



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 262, 264 and 265, along with the accompanying Statement of Basis and Purpose, the following will be considered:

Amendment of 6 CCR 1007-3, Parts 262, 264, and 265 - Regulations Pertaining to Hazardous Waste - Hazardous Waste Import-Export Recovery and Disposal Operation Codes

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 to Parts 262, 264 and 265 of the Colorado Hazardous Waste Regulations (6 CCR 1007-3) correspond to and provide equivalency with the Environmental Protection Agency (EPA) Conforming Changes to Canada-Specific Hazardous Waste Import-Export Recovery and Disposal Operation Codes final rule published in the Federal Register on October 1, 2021 {86 FR 45381-45386}, and which became effective in all states on October 31, 2021. These import and export requirements are administered by the Federal government as a foreign policy matter, and are not administered by States.

The EPA issued the October 31, 2021 final rule to reflect changes to regulations related to Canadian import-export recovery and disposal operations that Canada promulgated in the Canada Gazette Part II on March 17, 2021 and that become effective in Canada on October 31, 2021. The EPA revised twelve of its import-export recovery and disposal code numbers and descriptions in 40 CFR 262.81 to reflect the revised Canadian regulatory definitions so that export and import notices and subsequent movement documents exchanged between Canada and the United States on or after October 31, 2021, do not contain conflicting information.

Although States do not receive authorization to administer the Federal government's import/export functions in 40 CFR part 262 subpart H, or the import-export relation functions in any other section of the RCRA hazardous waste regulations, State programs are still required to adopt the provisions in the federal rule to maintain their equivalency with the Federal program (see 40 CFR 271.10(e)).

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, 2023. 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, 2023.

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

WRITTEN TESTIMONY

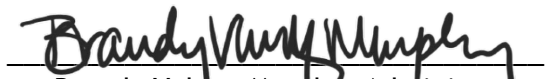
Any alternative proposals for rules or written comments relating to the proposed amendment of the regulation will be considered. The Solid and Hazardous Waste Commission will accept written testimony and materials regarding the proposed alternatives. **The commission strongly encourages interested parties to submit written testimony or materials to the Solid and Hazardous Waste Commission Office, via email to cdphe.hwcrequests@state.co.us by Thursday, May 4, 2023, 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 16, 2023
TIME: 9:00 a.m.
PLACE: This meeting will be held online only at:

<https://us02web.zoom.us/meeting/register/tZcldO2tqz8iGtWNIFbFjxIBKeAKk-6Rzco->

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 Conforming Changes to Canada-Specific Hazardous Waste Import-Export Recovery and
15 Disposal Operation Codes
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18 1) Section 262.81 is amended by revising paragraphs (13) through (17) of the definition of
19 “Disposal operations” to read as follows:
20

21 § 262.81 Definitions.

22 *****

23 “Disposal operations” means activities which do not lead to the possibility of resource recovery,
24 recycling, reclamation, direct re-use or alternate uses, which include:

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26 (13) D13 ~~Interim B~~blending or mixing, ~~prior to before an operation that bears~~ any of the disposal
27 operations D1 ~~through to~~ D12.

28 (14) D14 ~~Interim R~~repackaging, ~~prior to before an operation that bears~~ any of the disposal operations
29 D1 ~~through to D13~~ D12.

30 (15) D15 ~~(or DC17 for transboundary movements with Canada only)~~ Interim ~~S~~storage, ~~prior to before~~
31 an operation that bears any of the disposal operations D1 ~~through to~~ D12.

32 (16) DC15 Release, including the venting of compressed or liquified gases, or treatment, other than by
33 any of disposal operations codes D1 to D12 (for transboundary movements with Canada only).

34 (17) ~~DC16~~ DC2 Testing of a new technology to dispose of a hazardous waste (for transboundary
35 movements with Canada only).

