



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 amendment of 6 CCR 1007-3, Parts 260, 261, and 264, along with the accompanying Statement of Basis and Purpose, the following will be considered:

Amendment of 6 CCR 1007-3, Parts 260, 261, and 264 - Regulations Pertaining to Hazardous Waste - Modernizing Ignitable Liquids Determinations

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 260, 261 and 264 of the Colorado Hazardous Waste Regulations (6 CCR 1007-3) correspond to and provide equivalency with the Environmental Protection Agency (EPA) Modernizing Ignitable Liquids Determinations final rule published in the Federal Register on July 7, 2020 {85 FR 40594-40608}, and which became effective on September 8, 2020.

The federal rule finalized updates to the regulations for the identification of ignitable hazardous waste under the Resource Conservation and Recovery Act (RCRA), and codified existing guidance regarding the definition of aqueous for purposes of 40 CFR 261.21(a)(1). The federal rule also updated cross references to Department of Transportation (DOT) regulations, made certain other conforming amendments and technical corrections to the §261.21 regulations, and added mercury thermometer alternatives in the air sampling and stack emissions test methods in SW-846 Test Methods 0010, 0011, 0020, 0023A, and 0051.

These amendments are considered to be neither more nor less stringent than the existing provisions, and Colorado is not required to adopt these provisions. However, the Division believes that the adoption of these amendments will help provide greater clarity to hazardous waste identification, provide flexibility in testing requirements, and enhance protection of human health and the environment.

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 Section 24-4-103(3), C.R.S., a notice of proposed rulemaking was submitted to the Secretary of State on April 15, 2021. 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, 2021.

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

WRITTEN TESTIMONY

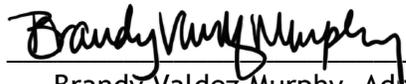
Any alternative proposals for rules or written comments relating to the proposed amendment of the regulation will be considered. The Solid and Hazardous Waste Commission will accept written testimony and materials regarding the proposed alternatives. **The commission strongly encourages interested parties to submit written testimony or materials to the Solid and Hazardous Waste Commission Office, via email to cdphe.hwcrequests@state.co.us by Wednesday, May 5, 2021, 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 18, 2021
TIME: 9:00 a.m.
PLACE: **Due to social distancing requirements due to COVID-19, the meeting will be held online only at:**

<https://us02web.zoom.us/meeting/register/tZYlfuuqqz4vHtw50-wjtUPFg-NjY4axkHiA>

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 Modernizing Ignitable Liquids Determinations
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17 1) Section 260.11 is revised to read as follows:
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19 § 260.11 Incorporation by reference.

20 (a)(1) When used in parts 260 through 268 and part 100 of these regulations, the following publications
21 are incorporated by reference. Copies of all approved materials incorporated by reference in the federal
22 regulations are available for inspection at the OLEM Docket in the Environmental Protection Agency
23 Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW,
24 Washington, DC. may be inspected at the Library, U.S. Environmental Protection Agency, 1200
25 Pennsylvania Ave., NW. (3403T), Washington, DC 20460, libraryhq@epa.gov; or at the National Archives
26 and Records Administration (NARA). The EPA/DC Public Reading Room hours of operation are 8:30 a.m.
27 to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC
28 Public Reading Room is (202) 566-1744, and the telephone number for the OLEM Docket is (202) 566-
29 0270. These approved materials are also available for inspection at the National Archives and Records
30 Administration (NARA0. For information on the availability of this material at NARA, email
31 fedreg.legal@nara.gov call 202-741-6030, or go to: www.archives.gov/federal-register/cfr/ibr-
32 locations.html http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

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

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

40 Regulatory and Program Authorization Coordinator
41 Colorado Department of Public Health and Environment
42 Hazardous Materials & Waste Management Division
43 4300 Cherry Creek Drive South

44 Denver, CO 80246-1530

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

48 (b) American Petroleum Institute (API). The following materials are available from the American
49 Petroleum Institute (API), 1220 L Street, Northwest, Washington, DC 20005, (855) 999-9870,
50 www.api.org.

51 (1) API Publication 2517, Third Edition, February 1989, "Evaporative Loss from External Floating-
52 Roof Tanks," IBR approved for § 265.1084.

