

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 58.01.05 - Rules and Standards for Hazardous Waste - Proposed Rule (Docket No. 58-0105-1801).

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 08/24/2018. 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 09/24/2018.

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

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*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 08, 2018

**SUBJECT:** Department of Environmental Quality

IDAPA 58.01.05 - Rules and Standards for Hazardous Waste - Proposed Rule (Docket No. 58-0105-1801)

#### 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 notes that these rules are updated annually to maintain consistency with federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act. The rule updates federal regulations incorporated by reference to include those revised as of July 1, 2018.

The department states that the proposed rule incorporated by reference 40 CFR Part 264, Subpart FF, and Part 265, Subpart FF, Fees for the Electronic Hazardous Waste Manifest Program (e-Manifest system). The department adds that the fees are imposed and collected by the EPA for use of the e-Manifest system, which is a new national system established by EPA for tracking hazardous waste shipments electronically. The department explains that all receiving facilities receiving waste that must be manifested under federal law, or receiving state-regulated hazardous waste that must be manifested as required by the state in which the waste was generated, must submit those manifests to EPA either in paper form or electronically beginning June 30, 2018. EPA charges receiving facilities an associated fee for each manifest. The department adds that states with authorized hazardous waste programs are required by EPA to revise their programs to be equivalent to, consistent with, and no less stringent than the requirements of the final e-Manifest user fee regulations. The department states that it will not be involved in any way with the assessment or collection of these fees.

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 department has complied with Section 67-5223(4), Idaho Code, including a synopsis detailing the substantive difference between the previously incorporated material and the latest revised version which in this case include confidentiality determinations for hazardous waste export and import documents, CFR corrections relating to the identification and listing of hazardous waste, user fees for electronic hazardous waste manifest system and amendments to manifest regulations and response to vacatur of certain provisions of the definition of solid waste; all of which the department indicates will have minimal to no impact on Idaho facilities.

Kristin Ford, Manager  
Research & Legislation

Paul Headlee, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

## Negotiated Rulemaking / Fiscal Impact

The department notes that negotiated rulemaking was not conducted due to the simple nature of the changes and because it 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 that there will be no fiscal impact on the general fund.

## Statutory Authority

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

cc: Department of Environmental Quality  
Paula J. Wilson

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

Per the Idaho Constitution, all administrative rules must 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. 58-0105-1801

### 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 15, 2018. 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, 2018.

This proposed rule includes the incorporation by reference of **40 CFR Part 264, Subpart FF, and Part 265, Subpart FF**, Fees for the Electronic Hazardous Waste Manifest Program (e-Manifest system). The fees are imposed and collected by the U.S. Environmental Protection Agency (EPA) for use of the e-Manifest system. The e-Manifest system is a new national system established by EPA for tracking hazardous waste shipments electronically. All receiving facilities, i.e., facilities that receive waste that must be manifested under federal law or receive state-regulated hazardous waste that must be manifested as required by the state in which the waste was generated, must submit those manifests to EPA either in paper form or electronically beginning June 30, 2018. EPA will charge receiving facilities an associated fee for each manifest. The fees are differentiated based on the manifest type and mode of submission.

States with authorized hazardous waste programs are required by EPA to revise their programs to be equivalent to, consistent with, and no less stringent than the requirements of the final e-Manifest user fee regulations. All state programs must adopt or reference appropriately in their state rules certain fee methodology provisions of the e-Manifest user fee rule so that users in all states are aware of the receiving facilities' obligation to pay user fees to EPA for e-Manifest related services.

The fees depend on the type of manifest submitted and, for the first year, will range from \$5 to \$15 per manifest. The fee assessments and collections associated with this rule are performed solely by EPA. DEQ is not involved in any way with the assessment or collection of e-Manifest user fees. Therefore, DEQ will not have additional costs associated with implementing the e-Manifest rule, and the regulated community will not have additional costs with respect to DEQ; fees will not be imposed or collected by DEQ.

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 in November 2018 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2019 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/58-0105-1801](http://www.deq.idaho.gov/58-0105-1801) 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 29, 2018.

