

Dear Senators HEIDER, Souza, Jordan, and  
Representatives RAYBOULD, Thompson, Smith:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the  
Department of Environmental Quality:

IDAPA 58.01.01 - Rules for the Control of Air Pollution in Idaho - Proposed Rule (Docket No.  
58-0101-1702);

IDAPA 58.01.05 - Rules and Standards for Hazardous Waste - Proposed Rule (Docket No.  
58-0105-1701).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the  
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research  
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative  
Services. The final date to call a meeting on the enclosed rules is no later than 09/06/2017. If a meeting is  
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis  
from Legislative Services. The final date to hold a meeting on the enclosed rules is 10/04/2017.

The germane joint subcommittee may request a statement of economic impact with respect to a  
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,  
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has  
been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the  
memorandum attached below.



Eric Milstead  
Director

# Legislative Services Office

## Idaho State Legislature

*Serving Idaho's Citizen Legislature*

### MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Environment, Energy & Technology Committee

**FROM:** Deputy Division Manager - Katharine Gerrity

**DATE:** August 17, 2017

**SUBJECT:** Department of Environmental Quality

IDAPA 58.01.01 - Rules for the Control of Air Pollution in Idaho - Proposed Rule (Docket No. 58-0101-1702)

IDAPA 58.01.05 - Rules and Standards for Hazardous Waste - Proposed Rule (Docket No. 58-0105-1701)

#### **1. IDAPA 58.01.01 - Rules for the Control of Air Pollution in Idaho**

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.01 - Rules for the Control of Air Pollution in Idaho. According to the department, the purpose of the rulemaking is to update federal regulations incorporated by reference as mandated by the EPA for approval of Idaho's Title V Operating Permit Program pursuant to 40 CFR Part 70 and fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(1) of the Clean Air Act.

According to the department, negotiated rulemaking was not conducted due to the simple nature of the rulemaking and because it has no discretion with respect to adopting federal regulations that are necessary for EPA approval of Idaho's Title V Operating Permit Program and state primacy of Clean Air Act programs. The department confirms that the proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations. The rulemaking appears to be authorized pursuant to Sections 39-105 and 39-107, Idaho Code.

#### **2. IDAPA 58.01.05 - Rules and Standards for Hazardous Waste**

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.05 - Rules and Standards for Hazardous Waste. According to the department, the purpose of the rulemaking is to ensure that the state rules remain consistent with federal regulations. The department notes that Idaho's Rules and Standards for Hazardous Waste, IDAPA 58.01.05, are updated annually to maintain consistency with the federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). The department states that the proposed rule updates federal

Mike Nugent, Manager  
Research & Legislation

Paul Headlee, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

regulations incorporated by reference to include those revised as of July 1, 2017. The department has also submitted a synopsis detailing the substantive difference between previously incorporated material and the latest revised edition or version of incorporated material being proposed.

According to the department, negotiated rulemaking was not conducted due to the simple nature of the rulemaking and because it has no discretion with respect to adopting federal regulations implementing the Resource Conservation and Recovery Act as directed by the Idaho Hazardous Waste Management Act. The department confirms that the proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations. The rulemaking appears to be authorized pursuant to Chapters 44 and 58, Title 39, Idaho Code. The department also notes that 40 CFR 271.21(e) and Section 39-4404, Idaho Code, require DEQ to adopt amendments to federal law as proposed in the docket.

cc: Department of Environmental Quality  
Paula J. Wilson

# **IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY**

## **58.01.01 – RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO**

**DOCKET NO. 58-0101-1702**

### **NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized by Sections 39-105 and 39-107, Idaho Code. This rulemaking updates federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency (EPA) for approval of Idaho's Title V Operating Permit Program pursuant to 40 CFR Part 70 and fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act. It also updates citations to other federal regulations necessary to retain state primacy of Clean Air Act programs.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this proposed rulemaking will be held as follows:

**PUBLIC HEARING**  
**Thursday, September 7, 2017**  
**3:00 pm (MDT)**

**Department of Environmental Quality**  
**Conference Room A**  
**1410 N. Hilton**  
**Boise, ID 83706**

The meeting location will be accessible to persons with disabilities, and language translators will be made available upon request. Requests for these accommodations must be made no later than five (5) days prior to the meeting date. For arrangements, contact the undersigned.

**DESCRIPTIVE SUMMARY:** The purpose of this rulemaking is to ensure that the state rules remain consistent with federal regulations. The Rules for the Control of Air Pollution in Idaho, IDAPA 58.01.01, are updated annually to maintain consistency with federal regulations implementing the Clean Air Act. This proposed rule updates federal regulations incorporated by reference to include those revised as of July 1, 2017.

Members of the regulated community who may be subject to Idaho's air quality rules, special interest groups, public officials, and members of the public who have an interest in the regulation of air emissions from sources in Idaho may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2017 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2018 legislative session if adopted by the Board and approved by the Legislature. DEQ will submit the final rule to EPA for approval.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary:

Adoption of federal regulations is necessary for EPA approval of Idaho's Title V Operating Permit Program and state primacy of Clean Air Act programs. Incorporation by reference allows DEQ to keep its rules up to date with federal regulation changes and simplifies compliance for the regulated community. Information for obtaining a copy of the federal regulations is included in the rule.

In compliance with Idaho Code 67-5223(4), DEQ prepared a brief synopsis detailing the latest revised edition or version of the incorporated material being proposed for incorporation by reference. The Overview of Incorporations by Reference can be obtained at [www.deq.idaho.gov/58-0101-1702](http://www.deq.idaho.gov/58-0101-1702) or by contacting the undersigned.

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was not conducted. DEQ determined that negotiated rulemaking is not feasible due to the simple nature of this rulemaking and because DEQ has no discretion with respect to adopting federal regulations that are necessary for EPA approval of Idaho's Title V Operating Permit Program and state primacy of Clean Air Act programs. Whenever possible, DEQ incorporates federal regulations by reference to ensure that the state rules are consistent with federal regulations.

