 may assert a claim of business
63 confidentiality covering part or all of that information by following the procedures set forth in 40 CFR §
64 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent, and by means
65 of the procedures, set forth in 40 CFR part 2, subpart B. Confidential business information (CBI) claims
66 received by the Department will be disclosed by the Department to the extent, and by means of the
67 procedures set forth in § 24-72-204, C.R.S.

68
69 (c)(1) No claim of business confidentiality may be asserted by any person with respect to information
70 entered on a Hazardous Waste Manifest (EPA Form 8700-22), a Hazardous Waste Manifest Continuation
71 Sheet (EPA Form 8700-22A), or an electronic manifest format that may be prepared and used in
72 accordance with 40 CFR § 262.20(a)(3).

73
74 (2) EPA will make any electronic manifest that is prepared and used in accordance with 40 CFR §
75 262.20(a)(3), or any paper manifest that is submitted to the system under 40 CFR §§ 264.71(a)(6) or
76 265.71(a)(6) available to the public under this section when the electronic or paper manifest is a
77 complete and final document. Electronic manifests and paper manifests submitted to the system are
78 considered by EPA to be complete and final documents and publicly available information after 90
79 days have passed since the delivery to the designated facility of the hazardous waste shipment
80 identified in the manifest.

81
82 (d)(1) No claim of business confidentiality may be asserted by any person with respect to information
83 contained in cathode ray tube export documents prepared, used and submitted under 40 CFR §§
84 261.39(a)(5) and 261.41(a), and with respect to information contained in hazardous waste export, import,
85 and transit documents prepared, used and submitted under 40 CFR §§ 262.82, 262.83, 262.84, 263.20,
86

89 264.12, 264.71, 265.12, 265.71, and 267.71, whether submitted electronically into EPA's Waste Import
90 Export Tracking System or in paper format.

91
92 (2) EPA will make any cathode ray tube export documents prepared, used and submitted under 40
93 CFR §§ 261.39(a)(5) and 261.41(a), and any hazardous waste export, import, and transit documents
94 prepared, used and submitted under 40 CFR §§ 262.82, 262.83, 262.84, 263.20, 264.12, 264.71,
95 265.12, 265.71, and 267.71 available to the public under this section when these electronic or paper
96 documents are considered by EPA to be final documents. These submitted electronic and paper
97 documents related to hazardous waste exports, imports and transits and cathode ray tube exports are
98 considered by EPA to be final documents on March 1 of the calendar year after the related cathode
99 ray tube exports or hazardous waste exports, imports, or transits occur.

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101
102 **3) Section 260.11 is amended by revising paragraph (a) to read as follows:**

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104
105 **§ 260.11 Incorporation by reference.**

106
107 (a)(1) When used in parts 260 through 268 and part 100 of these regulations, the following publications
108 are incorporated by reference. ~~These incorporations by reference were approved by the Director of the~~
109 ~~Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as~~
110 ~~they exist on the date of approval and a notice of any change in these materials will be published in the~~
111 ~~Federal Register.~~ Copies of materials incorporated by reference in the federal regulations may be
112 inspected at the Library, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW. (3403T),
113 Washington, DC 20460, libraryhq@epa.gov; or at the National Archives and Records Administration
114 (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:
115 http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. ~~These~~
116 ~~documents are also available for review at the Colorado Department of Public Health and Environment.~~
117 ~~(See § 260.2(b))~~

118
119 (2) All cited references are for that reference that is valid on the particular date of adoption of the
120 pertinent section of these regulations and do not include later amendments or editions of the
121 incorporated material.

122
123 (3) Materials or regulations incorporated by reference in these regulations are available for
124 examination at the Colorado Department of Public Health and Environment and at the state
125 publications depository libraries. Information concerning all materials or regulations incorporated by
126 reference in 6 CCR 1007-3 may be obtained by contacting:

127
128 Regulatory and Program Authorization Coordinator
129 Colorado Department of Public Health and Environment
130 Hazardous Materials & Waste Management Division
131 4300 Cherry Creek Drive South
132 Denver, CO 80246-1530

133
134 (4) Federal statutes and regulations that are cited in parts 260 through 268 and part 100 of these
135 regulations that are not specifically adopted by reference shall be used as guidance in interpreting the
136 Federal regulations in 40 CFR Parts 260 through 266, 268, 270 and 124.