53 (2) [Reserved]

54 ~~(bc)~~ ASTM International (ASTM). The following materials are available for purchase from the American
55 Society for Testing and Materials ASTM International (ASTM), 100 Barr Harbor Drive, P.O. Box C700,
56 West Conshohocken, PA 19428-2959, (877) 909-ASTM, www.astm.org.

57 (1) ASTM D-93-79 ~~or D-93-80~~, "Standard Test Methods for Flash Point by Pensky-Martens Closed
58 Cup Tester," IBR approved for § 261.21(a).

59 (2) ASTM D-93-80, "Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester,"
60 IBR approved for § 261.21(a).

61 ~~(23)~~ ASTM D-1946-82, "Standard Method for Analysis of Reformed Gas by Gas Chromatography,"
62 IBR approved for §§ 264.1033, and 265.1033.

63 ~~(34)~~ ASTM D-2267-88, "Standard Test Method for Aromatics in Light Naphthas and Aviation
64 Gasolines by Gas Chromatography," IBR approved for § 264.1063.

65 ~~(45)~~ ASTM D-2382-83, "Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by
66 Bomb Calorimeter (High-Precision Method)," IBR approved for §§ 264.1033, and 265.1033.

67 ~~(56)~~ ASTM D-2879-92, "Standard Test Method for Vapor Pressure--Temperature Relationship and
68 Initial Decomposition Temperature of Liquids by Isoteniscope," IBR approved for § 265.1084.

69 ~~(67)~~ ASTM D-3278-78, "Standard Test Methods for Flash Point for Liquids by Setaflash Closed
70 Tester," IBR approved for § 261.21(a).

71 (8) ASTM D8174-18 "Standard Test Method for Finite Flash Point Determination of Liquid Wastes by
72 Small Scale Closed Cup Tester." Approved March 15, 2018, IBR approved for § 261.21(a).

73 (9) ASTM D8175-18 "Standard Test Method for Finite Flash Point Determination of Liquid Wastes by
74 Pensky-Martens Closed Cup Tester." Approved March 15, 2018, IBR approved for § 261.21(a).

75 ~~(710)~~ ASTM E-168-88, "Standard Practices for General Techniques of Infrared Quantitative Analysis,"
76 IBR approved for § 264.1063.

77 ~~(811)~~ ASTM E-169-87, "Standard Practices for General Techniques of Ultraviolet-Visible Quantitative
78 Analysis," IBR approved for § 264.1063.

79 ~~(912)~~ ASTM E-260-85, "Standard Practice for Packed Column Gas Chromatography," IBR approved
80 for § 264.1063.

81 (13) ASTM E681–85 “Standard Test Method for Concentration Limits of Flammability of Chemicals
82 (Vapors and gases),” Approved November 14, 1985, IBR approved for § 261.21(a).

83 ~~(10) ASTM E 926-88, “Standard Test Methods for Preparing Refuse-Derived Fuel (RDF) Samples for~~
84 ~~Analyses of Metals,” Test Method C—Bomb, Acid Digestion Method.~~

85 ~~(ed) Environmental Protection Agency (EPA). The following materials are available for purchase. Materials~~
86 ~~cited in paragraphs (d)(1) through (d)(3) is available from: the National Technical Information Service,~~
87 ~~5285 Port Royal Road, Springfield, VA 22161; or for purchase from the Superintendent of Documents,~~
88 ~~U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800; EPA’s National Service Center~~
89 ~~for Environmental Publications at <https://www.epa.gov/nscep>. Material cited in paragraph (d)(4) of this~~
90 ~~section is available at <https://www.epa.gov/hw-sw846>.~~

91 (1) “APTI Course 415: Control of Gaseous Emissions,” EPA Publication EPA-450/2-81-005,
92 December 1981, IBR approved for §§ 264.1035, 265.1035, and 100.41 (40 CFR § 270.24, 270.25).

93 (2) Method 1664, ~~Revision A~~, n-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel
94 Treated n-Hexane Extractable Material (SGT-HEM; Non-polar Material) by Extraction and Gravimetry,
95 ~~PB99-121949, IBR approved for Part 261, Appendix IX.~~

96 (i) Revision A, EPA–821–R–98–002, February 1999, IBR approved for Appendix IX to 40 CFR
97 Part 261.