**IDAHO CODE SECTION 39-107D STATEMENT:** This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Carl Brown at [carl.brown@deq.idaho.gov](mailto:carl.brown@deq.idaho.gov) or (208) 373-0206.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 7, 2017.

Dated this 2nd day of August, 2017.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
Boise, ID 83706-1255  
Phone: (208) 373-0418  
Fax: (208) 373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0101-1702**  
**(Only Those Sections With Amendments Are Shown.)**

**107. INCORPORATIONS BY REFERENCE.**

**01. General.** Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 107.03 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term "documents" includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-1-94)

**02. Availability of Referenced Material.** Copies of the documents incorporated by reference into these rules are available at the following locations: (5-1-94)

- and;
- a.** All federal publications: U.S. Government Printing Office at <http://www.ecfr.gov/cgi-bin/ECFR>; (3-25-16)
  - b.** Statutes of the state of Idaho: <http://legislature.idaho.gov/idstat/TOC/IDStatutesTOC.htm>; and (3-20-14)

- c. All documents herein incorporated by reference: (7-1-97)
0502. i. Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255 at (208) 373- (7-1-97)
- ii. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0051, (208) 334-3316. (7-1-97)
- 03. Documents Incorporated by Reference.** The following documents are incorporated by reference into these rules: (5-1-94)
- a. Requirements for Preparation, Adoption, and Submittal of Implementation Plans, [40 CFR Part 51](#) revised as of July 1, 2016~~7~~. The following portions of 40 CFR Part 51 are expressly excluded from any incorporation by reference into these rules: (3-29-17)(      )
- i. All sections included in 40 CFR Part 51, Subpart P, Protection of Visibility, except that 40 CFR 51.301, 51.304(a), 51.307, and 51.308 are incorporated by reference into these rules; and (3-30-07)
- ii. Appendix Y to Part 51, Guidelines for BART Determinations Under the Regional Haze Rule. (3-30-07)
- b. National Primary and Secondary Ambient Air Quality Standards, [40 CFR Part 50](#), revised as of July 1, 2016~~7~~. (3-29-17)(      )
- c. Approval and Promulgation of Implementation Plans, [40 CFR Part 52](#), Subparts A and N and Appendices D and E, revised as of July 1, 2016~~7~~. (3-29-17)(      )
- 2016~~7~~. d. Ambient Air Monitoring Reference and Equivalent Methods, [40 CFR Part 53](#), revised as of July 1, (3-29-17)(      )
- e. Ambient Air Quality Surveillance, [40 CFR Part 58](#), revised as of July 1, 2016~~7~~. (3-29-17)(      )
- f. Standards of Performance for New Stationary Sources, [40 CFR Part 60](#), revised as of July 1, 2016~~7~~. (3-29-17)(      )
- 2016~~7~~. g. National Emission Standards for Hazardous Air Pollutants, [40 CFR Part 61](#), revised as of July 1, (3-29-17)(      )
- h. Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or Before December 1, 2008, [40 CFR Part 62, Subpart HHH](#), revised as of July 1, 2016~~7~~. (3-29-17)(      )
- i. National Emission Standards for Hazardous Air Pollutants for Source Categories, [40 CFR Part 63](#), revised as of July 1, 2016~~7~~. (3-29-17)(      )
- j. Compliance Assurance Monitoring, [40 CFR Part 64](#), revised as of July 1, 2016~~7~~. (3-29-17)(      )
- k. State Operating Permit Programs, [40 CFR Part 70](#), revised as of July 1, 2016~~7~~. (3-29-17)(      )
- l. Permits, [40 CFR Part 72](#), revised as of July 1, 2016~~7~~. (3-29-17)(      )
- m. Sulfur Dioxide Allowance System, [40 CFR Part 73](#), revised as of July 1, 2016~~7~~. (3-29-17)(      )
- n. Protection of Stratospheric Ozone, [40 CFR Part 82](#), revised as of July 1, 2016~~7~~. (3-29-17)(      )
- o. Clean Air Act, 42 U.S.C. Sections 7401 through 7671g (1997). (3-19-99)
- p. Medical Waste Combustors, [Section 39-128, Idaho Code \(1992\)](#). (3-20-14)

# Overview of Incorporations by Reference for the DEQ Air Quality Program

Docket No. 58-0101-1702

Required by Idaho Code § 67-5223(4)

---

An efficient way to implement new or updated federal regulations is to incorporate them by reference into state rule. Reproducing the Code of Federal Regulations (CFR) in state rule is impractical and costly. Therefore when possible, and as supported by Idaho industry, DEQ incorporates federal regulations by reference. Sections with no changes are also incorporated to ensure the state rules are consistent with federal regulations and to provide one set of rules for industry to follow. Idaho industry is required to comply with all applicable new and updated federal rules regardless of whether DEQ incorporates them by reference.

In addition, for DEQ to be the implementing authority for the Clean Air Act in the state of Idaho, the agency is required to (1) implement the National Ambient Air Quality Standards (NAAQS) and (2) implement an air quality operating permit program for facilities with significant emissions.

- (1) **National Ambient Air Quality Standards (NAAQS) Implementation**—If an area in Idaho exceeds a NAAQS, DEQ will develop a state plan to improve air quality in that area. Whenever EPA updates a federal standard, DEQ also must demonstrate to EPA that it can implement the new standard. To obtain the appropriate authority to implement a new standard, DEQ incorporates by reference the following sections from the Code of Federal Regulations: Parts 50, 51, 52, 53, and 58.
- (2) **Operating Permit Program**—Operating permit requirements are outlined under Parts 64 and 70 of the Code of Federal Regulations. To write these permits in Idaho, DEQ must have the authority to include all of the applicable federal requirements. These requirements are contained in CFR Parts 52, 60, 61, 62, 63, 73, and 82.

To maintain authority for implementing the Clean Air Act in Idaho, DEQ is required to continually demonstrate that our air quality program meets minimum federal requirements.

Note, if DEQ's air program does not meet EPA's minimum requirements, EPA could impose sanctions on Idaho as outlined in the Clean Air Act ([42 USC 7509](#)). Under certain circumstances, these sanctions could include withholding federal highway funds or DEQ operating funds.

