

RECEIVED
 2020 INDEPENDENT
 REGULATORY
 REVIEW COMMISSION

RECEIVED
 FEB 14 2020
 Independent Regulatory
 Review Commission

IRRC Number: 3253

Regulatory Analysis Form
 (Completed by Promulgating Agency)
 (All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency: Department of Environmental Protection
 (2) Agency Number: 7
 Identification Number: 543

(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).

(4) Short Title: Hazardous Waste Generator Improvements Rule

(5) Agency Contacts (List Telephone Number and Email Address):
 Primary Contact: Laura Edinger, 783-8727, ledinger@pa.gov
 Secondary Contact: Jessica Shirley, 783-8727, jessshirley@pa.gov

(6) Type of Rulemaking (check applicable box):

<input type="checkbox"/> Proposed Regulation	<input type="checkbox"/> Emergency Certification Regulation;
<input type="checkbox"/> Final Regulation	<input type="checkbox"/> Certification by the Governor
<input checked="" type="checkbox"/> Final Omitted Regulation	<input type="checkbox"/> Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

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.

(8) State the statutory authority for the regulation. Include specific statutory citation.

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

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.

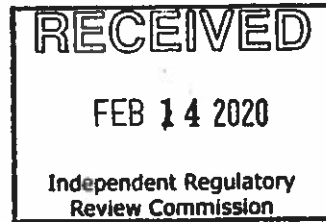
Data is not the basis for this final-omitted rulemaking.

(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.)



FACE SHEET FOR FILING DOCUMENTS WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

By: (Deputy Attorney General)

DATE OF APPROVAL

Check if applicable Copy not approved. Objections attached.

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

DEPARTMENT OF ENVIRONMENTAL PROTECTION ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-543

DATE OF ADOPTION JANUARY 21, 2020

BY Patrick McDonnell

TITLE PATRICK MCDONNELL CHAIRPERSON

EXECUTIVE OFFICER CHAIRPERSON OR SECRETARY

Copy below is hereby approved as to form and legality Executive or Independent Agencies

BY Lori G. ... 2/11/20 DATE OF APPROVAL

(Deputy General Counsel) (Chief Counsel - Independent Agency) (Strike inapplicable title)

Check if applicable. No Attorney General Approval or objection within 30 days after submission.

NOTICE OF FINAL-OMITTED RULEMAKING DEPARTMENT OF ENVIRONMENTAL PROTECTION ENVIRONMENTAL QUALITY BOARD Hazardous Waste Generator Improvements Rule 25 Pa. Code Chapters 261a - 265a

**FINAL-OMITTED RULEMAKING
ENVIRONMENTAL QUALITY BOARD
Hazardous Waste Generator Improvements Rule
[25 Pa. Code Chapters 261a, 262a, 263a, 264a and 265a]**

The Environmental Quality Board (Board) amends Chapters 261a, 262a, 263a, 264a and 265a to update the regulations to be consistent with the Federal regulations amended under the Hazardous Waste Generator Improvements Rule (HWGIR) regulatory amendments adopted by the United States Environmental Protection Agency (EPA) in 2016, effective May 30, 2017. See 81 FR 85732 (November 28, 2016). The Federal amendments were automatically incorporated by reference into Pennsylvania's regulations 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." The amendments to Chapters 261a – 265a are set forth in Annex A.

This final-omitted rulemaking was adopted by the Board at its meeting of January 21, 2020.

A. Effective Date

This final-omitted rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

B. Contact Persons:

For further information, contact Thomas Mellott, Chief, Division of Hazardous Waste Management, P.O. Box 69170, Rachel Carson State Office Building, Harrisburg, PA 17106-9170, (717) 787-6239; or Nikolina Smith, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 783-8501. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-omitted rulemaking is available on the Department of Environmental Protection's (Department) website at www.dep.pa.gov (Select "Public Participation," then "Environmental Quality Board (EQB)").