98 (ii) Revision B, EPA–821–R–10–001, February 2010, IBR approved for Appendix IX to 40 CFR
99 Part 261.

100 (3) “Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised”.
101 October 1992, EPA Publication No. EPA–450/R–92–019, IBR approved for Appendix IX to § 264.348
102 (40 CFR Part 266, Appendix IX).

103 ~~(34) The following methods as published in the test methods compendium known as “Test Methods~~
104 ~~for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, Third Edition. A~~
105 ~~suffix of “A” in the method number indicates revision one (the method has been revised once). A~~
106 ~~suffix of “B” in the method number indicates revision two (the method has been revised twice). A~~
107 ~~suffix of “C” in the method number indicates revision three (the method has been revised three times).~~
108 ~~A suffix of “D” in the method number indicates revision four (the method has been revised four times).~~

109 (i) Method 0010, Modified Method 5 Sampling Train, Revision 1, dated August 2018, dated
110 September 1986 and in the Basic Manual, IBR approved for 40 CFR Part 261, Appendix IX.

111 ~~(ii) (viii) Method 0011, Sampling for Selected Aldehyde and Ketone Emissions from Stationary~~
112 ~~Sources, Revision 1, dated August 2018, dated December 1996 and in Update III,~~ IBR approved
113 for 40 CFR Part 261, Appendix IX, and Appendix IX to § 264.348 (40 CFR Part 266, Appendix
114 IX).

115 ~~(ii) (iii) Method 0020, Source Assessment Sampling System (SASS), Revision 1, dated August~~
116 ~~2018, dated September 1986 and in the Basic Manual,~~ IBR approved for 40 CFR Part 261,
117 Appendix IX.

118 ~~(iv) (ix) Method 0023A, Sampling Method for Polychlorinated Dibenzo-p-Dioxins and~~
119 ~~Polychlorinated Dibenzofuran Emissions from Stationary Sources, Revision 2, dated August~~
120 ~~2018, dated December 1996 and in Update III,~~ IBR approved for 40 CFR Part 261, Appendix IX,
121 Appendix IX to § 264.348 (40 CFR Part 266, Appendix IX), and § 264.342(b) (40 CFR § 266.104).