The following table summarizes the CFR sections the DEQ Air Quality Program incorporates by reference.

40 CFR Part	Title	Changes During Past Year?	Impact on Idaho
50	National primary and secondary ambient air quality standards	Yes	Yes
51	Requirements for preparation, adoption, and submittal of implementation plans	Yes	Yes
52	Subparts A and N and Appendices D and E: Approval and promulgation of implementation plans	Yes	Yes
53	Ambient air monitoring reference and equivalent methods	No	—
58	Ambient air surveillance	Yes	Yes
60	Standards of performance for new stationary sources	Yes	Yes
61	National emission standards for hazardous air pollutants	Yes	Yes
62	Subpart HHH: Federal plan requirements for hospital/medical/infectious waste incinerators constructed on or before December 1, 2008	No	—
63	National emission standards for hazardous air pollutants for source categories	Yes	Yes
64	Compliance assurance monitoring	No	—
70	State operating permit programs	Yes	Yes
72	Permits	No	—
73	Sulfur dioxide allowance system	No	—
82	Protection of stratospheric ozone	Yes	No

These changes are discussed in more detail below. The associated Federal Register notices are denoted in parentheses as hyperlinks.



The following parts were revised:

### **National Ambient Air Quality Standards (NAAQS) Implementation**

The NAAQS implementation rules promulgated by EPA in this time period are mostly administrative in nature. While there is an impact on Idaho, these rules mostly affect DEQ, e.g., update to state implementation plan (SIP) requirements that DEQ would need to follow, update to public notice requirements for DEQ permitting actions, or EPA actions in response to DEQ's SIP submittals.

A more detailed summary of the CFR changes that impact NAAQS implementation is given below.

#### **Part 50: National primary and secondary ambient air quality standards**

- This section contains the air quality standards that EPA promulgates for the criteria pollutants: coarse and fine particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>), ozone, sulfur dioxide (SO<sub>2</sub>), nitrogen dioxide (NO<sub>2</sub>), lead, and carbon monoxide (CO).
- This past year EPA promulgated three rules in this section: one updated requirements for state agencies as they implement the PM<sub>2.5</sub> NAAQS ([FR-2016-08-24](#)), one retained the NAAQS for lead ([FR-2016-10-18](#)), and another updates a minor correction to the PM<sub>2.5</sub> design value calculation ([FR-2017-03-20](#)).

#### **Part 51: Requirements for preparation, adoption, and submittal of implementation plans**

- States are required to have a state implementation plan, which includes the rules and area-specific plans that address NAAQS. This section outlines the state implementation plan requirements for state environmental agencies.
- There were five actions in this section: one updated requirements for state agencies as they implement the PM<sub>2.5</sub> NAAQS ([FR-2016-08-24](#)), one determined that a specific compound was not a volatile organic compound ([FR-2016-08-01](#)), one updated corrections to source test regulations ([FR-2016-08-30](#)), one updated public notice requirements for permitting actions ([FR-2016-10-18](#)), and another updated state plan requirements for the regional haze rule ([FR-2017-01-10](#)).

#### **Part 52, Subparts A and N and Appendices D and E: Approval and promulgation of implementation plans**

- This section contains general provisions associated with state implementation plans and Idaho-specific state implementation plan actions.
- EPA promulgated seven rules in this section: three are actions related to Idaho's SIP ([FR-2016-08-12](#), [FR-2017-01-04](#) ([FR-2017-05-12](#)), one updated public notice requirements for permitting actions ([FR-2016-10-18](#)), one updated requirements for the cross state air pollution rule (rule does not affect Idaho) ([FR-2016-10-26](#)), one removed a date restriction from a permit rescission provision ([FR-2016-11-07](#)), and the final one updated state plan requirements for the regional haze rule ([FR-2017-01-10](#)).

#### **Part 58: Ambient air surveillance**

- This section describes the requirements for states to operate a monitoring program.

- For this incorporation by reference period, there is one update in this section: an update to the near road NO<sub>2</sub> monitoring requirements ([FR-2016-12-30](#)).

### **Operating Permit Program Implementation**

There were updates to the subparts associated with DEQ's operating permit program that will have an impact on Idaho facilities. The source category most affected is:

- Municipal Solid Waste Landfills. EPA promulgated two rules that control emissions from municipal solid waste landfills.
  - The new source performance standard for new facilities was stayed by EPA on May 31, 2017 for 90 days as EPA reconsiders certain aspects of this rule
  - The rules for existing facilities were also stayed by EPA on May 31, 2017. DEQ had begun a rulemaking to address this rule, but we vacated our rulemaking effort to wait on EPA's reconsideration.

A more detailed summary of the Code of Federal Register changes that impact DEQ's operating permit program is given below.

#### **Part 60:** Standards of performance for new stationary sources

- The section describes the permitting requirements for new facilities of specific industries.
- The current action includes seven updates to new source performance standards: these apply to internal combustion engines ([FR-2016-07-07](#)), petroleum refineries ([FR-2016-07-13](#)), MSW Landfills (two separate rules) ([FR-2016-08-29a](#), [FR-2016-08-29b](#)), facilities that use certain source testing methods ([FR-2016-08-30](#)), facilities that continuously monitor for PM ([FR-2016-11-21](#)), and a general correction for incorrect paragraph numbering ([FR-2017-06-23](#))

#### **Part 61:** National emission standards for hazardous air pollutants

- This section addresses the national emission standards for certain hazardous air pollutants.
- The current action includes two updates: these apply to facilities that use certain source testing methods ([FR-2016-08-30](#)) and radon emissions from Operating Mill Tailings ([FR-2017-01-17](#))

#### **Part 63:** National emission standards for hazardous air pollutants for source categories

- This section addresses national emission standards for hazardous air pollutants for specific source categories (i.e., industries).
- There are currently nine updates to rules in this section that DEQ is incorporating by reference: these apply to petroleum refineries ([FR-2016-07-13](#)), two for Portland Cement manufacturing ([FR-2016-07-25](#), [FR-2017-06-23](#)), boilers ([FR-2016-09-14](#)), aerospace manufacturing ([FR-2016-08-03](#)), facilities that use certain source testing methods ([FR-2016-08-30](#)), a coke oven visible emission test method update ([FR-2016-11-22](#)), one specific to the Tennessee Department of Environment and Conservation ([FR-2017-06-29](#)) and one focused on ferroalloy production ([FR-2017-01-18](#)).