C. Statutory Authority

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 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 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.

D. Background and Purpose

Consistency of Pennsylvania's Hazardous Waste Program with Federal Law

The Pennsylvania hazardous waste program regulations under Chapters 260a – 268a and 270a, incorporate by reference the Federal hazardous waste regulations under 40 CFR parts 260 – 273. See 25 Pa. Code § 260a.3(e). See also 29 Pa.B. 2369 (May 1, 1999). On November 28, 2016, EPA finalized the HWGIR, which substantially revised provisions in 40 CFR Parts 260 – 268 and 270 and became effective on May 30, 2017. See 81 FR 85372.

The revisions to the Federal rules are automatically incorporated into the *Pennsylvania Code* by reference. However, certain nonsubstantive revisions are needed to some sections of the Pennsylvania regulations to reflect the Federal changes under the HWGIR.

These changes will ensure the consistency of Chapters 261a – 265a with the revised Federal regulations, provide the correct cross-references to the applicable Federal regulations and provide clarity to the public and the regulated community with respect to the references to the Federal provisions incorporated by reference.

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.” See 45 P.S. § 1204(3).

Public comment is omitted because the substantive changes in the HWGIR were automatically incorporated by reference in Pennsylvania's regulations and the amendments in this final-omitted rulemaking are not substantive. 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. 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.

Additionally, a notice and comment process is unnecessary for the renumbering changes that are unrelated to the HWGIR. These changes comprise a simple renumbering of § 261a.8 to § 261a.9 to be consistent with the numbering structure under 40 CFR Part 261 (relating to identification and listing of hazardous waste). No change in the heading or text of the regulation is being made. Two erroneous cross-references §§ 264a.11 and 265a.11 are also corrected in this final-omitted rulemaking.

The amendments included in this final-omitted rulemaking provide clarity to the public and the regulated community with respect to the Federal provisions incorporated by reference and the numbering structure of 40 CFR Part 261. As a result, the Board for good cause finds that public comment in this case is not necessary.

E. Summary of the Final-Omitted Rulemaking

This final-omitted rulemaking includes changes to Pennsylvania's regulations to address: the relocation of certain Federal provisions in 40 CFR Parts 260 – 265 as a result of the HWGIR; a change in the terminology used in the Federal rule from “conditionally exempt small quantity generator” to “very small quantity generator;” and the deletion of a reference in Subpart J of 40 CFR Part 262 (relating to standards applicable to generators of hazardous waste) in the HWGIR. These changes are further explained below

Relocation of Federal Provisions

To be consistent with the numbering structure of the Federal regulations and the change in terminology relating to very small quantity generators, § 261a.5 is being deleted and reserved and the provisions of the section transferred to two new sections. Specifically, the waste oil provision of subsection (a) is being transferred to new § 262a.13. The provision in subsection (b) regarding prohibition of hazardous waste in a municipal or residual waste landfill and the provision in subsection (c) regarding deemed transporter license are being transferred to new § 262a.14. These changes reflect changes in the Federal regulations.

In particular, § 261a.5 paralleled former 40 CFR 261.5 which, under the HWGIR, was deleted and its provisions transferred to other sections of 40 CFR Part 262. See 81 FR 85732, 85736, 85737 and 85806. Under the HWGIR, EPA deleted 40 CFR 261.5(c)(4) and (j) and transferred their provisions to 40 CFR 262.13(c)(4) and (f)(1)(iii) (relating to generator category determination). See 81 FR 85737 and 85809. New § 262a.14 includes the provisions that were in § 261a.5(b) and (c), as described above. These provisions pertain to prohibiting hazardous waste in a municipal or residual waste landfill and to deemed transporter licenses.