137
138 *****

139 **4) Section 262.83 is amended by revising paragraphs (b)(5) and (f)(9) to read as follows:**

140
141 **§ 262.83 Exports of hazardous waste.**

142
143 (a) *****

144
145 *****

146 **(b) Notifications--(1) General notifications.** At least sixty (60) days before the first shipment of
147 hazardous waste is expected to leave the United States, the exporter must provide notification in English
148 to EPA of the proposed transboundary movement. Notifications must be submitted electronically using
149 EPA's Waste Import Export Tracking System (WIETS), or its successor system. The notification may
150 cover up to one year of shipments of one or more hazardous wastes being sent to the same recovery or
151 disposal facility, and must include all of the following information:

152
153 *****

154
155 (5) For cases where the proposed country of import and recovery or disposal operations are not
156 covered under an international agreement to which both the United States and the country of import
157 are parties, EPA will coordinate with the Department of State to provide the complete notification to
158 country of import and any countries of transit. In all other cases, EPA will provide the notification
159 directly to the country of import and any countries of transit. A notification is complete when EPA
160 receives a notification which EPA determines satisfies the requirements of paragraph (b)(1)(i) through
161 (b)(1)(xiii) of this section. ~~Where a claim of confidentiality is asserted with respect to any notification~~
162 ~~information required by paragraphs (b)(1)(i) through (b)(1)(xiii) of this section, EPA may find the~~
163 ~~notification not complete until any such claim is resolved in accordance with 40 CFR § 260.2.~~

164
165 *****

166 *****

167 **(f) Export contract requirements.** (1) Exports of hazardous waste are prohibited unless they occur
168 under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the
169 movement occurs between parties controlled by the same corporate or legal entity). Such contracts or
170 equivalent arrangements must be executed by the exporter, foreign importer (if different from the foreign
171 receiving facility), and the owner or operator of the foreign receiving facility, and must specify
172 responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this section
173 only if persons assuming obligations under the contracts or equivalent arrangements have appropriate
174 legal status to conduct the operations specified in the contract or equivalent arrangements.

175
176 *****

177
178 (9) Upon request by EPA, U.S. exporters, importers, or recovery facilities must submit to EPA copies
179 of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between
180 parties controlled by the same corporate or legal entity). ~~Information contained in the contracts or~~
181 ~~equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40 CFR §~~
182 ~~2.203(b) will be treated as confidential and will be disclosed by EPA only as provided in 40 CFR §~~
183 ~~260.2.~~

184
185 *****

186 **5) Section 262.84 is amended by revising paragraphs (b)(4) and (f)(8) to read as follows:**
187
188

189 **§ 262.84 Imports of hazardous waste.**
190

191 *****

192
193 (b) **Notifications.** In cases where the competent authority of the country of export does not regulate the
194 waste as hazardous waste and, thus, does not require the foreign exporter to submit to it a notification
195 proposing export and obtain consent from EPA and the competent authorities for the countries of transit,
196 but EPA does regulate the waste as hazardous waste:
197

198 *****

199 (4) A notification is complete when EPA determines the notification satisfies the requirements of
200 paragraph (b)(1)(i) through (xiii) of this section. ~~Where a claim of confidentiality is asserted with~~
201 ~~respect to any notification information required by paragraphs (b)(1)(i) through (xiii) of this~~
202 ~~section, EPA may find the notification not complete until any such claim is resolved in accordance~~
203 ~~with 40 CFR § 260.2.~~
204

205 *****

206 *****

207
208 (f) **Import contract requirements.** (1) Imports of hazardous waste must occur under the terms of a valid
209 written contract, chain of contracts, or equivalent arrangements (when the movement occurs between
210 parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must
211 be executed by the foreign exporter, importer, and the owner or operator of the receiving facility, and
212 must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of
213 this section only if persons assuming obligations under the contracts or equivalent arrangements have
214 appropriate legal status to conduct the operations specified in the contract or equivalent arrangements.
215

216 *****

217
218 (8) Upon request by EPA, importers or disposal or recovery facilities must submit to EPA copies
219 of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between
220 parties controlled by the same corporate or legal entity). ~~Information contained in the contracts or~~
221 ~~equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40~~
222 ~~CFR § 2.203(b) will be treated as confidential and will be disclosed by EPA only as provided in 40~~
223 ~~CFR § 260.2.~~
224

