



Eric Milstead  
Director

# Legislative Services Office Idaho State Legislature

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## MEMORANDUM

**TO:** Senators HEIDER, Martin, Schmidt and,  
Representatives THOMPSON, Anderst, Smith

**FROM:** Katharine Gerrity - Principal Legislative Research Analyst

**DATE:** December 05, 2014

**SUBJECT:** Temporary Rule

IDAPA 58.01.10 - Rules Regulating the Disposal of Radioactive Materials Not Regulated Under the Atomic Energy Act of 1954, As Amended - Temporary and Pending Rule - Docket No. 58-0110-1401

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Katharine Gerrity at the Legislative Services Office at (208) 334-4834. Thank you.

Attachment: Temporary Rule

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## IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

### 58.01.10 - RULES REGULATING THE DISPOSAL OF RADIOACTIVE MATERIALS NOT REGULATED UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

DOCKET NO. 58-0110-1401

#### NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY AND PENDING RULE

**EFFECTIVE DATE:** The temporary rule is effective December 3, 2014, and remains in effect until the adjournment of the 2015 legislative session unless rescinded by the agency. This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Sixty-third Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

**AUTHORITY:** In compliance with Sections 67-5226 and 67-5224, Idaho Code, notice is hereby given that the Board has adopted a temporary and pending rule. This action is authorized by Section 39-4405, Idaho Code. This legislation is consistent with the language in the pending rule.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, June 4, 2014, [Vol. 14-6, pages 115 through 118](#). DEQ received no public comments, and the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at [www.deq.idaho.gov/58-0110-1401](http://www.deq.idaho.gov/58-0110-1401) or by contacting the undersigned.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in order to confer a benefit. The State of Idaho would be conferred a benefit on the additional tipping fees to the General Fund of approximately \$100,000. A portion of these tipping fees allows for maintenance of roads leading to the facility and are directed to the Idaho Transportation Department and the County Highway District. Owyhee County also receives a portion of the tipping fee to supplement emergency services. This rulemaking would allow several additional federal agencies to utilize the existing Idaho DEQ permitted disposal capacity of the U.S. Ecology Idaho, Inc. Grand View facility for environmentally protective, secure disposal of these materials.

**IDAHO CODE SECTION 39-107D STATEMENT:** This rule does regulate an activity not regulated by the federal government but is consistent with the legislative directive in Senate Bill 1260 (codified at Section 39-4403, Idaho Code).

**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 when the pending rule will become effective: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact John Brueck at [john.brueck@deq.idaho.gov](mailto:john.brueck@deq.idaho.gov) or (208) 373-0458.

Dated this 19th Day of November, 2014.

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**DOCKET NO. 58-0110-1401 - ADOPTION OF PENDING AND TEMPORARY RULE**

No substantive changes have been made to the pending rule.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 14-6, June 4, 2014, pages 115 through 118.

This rule has been adopted as a pending rule by the Agency and is now awaiting review and final approval by the 2015 Idaho State Legislature.

Additionally, this rule has been adopted as a temporary rule and is effective December 3, 2014.

Pursuant to Section 67-5226, Idaho Code, the full text of the temporary rule is being published in this Bulletin.

**THE FOLLOWING IS TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 58-0110-1401**

**004. INCORPORATION BY REFERENCE.**

**01. General.** Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 004.02 shall constitute the full adoption by 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. (3-15-02)

**02. Documents Incorporated by Reference.** The following documents are incorporated by reference into these rules: (3-15-02)

- a. 10 CFR 30.14 through 30.15, revised as of January 1, 2014. (~~3-29-12~~)(12-3-14)T
- b. 10 CFR 30.18 through 30.21, revised as of January 1, 2014. (~~3-29-12~~)(12-3-14)T
- c. 10 CFR 32.11, revised as of January 1, 2014. (~~3-29-12~~)(12-3-14)T
- d. 10 CFR 32.18, revised as of January 1, 2014. (~~3-29-12~~)(12-3-14)T
- e. 10 CFR 40.13, revised as of January 1, 2014. (~~3-29-12~~)(12-3-14)T

**03. Availability of Referenced Material.** Copies of the documents incorporated by reference into these rules are available at the following locations: (3-15-02)

- a. Department of Environmental Quality, 1410 N. Hilton, Boise ID 83706-1255. (3-15-02)
- b. Idaho State Law Library, 451 W. State Street, P.O. Box 83720, Boise ID 83720-0051. (3-15-02)
- c. U.S. Government Printing Office, [www.ecfr.gov](http://www.ecfr.gov). (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