36 *****

37 **2) Section 262.81 is amended by revising paragraphs (11) through (16) of the definition of**
38 **“Recovery operations” to read as follows:**

39
40 **§ 262.81 Definitions.**

41
42 *****

43 **“Recovery operations”** means activities leading to resource recovery, recycling, reclamation, direct
44 re-use or alternative uses, which include:

45 *****

46 (11) R11 Use of residual materials obtained from any of the recovery operations codes numbered
47 R1 through R10 or RC1 RC14 (for transboundary shipments with Canada only).

48 (12) R12 Interim Exchange of wastes for submission to before recycling using any of the recovery
49 operations codes numbered R1 through R11 or RC1 RC14 (for transboundary shipments with
50 Canada only).

51 (13) R13 Interim Accumulation of material intended for wastes before recycling using any of the
52 recovery operation codes numbered R1 through R11 or RC1 R12 or RC14 (for transboundary
53 shipments with Canada only).

54 (14) RC1 RC14 Recovery or regeneration of a substance or use or re-use of a recyclable material,
55 other than by any of operations R1 to R10 (for transboundary shipments with Canada only).

56 (15) RC2 RC15 Testing of a new technology to recycle a hazardous recyclable material (for
57 transboundary shipments with Canada only).

58 (16) RC3 RC16 Interim storage prior to any of operations R1 to R11 or RC1 RC14 (for
59 transboundary shipments with Canada only).

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63 **3) Section 262.83 is amended by revising paragraphs (b)(3) and (f)(6) to read as follows:**

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65 **§ 262.83 Exports of hazardous waste.**

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

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78 **(3) Notifications listing interim recycling operations or interim disposal operations.** If the foreign
79 receiving facility listed in paragraph (b)(1)(ii) of this section will engage in any of the interim recovery
80 operations R12 or R13 or interim disposal operations D13 through D15, or in the case of

81 transboundary movements with Canada, any of the interim recovery operations R12, R13, or [RC3](#)
82 [RC46](#), or interim disposal operations D13 to D14, or [D15 DC47](#), the notification submitted according
83 to paragraph (b)(1) of this section must also include the final foreign recovery or disposal facility
84 name, address, telephone, fax numbers, email address, technologies employed, and which of the
85 applicable recovery or disposal operations R1 through R11 and D1 through D12, or in the case of
86 transboundary movements with Canada, which of the applicable recovery or disposal operations R1
87 through R11, [RC1 RC14](#) to [RC2 RC45](#), D1 through D12, and [DC1 DC45](#) to [DC2 DC46](#) will be
88 employed at the final foreign recovery or disposal facility. The recovery and disposal operations in this
89 paragraph are defined in § 262.81.

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

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103 *****

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105 (6) Contracts must specify that the foreign importer or the foreign receiving facility that performed
106 interim recycling operations R12, R13, or [RC3 RC46](#), or interim disposal operations D13 through D15
107 ~~or DC47~~, (recovery and disposal operations defined in § 262.81) as appropriate, will:

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109 (i) Provide the notification required in paragraph (f)(3)(ii) of this section prior to any re-export of
110 the hazardous wastes to a final foreign recovery or disposal facility in a third country; and

111
112 (ii) Promptly send copies of the confirmation of recovery or disposal that it receives from the final
113 foreign recovery or disposal facility within one year of shipment delivery to the final foreign
114 recovery or disposal facility that performed one of recovery operations R1 through R11, or [RC1](#)
115 [RC46](#), or one of disposal operations D1 through D12, [DC1 DC45](#) or [DC2 DC46](#) to the competent
116 authority of the country of import. For contracts that will be in effect on or after [December 31,](#)
117 [2017](#)the [electronic import-export reporting compliance date](#), the contracts must additionally
118 specify that the foreign facility send copies to EPA at the same time using the allowable method
119 listed in paragraph (b)(1) of this section on or after that date.