225 *****

226
227
228 **6) Section 8.95 (Statement of Basis for the Rulemaking Hearing of May 19, 2020) is added**
229 **to Part 8 of the Regulations to read as follows:**
230

231
232 **Statement of Basis and Purpose**
233 **Rulemaking Hearing of August 20, 2019**
234

235 **8.95 Basis and Purpose.**
236

237 These amendments to 6 CCR 1007-3, Parts 260 and 262 are made pursuant to the authority granted to
238 the Solid and Hazardous Waste Commission in § 25-15-302(2), C.R.S.
239

240 **Confidentiality Determinations for Hazardous Waste Export and Import Documents**

241
242 These amendments revise existing regulations of the Colorado Hazardous Waste Regulations (6 CCR
243 1007-3) regarding the export and import of hazardous wastes from and into the United States. These
244 amendments correspond to the Environmental Protection Agency (EPA) rule that was published in the
245 Federal Register on December 26, 2017 {82 FR 60894-60901}, and the amendments to § 260.2(c)
246 included in the Hazardous Waste E-Manifest rule published in the Federal Register on February 7, 2014
247 (79 FR 7518-7563).
248

249 The § 260.2 amendments apply a consistent approach in addressing confidentiality claims for export and
250 import documentation, such that EPA will no longer accept confidential business information (CBI) claims
251 that might be asserted in connection with:
252

253 a) processing, using, or retaining individual paper or electronic manifests or aggregate data (see §
254 260.2(c)(1)); and
255

256 b) individual documents and/or aggregate data related to the export, import, and transit of hazardous
257 waste and export of excluded cathode ray tubes (CRTs) (see § 260.2(d)(1)).
258

259 The application of confidentiality determinations to RCRA export, import, and transit documents in this
260 action generally affects three groups:
261

262 a) all persons who export or import (or arrange for the export or import of) of hazardous waste for
263 recycling or disposal, including those hazardous wastes subject to the alternate management
264 standards for:

- 265 (1) universal waste for recycling or disposal,
266 (2) spent lead-acid batteries (SLABs) being shipped for reclamation,
267 (3) industrial ethyl alcohol being shipped for reclamation,
268 (4) hazardous waste samples of more than 25 kilograms being shipped for waste characterization
269 or treatability studies, and
270 (5) hazardous recyclable materials being shipped for precious metal recovery;
271

272 (b) all recycling and disposal facilities who receive imports of such hazardous wastes for recycling or
273 disposal; and
274

275 (c) all persons who export (or arrange for the export of) conditionally excluded cathode ray tubes
276 (CRTs) being shipped for recycling.
277

278 Conforming revisions are being made to paragraphs (b)(5) and (f)(9) of section 262.83 (Exports of
279 Hazardous Waste) and paragraphs (b)(4) and (f)(8) of section 262.84 (Imports of Hazardous Waste) to
280 remove language regarding asserting CBI claims for notification and contract documents related to the
281 export and import of hazardous waste.
282

283 As part of this rulemaking, Colorado is also revising § 260.2 of its regulations to correspond to 40 CFR §
284 260.2 (Availability of information; confidentiality of information). These amendments include moving the
285 incorporation by reference provisions currently found in § 260.2 of the state regulations and consolidating
286 the information into § 260.11 (Incorporation by reference).
287

288 Because of the federal government's special role in matters of foreign policy, EPA does not authorize
289 States to administer Federal import/export functions in any section of the RCRA hazardous waste
290 regulations. This approach of having Federal, rather than State, administering of the import/export
291 functions promotes national coordination, uniformity and the expeditious transmission of information
292 between the United States and foreign countries.
293
294 Although States do not receive authorization to administer the Federal government's import/export
295 functions in 40 CFR part 262 subpart H, or the import/export relation functions in any other section of the
296 RCRA hazardous waste regulations, State programs are still required to adopt the provisions in this rule
297 to maintain their equivalency with the Federal program (see 40 CFR § 271.10(e)).
298
299 Colorado is not adopting the amendments to 40 CFR § 261.39 (Conditional Exclusion for Used, Broken
300 Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling), as Colorado has not
301 adopted state analogs to these optional federal provisions.
302
303 This Basis and Purpose incorporates by reference the applicable portions of the preamble language for
304 the EPA regulations as published in the Federal Register at 82 FR 60894-60901, December 26, 2017,
305 and the preamble language for the amendment of § 260.2 as published in the Federal Register at 79 FR
306 7518-7563, February 7, 2014.