

<h1 style="margin: 0;">Regulatory Analysis Form</h1> <p style="margin: 0;">(Completed by Promulgating Agency)</p>		<p><i>INDEPENDENT REGULATORY REVIEW COMMISSION</i></p>
<p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		
<p>(1) Agency: Department of Environmental Protection</p>		<p>IRRC Number:</p>
<p>(2) Agency Number: 7 Identification Number: 543</p>		
<p>(3) PA Code Cite: 25 Pa. Code, Part I, Subpart D, Article VII. Hazardous Waste Management, Chapters 261a (Identification and Listing of Hazardous Waste); 262a (Standards Applicable to Generators of Hazardous Waste); 263a (Transporters of Hazardous Waste); 264a (Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities); and 265a (Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities).</p>		
<p>(4) Short Title: Hazardous Waste Generator Improvements Rule</p>		
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Laura Edinger, 783-8727, ledinger@pa.gov Secondary Contact: Jessica Shirley, 783-8727, jessshirley@pa.gov</p>		
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input type="checkbox"/> Proposed Regulation <input type="checkbox"/> Final Regulation <input checked="" type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General</p>
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>The Pennsylvania hazardous waste regulations, 25 Pa. Code Chapters 260a – 268a and 270a, incorporate by reference the Federal hazardous waste regulations. In 2016, EPA substantially revised its hazardous waste regulations under 40 CFR Parts 260 – 273. As a consequence, certain nonsubstantive revisions are needed to ensure the consistency of 25 Pa. Code Chapters 261a – 265a with the revised Federal regulations, provide the correct cross-references in the Pennsylvania regulations and provide clarity to the public and the regulated community with respect to the references to the Federal provisions incorporated by reference.</p>		
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p>This final-omitted rulemaking is being made under the following statutory authorities: Sections 105, 402 and 501 of the Solid Waste Management Act (35 P.S. §§ 6018.105 and 6018.402), which grant the Environmental Quality Board (Board) the authority to adopt rules and regulations concerning the storage, treatment, disposal and transportation of hazardous waste; Sections 303 and 305(e)(2) of the Hazardous Sites Cleanup Act (35 P.S. §§ 6020.303), which grant the Board the authority to promulgate regulations to carry out the provisions of that Act; and Section 1920A of the</p>		

Administrative Code of 1929 (71 P.S. § 510-20), which grants the Board the authority to adopt rules and regulations for the proper performance of the work of the Department.

The Pennsylvania hazardous waste program regulations, 25 Pa. Code Chapters 260a – 268a and 270a, incorporate by reference the federal hazardous waste regulations in 40 CFR Parts 260 – 268 and 270. The revisions to the HWGIR were automatically incorporated into the Pennsylvania regulations by reference. *See* 25 Pa Code § 260a.3(e) (“[t]he incorporation by reference includes any subsequent modifications and additions to the [Code of Federal Regulations] incorporated in [Article VII Hazardous Waste Management]”). Nonetheless, certain nonsubstantive revisions are needed to some sections of the Pennsylvania regulations because of the HWGIR amendments. The changes outlined in the final-omitted rulemaking will ensure the consistency of the Pennsylvania hazardous waste regulations with the federal hazardous waste regulations.

Notice of proposed rulemaking is omitted under section 204 of the Commonwealth Documents Law (CDL), the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. § 1204). Section 204(3) of the CDL provides that an agency may omit the notice of proposed rulemaking if “the agency for good cause finds . . . that the [public notice and comment] procedures specified in sections 201 and 202 are in the circumstances impracticable, unnecessary, or contrary to the public interest.” 45 P.S. § 1204(3). A notice and comment process is unnecessary because the substantive changes in EPA’s 2016 Hazardous Waste Generator Improvements Rule (HWGIR), in which EPA substantially revised provisions in 40 CFR Parts 260 – 268 and 270, were automatically incorporated by reference in Pennsylvania’s regulations. *See* 81 FR 85372 (November 28, 2016), effective on May 30, 2017. The HWGIR was subject to a notice and comment process when it was proposed at the federal level on September 25, 2015, 80 FR 57918. The amendments to 25 Pa. Code Chapters 261a – 265a set forth in Annex A are not substantive changes but rather are minor corrections to ensure consistency with the provisions of the Federal regulations already incorporated by reference.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The regulation is not mandated by any Federal or State law or court order or Federal regulation. The amendments are not substantive changes but rather are minor corrections or clarifications to ensure consistency with the provisions of the Federal HWGIR regulations already incorporated by reference, as more fully described in the response to item 10 below.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The amendments in the final-omitted rulemaking are necessary to ensure that Pennsylvania’s regulations are consistent with the Federal amendments under the HWGIR. The Federal amendments were automatically incorporated by reference under § 260a.3(e) (relating to terminology and citations related to Federal regulations), which provides that “[t]he incorporation by reference includes any subsequent modifications and additions to the CFR incorporated in this article.”

Many of the Federal generator regulations have been reorganized to foster improved compliance by hazardous waste generators in the identification and management of the hazardous waste they generate and, as a result, improve protection of human health and the environment.

Minor amendments to the Pennsylvania regulations are intended to ensure consistency with the Federal amendments. These amendments are necessary for the Pennsylvania hazardous waste regulations to be logical, intuitive and appropriately reflective of the updated Federal regulations. Having a difference in the federal and state analogs could create an inefficiency in understanding the regulations and have negative implications in terms of compliance.