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124 **4) Section 262.84 is amended by revising paragraphs (b)(2), (f)(5), (g)(2), and (h)(2)(iii) to**
125 **read as follows:**

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127 **§ 262.84 Imports of hazardous waste.**

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131 (b) **Notifications.** In cases where the competent authority of the country of export does not regulate the
132 waste as hazardous waste and, thus, does not require the foreign exporter to submit to it a notification

133 proposing export and obtain consent from EPA and the competent authorities for the countries of transit,
134 but EPA does regulate the waste as hazardous waste:

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138 (2) **Notifications listing interim recycling operations or interim disposal operations.** If the
139 receiving facility listed in paragraph (b)(1)(ii) of this section will engage in any of the interim recovery
140 operations R12, ~~or~~ R13, or RC3 or interim disposal operations D13 through D15, the notification
141 submitted according to paragraph (b)(1) of this section must also include the final recovery or
142 disposal facility name, address, telephone, fax numbers, email address, technologies employed, and
143 which of the applicable recovery or disposal operations R1 through R11, RC1, and D1 through D12,
144 will be employed at the final recovery or disposal facility. The recovery and disposal operations in this
145 paragraph are defined in § 262.81.

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

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158 (5) Contracts must specify that the importer or the receiving facility that performed interim recycling
159 operations R12, R13, or RC3 RC16, or interim disposal operations D13 through D15 ~~or DC15 through~~
160 DC17, as appropriate, will provide the notification required in § 262.83(b)(7) prior to the re-export of
161 hazardous wastes. The recovery and disposal operations in this paragraph are defined in § 262.81.

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167 (g) **Confirmation of recovery or disposal.** The receiving facility must do the following:

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171 (2) If the receiving facility performed any of recovery operations R12, R13, or RC3 RC16, or disposal
172 operations D13 through D15, ~~or DC17~~, the receiving facility shall promptly send copies of the
173 confirmation of recovery or disposal that it receives from the final recovery or disposal facility within
174 one year of shipment delivery to the final recovery or disposal facility that performed one of recovery
175 operations R1 through R11, or RC1 RC14 to RC2 RC15, or one of disposal operations D1 through
176 D12, or DC1 DC15 to DC2 DC16, to the competent authority of the country of export, and for
177 confirmations received on or after the electronic import-export reporting compliance date December
178 31, 2017, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its
179 successor system. The recovery and disposal operations in this paragraph are defined in § 262.81.

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181 (h) **Recordkeeping.** (1) The importer shall keep the following records and provide them to EPA or
182 authorized state personnel upon request:
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(2) The receiving facility shall keep the following records:

(iii) For the receiving facility that performed any of recovery operations R12, R13, or [RC3 RC46](#), or disposal operations D13 through D15, ~~or DC17~~ (recovery and disposal operations defined in § 262.81), a copy of each confirmation of recovery or disposal that the final recovery or disposal facility sent to it for at least three (3) years from the date that the final recovery or disposal facility completed processing the waste shipment; and

5) Section 264.12 is amended by revising paragraph (a)(4)(ii) to read as follows:

§ 264.12 Required notices.

(a) The owner or operator of a facility that is arranging or has arranged to receive hazardous waste subject to Part 262, Subpart H from a foreign source must submit the following required notices:

(4) As per § 262.84(g), such owner or operator shall:

(ii) If the facility performed any of recovery operations R12, R13, or [RC3 RC46](#), or disposal operations D13 through D15, ~~or DC17~~, promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or [RC1 RC46](#), or one of disposal operations D1 through D12, or ~~DC1 DC45~~ to [DC2 DC46](#), to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and on or after [the electronic import-export reporting compliance date December 31, 2017](#), to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The recovery and disposal operations in this paragraph are defined in § 262.81.

6) Section 265.12 is amended by revising paragraph (a)(4)(ii) to read as follows:

§ 265.12 Required notices.