- 122 ~~(iii)~~ (v) Method 0030, Volatile Organic Sampling Train, dated September 1986 and in the Basic
123 Manual, IBR approved for 40 CFR Part 261, Appendix IX.
- 124 ~~(vi)~~ ~~(x)~~ Method 0031, Sampling Method for Volatile Organic Compounds (SMVOC), dated
125 December 1996 and in Update III, IBR approved for 40 CFR Part 261, Appendix IX.
- 126 ~~(vii)~~ ~~(xi)~~ Method 0040, Sampling of Principal Organic Hazardous Constituents from Combustion
127 Sources Using Tedlar® Bags, dated December 1996 and in Update III, IBR approved for 40 CFR
128 Part 261, Appendix IX.
- 129 ~~(viii)~~ ~~(xii)~~ Method 0050, Isokinetic HCl/Cl₂ Emission Sampling Train, dated December 1996 and in
130 Update III, IBR approved for 40 CFR Part 261, Appendix IX, Appendix IX to § 264.348 (40 CFR
131 Part 266, Appendix IX), and § 264.345 (40 CFR § 266.107).
- 132 ~~(ix)~~ ~~(xiii)~~ Method 0051, Midget Impinger HCl/Cl₂ Emission Sampling Train, Revision 1, dated
133 August 2018, dated December 1996 and in Update III, IBR approved for 40 CFR Part 261,
134 Appendix IX, Appendix IX to § 264.348 (40 CFR Part 266, Appendix IX), and § 264.345 (40 CFR
135 § 266.107).
- 136 ~~(x)~~ ~~(xiv)~~ Method 0060, Determination of Metals in Stack Emissions, dated December 1996 and in
137 Update III, IBR approved for 40 CFR Part 261, Appendix IX, § 264.344 (40 CFR § 266.106), and
138 Appendix IX to § 264.348 (40 CFR Part 266, Appendix IX).
- 139 ~~(xi)~~ ~~(xv)~~ Method 0061, Determination of Hexavalent Chromium Emissions from Stationary
140 Sources, dated December 1996 and in Update III, IBR approved for 40 CFR Part 261, Appendix
141 IX, § 264.344(40 CFR § 266.106), and Appendix IX to § 264.348 (40 CFR Part 266, Appendix IX).
- 142 ~~(xii)~~ ~~(xvii)~~ Method 1010AB, Test Methods for Flash Point by Pensky-Martens Closed-Cup Tester,
143 dated December 2018, dated November 2004 and in Update IIIB, IBR approved for § 261.21 and
144 40 CFR Part 261, Appendix IX.
- 145 ~~(xiii)~~ ~~(xviii)~~ Method 1020BC, Standard Test Methods for Flash Point by Setaflash (Small Scale)
146 Closed-Cup Apparatus, dated December 2018, dated November 2004 and in Update IIIB, IBR
147 approved for § 261.21 and 40 CFR Part 261, Appendix IX.
- 148 ~~(xiv)~~ ~~(xix)~~ Method 1110A, Corrosivity Toward Steel, dated November 2004 and in Update IIIB,
149 IBR approved for § 261.22 and 40 CFR Part 261, Appendix IX.
- 150 ~~(xv)~~ ~~(xx)~~ Method 1310B, Extraction Procedure (EP) Toxicity Test Method and Structural Integrity
151 Test, dated November 2004 and in Update IIIB, IBR approved for 40 CFR Part 261, Appendix IX.
- 152 ~~(xvi)~~ ~~(v)~~ Method 1311, Toxicity Characteristic Leaching Procedure, dated September 1992 and in
153 Update I, IBR approved for 40 CFR Part 261, Appendix IX, and §§ 261.24, 268.7, 268.40.
- 154 ~~(xvii)~~ ~~(vii)~~ Method 1312, Synthetic Precipitation Leaching Procedure, dated September 1994 and
155 in Update III, IBR approved for Part 261, Appendix IX.
- 156 ~~(xviii)~~ ~~(iv)~~ Method 1320, Multiple Extraction Procedure, dated September 1986 and in the Basic
157 Manual, IBR approved for 40 CFR Part 261, Appendix IX.
- 158 ~~(xix)~~ ~~(vi)~~ Method 1330A, Extraction Procedure for Oily Wastes, dated September 1992 and in
159 Update I, IBR approved for 40 CFR Part 261, Appendix IX.

160 ~~(v) Method 1311, dated September 1992 and in Update I, IBR approved for Part 261, Appendix~~
161 ~~IX, and §§ 261.24, 268.7, 268.40.~~

162 ~~(vi) Method 1330A, dated September 1992 and in Update I, IBR approved for Part 261, Appendix~~
163 ~~IX.~~

164 ~~(vii) Method 1312 dated September 1994 and in Update II, IBR approved for Part 261, Appendix~~
165 ~~IX.~~

166 ~~(viii) Method 0011, dated December 1996 and in Update III, IBR approved for Part 261, Appendix~~
167 ~~IX, and Part 266, Appendix IX.~~

168 ~~(ix) Method 0023A, dated December 1996 and in Update III, IBR approved for Part 261, Appendix~~
169 ~~IX, Part 266, Appendix IX, and § 266.104.~~

170 ~~(x) Method 0031, dated December 1996 and in Update III, IBR approved for Part 261, Appendix~~
171 ~~IX.~~

172 ~~(xi) Method 0040, dated December 1996 and in Update III, IBR approved for Part 261, Appendix~~
173 ~~IX.~~

174 ~~(xii) Method 0050, dated December 1996 and in Update III, IBR approved for Part 261, Appendix~~
175 ~~IX, Part 266, Appendix IX, and § 266.107.~~

176 ~~(xiii) Method 0051, dated December 1996 and in Update III, IBR approved for Part 261, Appendix~~
177 ~~IX, Part 266, Appendix IX, and § 266.107.~~