Generators of hazardous waste will benefit by the amendments included in this final-omitted rulemaking because of the consistency and clarity that it will create.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

These regulatory amendments will not make Pennsylvania's regulations more stringent than other states; rather, it will ensure that Pennsylvania's regulations are equivalent to the Federal regulations. This will have no effect on Pennsylvania's ability to compete with other states.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No other regulations will be affected.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Department presented a draft Annex A of this final-omitted rulemaking to the Solid Waste Advisory Committee at a meeting held on September 12, 2019. As discussed in the response to Question 8 above, a notice and comment process for this final-omitted rulemaking is unnecessary because the substantive provisions of the HWGIR were automatically incorporated by reference and this final-omitted rulemaking only makes nonsubstantive revisions to reflect the Federal amendments under the HWGIR. The HWGIR was subject to a notice and comment process when it was proposed at the federal level on September 25, 2015. See 80 FR 57918.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Generators of hazardous waste will be minimally affected by this final-omitted rulemaking in that they will benefit by the consistency and clarity that the final-omitted rulemaking will create. There are over 10,000 affected generators.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

The Department is aware of over 10,000 active generators of hazardous waste based on notifications the Department has received from various generators of their hazardous waste activities within Pennsylvania. This number includes large quantity generators, small quantity generators and very small quantity generators (conditionally exempt) as defined in 40 CFR 260.10 (relating to terminology and citations related to Federal regulations).

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

There are no financial, economic or social impacts associated with this final-omitted rulemaking.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The fundamental benefit of this final-omitted rulemaking is that it provides consistency with the Federal regulations that are incorporated by reference in the Pennsylvania regulations. The changes are in the public interest because they provide clarity to the public and the regulated community with respect to the Federal provisions incorporated by reference.

There are no adverse effects associated with this final-omitted rulemaking.

(19) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs or savings associated with compliance with this final-omitted rulemaking.

(20) Provide a specific estimate of the costs and/or savings to the local governments associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There will be no costs or savings to local governments associated with compliance with this final-omitted rulemaking.

(21) Provide a specific estimate of the costs and/or savings to the state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There will be no costs or savings to state government associated with implementation of this final-omitted rulemaking.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

There are no additional requirements for any group or entity identified in items (19) - (21), above, resulting from this final-omitted rulemaking.

(22a) Are forms required for implementation of the regulation?

No forms are required.

(22b) If forms are required for implementation of the regulation, attach copies of the forms here. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.

Not applicable.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY 2017/18	FY +1 2018/19	FY +2 2019/20	FY +3 2020/21	FY +4 2021/22	FY +5 2022/23
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Savings	0	0	0	0	0	0
COSTS:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Costs	0	0	0	0	0	0
REVENUE LOSSES:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

(23a) Provide the past three-year expenditure history for programs affected by the regulation.

This final-omitted rulemaking will have no effect on program expenditures.

Program	FY -3 2016/17	FY -2 2017/18	FY -1 2018/19	Current FY 2019/20
RCRA Grant	\$4,740,000	\$4,740,000	\$4,740,000	\$4,740,000
State Match (HSCA)	\$1,580,000	\$1,580,000	\$1,580,000	\$1,580,000

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.**
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.**
- (c) A statement of probable effect on impacted small businesses.**
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.**

This final-omitted rulemaking will have no adverse impact on small businesses. Small businesses are already subject to the HWGIR and were required to comply with its provisions when the Federal changes were made in 2016 and became effective in 2017. This final-omitted rulemaking does not include any additional substantive provisions.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

As this rulemaking will have no impact on the affected groups listed, no special provisions are needed.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

As this rulemaking will have no impact on the regulated community, no alternative regulatory provisions were considered. Businesses are already subject to the HWGIR and were required to comply with its provisions when the Federal changes were made in 2016 and became effective in 2017. This final-omitted rulemaking does not include any additional substantive provisions.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

This final-omitted rulemaking will not have any adverse impact on small businesses. Small businesses are already subject to the HWGIR and were required to comply with its provisions when the Federal changes were made in 2016 and became effective in 2017. This final-omitted rulemaking does not include any additional substantive provisions.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data is not the basis for this final-omitted rulemaking.

(29) Include a schedule for review of the regulation including:

- A. The length of the public comment period: N/A
- B. The date or dates on which any public meetings or hearings will be held: N/A
- C. The expected date of delivery of the final-omitted regulation: Quarter 1, 2020
- D. The expected effective date of the final-omitted regulation: Quarter 2, 2020
- E. The expected date by which compliance with the final-omitted regulation will be required: Quarter 2, 2020
- F. The expected date by which required permits, licenses or other approvals must be obtained: N/A

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

A plan for evaluating the continuing effectiveness of this final-omitted rulemaking is not necessary, as this final-omitted rulemaking will not create any change in requirements. DEP will continue to maintain its inspection schedule in relation to the terms of its RCRA Subtitle C Hazardous Waste Workplan in accordance with the provisions of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C.A. § 6901 *et seq.* The Department develops a work plan under the terms of its RCRA Subtitle C Hazardous Waste Grant. The Department will collect, track and report required metrics as determined by the Workplan (administrative, authorization, corrective action, data management, enforcement, permitting, etc.) to EPA and to the RCRA Info database. (RCRAInfo is EPA's comprehensive information system, providing access to data supporting RCRA and the Federal Hazardous and Solid Waste Amendments (HSWA) of 1984.)