#### **Part 70:** State operating permit programs

- This section describes the minimum requirements for state permitting programs.
- DEQ is incorporating by reference one update to this section: updated public notice requirements for permitting actions ([FR-2016-10-18](#)).

**Part 82:** Protection of stratospheric ozone

- The purpose of this section is to implement the Montreal Protocol, which addresses substances that deplete the ozone layer.
- There are currently two updates to this section DEQ is incorporating by reference: one updates refrigerant management requirements ([FR-2016-11-18](#)) and the other updates minor stratospheric ozone rule requirements ([FR-2016-12-01](#)).

**The following parts were not revised:**

**Part 53:** Ambient air monitoring reference and equivalent methods

- DEQ is required to implement a NAAQS monitoring program in Idaho. Any updates to approved monitoring methods are included in this section. Approved industrial monitoring methods are also included in this section.

**Part 62, Subpart HHH:** Federal plan requirements for hospital/medical/infectious waste incinerators constructed on or before December 1, 2008

- This section describes the requirements for hospital/medical/infectious waste incinerators. DEQ took delegation of these federal plan requirements.

**Part 64:** Compliance assurance monitoring

- This section outlines the compliance assurance monitoring requirements for emission units at major sources.

**Part 72:** Permits

- This section establishes permit requirements under the Acid Rain Program.

**Part 73:** Sulfur dioxide allowance system

- This part establishes the requirements and procedures for an SO<sub>2</sub> pollutant trading program.
- Idaho currently does not have any sources participating in a pollutant trading program.

# **IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY**

## **58.01.05 – RULES AND STANDARDS FOR HAZARDOUS WASTE**

### **DOCKET NO. 58-0105-1701**

#### **NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized by Chapters 44 and 58, Title 39, Idaho Code. In addition, 40 CFR 271.21(e) and Section 39-4404, Idaho Code, require DEQ to adopt amendments to federal law as proposed under this docket.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before August 16, 2017. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** The purpose of this rulemaking is to ensure that the state rules remain consistent with federal regulations. Idaho's Rules and Standards for Hazardous Waste, IDAPA 58.01.05, are updated annually to maintain consistency with the federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). This proposed rule updates federal regulations incorporated by reference to include those revised as of July 1, 2017. Specific citations of 40 CFR Part 262, contained in IDAPA 58.01.05.006, have been updated to coincide with a reorganization of this part of the federal regulations. In addition, this rulemaking makes a minor correction to previous incorporation in IDAPA 58.01.05.013 to clarify that 40 CFR 124.15(b)(2) is being expressly excluded from the incorporation by reference.

Groups interested in hazardous waste and handlers of hazardous waste including generators, transporters, and treatment, storage, and disposal facilities may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2017 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2018 legislative session if adopted by the Board and approved by the Legislature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary:

Adoption of federal regulations is necessary to maintain program primacy. Incorporation by reference allows DEQ to keep its rules up to date with federal regulation changes and simplifies compliance for the regulated community. Information for obtaining a copy of the federal regulations is included in the rule.

In compliance with Idaho Code 67-5223(4), DEQ prepared a brief synopsis detailing the substantive difference between the previously incorporated material and the latest revised edition or version of the incorporated material being proposed for incorporation by reference. The Overview of Incorporations by Reference can be obtained at [www.deq.idaho.gov/58-0105-1701](http://www.deq.idaho.gov/58-0105-1701) or by contacting the undersigned.

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was not conducted. DEQ determined that negotiated rulemaking is not feasible due to the simple nature of this rulemaking and because DEQ has no discretion with respect to adopting EPA's federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). Whenever possible, DEQ incorporates federal regulations by reference to ensure that the state rules are consistent with federal regulations.

**IDAHO CODE SECTION 39-107D STATEMENT:** This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**FISCAL IMPACT STATEMENT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the proposed rulemaking, contact Matt Alvarado at [matt.alvarado@deq.idaho.gov](mailto:matt.alvarado@deq.idaho.gov) or (208) 373-0554.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before August 30, 2017.

DATED this 2nd day of August, 2017.

Paula J. Wilson, Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton St.  
Boise, ID 83706-1255  
Phone: (208) 373-0418  
Fax: (208) 373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0105-1701**  
**(Only Those Sections With Amendments Are Shown.)**

**002. INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS.**

Any reference in these rules to requirements, procedures, or specific forms contained in the Code of Federal Regulations (CFR), Title 40, Parts 124, 260 - 268, 270, 273, 278, and 279 shall constitute the full adoption by reference of that part and Subparts as they appear in 40 CFR, revised as of July 1, 2016~~7~~, including any notes and appendices therein, unless expressly provided otherwise in these rules. ~~(3-29-17)~~( )

**01. Exceptions.** Nothing in 40 CFR Parts 260 - 268, 270, 273, 278, 279 or Part 124 as pertains to permits for Underground Injection Control (U.I.C.) under the Safe Drinking Water Act, the Dredge or Fill Program under Section 404 of the Clean Water Act, the National Pollution Discharge Elimination System (NPDES) under the Clean Water Act or Prevention of Significant Deterioration Program (PSD) under the Clean Air Act is adopted or included by reference herein. (5-8-09)

**02. Availability of Referenced Material.** The federal regulations adopted by reference throughout these rules are maintained at the following locations: (7-2-97)

- a. U.S. Government Printing Office, <http://www.ecfr.gov/cgi-bin/ECFR>; and (3-25-16)
- b. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051, (208) 334-3316; and (7-2-97)
- c. Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208) 373-0502. (7-2-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