(a) The owner or operator of a facility that is arranging or has arranged to receive hazardous waste subject to Part 262, Subpart H from a foreign source must submit the following required notices:

237 (4) As per § 262.84(g), such owner or operator shall:

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241 (ii) If the facility performed any of recovery operations R12, R13, or ~~RC3 RC46~~, or disposal
242 operations D13 through D15, ~~or DC17~~, promptly send copies of the confirmation of recovery or
243 disposal that it receives from the final recovery or disposal facility within one year of shipment
244 delivery to the final recovery or disposal facility that performed one of recovery operations R1
245 through R11, or ~~RC1 RC46~~, or one of disposal operations D1 through D12, or ~~DC1 DC45~~ to ~~DC2~~
246 ~~DC46~~, to the competent authority of the country of export that controls the shipment as an export of
247 hazardous waste, and on or after ~~the electronic import-export reporting compliance date~~ ~~December~~
248 ~~31, 2107~~, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its
249 successor system. The recovery and disposal operations in this paragraph are defined in § 262.81.

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253 **7) Section 8.102 (Statement of Basis for the Rulemaking Hearing of May 16, 2023) is**
254 **added to Part 8 of the Regulations to read as follows:**

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257 **Statement of Basis and Purpose**
258 **Rulemaking Hearing of May 16, 2023**

259
260 **8.102 Basis and Purpose.**

261
262 These amendments to 6 CCR 1007-3, Parts 262, 264 and 265 are made pursuant to the authority
263 granted to the Solid and Hazardous Waste Commission in § 25-15-302(2), C.R.S.

264
265 **Amendment of Hazardous Waste Import-Export Recovery and Disposal Operation Codes**

266
267 These amendments to Parts 262, 264 and 265 of the Colorado Hazardous Waste Regulations (6 CCR
268 1007-3) correspond to and provide equivalency with the Environmental Protection Agency (EPA)
269 Conforming Changes to Canada-Specific Hazardous Waste Import-Export Recovery and Disposal
270 Operation Codes final rule published in the Federal Register on October 1, 2021 {86 FR 45381-45386},
271 and which became effective in all states on October 31, 2021. These import and export requirements are
272 administered by the Federal government as a foreign policy matter, and are not administered by States.

273
274 The EPA issued the October 31, 2021 final rule to reflect changes to regulations related to Canadian
275 import-export recovery and disposal operations that Canada promulgated in the Canada Gazette Part II
276 on March 17, 2021 and that become effective in Canada on October 31, 2021. The EPA revised twelve of
277 its import-export recovery and disposal code numbers and descriptions in 40 CFR 262.81 to reflect the
278 revised Canadian regulatory definitions so that export and import notices and subsequent movement
279 documents exchanged between Canada and the United States on or after October 31, 2021, do not
280 contain conflicting information.

281
282 Because of the federal government's special role in matters of foreign policy, the EPA does not authorize
283 States to administer Federal import/export functions in any section of the RCRA hazardous waste
284 regulations. This approach of having Federal, rather than State, administering of the import/export
285 functions promotes national coordination, uniformity and the expeditious transmission of information
286 between the United States and foreign countries. Although States do not receive authorization to
287 administer the Federal government's import/export functions in 40 CFR part 262 subpart H, or the

288 import/export relation functions in any other section of the RCRA hazardous waste regulations, State
289 programs are still required to adopt the provisions in the federal rule to maintain their equivalency with the
290 Federal program (see 40 CFR 271.10(e)).

291
292 These amendments make conforming changes to Part 262, Subpart H of Colorado's Hazardous Waste
293 Regulations (6 CCR 1007-3) related to twelve hazardous waste import-export recovery and disposal
294 operations used in hazardous waste export and import notices submitted to EPA by U.S. exporters and
295 importers, and in movement documents that accompany export and import shipments.

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297 This Basis and Purpose incorporates by reference the applicable portions of the preamble language for
298 the EPA regulations as published in the Federal Register at 86 FR 445381-45386, October 1, 2021.