

Dear Senators VANORDEN, Wintrow, and  
Representatives BARBIERI, Furniss, Necochea:

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.  
58-0105-2401).

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 09/12/2024. 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 10/10/2024.

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 Health & Welfare Committee and the House Environment, Energy & Technology Committee

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

**DATE:** August 26, 2024

**SUBJECT:** Department of Environmental Quality

IDAPA 58.01.05 - Rules and Standards for Hazardous Waste - Proposed Rule (Docket No. 58-0105-2401)

#### **Summary and Stated Reasons for the Rule**

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 states that the rules are updated annually to maintain consistency with federal regulations implementing the Resource Conservation and Recovery Act as directed by the Idaho Hazardous Waste Management Act. The department indicates that the rulemaking is necessary to maintain program primacy.

#### **Negotiated Rulemaking / Fiscal Impact**

The department notes 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 the federal regulations in order to maintain primacy. The department states that there is no fiscal impact as a result of the rulemaking and that the rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

#### **Statutory Authority**

The rulemaking appears to be authorized by Chapters 1, 44, and 58, Title 39, Idaho Code.

cc: Department of Environmental Quality  
Janeena White

#### **\*\*\* PLEASE NOTE \*\*\***

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.

Paul Headlee, Deputy Director    Matt Drake, Manager    Keith Bybee, Manager    April Renfro, Manager    Norma Clark, 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  
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# IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

## 58.01.05 – RULES AND STANDARDS FOR HAZARDOUS WASTE

### DOCKET NO. 58-0105-2401

#### 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 1, 44 and 58, Title 39, Idaho Code. In addition, 40 CFR 271.21(e)(1) 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 21, 2024. 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, 2024 Code of Federal Regulations (CFR) effective date. The July 1, 2024 CFR is a codification of federal regulations published in the Federal Register as of July 1, 2024.

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. If adopted by the Idaho Board of Environmental Quality and approved by concurrent resolution of the 2025 Idaho Legislature, the rule will become effective on July 1, 2025, unless otherwise specified in the concurrent resolution.

**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.

**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, 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 differences 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 is available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/hazardous-waste-docket-no-58-0105-2401>.

**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.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on questions concerning this proposed rulemaking, contact Albert Crawshaw at [albert.crawshaw@deq.idaho.gov](mailto:albert.crawshaw@deq.idaho.gov) or (208) 373-0554.

**SUBMISSION OF WRITTEN COMMENTS:** Anyone may submit written comments regarding this proposed rule. The Department will consider all written comments received on or before August 28, 2024. Submit written comments to:

Albert Crawshaw  
Department of Environmental Quality  
1410 N. Hilton, Boise, ID 83706  
[albert.crawshaw@deq.idaho.gov](mailto:albert.crawshaw@deq.idaho.gov)

Dated this 7th day of August, 2024.

Janeena White  
Senior Operations Analyst  
Department of Environmental Quality  
1410 N. Hilton Street  
Boise, Idaho 83706  
Phone: (208)373-0502  
[janeena.white@deq.idaho.gov](mailto:janeena.white@deq.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0105-2401**  
**(Only Those Sections With Amendments Are Shown.)**

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

**000. LEGAL AUTHORITY.**

~~Under Chapters 1, 44 and 58, Title 39, Idaho Code, the Idaho Legislature has granted the Board of Environmental Quality the authority to promulgate these rules. (3-24-22)( )~~

~~**001. TITLE.**~~

~~These rules are titled IDAPA 58.01.05, “Rules and Standards for Hazardous Waste.” (3-24-22)~~

**001. (RESERVED)**

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

**01. Federal Regulations Incorporated by Reference.** ~~Any reference in these rules to requirements, procedures, or specific forms contained in the Code of Federal Regulations (CFR), Title 40, 40 CFR 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, 2024, including any notes and appendices therein, unless expressly provided otherwise in are incorporated by reference into these rules. (4-6-23)( )~~

**042. 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, <https://www.ecfr.gov/current/title-40>; (4-6-23)~~
- ~~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. 58-0105-2401, IDAPA 58.01.05**

**Required by Idaho Code § 67-5223(4)**

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Rulemaking Docket No. 58-0105-2401 describes incorporation by reference of final federal hazardous waste regulations promulgated with effective dates through June 30, 2024.

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.

<a href="#">40 CFR Part</a>	Title	Changes During Past Year?	Impact on Idaho
124	Procedures for Decision Making (State Procurement for RCRA or HMWA Permit Applications)	No	No
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	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	Yes	Yes
267	Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit	No	No
268	Land Disposal Restrictions	No	No
270	Hazardous Waste Permit Program	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	No
279	Standards for the Management of Used Oil	No	No

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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:**

#### **40 CFR Part 266**

[88 FR 16732, March 20, 2023, EPA Method 23-Determination of Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofurans From Stationary Sources](#): EPA has amended existing regulations regarding editorial and technical revisions to the Environmental Protection Agency's (EPA's) Method 23 (Determination of Polychlorinated Dibenzo-p-Dioxins, Polychlorinated Dibenzofurans, and Polycyclic Aromatic Hydrocarbons from Stationary Sources). Final revisions include incorporating true, comprehensive, and stable isotope dilution for quantifying target compounds using corresponding carbon-13 labeled compounds for each target compound including most of the polycyclic aromatic hydrocarbons (PAH) and changing the method quality control from the current prescriptive format to a more flexible performance-based approach with specified performance criteria. We are also finalizing revisions that expand the list of target compounds of Method 23 to include PAH and polychlorinated biphenyls (PCB). The final revisions allow facilities and their test teams flexibility when sampling and measuring polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans (PCDD/PCDF), PAH, and PCB from stationary sources with a comprehensive isotope dilution method while ensuring that the stack testing community can consistently implement the method across emissions sources and facilities.

#### **40 CFR Parts 261, 262, and 266**

[88 FR 84710, December 6, 2023, Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule; Technical Corrections](#): EPA has amended existing regulations on a number of technical corrections that correct or clarify several parts of the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations. These technical corrections correct or clarify specific provisions in the existing hazardous waste regulations that were promulgated in the Hazardous Waste Generator Improvements rule, the Hazardous Waste Pharmaceuticals rule, and the Definition of Solid Waste rule. This rule also makes other minor corrections that fall within the same sections of the hazardous waste regulations but are independent of these three rules.