178 ~~(xiv) Method 0060, dated December 1996 and in Update III, IBR approved for Part 261, Appendix~~
179 ~~IX, § 266.106, and Part 266, Appendix IX.~~

180 ~~(xv) Method 0061, dated December 1996 and in Update III, IBR approved for Part 261, Appendix~~
181 ~~IX, § 266.106, and Part 266, Appendix IX.~~

182 ~~(xvi) Method 9071B, dated April 1998 and in Update IIIA, IBR approved for Part 261, Appendix IX.~~

183 ~~(xvii) Method 1010A, dated November 2004 and in Update IIIB, IBR approved for Part 261,~~
184 ~~Appendix IX.~~

185 ~~(xviii) Method 1020B, dated November 2004 and in Update IIIB, IBR approved for Part 261,~~
186 ~~Appendix IX.~~

187 ~~(xix) Method 1110A, dated November 2004 and in Update IIIB, IBR approved for § 261.22 and~~
188 ~~Part 261, Appendix IX.~~

189 ~~(xx) Method 1310B, dated November 2004 and in Update IIIB, IBR approved for Part 261,~~
190 ~~Appendix IX.~~

191 ~~(xx) (xxi) Method 9010C, Total and Amenable Cyanide: Distillation, dated November 2004 and in~~
192 ~~Update IIIB, IBR approved for 40 CFR Part 261, Appendix IX and §§ 268.40, 268.44, 268.48.~~

193 ~~(xxi) (xxii) Method 9012B, Total and Amenable Cyanide (Automated Colorimetric, with Off-Line~~
194 ~~Distillation), dated November 2004 and in Update IIIB, IBR approved for 40 CFR Part 261,~~
195 ~~Appendix IX and §§ 268.40, 268.44, 268.48.~~

196 ~~(xxii)~~ ~~(xxiii)~~ Method 9040C, pH Electrometric Measurement, dated November 2004 and in Update
197 IIIB, IBR approved for 40 CFR Part 261, Appendix IX and § 261.22.

198 ~~(xxiii)~~ ~~(xxiv)~~ Method 9045D, Soil and Waste pH, dated November 2004 and in Update IIIB, IBR
199 approved for 40 CFR Part 261, Appendix IX.

200 ~~(xxiv)~~ ~~(xxv)~~ Method 9060A, Total Organic Carbon, dated November 2004 and in Update IIIB, IBR
201 approved for 40 CFR Part 261, Appendix IX, and §§ 264.1034, 264.1063, 265.1034, 265.1063.

202 ~~(xxv)~~ ~~(xxvi)~~ Method 9070A, n-Hexane Extractable material (HEM) for Aqueous Samples, dated
203 November 2004 and in Update IIIB, IBR approved for 40 CFR Part 261, Appendix IX.

204 ~~(xxvi)~~ ~~(xxvii)~~ Method 9071B, n-Hexane Extractable Material (HEM) for Sludge, Sediment, and Solid
205 Samples, dated April 1998 and in Update IIIA, IBR approved for 40 CFR Part 261, Appendix IX.

206 (xxvii) Method 9095B, Paint Filter Liquids Test, dated November 2004 and in Update IIIB, IBR
207 approved, 40 CFR Part 261, Appendix IX, and §§ 264.190, 264.314, 265.190, 265.314, 265.1081,
208 268.32, and 40 CFR § 267.202.

209 ~~(de)~~ National Fire Protection Association (NFPA). The following materials are available ~~for purchase~~ from
210 the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101
211 (800) 344-3555, www.nfpa.org.

212 (1) NFPA 30, "Flammable and Combustible Liquids Code," ~~(NFPA 30)~~, 1977 edition or 1981, IBR
213 approved for §§ 262.16(b), 264.198(b), ~~and~~ 265.198(b), and 40 CFR § 267.202.

214 (2) ~~[Reserved]~~ NFPA 30, "Flammable and Combustible Liquids Code," 1981 edition, IBR approved for
215 §§ 262.16(b), 264.198(b), and 265.198(b) and 40 CFR § 267.202.

216 ~~(ef)~~ Organization for Economic Cooperation and Development (OECD). The following materials are
217 available ~~for purchase~~ from the Organization for Economic Cooperation and Development, Environment
218 Directorate, 2 rue Andre Pascal, F-75775 Paris Cedex 16, France owwww.oecd-ilibrary.org/.