Section 262a.34 is reserved in this final-omitted rulemaking. This section set forth additional requirements for accumulation time for accumulated hazardous waste. It provided that a generator who accumulated hazardous waste onsite under 40 CFR 262.34(a)(1)(i) (formerly relating to accumulation time) (removed and relocated in the HWGIR) must also comply with Chapter 265a, Subchapter I (relating to use and management of containers). The cited Federal provision, 40 CFR 262.34, has been deleted and reserved. See 81 FR at 85818. More specifically, the language of 40 CFR 262.34(a)(1)(i) was moved to 40 CFR 262.17(a)(1) (relating to conditions for exemption for a large quantity generator that accumulates hazardous waste). See 81 FR at 85739 and 85814.

To maintain consistency with the numbering structure of the Federal regulation, the provisions of § 262a.34 are transferred in this final-omitted rulemaking to two new sections, 262a.16 and 262a.17. The requirements for the new sections are identical to each other, except that § 262a.16 applies to small quantity generators and § 262a.17 applies to large quantity generators.

Terminology Changes

The EPA replaced the term “conditionally exempt small quantity generator” in 40 CFR 261.5 with “very small quantity generator” in 40 CFR 262.14 (relating to conditions for exemption for a very small quantity generator). See 81 FR 85733, 85734 and 85809.

Similarly, in §§ 264a.11 and 265a.11 (relating to identification number and transporter license; and identification number and transporter license), references to “conditionally exempt small quantity generators” in these sections are changed to “very small quantity generators” to match the change in terminology in the HWGIR. “Very small quantity generator” is defined at 40 CFR 260.10 (relating to definitions).

Reference Deletions

Existing § 262a.10 (relating to incorporation by reference, purpose, scope and applicability) incorporated by reference 40 CFR Part 262 but specified that § 262.10(j) and Part 262 Subpart J were not incorporated by reference. EPA deleted these two portions of Part 262 under the HWGIR. Consequently, the Board is amending § 262a.10 by removing citations to Section 262.10(j) and Subpart J.

Renumbering for Consistency

Section 261a.8 (relating to requirements for universal waste), which is reserved in this final-omitted rulemaking, is comparable to the Federal regulation in 40 CFR 261.9 (relating to requirements for universal waste). In this final-omitted rulemaking, § 261a.8 is being renumbered as § 261a.9 to be consistent with the numbering structure for the Federal regulation. See 80 FR 25492 (May 11, 1995).

Section 262a.12 (relating to EPA identification numbers), which is reserved in this final-omitted rulemaking, provided additional Pennsylvania-specific requirements for hazardous waste generators applicable to EPA identification numbers. It was a parallel provision to 40 CFR 262.12 (formerly relating to EPA identification numbers), which was reserved and renumbered as 40 CFR 262.18 under the HWGIR. See 81 FR 85737, 85740, 85808, and 85818. Section 262a.12 is being renumbered as section 262a.18 (relating to EPA identification numbers) to be consistent with the Federal numbering structure and contains provisions relating to EPA identification numbers that had previously existed in § 261a.12.

In § 263a.13(a) (relating to licensing), a reference to § 261a.5(c) is being changed to § 262a.14(b) because of the transfer of the content of part of § 261a.5(c) to section 262a.14(b).

The Board is correcting an error in §§ 264a.11 and 265a.11. The references in these two sections to § 261a.5(d) are to a nonexistent subsection. The references should have been to § 261a.5(c). Because the language of § 261a.5(c) is being transferred to § 262a.14(b), these references in §§ 264a.11 and 265a.11 are accordingly being changed to § 262a.14(b).

F. Benefits, Costs and Compliance

Benefits

The fundamental benefit of this final-omitted rulemaking is that these changes will ensure the consistency of 25 Pa. Code Chapters 261a – 265a with the revised Federal regulations, provide the correct cross-references in the Pennsylvania regulations to the applicable Federal regulations, and provide clarity to the public and the regulated community with respect to the Federal provisions Pennsylvania incorporates by reference.

Compliance Costs

The amendments will create no additional compliance costs. No additional financial, economic or social impact will result from these amendments.

