

<p>Docket Number: <u>58-0105-1601</u> Effective Date: <u>2017 Sine die</u> Rules Title: <u>Rules and Standards for Hazardous Waste</u> Agency Contact and Phone: <u>Matt Alvarado, 373-0554</u></p>	<p style="text-align: right;">Public Notice</p> <p>Hearings: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Locations and Dates: N/A Written Comment Deadline: 8/31/16</p>
<p>Descriptive Summary of Rule as Initially Proposed: 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, 2016. In addition, this rulemaking also denotes instances where emergency notifications must be made to the State Communications Center in addition to the National Response Center.</p> <p>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. A copy of the Overview of Incorporations by Reference is attached.</p> <p>DEQ recommends that the Board adopt the rule, as presented in the final proposal, as a pending rule with the final effective date coinciding with the adjournment <i>sine die</i> of the First Regular Session of the Sixty-fourth Idaho Legislature. The rule is subject to review by the Legislature before becoming final and effective.</p>	<p>Negotiated Rule Making: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
	<p>Costs To the Agency: None anticipated.</p> <p>Costs To the Regulated Community: None anticipated.</p>
	<p>Relevant Statutes: Chapters 44 and 58, Title 39, Idaho Code</p>
	<p>Idaho Code § 39-107D Statement: This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.</p>

Temporary Rule Necessary to protect public health, safety or welfare
 Compliance with deadlines in amendments to governing law or federal programs
 Conferring a benefit

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Section	Section Title	Summary of Rule Changes Based on Public Comment
002	Incorporation by Reference of Federal Regulations.	This section has not been changed. No comments received.
004	Hazardous Waste Management System.	This section has not been changed. No comments received.
005	Identification and Listing of Hazardous Waste.	This section has not been changed. No comments received.
006	Standards Applicable to Generators of Hazardous Waste.	This section has not been changed. No comments received.
007	Standards Applicable to Transporters of Hazardous Waste.	This section has not been changed. No comments received.
008	Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities.	This section has not been changed. No comments received.
009	Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities.	This section has not been changed. No comments received.
010	Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Facilities.	This section has not been changed. No comments received.
011	Land Disposal Restrictions.	This section has not been changed. No comments received.
012	Hazardous Waste Permit Program.	This section has not been changed. No comments received.
013	Procedures for Decision-Making (State Procedures for RCRA or HWMA Permit Applications).	This section has not been changed. No comments received.
015	Standards for the Management of Used Oil.	This section has not been changed. No comments received.

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Section	Section Title	Summary of Rule Changes Based on Public Comment
016	Standards for Universal Waste Management.	This section has not been changed. No comments received.
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.	This section has not been changed. No comments received.
018	Standards for Owners and Operators of Hazardous Waste Facilities Operating under a Standardized Permit.	This section has not been changed. No comments received.

Overview of Incorporations by Reference for the DEQ Hazardous Waste Program - Docket No. 58-0105-1601 Required by Idaho Code § 67-5223(4)

Orville Green, Administrator, Waste Management & Remediation Division

Department of Environmental Quality

Rulemaking docket, 58-0105-1601, describes adoption by reference of final federal hazardous waste regulations promulgated with effective dates from July 1, 2015 through June 30, 2016.

Adoption 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, Section 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.

The public notice for the rulemaking appeared in the August 2016 edition of the Idaho Administrative Bulletin. No public hearing was requested or held; the Legislative Services Office and Germane Subcommittees of the Idaho Legislature filed no objections; and no written comments were received from the public.

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, Title 01, Chapter 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	No	-
264	Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities	No	-
265	Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities	No	-
266	Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Facilities	No	-
268	Land Disposal Restrictions	No	-
270	Hazardous Waste Permit Program	No	-
124	Procedures for Decision-Making (State Procedures for RCRA or HWMA Permit Applications)	No	-
279	Standards for the Management of Used Oil	No	-
273	Standards for Universal Waste Management	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	-

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

- Definition of Solid Waste: EPA has revised several recycling-related provisions (<https://www.gpo.gov/fdsys/pkg/FR-2015-01-13/pdf/2014-30382.pdf>) associated with the definition of solid waste used to determine hazardous waste regulation under Subtitle C of the Resource Conservation and Recovery Act, (RCRA). The purpose of these revisions is to encourage recycling and reclamation while ensuring that hazardous secondary materials (HSM) recycling does not result in increased risk to human health and the environment.