219 (1) Guidance Manual for the Control of Transboundary Movements of Recoverable Wastes, copyright
220 2009, Annex B: OECD Consolidated List of Wastes Subject to the Green Control Procedure and
221 Annex C: OECD Consolidated List of Wastes Subject to the Amber Control Procedure, IBR approved
222 for §§ 262.82(a), 262.83(b), (d), and (g), and 262.84(b) and (d) of these regulations.

223 (2) [Reserved]

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2) Section 261.21 is revised to read as follows:

§ 261.21 Characteristic of ignitability.

229 (a) A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any
230 of the following properties:

231 (1) It is a liquid, other than ~~an aqueous~~ solution containing less than 24 percent alcohol by volume and
232 at least 50 percent water by weight, and that has a flash point less than 60° C (140° F), as determined
233 by using one of the following ASTM standards: a Pensky Martens Closed Cup Tester, using the test
234 method specified in ASTM Standard D-93-79, or ASTM D-93-80, D3278-78, D8174-18, or D8175-18
235 as specified in SW-846 Test Methods 1010(B) or 1020(C) (all incorporated by reference, see §

236 260.11), ~~or a Setflash Closed Cup Tester, using the test method specified in ASTM standard D-~~
237 ~~3278-78 (incorporated by reference, see § 260.11).~~

238 (2) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through
239 friction, absorption of moisture, or spontaneous chemical changes and, when ignited, burns so
240 vigorously and persistently that it creates a hazard.

241 (3) It is an ignitable compressed gas.

242 (i) The term "compressed gas" shall designate any material or mixture having in the container an
243 absolute pressure exceeding 40 p.s.i. at 70°F or, regardless of the pressure at 70°F, having an
244 absolute pressure exceeding 104 p.s.i. at 130°F; or any liquid flammable material having a vapor
245 pressure exceeding 40 p.s.i. absolute at 100°F as determined by ASTM Test D-323.

246 (ii) A compressed gas shall be characterized as ignitable if any one of the following occurs:

247 (A) Either a mixture of 13 percent or less (by volume) with air forms a flammable mixture or the
248 flammable range with air is wider than 12 percent regardless of the lower limit. These limits shall
249 be determined at atmospheric temperature and pressure. The method of sampling and test
250 procedure shall be ~~the ASTM E 681-85 (incorporated by reference, see § 260.11), or other~~
251 ~~equivalent methods acceptable to the Bureau of Explosives and approved by the director,~~
252 ~~Associate Administrator, Pipeline and Hazardous Materials Safety Administration Technology,~~
253 ~~U.S. Department of Transportation (see Note 2).~~

254 (B) ~~It is determined to be flammable or extremely flammable using 49 CFR § 173.115(l). Using~~
255 ~~the Bureau of Explosives' Flame Projection Apparatus (see Note 1), the flame projects more than~~
256 ~~18 inches beyond the ignition source with valve opened fully, or, the flame flashes back and~~
257 ~~burns at the valve with any degree of valve opening.~~

258 (C) ~~Using the Bureau of Explosives' Open-Drum Apparatus (see Note 1), there is any significant~~
259 ~~propagation of flame away from the ignition source.~~

260 (D) ~~Using the Bureau of Explosives' Closed-Drum Apparatus (see Note 1), there is any explosion~~
261 ~~of the vapor-air mixture in the drum.~~

262 (4) It is an oxidizer. An oxidizer for the purpose of this subchapter is a substance such as a chlorate,
263 permanganate, inorganic peroxide, or a nitrate, that yields oxygen readily to stimulate the combustion
264 of organic matter ~~(see Note 4).~~

265 (i) An organic compound containing the bivalent -O-O- structure and which may be considered a
266 derivative of hydrogen peroxide where one or more of the hydrogen atoms have been replaced by
267 organic radicals must be classed as an organic peroxide unless:

268 (A) The material meets the definition of a ~~Class A Division 1.1, 1.2, or 1.3 explosive, or a Class B~~
269 ~~explosive~~, as defined in § 261.23(a)(8), in which case it must be classed as an explosive,

270 (B) The material is forbidden to be offered for transportation according to 49 CFR 172.101 and 49
271 CFR 173.21,

272 (C) It is determined that the predominant hazard of the material containing an organic peroxide is
273 other than that of an organic peroxide, or

274 (D) According to data on file with the Pipeline and Hazardous Materials Safety Administration in
275 the U.S. Department of Transportation (~~see Note 3~~), it has been determined that the material
276 does not present a hazard in transportation.