Compliance Assistance Plan

No formal compliance assistance is necessary for implementation of this final-omitted rulemaking, because the amendments are not substantive and do not have an impact on the regulated community. The HWGIR became effective at the Federal level on May 30, 2017. In accordance with Pa. Code Section 260a.3(e), the HWGIR was incorporated into the Pennsylvania regulations by reference and became effective on the same date. Further, the Hazardous Waste Management Division of the Department has made appropriate changes to the Department's *Hazardous Waste Management Compliance Guide* (available through DEP's eLibrary) and to the *Hazardous Waste Frequently Asked Questions* (available online) to reflect the HWGIR.

Paperwork Requirements

This final-omitted regulation will not revise paperwork requirements.

G. Pollution Prevention

This final-omitted regulation will not impact pollution prevention efforts of the Department.

H. Sunset Review

The Board is not establishing a sunset date for these amended regulations because the amendments are necessary for the regulations to accurately reflect the Department's legal authority and for the Department to meet its obligations under State and Federal law.

I. Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), on February 14, 2020, the Department submitted a copy of this final-omitted rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources Committees. On the same date, the final-omitted rulemaking was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732.101 – 732.506).

Under section 5.1(j.2) of the Regulatory Review Act, on _____, 2020, this final-omitted rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, 2020 and approved this final-omitted rulemaking,

J. Findings of the Board

The Board finds that:

- (1) The amendments as set forth in Annex A are appropriate to ensure consistency with the Federal HWGIR and among the Commonwealth's hazardous waste regulations.
- (2) Use of the omission of notice of proposed rulemaking procedure is appropriate because the proposed rulemaking procedures specified in sections 201 and 202 of the Commonwealth Documents Law (45 P.S. §§ 1201 and 1202) are, in this instance, "impractical, unnecessary, or contrary to the public interest."
- (3) No hazardous waste permits are affected by this final-omitted rulemaking.
- (4) These amendments are necessary and appropriate for the administration and enforcement of the authorizing acts identified in Section C of this order and are in the public interest.

K. Order of the Board

The Board, acting under the authorizing statutes, orders that:

- (a) The regulations of the Department, 25 Pa. Code Chapters 261a, 262a, 263a, 264a, and 265a are amended as set forth in Annex A.
- (b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.
- (c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act (71 P.S. §§ 745.1 – 745.14).
- (d) The Chairperson of the Board shall certify this order and Annex A, as approved to legality and form, and deposit them with the Legislative Reference Bureau, as required by law.
- (e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

PATRICK McDONNELL
Chairperson

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

Part I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE VII. HAZARDOUS WASTE MANAGEMENT

CHAPTER 261a. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Subchapter A. General

§ 261a.5. [Special requirements for hazardous waste generated by conditionally exempt small quantity generators] [Reserved].

[(a) The reference to 40 CFR Part 279 in 40 CFR 261.5(c)(4) and (j) (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators is replaced with Chapter 298 (relating to management of waste oil).

(b) In addition to the requirements incorporated by reference, a conditionally exempt small quantity generator may not dispose of hazardous waste in a municipal or residual waste landfill in this Commonwealth.

(c) A conditionally exempt small quantity generator complying with this subchapter and 40 CFR 261.5 is deemed to have a license for the transportation of those conditionally exempt small quantity generator wastes generated by the generator's own operation.]

*** * * * ***

§ 261a.8. [Requirements for universal waste] [Reserved].

§ 261a.9. Requirements for universal waste.

In addition to the requirements incorporated by reference, oil-based finishes and photographic solutions as defined in § 266b.3 (relating to definitions) are included as wastes subject to regulation under Chapter 266b (relating to universal waste management).

*** * * * ***

CHAPTER 262a. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

Subchapter A. GENERAL

§ 262a.10 Incorporation by reference, purpose, scope and applicability.