**004. HAZARDOUS WASTE MANAGEMENT SYSTEM.**

40 CFR Part 260 and all Subparts, except 40 CFR 260.2, are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2016~~7~~. For the purposes of 40 CFR 260.10 in the definition of electronic manifest and electronic

manifest system, "EPA" shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR 260.10, in the definition of hazardous waste constituent, "Administrator" shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 260.20, "Federal Register" shall be defined as the Idaho Administrative Bulletin. (3-29-17)( )

**005. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.**

40 CFR Part 261 and all Subparts (excluding 261.4(b)(17)), except the language "in the Region where the sample is collected" in 40 CFR 261.4(e)(3)(iii), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2016. For purposes of 40 CFR 261.10 and 40 CFR 261.11, "Administrator" shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 261.4(b)(11)(ii), 40 CFR 261.39(a)(5), 40 CFR 261.41, and 40 CFR 261 Appendix IX, "EPA" shall be defined as the U.S. Environmental Protection Agency. Copies of annual reports and advance notifications under these sections shall also be sent to the Director. (3-29-17)( )

**01. Hazardous Secondary Materials Managers Emergency Notification.** In addition to the emergency notification required by 40 CFR 261.411(d)(3) and 261.420(f)(4)(ii), the emergency coordinator must also immediately notify the Idaho Office of Emergency Management by telephone, 1-800-632-8000, to file an identical report. (3-29-17)

**02. Excluded Wastes.** Chemically Stabilized Electric Arc Furnace Dust (CSEAFD) generated by Envirosafe Services of Idaho, Inc. (ESII) at ESII's facility in Grand View, Idaho using the Super Detox(R) treatment process as modified by ESII and that is disposed of in a Subtitle D or Subtitle C landfill is excluded from the lists of hazardous waste provided ESII implements a program that meets the following conditions: (3-16-96)

**a. Verification Testing Requirements.** Sample Collection and analyses, including quality control procedures, conducted pursuant to Subsections 005.02.b. and 005.02.c., must be performed according to SW-846 methodologies and the RCRA Part B permit, including future revisions. (3-29-17)

**b. Initial Verification Testing.** (3-16-96)

**i.** For purposes of Subsections 005.02.b., "new source" shall mean any generator of Electric Arc Furnace Dust (EAFD), EPA and Idaho Department of Environmental Quality Hazardous Waste No. KO61, whose waste has not previously been processed by ESII using the Super Detox(R) treatment process resulting in processed EAFD which has been subjected to initial verification testing and has demonstrated compliance with the delisting levels specified in Subsection 005.02.d. (3-29-17)

**ii.** Prior to the initial treatment of any new source of EAFD, ESII must notify the Department in writing. The written notification shall include: (3-16-96)

(1) The waste profile information; and (3-16-96)

(2) The name and address of the generator. (3-16-96)

**iii.** The first four (4) consecutive batches treated must be sampled in accordance with Subsection 005.02.a. Each of the four (4) samples shall be analyzed to determine if the CSEAFD generated meets the delisting levels specified in Subsection 005.02.d. (3-29-17)

**iv.** If the initial verification testing demonstrates that the CSEAFD samples meet the delisting levels specified in Subsection 005.02.d., ESII shall submit the operational and analytical test data, including quality control information, to the Department, in accordance with Subsection 005.02.f. Subsequent to such data submittal, the CSEAFD generated from EAFD originating from the new source shall be considered delisted. (3-29-17)

**v.** CSEAFD generated by ESII from EAFD originating from a new source shall be managed as hazardous waste in accordance with Subtitle C of RCRA until: (3-16-96)

(1) Initial verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.02.d.; and (3-29-17)

(2) The operational and analytical test data is submitted to the Department pursuant to Subsection 005.02.b.iv. (3-29-17)

vi. For purposes of Subsections 005.02.b. and 005.02.c., “batch” shall mean the CSEAFD which results from a single treatment episode in a full scale mixing vessel. (3-29-17)

**c.** Subsequent Verification Testing. (3-16-96)

i. Subsequent to initial verification testing, ESII shall collect a representative sample, in accordance with Subsection 005.02.a., from each batch of CSEAFD generated by ESII. ESII may, at its discretion, conduct subsequent verification testing on composite samples. In no event shall a composite sample consist of representative samples from more than twenty (20) batches of CSEAFD. (3-29-17)

ii. The samples shall be analyzed prior to disposal of each batch of CSEAFD to determine if the CSEAFD meets the delisting levels specified in Subsection 005.02.d. (3-29-17)

iii. Each batch of CSEAFD generated by ESII shall be subjected to subsequent verification testing no later than thirty (30) days after it is generated by ESII. (3-16-96)

iv. If the levels of constituents measured in a sample, or composite sample, of CSEAFD do not exceed the levels set forth in Subsection 005.02.d., then any batch of CSEAFD which contributed to the sample that does not exceed the levels set forth in Subsection 005.02.d. is non-hazardous and may be managed and/or disposed of in a Subtitle D or Subtitle C landfill. (3-29-17)

v. If the constituent levels in a sample, or composite sample, exceed any of the delisting levels set forth in Subsection 005.02.d., then ESII must submit written notification of the results of the analysis to the Department within fifteen (15) days from receiving the final analytical results, and any CSEAFD which contributed to the sample must be: (3-29-17)

(1) Retested, and retreated if necessary, until it meets the levels set forth in Subsection 005.02.d.; or (3-29-17)

(2) Managed and disposed of in accordance with Subtitle C of RCRA. (3-16-96)

vi. Each batch of CSEAFD shall be managed as hazardous waste in accordance with Subtitle C of RCRA until subsequent verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.02.d. (3-29-17)

**d.** Delisting Levels. (3-16-96)

i. All leachable concentrations for these metals must not exceed the following levels (mg/l):

antimony	0.06	mercury	0.009
arsenic	0.50	nickel	1
barium	7.60	selenium	0.16
beryllium	0.010	silver	0.30
cadmium	0.050	thallium	0.020
chromium	0.33	vanadium	2
lead	0.15	zinc	70

(3-16-96)