277 (b) A solid waste that exhibits the characteristic of ignitability has the EPA Hazardous Waste Number of
278 D001.

279 ~~Note 1: A description of the Bureau of Explosives' Flame Projection Apparatus, Open Drum Apparatus,~~
280 ~~Closed Drum Apparatus, and method of tests may be procured from the Bureau of Explosives.~~

281 ~~Note 2: As part of a U.S. Department of Transportation (DOT) reorganization, the Office of Hazardous~~
282 ~~Materials Technology (OHMT), which was the office listed in the 1980 publication of 49 CFR 173.300 for~~
283 ~~the purposes of approving sampling and test procedures for a flammable gas, ceased operations on~~
284 ~~February 20, 2005. OHMT programs have moved to the Pipeline and Hazardous Materials Safety~~
285 ~~Administration (PHMSA) in the DOT.~~

286 ~~Note 3: As part of a U.S. Department of Transportation (DOT) reorganization, the Research and Special~~
287 ~~Programs Administration (RSPA), which was the office listed in the 1980 publication of 49 CFR 173.151a~~
288 ~~for the purposes of determining that a material does not present a hazard in transport, ceased operations~~
289 ~~on February 20, 2005. RSPA programs have moved to the Pipeline and Hazardous Materials Safety~~
290 ~~Administration (PHMSA) in the DOT.~~

291 ~~Note 4: The DOT regulatory definition of an oxidizer was contained in § 173.151 of 49 CFR, and the~~
292 ~~definition of an organic peroxide was contained in paragraph 173.151a. An organic peroxide is a type of~~
293 ~~oxidizer.~~

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296 3) The following paragraph in Section 5.0 (Hazardous Waste Combustion Air Quality Screening
297 Procedure) of Appendix IX to Section 264.348 is revised to read as follows:

298
299 **Section 5.0 Hazardous Waste Combustion Air Quality Screening Procedure**

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301 *****

302
303 If any of these criteria are met or the Director determines that this procedure is not appropriate, then
304 detailed site-specific modeling or modeling using the "Screening Procedures for Estimating the Air Quality
305 Impact of Stationary Sources, Revised", October 1992, EPA Publication No. 450/R-92-0194-88-010,
306 Office of Air Quality Planning and Standards, August 1988, is required. Detailed site-specific dispersion
307 modeling must conform to the EPA "Guidance on Air Quality Models (Revised)", EPA 450/2-78-027R,
308 Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, July 1986. This
309 document provides guidance on both the proper selection and regulatory application of air quality models.

310
311
312
313 **4) Section 8.97 (Statement of Basis for the Rulemaking Hearing of May 18, 2021) is added**
314 **to Part 8 of the Regulations to read as follows:**

315
316
317 **Statement of Basis and Purpose**
318 **Rulemaking Hearing of May 18, 2021**

319
320 **8.97 Basis and Purpose.**
321

322 These amendments to 6 CCR 1007-3, Parts 260, 261 and 264 are made pursuant to the authority
323 granted to the Solid and Hazardous Waste Commission in § 25-15-302(2), C.R.S.
324

325 **Modernizing Ignitable Liquids Determinations**
326

327 These amendments to Parts 260, 261 and 264 of the Colorado Hazardous Waste Regulations (6 CCR
328 1007-3) correspond to and provide equivalency with the Environmental Protection Agency (EPA)
329 Modernizing Ignitable Liquids Determinations final rule published in the Federal Register on July 7, 2020
330 {85 FR 40594-40608}, and which became effective on September 8, 2020.
331