Except as expressly provided in this chapter, 40 CFR Part 262 and its appendices (relating to standards applicable to generators of hazardous waste) are incorporated by reference. In 40 CFR

262.10(g) (relating to purpose, scope and applicability), the term “section 3008 of the act” is replaced with “Article VI of the Solid Waste Management Act (35 P.S. §§ 6018.601 – 6018.617).” 40 CFR [262.10(j) and (k)] 262.10(k) (relating to purpose, scope and applicability) [and Part 262 Subpart J (relating to University Laboratories XL Project – Laboratory Environmental Management Standard) are] is not incorporated by reference.

* * * * *

§ 262a.12. [EPA identification numbers] [Reserved].

[In addition to the requirements incorporated by reference:

- (1) A generator shall submit a subsequent notification to the Department if:**
 - (i) The generator activity moves to another location.**
 - (ii) The generator facility’s designated contact person changes.**
 - (iii) The ownership of the generator facility changes.**
 - (iv) The type of regulated activity that takes place at the generator facility changes.**
 - (v) The generator’s generator status changes, except when the generator status change is temporary.**
 - (vi) The name of the facility changes.**
- (2) A generator shall offer a shipment of hazardous waste only to a transporter with a valid license issued by the Department.]**

§ 262a.13. Generator category determination.

The reference to 40 CFR Part 279 in 40 CFR 262.13(c)(4) and (f)(1)(iii) (relating to generator category determination) is replaced with Chapter 298 (relating to management of waste oil).

§ 262a.14. Conditions for exemption for a very small quantity generator.

- (a) In addition to the requirements incorporated by reference, a very small quantity generator may not dispose of hazardous waste in a municipal or residual waste landfill in this Commonwealth.**
- (b) A very small quantity generator complying with this subchapter and 40 CFR 261.14 (relating to conditions for exemption for a very small quantity generator) is deemed to have a license for the transportation of those very small quantities of waste generated by the generator’s own operation.**

§ 262a.16. Conditions for exemption for a small quantity generator that accumulates hazardous waste.

In addition to the requirements incorporated by reference, a small quantity generator who accumulates hazardous waste onsite as specified in 40 CFR 262.16 (relating to conditions for exemption for a small quantity generator that accumulates hazardous waste) shall also comply with Chapter 265a, Subchapter I (relating to use and management of containers).

§ 262a.17. Conditions for exemption for a large quantity generator that accumulates hazardous waste.

In addition to the requirements incorporated by reference, a large quantity generator who accumulates hazardous waste onsite as specified in 40 CFR 262.17(a)(1)(i) (relating to conditions for exemption for a large quantity generator that accumulates hazardous waste) shall also comply with Chapter 265a, Subchapter I (relating to use and management of containers).

§ 262a.18. EPA identification numbers.

In addition to the requirements incorporated by reference:

- (1) A generator shall submit a subsequent notification to the Department if:
 - (i) The generator activity moves to another location.
 - (ii) The generator facility's designated contact person changes.
 - (iii) The ownership of the generator facility changes.
 - (iv) The type of regulated activity that takes place at the generator facility changes.
 - (v) The generator's generator status changes, except when the generator status change is temporary.
 - (vi) The name of the facility changes.
- (2) A generator shall offer a shipment of hazardous waste only to a transporter with a valid license issued by the Department.

* * * * *

Subchapter D. RECORDKEEPING AND REPORTING

§ 262a.34. [Accumulation time] [Reserved].

[In addition to the requirements incorporated by reference, a generator who accumulates hazardous waste onsite as specified in 40 CFR 262.34(a)(1)(i) (relating to accumulation time) shall comply with Chapter 265a, Subchapter I (relating to use and management of containers).]

* * * * *

CHAPTER 263a. TRANSPORTERS OF HAZARDOUS WASTE

Subchapter A. GENERAL

§ 263a.13. Licensing.