- ii. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR Part 261.24. (3-16-96)
- e. Modification of Treatment Process. (3-16-96)
- i. If ESII makes a decision to modify the Super Detox(R) treatment process from the description of the process as set forth in ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995, ESII shall notify the Department in writing prior to implementing the modification. (3-16-96)
- ii. After ESII's receipt of written approval from the Department, and subject to any conditions included with the approval, ESII may implement the proposed modification. (3-16-96)
- iii. If ESII modifies its treatment process without first receiving written approval from the Department, this exclusion of waste will be void from the time the process was modified. (3-16-96)
- iv. ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995 is available at the Department of Environmental Quality, Waste Management and Remediation Division, 1410 N. Hilton, Boise, Idaho 83706. (3-29-12)
- f. Records and Data Retention and Submittal. (3-16-96)
- i. Records of disposal site, operating conditions and analytical data from verification testing must be compiled, summarized, and maintained at ESII's Grand View facility for a minimum of five (5) years from the date the records or data are generated. (3-16-96)
- ii. The records and data maintained by ESII must be furnished upon request to the Department or EPA. (3-16-96)
- iii. Failure to submit requested records or data within ten (10) business days of receipt of a written request or failure to maintain the required records and data on site for the specified time, will be considered by the Department, at its discretion, sufficient basis to revoke the exclusion to the extent directed by the Department. (3-16-96)
- iv. All records or data submitted to the Department must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the records or data submitted: "Under civil and/or criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate, and complete. As to any identified sections of this document for which I cannot personally verify the truth and accuracy, I certify as the ESII official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. In the event that any of this information is determined by the Department in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to ESII, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the Department and that ESII will be liable for any actions taken in contravention of ESII's RCRA and CERCLA obligations premised upon ESII's reliance on the void exclusion." (3-16-96)
- g. Facility Merger and Name Change. On May 4, 2001, the Department was notified of a stock transfer that resulted in ESII's facility merging with American Ecology. This created a name change from EnviroSAFE Services of Idaho, Inc. (ESII) to US Ecology Idaho, Inc. effective May 1, 2001. All references to EnviroSAFE Services of Idaho, Inc. or ESII now refer to US Ecology Idaho, Inc. (3-15-02)

**006. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.**

**01. Incorporation by Reference.** 40 CFR Part 262 and all Subparts ~~(excluding Subparts I and J and 40 CFR 262.10(j), 262.34(j), (k), (l))~~, except for the language "for the Region in which the generator is located" in 40 CFR 262.42(a)(2) and 40 CFR 262.42(b), are herein incorporated by reference as provided in 40 CFR, revised as of



July 1, 2016<sup>7</sup>. For purposes of 40 CFR 262.~~5382~~, 262.~~5583~~, and 262.~~5684~~, “EPA” shall be defined as the U.S. Environmental Protection Agency. Copies of advance notification, annual reports, and exception reports, required under those sections, shall also be provided to the Director. For purposes of 40 CFR 262.20, 262.21, 262.24, and 262.25, ~~262.51, 262.54(e), 262.54(g)(1), 262.55, 262.56, 262.60, and 262.85(g)~~, EPA or Environmental Protection Agency shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR Part 262, Subparts ~~E, F, H, and 40 CFR 262.41(a)(4)~~, “United States or U.S.” shall be defined as the United States. ~~(3-29-17)( )~~

**02. Generator Emergency Notification.** In addition to the emergency notification required by 40 CFR ~~265.56(d)(2), 262.34(d)(5)(iv)(C) 262.16(b)(9)(iv)(C) and 262.265(d)(2)~~, (see 40 CFR ~~262.34(a)(4) 262.17(a)(6), 263.30(c)(1), and 264.56(d)(2)~~, and 265.56(d)(2)) the emergency coordinator must also immediately notify the Idaho Office of Emergency Management by telephone, 1-800-632-8000, to file an identical report. ~~(3-15-02)( )~~

**007. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.**

40 CFR Part 263 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2016<sup>7</sup>. For purposes of 40 CFR 263.20(g), 263.20(g)(1), 263.20(g)(4), 263.21(a)(4), and 263.22(d), “United States” shall be defined as the United States. For the purposes of 40 CFR 263.20(a), “EPA” shall be defined as U.S. Environmental Protection Agency. ~~(3-29-17)( )~~

**008. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.**

40 CFR Part 264 and all Subparts (excluding 40 CFR 264.1(f), 264.1(g)(12), 264.149, 264.150, 264.301(l), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f) and 264.1080(g)) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2016<sup>7</sup>. For purposes of 40 CFR Subsection 264.12(a), “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 264.71 and 264.1082(c)(4)(ii), “EPA” shall be defined as the U.S. Environmental Protection Agency. ~~(3-29-17)( )~~

**009. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.**

40 CFR Part 265, and all Subparts (excluding Subpart R, 40 CFR 265.1(c)(4), 265.1(c)(15), 265.149, 265.150, 265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), and 265.1080(g)), except the language contained in 40 CFR 265.340(b)(2) as replaced with: “The following requirements continue to apply even when the owner or operator has demonstrated compliance with the MACT requirements of part 63, subpart EEE of this chapter: 40 CFR 265.351 (closure) and the applicable requirements of Subparts A through H, BB and CC of this part.” are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2016<sup>7</sup>. For purposes of 40 CFR Subsection 265.12(a), “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 265.71 and 265.1083(c)(4)(ii), “EPA” shall be defined as the U.S. Environmental Protection Agency. ~~(3-29-17)( )~~

**010. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE FACILITIES.**

40 CFR Part 266 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2016<sup>7</sup>. ~~(3-29-17)( )~~

**011. LAND DISPOSAL RESTRICTIONS.**

40 CFR Part 268 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2016<sup>7</sup>, except for 40 CFR 268.1(e)(3), 268.5, 268.6, 268.13, 268.42(b), and 268.44(a) through (g). The authority for implementing the provisions of these excluded sections remains with the EPA. However, the requirements of Sections 39-4403(17) and 39-4423, Idaho Code, shall be applied in all cases where these requirements are more stringent than the federal standards. If the Administrator of the EPA grants a case-by-case variance pursuant to 40 CFR 268.5, that variance will simultaneously create the same case-by-case variance to the equivalent requirement of these rules. For purposes of 40 CFR 268.(2)(j) “EPA” shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR 268.40(b), “Administrator” shall be defined as U.S. Environmental Protection Agency Administrator. In 40 CFR 268.7(a)(9)(iii), “D009” is excluded, (from lab packs as noted in 40 CFR Part 268 Appendix IV.). ~~(3-29-17)( )~~

