

Dear Senators VICK, Heider, Stennett, and
Representatives EHARDT, Wisniewski, Chew:

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

IDAPA 58.01.05 - Rules and Standards for Hazardous Waste - Proposed Rule (Docket No.
58-0105-2201).

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 10/24/2022. 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 11/21/2022.

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 334-4854, or send a written request to the address on the
memorandum attached below.



Terri Kondeff
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

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

FROM: Deputy Division Manager - Katharine Gerrity

DATE: October 05, 2022

SUBJECT: Department of Environmental Quality

IDAPA 58.01.05 - Rules and Standards for Hazardous Waste - Proposed Rule (Docket No. 58-0105-2201)

Summary and Stated Reasons for the Rule

The Department of Environmental Quality submits a 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 and this results in an annual update. Idaho's Rules and Standards for Hazardous Waste 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. The department states that adoption of federal regulations is necessary to maintain program primacy. The department adds 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.

Negotiated Rulemaking / Fiscal Impact

The department indicates that negotiated rulemaking was not conducted due to the simple nature of the rulemaking and because the department has no discretion with respect to adopting EPA's federal regulations implementing RCRA as directed by the Idaho Hazardous Waste Management Act. The department states there is no fiscal impact.

Statutory Authority

The rulemaking appears authorized pursuant to Chapters 44 and 58, Idaho Code, Title 39, Idaho Code, 40 CFR 271.21(e) and Section 39-4404, Idaho Code.

cc: Department of Environmental Quality
Paula J. Wilson

*** PLEASE NOTE ***

Paul Headlee, Deputy Director Kristin Ford, Manager Keith Bybee, Manager April Renfro, Manager Glenn Harris, Manager
Legislative Services Office Research & Legislation Budget & Policy Analysis Legislative Audits Information Technology

Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

Tel: 208-334-2475
legislature.idaho.gov

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.05 – RULES AND STANDARDS FOR HAZARDOUS WASTE

DOCKET NO. 58-0105-2201

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. This 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 September 21, 2022. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: 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 with the July 1, 2022 Code of Federal Regulations (CFR) effective date. The July 1, 2022 CFR is a codification of federal regulations published in the Federal Register as of July 1, 2022.

Citizens of the state of Idaho; environmental groups; persons interested in hazardous waste; and hazardous waste 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 Idaho Board of Environmental Quality in November 2022 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2023 legislative session if adopted by the Board and approved by the Idaho Legislature.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

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 <https://www.deq.idaho.gov/hazardous-waste-docket-no-58-0105-2201/>.

NEGOTIATED RULEMAKING: Negotiated rulemaking was not conducted. DEQ determined that negotiated rulemaking is not feasible pursuant to Section 67-5220, Idaho Code, 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: 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 resulting from this rulemaking:

Not applicable

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the proposed rule, contact Albert Crawshaw at albert.crawshaw@deq.idaho.gov or (208) 373-0554.

SUBMISSION OF WRITTEN COMMENTS: Anyone may submit written comments regarding this proposed rulemaking. The Department will consider all comments received on or before September 28, 2022. Submit comments to:

Albert Crawshaw
Department of Environmental Quality
1410 N. Hilton Street
Boise, Idaho 83706
albert.crawshaw@deq.idaho.gov

DATED this September 7, 2022

Caroline Moores
Operations Senior Analyst
Department of Environmental Quality
1410 N Hilton St.
Boise, ID 83706
208-373-0149
caroline.moores@deq.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0105-2201
(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 constitute the full adoption by reference of that part and Subparts as they appear in 40 CFR, revised as of July 1, 2021², including any notes and appendices therein, unless expressly provided otherwise in these rules. (3-24-22)()

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. (3-24-22)

02. Availability of Referenced Material. The federal regulations adopted by reference throughout these rules are maintained at the following locations: (3-24-22)

- a. U.S. Government Printing Office, ~~<http://www.ecfr.gov/cgi-bin/ECFR>~~ [https://www.ecfr.gov/current/title-40](https://www.ecfr.gov/current/title-40;); (3-24-22)()
- b. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051, (208) 334-3316; (3-24-22)
- c. Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208) 373-0502. (3-24-22)

Overview of Incorporations by Reference for the DEQ Hazardous Waste Program - Docket No. 58-0105-2201 Required by Idaho Code § 67-5223(4)

Rulemaking Docket No. 58-0105-2201 describes incorporation by reference of final federal hazardous waste regulations promulgated with effective dates from July 1, 2021, through June 30, 2022.

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.

<u>40 CFR Part</u>	Title	Changes During Past Year?	Impact on Idaho
260	Hazardous Waste Management System	No	No
261	Identification and Listing of Hazardous Waste	No	No
262	Standards Applicable to Generators of Hazardous Waste	Yes	Yes
263	Standards Applicable to Transporters of Hazardous Waste	No	No
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	No	No
268	Land Disposal Restrictions	No	No
270	Hazardous Waste Permit Program	No	No
124	Procedures for Decision-Making (State Procedures for RCRA or HWMA Permit Applications)	No	No
279	Standards for the Management of Used Oil	No	No
273	Standards for Universal Waste Management	No	No
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	No	No

An overview of the changes is included below.

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

[40 CFR Parts 262, 264, and 265](#)

Conforming Changes to Canada-Specific Hazardous Waste Import-Export Recovery and Disposal Operation Codes

In this final rule, EPA updated regulations related to twelve recovery and disposal operations needed to reflect changes to regulations related to Canadian import-export recovery and disposal operations. This final rule was promulgated solely because of Environment and Climate Change Canada's revisions to its import-export recovery and disposal code numbers and descriptions. A full description and rule text can be found in the [Federal Register](#).

The changes to the regulations related to the twelve import-export disposal and recovery operations will ensure that the disposal and recovery operation codes listed in U.S export notices proposing exports to Canada facilities and subsequent movement documents will continue to reflect the accurate Canadian code numbers and description of the operations, enabling matching to the information listed in the Canadian import notices and movement documents.

These revisions to the regulations related to twelve recovery and disposal codes used by exporters and importers in this action generally affect two groups: (1) All persons who export or import (or arrange for the export or import of) hazardous waste for recycling or disposal, including those hazardous wastes subject to the alternate management standards; and (2) all persons who export or arrange for the export of materials for recycling or conditionally excluded hazardous secondary materials being shipped for recycling.