(a) Except as otherwise provided in subsection (b), § [261a.5(c)] 262a.14(b), § 266a.70(1) or § 266b.50 (relating to requirements for hazardous waste generated by [conditionally exempt] very small quantity generators; applicability and requirements; and applicability), a person or municipality may not transport hazardous waste within this Commonwealth without first obtaining a license from the Department.

(b) * * * * *

* * * * *

CHAPTER 264a. OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

Subchapter B. General Facility Standards

§ 264a.11. Identification number and transporter license.

In addition to the requirements incorporated by reference, a person or municipality who owns or operates a hazardous waste management facility may not accept hazardous waste for treatment, storage or disposal from a transporter who has not received an EPA identification number and a license from the Department, except as otherwise provided. The licensing requirement does not apply to [conditionally exempt] very small quantity generators transporting their own hazardous waste provided that the [conditionally exempt] very small quantity generator is in compliance with § [261a.5(d)] 262a.14(b) (relating to special requirements for hazardous waste generated by [conditionally exempt] very small quantity generators), transporters transporting recyclable materials utilized for precious metal recovery in compliance with § 266a.70(1) (relating to applicability and requirements) or universal waste transporters in compliance with § 266b.50 (relating to applicability).

* * * * *

CHAPTER 265a. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

Subchapter B. GENERAL FACILITY STANDARDS

§ 265a.11. Identification number and transporter license.

In addition to the requirements incorporated by reference, a person or municipality who owns or operates a hazardous waste management facility may not accept hazardous waste for treatment, storage or disposal from a transporter without an EPA identification number and a license from the Department, except as otherwise provided. The licensing requirement does not apply to [conditionally exempt] very small quantity generators transporting their own hazardous waste if the [conditionally exempt] very small quantity generator is in compliance with § [261a.5(d)] 262a.14(b) (relating to special requirements for hazardous waste generated by [conditionally exempt] very small quantity generators), transporters transporting recyclable materials utilized for precious metal recovery in compliance with §266a.70(1) (relating to applicability and requirements) or universal waste transporters in compliance with § 266b.50 (relating to applicability).

February 14, 2020

2020 FEB 14 P 1:38

David Sumner
Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17120

Re: Final-Omitted Rulemaking: Hazardous Waste Generator Improvements Rule (#7-543)
Final Rulemaking: Revision of the Maximum Allowable Sulfur Content Limit for No. 2
and Lighter Fuel Oil (#7-546)
Final Rulemaking: Unconventional Well Permit Application Fees (#7-542)

Dear Mr. Sumner:

Pursuant to Section 5(a) of the Regulatory Review Act, please find enclosed two final-form rulemakings and one final-omitted rulemaking for review by the Independent Regulatory Review Commission (IRRC). The Environmental Quality Board (EQB or Board) adopted these rulemakings at its January 21, 2020, meeting.

The Hazardous Waste Generator Improvements Rule (#7-543) final-omitted rulemaking ensures the alignment of Pennsylvania's hazardous waste regulations with revisions to the Federal hazardous waste regulations. On November 28, 2016, the U.S. Environmental Protection Agency (EPA) finalized the Hazardous Waste Generator Improvements Rule (HWGIR), which substantially revised provisions in 40 CFR Parts 260 – 268 and 270, reorganizing many of the Federal generator regulations to make them more intuitive for users. The amendments included in this rulemaking will ensure the consistency of Chapters 261a – 265a with the revised Federal regulations, update the cross-references in the Pennsylvania regulations to match the revised Federal regulations and provide clarity to the public and the regulated community with respect to the references to the Federal provisions incorporated by reference.

This final-omitted rulemaking includes changes to Pennsylvania's regulations to address: the relocation of certain Federal provisions in 40 CFR Parts 260 – 265 as a result of the HWGIR; a change in the terminology used in the Federal rule from “conditionally exempt small quantity generator” to “very small quantity generator;” and the deletion of a reference in Subpart J of 40 CFR Part 262 (relating to standards applicable to generators of hazardous waste) in the HWGIR.