Dated this 1st day of August, 2018.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton St.  
Boise, Idaho 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. 58-0105-1801**  
**(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, 2017~~8~~, including any notes and appendices therein, unless expressly provided otherwise in these rules. ~~(3-28-18)( )~~

**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, 2017<sup>8</sup>. For the purposes of 40 CFR 260.4(a)(4) and 260.5(b)(2), “EPA” shall be defined as the U.S. Environmental Protection Agency. 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. (3-28-18)( )

**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, 2017<sup>8</sup>. 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. (3-28-18)( )

**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, 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, 2017. For purposes of 40 CFR 262.82, 262.83, and 262.84, "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, and 262.39, EPA or Environmental Protection Agency shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR Part 262, Subpart H, "United States or U.S." shall be defined as the United States. (3-28-18)( )

**02. Generator Emergency Notification.** In addition to the emergency notification required by 40 CFR 262.16(b)(9)(iv)(C) and 262.265(d)(2), (see 40 CFR 262.17(a)(6), 263.30(c)(1), 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. (3-28-18)

**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, 2017. 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. (3-28-18)( )

**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, 2017. 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. (3-28-18)( )

**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, 2017. 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. (3-28-18)( )

**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, 2017~~8~~. (3-28-18)(    )

**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, 2017~~8~~, 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.) (3-28-18)(    )

**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, 2017~~8~~. 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. (3-28-18)(    )

**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, 2017~~8~~, 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. (3-28-18)(    )

**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, 2017~~8~~. 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. (3-28-18)(    )

**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, 2017~~8~~. For purposes of 40 CFR 273.32(a)(3), “EPA” shall be defined as the U.S. Environmental Protection Agency. (3-28-18)(    )

**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, 2017~~8~~. ~~(3-28-18)~~( )

**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, 2017~~8~~. ~~(3-28-18)~~( )

# Overview of Incorporations by Reference for the DEQ Hazardous Waste Program - Docket No. 58-0105-1801

Required by Idaho Code § 67-5223(4)

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Rulemaking Docket No. 58-0105-1801 describes incorporation by reference of final federal hazardous waste regulations promulgated with effective dates from July 1, 2017 through June 30, 2018.

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	No	Yes
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

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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:

**Parts 260, 261, and 262**

- Confidentiality Determinations for Hazardous Waste Export and Import Documents: 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-2017-12-26/pdf/2017-27525.pdf>). Specifically, this rule applies a confidentiality determination such that no person can assert confidential business information (CBI) claims for documents related to the export, import, and transit of hazardous waste and export of excluded cathode ray tubes (CRTs).

EPA has made these changes to apply a consistent approach in addressing confidentiality claims for export and import documentation. The rule will result in cost-savings and greater efficiency for EPA and the regulated community as well as facilitate transparency with respect to the documents that are within the scope of this rulemaking.

- EPA does not authorize states to administer federal export/import functions in any section of the RCRA hazardous waste regulations and must be notified of all exports/imports of hazardous waste. Nevertheless, state programs are still required to adopt these provisions to maintain their equivalency with the federal program.
- Identification and Listing of Hazardous Waste- CFR Corrections: EPA has made two (2) corrections to 40 CFR Part 261 (<https://www.gpo.gov/fdsys/pkg/FR-2018-02-07/pdf/2018-02518.pdf>). 40 CFR 261.6(a)(2)(iv) has been reinstated to read, “Spent lead-acid batteries that are being reclaimed (40 CFR part 266, subpart G)”. The heading for 40 CFR Part 261 Subpart C has been reinstated to read, “Characteristics of Hazardous Waste”. In both instances, the July 1, 2017 version of the above CFR sections contained incorrect information.
- 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, and 271**

- User Fees for the Electronic Hazardous Waste Manifest System and Amendments to Manifest Regulations: In this rule, EPA is establishing the methodology the Agency will use to determine and revise the user fees applicable to the electronic and paper manifests to be submitted to the national electronic manifest system (e-Manifest system) that EPA is developing under the Hazardous Waste Electronic Manifest Establishment Act (<https://www.gpo.gov/fdsys/pkg/FR-2018-01-03/pdf/2017-27788.pdf>). After the e-Manifest system's implementation date, certain users of the hazardous waste manifest will be required to pay a prescribed fee for each electronic and paper manifest they use and submit to the national system so that EPA can recover costs of developing and operating the national e-Manifest system.

This rule announces the date when EPA expects the system to be operational and available to users (June 30, 2018). EPA will begin accepting manifest submissions and collecting the corresponding manifest submission fees on this date. This rule will become effective nationally on the above date.