**012. HAZARDOUS WASTE PERMIT PROGRAM.**

40 CFR Part 270 and all Subparts, except 40 CFR 270.1(c)(2)(ix), 270.12(a) and 40 CFR 270.14(b)(18), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2016<sup>7</sup>. For purposes of 40 CFR 270.2, 270.5, 270.10(e)(2), 270.10(e)(3), 270.10(f)(2), 270.10(f)(3), 270.10(g), 270.11(a)(3), 270.32(a), 270.32(b)(2), 270.32(c), 270.51, 270.72(a)(5), and 270.72(b)(5), “EPA” and “Administrator” or “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator respectively. (3-29-17)( )

**013. PROCEDURES FOR DECISION-MAKING (STATE PROCEDURES FOR RCRA OR HWMA PERMIT APPLICATIONS).**

40 CFR Part 124, Subparts A, B and G are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2016<sup>7</sup>, except that the last sentence of 40 CFR 124.10(b)(1), 40 CFR 124.15(b)(2) 40 CFR 124.19, the fourth sentence of 40 CFR 124.31(a), the third sentence of 40 CFR 124.32(a), and the second sentence of 40 CFR 124.33(a) are expressly omitted from the incorporation by reference of each of those subsections. For purposes of 40 CFR 124.6(e), 124.10(b), and 124.10(c)(1)(ii) “EPA” and “Administrator” or “Regional Administrator” shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator, respectively. (3-29-17)( )

**014. (RESERVED)**

**015. STANDARDS FOR THE MANAGEMENT OF USED OIL.**

**01. Incorporation by Reference.** 40 CFR Part 279 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2016<sup>7</sup>. For purposes of 40 CFR 279.43(c)(3)(ii) “Director” shall be defined as the Director, U.S.DOT Office of Hazardous Materials Regulation. (3-29-17)( )

**02. Used Oil as a Dust Suppressant.** 40 CFR Part 279 contains a prohibition on the use of used oil as a dust suppressant at 279.82(a), however, States may petition EPA to allow the use of used oil as a dust suppressant. Members of the public may petition the State to make this application to EPA. This petition to the State must: (2-11-94)

**a.** Be submitted to the Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706-1255; and (2-11-94)

**b.** Demonstrate how the requirements of 40 CFR 279.82(b) will be met. (2-11-94)

**016. STANDARDS FOR UNIVERSAL WASTE MANAGEMENT.**

40 CFR Part 273 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2016<sup>7</sup>. For purposes of 40 CFR 273.32(a)(3), “EPA” shall be defined as the U.S. Environmental Protection Agency. (3-29-17)( )

**017. CRITERIA FOR THE MANAGEMENT OF GRANULAR MINE TAILINGS (CHAT) IN ASPHALT CONCRETE AND PORTLAND CEMENT CONCRETE IN TRANSPORTATION CONSTRUCTION PROJECTS FUNDED IN WHOLE OR IN PART BY FEDERAL FUNDS.**

40 CFR Part 278 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2016<sup>7</sup>. (3-29-17)( )

**018. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT.**

40 CFR Part 267 and all Subparts, except 40 CFR 267.150, are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2016<sup>7</sup>. (3-29-17)( )

# Overview of Incorporations by Reference for the DEQ Hazardous Waste Program - Docket No. 58-0105-1701

Required by Idaho Code § 67-5223(4)

---

Rulemaking Docket No. 58-0105-1701 describes incorporation by reference of final federal hazardous waste regulations promulgated with effective dates from July 1, 2016 through June 30, 2017.

Incorporation by reference of federal hazardous waste regulations is a routine procedure that DEQ performs annually to: 1) satisfy the consistency and stringency requirements of the Hazardous Waste Management Act (HWMA – Idaho Code § 39-4404); 2) meet the legislative intent to avoid the existence of duplicative, overlapping or conflicting state and federal regulatory systems; and 3) provide for DEQ to maintain primacy and authorization to operate the federal Resource Conservation and Recovery Act (RCRA) program in lieu of EPA.

This proposed rule is neither broader in scope nor more stringent than federal regulations, and does not regulate an activity that is not regulated by the federal government.

The following table summarizes the Code of Federal Regulations sections the DEQ Hazardous Waste Program incorporates by reference. References are listed in the order listed in IDAPA 58.01.05, Rules and Standards for Hazardous Waste. Excluded provisions are specifically identified in the rules.

40 CFR Part	Title	Changes During Past Year?	Impact on Idaho
260	Hazardous Waste Management System	Yes	Yes
261	Identification and Listing of Hazardous Waste	Yes	Yes
262	Standards Applicable to Generators of Hazardous Waste	Yes	Yes
263	Standards Applicable to Transporters of Hazardous Waste	Yes	Yes
264	Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities	Yes	Yes
265	Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities	Yes	Yes
266	Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Facilities	Yes	Yes
268	Land Disposal Restrictions	Yes	Yes
270	Hazardous Waste Permit Program	Yes	Yes
124	Procedures for Decision-Making (State Procedures for RCRA or HWMA Permit Applications)	Yes	No
279	Standards for the Management of Used Oil	Yes	Yes
273	Standards for Universal Waste Management	Yes	Yes
278	Criteria for the Management of Granular Mine Tailings (CHAT) in Asphalt Concrete and Portland Cement Concrete in Transportation Construction Projects Funded in Whole or in Part by Federal Funds	No	-
267	Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit	Yes	No

---

These changes are discussed in more detail below. Links to the pdf files associated with the Federal Register notices are denoted in parentheses as hyperlinks.