Public comment is omitted for this rulemaking because the substantive changes in the HWGIR were automatically incorporated by reference in Pennsylvania's regulations and the amendments in this final-omitted rulemaking are not substantive. 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. The amendments to 25 Pa. Code Chapters 261a – 265a are not substantive changes, but rather are minor corrections to ensure consistency with the provisions of the Federal regulations already incorporated by reference.

The Department presented a draft Annex A of this final-omitted rulemaking to the Solid Waste Advisory Committee at its meeting on September 12, 2019. The only feedback received was members wanting to ensure that the regulated community is educated and informed about the changes included in this rulemaking. As mentioned above, this rulemaking incorporates the HWGIR, which the regulated community has had to comply with since it took effect in May of 2017. To ensure the regulated community is aware of the information in the HWGIR, focused inspector training regarding the rule was provided by EPA Headquarters to Department staff at the Southcentral Regional Office on May 17, 2017. Additionally, the Hazardous Waste Management Division of the Department's Bureau of Waste Management made appropriate changes to the Hazardous Waste Management Compliance Guide (available on the Department's website) and to the Hazardous Waste Frequently Asked Questions (also available online) to reflect the HWGIR.

The Revision of the Maximum Allowable Sulfur Content Limit for No. 2 and Lighter Fuel Oil (#7-546) final-form rulemaking provides for the reduction of sulfur dioxide (SO₂) emissions from the combustion of No. 2 and lighter commercial fuel oil (No. 2 fuel oil). The SO₂ emissions released by combustion of sulfur-containing No. 2 fuel oil contribute to the formation of regional haze and fine particulate matter (PM_{2.5}) both of which are serious public health and welfare threats and affect visibility. Adopting this final rulemaking is part of the Commonwealth's strategy for meeting regional haze obligations under Section 169A of the Federal Clean Air Act, 42 U.S.C.A. § 7491, and its implementing regulations under 40 CFR Part 51, Subpart P (protection of visibility).

These amendments are consistent with the recommendations of the Mid-Atlantic/Northeast Visibility Union (MANE-VU) Regional Planning Organization. The Commonwealth is a member of MANE-VU, which was established in 2001 to assist the Mid-Atlantic and Northeast States in planning and developing their regional haze State Implementation Plan (SIP) revisions to address the impact of regional haze and visibility impairment on mandatory Federal Class I areas (which includes National parks, forests, and wilderness areas) as well as urban and rural areas within the MANE-VU region.

The proposed rulemaking was adopted by the Board at its meeting on April 16, 2019, and published in the *Pennsylvania Bulletin* on July 6, 2019, with a 66-day public comment period (49 Pa. B. 3482) that closed September 9, 2019. Three public hearings were held on August 6, 7, and 8, 2019, in Pittsburgh, Norristown, and Harrisburg, respectively. Five individuals presented testimony at the public hearings. The Board received 23 public comments in total.

On October 9, 2019, the Independent Regulatory Review Commission (IRRC) submitted comments on the proposed rulemaking. IRRC asked if the Department considered a fixed implementation date to allow the regulated community to plan for the transition to the lower sulfur content limit. IRRC also asked whether the Department considered a less costly or less intrusive

alternative method of achieving the goal of the regulation for small businesses in the fuel oil supply chain impacted by this regulation. The compliance date was revised in the final rulemaking to September 1, 2020, to provide certainty to the regulated community.

In November 2017, the Department met with representatives from the Pennsylvania Petroleum Association (Association) and member companies, including Shipley Energy, Walton, Inc., and Tevis Energy. The Association indicated that it would like the maximum allowable sulfur content limit for No. 2 fuel oil to be reduced to 15 ppm as soon as possible. On January 23, 2019, the Department met with the Association, which again expressed its eagerness to see this proposal move forward and also stated that it is recommending the use of 15 ppm fuel oil to its members.

