



## VEOLIA Environmental Solutions and Services REGULATORY ALERT

### Aerosol Cans added to Universal Waste Regulations - Final Rule

#### Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations: Final Rule

**Agency:** Environmental Protection Agency

**Published Date:** December 9, 2019

**Effective Date:** February 7, 2020

The Environmental Protection Agency (EPA) believes that the management of hazardous waste aerosol cans can be best implemented through a universal waste approach where handlers operate within a streamlined management system with regulatory oversight. On December 9, 2019, the EPA finalized the rule to add Aerosol Cans to the federal list of Universal Wastes. This final rule will impact the labeling and marking, accumulation time limits, employee training, responses to releases, export requirements, and, for large quantity handlers of universal waste, notification and tracking.

#### Definition of Aerosol Can

- In the final rule, aerosol can is defined as a non-refillable receptacle containing a gas compressed, liquefied or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.
- Using language from the DOT regulation will help ensure consistency across federal regulatory programs, avoid unnecessarily narrowing the scope of the rule to aerosol cans that aerate their product, and will not inadvertently include compressed gas cylinders in the definition of aerosol can. Because compressed gas cylinders, unlike aerosol cans, require special procedures to safely depressurize, it would not be appropriate to include them in the final rule.
- Finally, because the DOT language is more inclusive than the proposed language, it better matches the intent of the proposal to apply to all types of aerosol cans, including cans that dispense product in the form of paste or powder, and would not require states that have already added aerosol cans to their universal waste program to change their regulations.

#### Background

On March 16, 2018 the Environmental Protection Agency (EPA) proposed adding aerosol cans to the federal universal waste list. This proposal recognized that the inclusion of this waste stream as a universal waste could better ensure that aerosol cans are managed appropriately from cradle to grave. Aerosol cans are widely used for dispensing a broad range of products including paints, solvents, pesticides, food and personal care products. The Consumer Specialty Products Association (CSPA) estimates that 3.8 billion aerosol cans were filled in the United States in 2015 for use by commercial and industrial facilities along with households. Aerosol cans may be dangerous if mismanaged, particularly when exposed to excessive heat, which may result in increased internal pressure and eventually could cause the container to burst and release its contents. If the propellant or product is ignitable, this could result in a rapidly burning vapor "fireball." Even if the propellant is not ignitable there are dangers from a bursting aerosol can as parts of the aerosol can could become a projectile.

After the proposed rulemaking was announced the EPA took public comment on the proposed standards. The docket number for this rulemaking is EPA-HQ-QLEM-2017-0463.

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### Summary

The Environmental Protection Agency (EPA) is adding hazardous waste aerosol cans to the universal waste program under the federal Resource Conservation and Recovery Act (RCRA) regulations. The aim of this rule is to benefit the establishments generating and managing hazardous waste aerosol cans. These establishments include retail stores and others that discard hazardous waste aerosol cans. The rule will ease the regulatory burdens on these establishments and promote the collection and recycling of these cans and encourage the development of municipal and commercial programs to reduce the amount of aerosol cans from going to municipal solid waste landfills or combustors.

**This final ruling will impact the following areas for all handlers:**

Labeling and marking	The final rule requires aerosol cans to be labeled as “Universal Waste—Aerosol Can(s),” “Waste Aerosol Can(s),” or “Used Aerosol Can(s).”
Accumulation time limits	The final rule allows for generators to store aerosol cans for up to one-year.
Employee training	Employees must be trained on handling and how to safely puncture and drain universal waste aerosol cans - if applicable to facility.
Responses to releases	Written procedures must be in place in the event of a spill. Also, spill clean up kit must be available, and spills must be cleaned up promptly.
Export requirements	Aerosol cans will now be exported as Universal Waste
Notification and Tracking	This will only impact large quantity universal waste handlers. Handlers must make a notification before beginning to puncture the aerosol cans.

### Sending Universal Waste to another Handler

- Under the universal waste rule, a handler of universal waste can send the universal waste to another handler, where it can be consolidated into a larger shipment for transport to a destination facility.
- Universal waste destination facilities are subject to all currently applicable requirements for hazardous waste treatment, storage, and disposal facilities (TSDFs) and must receive a RCRA permit for such activities.
- This will make it more economical to send hazardous waste aerosol cans for recycling for recovery of metal materials. This final action is estimated to result in an annual cost savings of \$5.3 million to \$47.8 million.