The following parts were revised and may have minimal or no impact on Idaho facilities:

**Parts 260, 261, 262, 263, 264, 265, 266, 267, 271, 273, and 124**

- Hazardous Waste Export-Import Revisions: EPA has amended existing regulations regarding the export and import of hazardous waste from and into the United States (<https://www.gpo.gov/fdsys/pkg/FR-2016-11-28/pdf/2016-27428.pdf>). The purpose of these revisions is to provide greater protection to human health and the environment by making existing export and import related requirements more consistent with the current requirements for shipments between members of the Organization for Economic Cooperation and Development (OECD).

The rule improves and consolidates previous regulations so that one set of requirements – the OECD’s more stringent controlling transboundary movements of hazardous waste requirements – apply to all U.S. hazardous waste exports and imports.

More efficient compliance monitoring will be provided by the rule’s requirement to link the consent to export with the electronic export information submitted to U.S. Customs and Border Protection (CBP). These regulations support a broader U.S. government effort led by CBP to convert from a paper-based border-crossing approval process for a wide range of exports and imports, to an electronic border-crossing approval process. This rule covers the hazardous waste export component of this larger International Trade Data System initiative.

Additionally, the new rule requires mandatory electronic reporting to EPA, which will enable increased sharing of hazardous waste export and import data with state programs, the general public, and individual hazardous waste exporters and importers.

- EPA does not authorize states to administer federal import/export functions in any section of the RCRA hazardous waste regulations and must be notified of all imports/exports of hazardous waste. Nevertheless, state programs are still required to adopt these provisions to maintain their equivalency with the federal program.
- IDAPA 58.01.05.013 is being revised to clarify that 40 CFR 124.15(b)(2) is expressly excluded from the incorporation by reference. This section references a section (40 CFR 124.19) that is already listed in the sections of this part that were expressly omitted from incorporation by reference.
  - This change should have no impact to Idaho facilities.

The following parts were revised and may have an impact on Idaho facilities:

**Parts 260, 261, 262, 263, 264, 265, 266, 267, 268, 270, 271, 273, and 279**

- Hazardous Waste Generator Improvements Rule: In this rule, EPA is revising the RCRA hazardous waste generator regulatory program (<https://www.gpo.gov/fdsys/pkg/FR-2016-11-28/pdf/2016-27429.pdf>). The objectives to these revisions include: 1) reorganizing the hazardous waste generator regulations to make them more user-friendly and thus improve their usability by the regulated community; 2) providing a better understanding of how the RCRA hazardous waste generator regulatory program works; 3) addressing gaps in the existing regulations to strengthen environmental protection; 4) providing greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner; and 5) making technical corrections and conforming changes to address inadvertent errors and remove obsolete references to programs that no longer exist.

This rule includes over 60 changes to the hazardous waste generator regulations that clarify existing requirements, increase flexibility, and improve environmental protection. These changes also reorganize the regulations to make them easier to follow and make certain technical corrections.

#### Provisions to increase flexibility for generators of hazardous waste

- Allowing very small quantity generators (VSQGs) (previously known in federal regulations as “conditionally exempt small quantity generators” CESQGs) to send hazardous waste to a large quantity generator (LQG) that is under the control of the same person and consolidate it there before sending it on to management at a RCRA-designated facility, provided certain conditions are met. In some situations, organizations in industry, government, and academia may have satellite locations that qualify as VSQGs. These organizations could take advantage of this provision to send material to an LQG within their company and ultimately to manage the hazardous waste in an environmentally sound manner rather than as an exempt waste.
- Allowing a VSQG or a small quantity generator (SQG) to maintain its existing generator category in the case of an event in which the VSQG or SQG generates a quantity of hazardous waste in a calendar month that would otherwise bump the generator into a more stringent generator regulatory category. Under this provision, generators that satisfy the listed conditions do not have to comply with the more stringent generator standards when an unusual event such as a cleanout or an act of nature causes its generator category to temporarily increase.

### Improvements of environmental protection

- Updating the emergency response and contingency planning provisions for SQGs and LQGs to include Local Emergency Planning Committees (LEPC) among those emergency planning organizations with which a generator may make response arrangements and require that new and existing LQGs submit quick reference guides with the key information when they either develop or update their contingency plans to local responders for easy access during an event.
- Requiring periodic re-notification for SQGs every four years (SQGs only notify once under the current system).
- Revising the regulations for labeling and marking of containers and tanks to clearly indicate the hazards of the hazardous waste contained inside.

### Provisions to improve generator compliance

- Clarifying inconsistent guidance on which generator category applies when a generator generates both acute and non-acute hazardous waste in a calendar month.
- Revising the regulations for completing the RCRA biennial report to be consistent with the current instructions distributed with the form.
- Replacing the phrase “conditionally exempt small quantity generator” with the phrase “very small quantity generator” to be consistent with the other two generator categories – LQGs and SQGs.

### Reorganization of the hazardous waste generator regulations

- Moving the VSQG regulations from 40 CFR 261.5 into 40 CFR part 262, where the regulations for SQGs and LQGs are located.
- Moving a number of the generator regulations that are currently located in other parts of the hazardous waste standards into 40 CFR part 262 to replace the current list of cross references.

Technical corrections

- Correcting inadvertent errors in the regulations, obsolete programs, and unclear citations
- These rules are a combination of less stringent, more stringent, and neither more nor less stringent than current requirements.
- Currently, there are approximately 1,000 active hazardous waste generators in Idaho ( $\approx 37$  LQGs,  $\approx 99$  SQGs, and  $\approx 863$  VSQGs) that could be affected by this rule.
- EPA estimates there are between 424,099 and 676,890 entities nationally that could be affected by this rule.
- VSQGs ( $\approx 86\%$  of the total no. of Idaho generators) will only be affected if they choose to take advantage of either of the two voluntary programs that were promulgated.
- National estimates indicate the annual cost to comply with the new requirements is between \$5.9 million and \$13.3 million.
- National annual cost savings or benefits for facilities opting to take advantage of the two voluntary programs are estimated to be between \$8.3 million and \$14.4 million.