The Department presented the draft final-form Annex A to the Air Quality Technical Advisory Committee on October 17, 2019, and to the Small Business Compliance Advisory Committee on October 23, 2019 and briefed both on the comments received. Both committees voted unanimously to concur with the Department's recommendation to present this final rulemaking to the EQB for consideration. The Department presented the draft final-form Annex A to the Citizens Advisory Council's (CAC) Policy and Regulatory Oversight (PRO) Committee on October 28, 2019. With the recommendation of the PRO Committee, on November 19, 2019, CAC concurred with the Department's recommendation to present this final rulemaking to the Board for consideration.

The Unconventional Well Permit Application Fees (#7-542) final-form rulemaking follows the process, as specified in sections 78.19(e) (relating to permit application fee schedule) and 78a.19(b), to provide the EQB with an evaluation of the Chapters 78 and 78a well permit application fees and recommend regulatory changes to address any disparity between Oil and Gas Program (Program) income generated by the fees and the Department's cost of administering the Program to ensure compliance with the 2012 Oil and Gas Act. The Department has determined that a significant disparity exists between fee income and costs to run the Program (See Attachment A of the rulemaking package for more information). In order to continue administering the Program, the unconventional permit application fee must be increased. This final-form rulemaking reflects a reasonable fee increase.

The final-form rulemaking increases the current well permit application fees from \$5,000 for nonvertical unconventional wells and \$4,200 for vertical unconventional wells to \$12,500 for all unconventional well permit applications in order to administer the 2012 Oil and Gas Act. Since the last unconventional well permit application fee increase in 2014, well permit application fees have not generated the revenue needed to fund Program costs due to declining unconventional well permit application numbers. Nonetheless, the Program's workload has increased due to the additional well inventory, development activity, and the need for guidance and technical tools to stay current with industry environmental standards.

The proposed rulemaking was adopted by the Board at its meeting on May 16, 2018, and published in the *Pennsylvania Bulletin* on July 14, 2018, with a 30-day comment period (48 Pa. B.4100). The comment period closed August 13, 2018. The Board received comments from 14 commenters.

The Department consulted with the Oil and Gas Technical Advisory Board (TAB) in the development of the proposed rulemaking. The Department presented its *3-Year Regulatory Fee and Program Cost Analysis Report to the Environmental Quality Board* and discussed its proposal to raise the unconventional well permit application fee to \$12,500 at TAB's February 14, 2018, meeting. The Department also included the proposed unconventional well permit application fee increase at several meetings with the regulated community. Attendees included representatives from all the major trade groups in the unconventional industry.

The Department will provide assistance as necessary to facilitate IRRC's review of the enclosed rulemakings under Section 5.1(e) of the Regulatory Review Act.

Please contact me by e-mail at ledinger@pa.gov or by telephone at 717.783.8727 if you have any questions or need additional information.

Sincerely,

A handwritten signature in cursive script that reads "Laura F. Edinger".

Laura Edinger
Regulatory Coordinator

Enclosures



RECEIVED

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO
THE REGULATORY REVIEW ACT

2020 FEB 14 P 1:29

I.D. NUMBER: 7-543
SUBJECT: Hazardous Waste Generator Improvements Rule
AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2/14/20	<u>Pamela Mundy</u>	Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Representative Daryl Metcalfe
2/14/20	<u>[Signature]</u>	Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Representative Craig Vitali
2/14/20	<u>Cory Funk</u>	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Senator Coene Yaw
2/14/20	<u>[Signature]</u>	Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Senator Steve Santarsiero
2/14/20	<u>David Sumner</u>	INDEPENDENT REGULATORY REVIEW COMMISSION David Sumner
2/14/20	<u>Carolyn Juttner</u>	ATTORNEY GENERAL (for Final Omitted only) Amy Elliott
	<u>C</u>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