### States with Existing Universal Waste Programs

- Five states - California, Colorado, New Mexico, Ohio and Utah - already have universal waste aerosol programs in place.
- These programs include streamlined management standards similar to 40 CFR part 273 for small and large quantity handlers of universal waste and a one-year accumulation time limit for aerosol cans.

### Puncturing and Draining of Aerosol Cans

- The current state universal waste programs set standards for puncturing and draining of aerosol cans by universal waste handlers. These programs allow the puncturing and draining of aerosol cans as long as specific management standards and waste characterizations are met. Once the aerosol can is punctured it may be recycled as scrap metal.

### **Leaking or Damaged Aerosol Cans**

- The EPA is requiring leaking or damaged aerosol cans that show evidence of leakage must be packaged in a separate closed container, overpacked with absorbents or immediately punctured and drained in accordance with the aerosol can universal waste requirements.
- The EPA used the existing state programs to develop the proposed ruling. The EPA proposed that an “aerosol can” be defined as an “intact container in which gas under pressure is used to aerate and dispense any material through a valve in the form of a spray or foam.” This definition is the same as the definition of aerosol can in California, Colorado, New Mexico and Utah universal waste programs.
- This definition excludes compressed gas cylinders from the definition of universal waste aerosol can because they pose an increased hazard. Additionally, the definition excludes any container that is larger than 24 ounces.

### **Materials excluded from the definition and therefore this Final Rule:**

- Compressed gas cylinders
- Any container larger than 24 ounces

### **Label and Marking**

- The EPA is finalizing in 40CFR 273.14 and 273.34 that either each aerosol can, or a container in which the aerosol cans are contained must be labeled or marked clearly with any of the following phrases: “Universal Waste—Aerosol Can(s),” “Waste Aerosol Can(s),” or “Used Aerosol Can(s).”

### **Storage**

- It is recommended for handlers to sort aerosol cans by type and consolidate intact aerosol cans in larger containers, remove actuators and valve stems to reduce the risk of accidental release.
- Aerosol cans are required to be stored in a container that is protected from sources of heat, including, but not limited to, open flames, lighting, smoking, cutting and welding, hot surfaces, frictional heat, static, electrical and mechanical sparks, and heat producing chemical reactions.

### **What remains unchanged?**

This final rule does not change any of the existing requirements applicable to universal waste transporters or universal waste destination facilities. Additionally, this rule does not impose any requirements on households or Very Small Quantity Generators (VSQGs) for managing these cans. Under the Universal Waste Rule provisions, VSQGs may choose to manage their hazardous waste aerosol cans in accordance with either the VSQG regulations under 40 CFR 262.14 or as a universal waste under part 273 (40 CFR 273.8(a)(2)). This final rule does not change the applicability of land disposal restriction (LDR) requirements to universal waste. Under the existing regulations (40 CFR 268.1(f)), universal waste handlers and transporters are exempt from the LDR requirements regarding testing, tracking, and recordkeeping in 40 CFR 268.7, and the storage prohibition in 40 CFR 268.50. EPA is amending 40 CFR 268.1(f) to add aerosol can universal waste for consistency. This final rule also does not change the regulatory status of destination facilities; they remain subject to the full LDR requirements.

### **State by State adoption**

Authorized states are required to modify their programs only when EPA enacts federal requirements that are more stringent or broader in scope than existing federal requirements. This final rule will be less stringent than the current federal program. Because states are not required to adopt less stringent regulations, they will not have to adopt the universal waste regulations for aerosol cans, although EPA encourages them to do so. The only states that will immediately adopt the new regulation are Iowa and Alaska, as they do not have an environmental department of their own.

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### **Effective Date**

This final rule will become effective 60 days after publication in the Federal Register. It was posted on December 9, 2019 so therefore the rule will become effective on February 7, 2020.

### **Link**

The link below will allow you to view/print the final rule.

<https://www.govinfo.gov/content/pkg/FR-2019-12-09/pdf/2019-25674.pdf>