In addition, this rule announces final decisions and regulations relating to several non-fee related matters that were included in the proposed rule. This includes modifying the existing regulations to: allow changes to the transporter designated on a manifest while the shipment is en route; describe how data corrections may be made to existing manifest records in the system; and amend the previous e-Manifest regulation (the One Year Rule) to allow the use, in certain instances, of a mixed paper and electronic manifest to track a hazardous waste shipment.

Manifests can be submitted in any of four (4) acceptable forms; fully electronic; data file uploads; image uploads; and mailed paper. A different fee will be charged for each type of manifest submitted. At the time this summary was completed, EPA had not published, in the Federal Register, the final initial fees associated with each type of manifest submission. The estimated fees for year one are: electronic- \$4; data file uploads- \$7; image uploads- \$13; and mailed paper- \$20. Facilities that receive shipments on a hazardous waste manifest will be required to submit all of the manifests to EPA and will be assessed and required to pay the associated fee for each submittal. EPA will not be assessing manifest fees to hazardous waste generators or hazardous waste transporters. However, it is possible the receiving facilities that are submitting the manifest to EPA and paying the fees will pass the fee costs on to their customers.

- These rules have been promulgated by EPA under the e-Manifest Act. When adopting manifest revisions, EPA requires strict consistency in the manifest requirements, so that any changes to federal manifest requirements that are authorizable to states must be implemented consistently in the states, regardless of whether the change might be considered more stringent or broader in scope than existing requirements.

- The fee assessments and collections associated with this rule are performed solely by EPA. DEQ is not involved in any way with the assessment or collection of e-Manifest user fees.
  - Currently, there only two (2) receiving facilities in Idaho that are subject to the manifest submittal and fee assessment requirements of the e-Manifest user fees, US Ecology Idaho Site-B and Safety-Kleen. Additionally, there are currently two (2) additional Idaho facilities that could become subject to these requirements in the future, the Idaho National Laboratory (INL) and P. Kay Metal.
  - National estimates of costs and cost savings indicate the annual cost to use paper manifests (pre-rule) is estimated to be \$238 million while the annual costs for using the e-Manifest system (post-rule) is estimated to be \$172 million. This provides an estimated annual cost savings of \$66 million.
  - Several of the provisions in this rule are not authorizable. That is to say EPA will maintain sole authority to enforce those provisions and state hazardous waste programs will not be authorized to enforce those provisions in lieu of EPA. However, although states cannot receive authorization to administer or enforce the federal government's e-Manifest user fees, authorized state programs must still include the content of or references to those provisions.
- Response to Vacatur of Certain Provisions of the Definition of Solid Waste: In this rule, EPA is revising regulations associated with the definition of solid waste under the Resource Conservation and Recovery Act (<https://www.gpo.gov/fdsys/pkg/FR-2018-05-30/pdf/2018-11578.pdf>). These revisions implement vacaturs ordered by the United States Court of Appeals for the District of Columbia Circuit (D.C. Cir.), on July 7, 2017, as modified on March 6, 2018.

As a matter of law, the orders issued by the D.C. Circuit on July 7, 2017 and amended on March 6, 2018: (1) vacated the 2015 verified recycler exclusion for hazardous waste that is recycled off-site (except for certain provisions); (2) reinstated the transfer-based exclusion from the 2008 rule to replace the now-vacated 2015 verified recycler exclusion; (3) upheld the containment and emergency preparedness provisions of the 2015 rule; (4) vacated Factor 4 of the 2015 definition of legitimate recycling in its entirety; and (5) reinstated the 2008 version of Factor 4 to replace the now-vacated 2015 version of Factor 4.

- The 2015 Definition of Solid Waste Rule became effective in Idaho on March 29, 2017.



- The DEQ hazardous waste program was in the process of updating its authorization status with EPA at the time of publication of this notice in the Federal Register. Approval of this authorization action will result in EPA considering the state provisions, included in the revised authorization application, to be broader in scope than the federal program as it pertains to the specific vacated provisions. The adoption of these court-ordered provisions will result in our state provisions being neither broader in scope nor more stringent than the federal requirements.
- There are currently no Idaho facilities using the specific section of the regulations affected by the court orders. However, DEQ is currently reviewing a proposal from one (1) Idaho facility (P. Kay Metal) to begin using the transfer-based exclusion addressed in the vacatur.
- These provisions should have little to no impact on Idaho facilities.