- 01. Accelerator-Produced Radioactive Material.** Any material made radioactive by a particle accelerator. (3-29-12)
- 02. Board.** The Idaho Board of Environmental Quality. (3-15-02)
- 03. Byproduct Material.** Byproduct Material means: (3-15-02)
- a.** Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or utilizing special nuclear material; and (3-15-02)
- b.** The tailings or waste produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content. (3-15-02)
- c.** Any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or any material that: (3-29-12)
- i.** Has been made radioactive by use of a particle accelerator; and (3-29-12)
- ii.** Is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and (3-29-12)
- d.** Any discrete source of naturally occurring radioactive material, other than source material, that: (3-29-12)
- i.** The U.S. Nuclear Regulatory Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium- 226 to the public health and safety or the common defense and security; and (3-29-12)
- ii.** Before, on, or after August 8, 2005, is extracted for use in a commercial, medical, or research activity. (3-29-12)
- 04. Department.** The Idaho Department of Environmental Quality. (3-15-02)
- 05. Exempt Quantities and Concentrations of Byproduct Materials.** Radioactive materials defined as exempt byproduct materials by the U.S. Nuclear Regulatory Commission (10 CFR 30.14 through 30.15, 10 CFR 30.18 through 30.21, 10 CFR 32.11 and 10 CFR 32.18). (3-29-12)
- 06. Naturally Occurring Radioactive Material (NORM).** Any material containing natural radionuclides at natural background concentrations, where human intervention has not concentrated the naturally occurring radioactive material or altered its potential for causing human exposure. NORM does not include source, byproduct or special nuclear material licensed by the U.S. Nuclear Regulatory Commission under the Atomic Energy Act of 1954. (3-15-02)
- 07. Operator.** Any person(s) currently responsible, or responsible at the time of disposal, for the overall operation of a hazardous waste treatment, storage or disposal facility or part of a hazardous waste treatment, storage or disposal site. (3-15-02)
- 08. Owner.** Any person(s) who currently owns, or owned at the time of disposal, a hazardous waste treatment, storage or disposal facility or part of a hazardous waste treatment, storage or disposal site. (3-15-02)
- 09. Person.** Any individual, association, partnership, firm, joint stock company, trust, political subdivision, public or private corporation, state or federal government department, agency, or instrumentality, municipality, industry, or any other legal entity which is recognized by law as the subject of rights and duties.

- (3-15-02)
- 10. Radioactive Material.** Radioactive Material includes: (3-15-02)
- a. Technologically Enhanced Naturally Occurring Radioactive Material; (3-15-02)
  - b. Byproduct material authorized for disposal pursuant to 10 CFR 20.2008(b); (3-29-12)
  - c. Exempt Quantities and Concentrations of Byproduct Materials; (4-2-08)
  - d. Unimportant Quantities of Source Material; and (4-2-08)
  - e. Any other byproduct, source material, or special nuclear material or devices or equipment utilizing such material, which has been *declared* exempted or released from radiological control or regulation under the Atomic Energy Act of 1954, as amended, *for the purposes of disposal pursuant to 10 CFR 30.11, 10 CFR 40.14, 10 CFR 70.17 to be disposed of in a commercial hazardous waste facility as regulated pursuant to the rules, permit requirements, and acceptance criteria provided for by Chapter 44, Title 39, Idaho Code.* (~~4-2-08~~)(12-3-14)T
- 11. Reasonably Maximally Exposed Individual.** That individual or group of individuals who by reason of location has been determined, through the use of environmental transport modeling and dose calculation, to receive the highest total effective dose equivalent from radiation emitted from the site and/or radioactive material transported off-site. (3-15-02)
- 12. Source Material.** Source material means: (3-15-02)
- a. Uranium or thorium, or any combination thereof, in any physical or chemical form; or (3-15-02)
  - b. Ores which contain by weight one-twentieth of one percent (0.05%) or more of: (3-15-02)
    - i. Uranium; (3-15-02)
    - ii. Thorium; or (3-15-02)
    - iii. Any combination thereof. (3-15-02)
  - c. Source material does not include special nuclear material. (3-15-02)
- 13. Special Nuclear Material.** Special Nuclear Material means: (3-15-02)
- a. Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the U.S. Nuclear Regulatory Commission determines to be special nuclear material. (3-15-02)
  - b. Any material artificially enriched by any of the material listed in Subsection 010.12.a. (3-15-02)
- 14. Technologically Enhanced Naturally Occurring Radioactive Material (TENORM).** Any naturally occurring radioactive materials not subject to regulation under the Atomic Energy Act whose radionuclide concentrations or potential for human exposure have been increased above levels encountered in the natural state by human activities. TENORM does not include source, byproduct or special nuclear material licensed by the U.S. Nuclear Regulatory Commission under the Atomic Energy Act of 1954. (3-15-02)
- 15. Unimportant Quantities of Source Material.** Radioactive materials defined as unimportant quantities of source materials by the U.S. Nuclear Regulatory Commission (10 CFR 40.13). (3-15-02)