332 The federal rule finalized updates to the regulations for the identification of ignitable hazardous waste
333 under the Resource Conservation and Recovery Act (RCRA), and codified existing guidance regarding
334 the definition of aqueous for purposes of 40 CFR 261.21(a)(1). The federal rule also updated cross
335 references to Department of Transportation (DOT) regulations, made certain other conforming
336 amendments and technical corrections to the § 261.21 regulations, and added mercury thermometer
337 alternatives in the air sampling and stack emissions test methods in SW-846 Test Methods 0010, 0011,
338 0020, 0023A, and 0051.
339

340 The specific amendments being adopted as part of this rulemaking include the following:
341

342 1) Section 260.11 (Incorporation by reference) – is being amended by:
343

344 A) revising the section to list the test methods identified in § 260.11 in alphabetical and numerical
345 order, and to update the information regarding the availability of the incorporated-by-reference
346 materials.
347

348 B) adding SW–846 Method 1010B, SW– 846 Method 1020C, ASTM D8174–18, ASTM D8175–
349 18, and ASTM E681–85 to the list of test methods incorporated by reference in § 261.11. SW–
350 846 Method 1010B and SW–846 Method 1020C list the required methods to determine flashpoint
351 for ignitable hazardous waste. SW–846 Method 1010B lists the Pensky-Martens flash point
352 methods, which are ASTM Standards D93–79, D93–80, and D8175–18. SW–846 Method 1020C
353 lists the Setaflash (small-scale) closed cup flash point methods, which are the ASTM Standards
354 D3278–78 and D8174–18. ASTM D8174–18 is a test method to determine the flash point of liquid
355 wastes using a small-scale (Setaflash) apparatus. ASTM D8175–18 is a test method used to
356 determine the flash point of liquid wastes using a Pensky-Martens apparatus. ASTM E681–85 is
357 a test method used to determine the upper and lower concentration limits of flammability for
358 chemicals having sufficient vapor pressure to form flammable mixtures with air.
359

360 C) updating the incorporation by reference listings for SW-846 Methods 0010, 0011, 0020, 0023A
361 and 0051. These test methods were updated to allow the use of non-mercury thermometers in
362 these air sampling and stack emission test methods.
363

364 D) deleting test method ASTM E 926-88, “Standard Test Methods for Preparing Refuse-Derived
365 Fuel (RDF) Samples for Analyses of Metals,” Test Method C--Bomb, Acid Digestion Method.
366

367 2) Section 261.21 (Characteristic of ignitability) is being amended by:
368

- 369 A) revising paragraph (a)(1) to update the test methods required for measuring the flash point of a
370 liquid waste when determining if that waste is an ignitable waste. The references to Methods
371 1010B and 1020C are updated to include ASTM standards D8174-18 and D8175-18.
372
373 B) revising paragraph (a)(1) to define aqueous as “at least 50 percent water by weight”.
374
375 C) revising paragraph (a)(3)(ii)(A) to specify the ASTM standard E 681–85 as the approved test
376 for determining whether any waste that is a compressed gas exhibits the RCRA ignitability
377 characteristic, and to remove reference to the Bureau of Explosives as an approving agency for
378 sampling and test methods.
379
380 D) revising paragraph (a)(3)(ii)(B) to update the definition of ignitable compressed gas within
381 paragraph(a)(3)(ii), removing references to Bureau of Explosives test methods, and mirroring the
382 definition and testing that DOT now requires.
383
384 E) deleting paragraphs (a)(3)(ii)(C) and (D).
385
386 F) revising paragraph (a)(4)(i)(A) to replace the currently referenced “Class A explosive or a
387 Class B explosive” with “Division 1.1, 1.2, or 1.3 explosive” to be consistent with DOT’s revised
388 classification system for explosives.
389
390 G) deleting the four notes at the end of § 261.21, which are outdated and no longer necessary.
391

392 These amendments are considered to be neither more nor less stringent than the existing provisions, and
393 Colorado is not required to adopt these provisions. However, the Division believes that the adoption of
394 these amendments will help provide greater clarity to hazardous waste identification, provide flexibility in
395 testing requirements, and enhance protection of human health and the environment.
396

397 This Basis and Purpose incorporates by reference the applicable portions of the preamble language for
398 the EPA regulations as published in the Federal Register at 85 FR 40594-40608, July 7, 2020.