The new requirements create a new definition of “legitimate recycling” of HSM and new requirements that apply to both the generator of HSM and to the recycling of such material whether on site by the generator or by an off-site third party recycler. In addition there is a new “remanufacturing exclusion” for 18 higher-value spent solvents and revisions to the process for existing variances and “non-waste determinations.”

The new definition of “legitimate recycling” requires that where recycling a process employs HSM it must:

- Provide a useful contribution to the recycling process or to a product of the recycling process;
- Produce a valuable product or intermediate that is comparable to a legitimate product or intermediate
- The recycler must manage the HSM as though it is a valuable commodity;

Where the Generator recycles onsite the new rules require the Generator to:

- Contain and label the HSM storage unit;
- Ensure HSM storage units are compatible with HSM;
- Maintain documentation that recycling is legitimate;
- Emergency preparedness and response requirements; and
- Maintain records regarding the percentage of HSM recycled in a 12 month period.

Where the Generator uses an off-site Verified Recycler or Reclamation Facility the new rules require the Generator, in addition to the requirements above, to:

- Notify EPA or Authorized State;
- Send HSM only to a Verified Recycler or Reclamation Facility; and
- Maintain records of off-site shipments of HSM and confirmation receipts for 3 years.

To become a Verified Recycler/Reclamation Facility the new rules require the facility to:

- Have a RCRA Part B Permit which addresses the HSM reclamation; or

- Obtain a Variance from EPA or Authorized State for HSM recycling/reclamation.

To Obtain a Variance the Reclaimer must:

- Demonstrate the recycling is legitimate per new regulatory definition;
- Have financial assurance in place to properly manage HSM if the facility closes;
- Not have had any formal enforcement actions for RCRA violations in the previous 3 years and not be classified as a significant non-complier with RCRA subtitle C;
- Meet emergency preparedness and response requirements including training and equipment;
- Properly manage the residuals from the reclamation; and
- Address risk to nearby communities from potential releases of the HSM

Remanufacturing Exclusion- The remanufacturing exclusion encourages the recycling of 18 higher-value hazardous spent solvents used for reacting, extracting, blending, or purifying chemicals in the pharmaceutical, organic chemical, plastics and resins, and the paint and coatings sectors. Conditions for the Remanufacturing Exclusion include the following new requirements:

- Both the generator and remanufacturer must notify EPA or authorized State;
- The generator and remanufacturer must jointly develop and maintain a remanufacturing plan;
- Both generators and remanufacturers must maintain record of shipments and confirmation receipts for 3 years;
- The spent solvents must be managed in RCRA-equivalent tanks and containers, including meeting applicable air emission standards; and
- Spent solvents managed under this exclusion are subject to the prohibition against speculative accumulation.

Revisions to Existing Variances and Non-Waste Determinations- Revisions include:

- Requiring facilities to send a notice to EPA or Authorized State and potentially re-apply for a variance in the event of a change in how an HSM meets the variance criteria;
- Establishing a fixed term not to exceed 10 years for variance and non-waste determinations, at the end of which facilities must re-apply;
- Requiring facilities to re-notify every 2 years with updated information;
- Revising the criteria for a partial reclamation variance to clarify when the variance applies and require that all criteria for the variance must be met; and
- For non-waste determinations, requiring that petitioners demonstrate why the existing solid waste exclusion would not apply to their HSM.

- Finally, the 2015 DSW includes a requirement for the National Response Center to be notified in certain emergency situations. The Idaho rules have been revised to ensure the State Communications Center (State Comm.) is also notified in these situations. This is identical to current requirements for hazardous waste generators and TSDFs.
- According to the federal register, these revisions are more stringent than those promulgated under the 2008 Definition of Solid Waste (DSW) rule. Any authorized states which have adopted the 2008 DSW final rule must modify their programs to be consistent with these new requirements. Idaho adopted the 2008 DSW final rule in March 2009. Therefore, in order to meet the requirement that state programs be no less stringent than the federal requirements, adoption of the 2015 DSW final rule is required.
- There is currently only 1 facility in Idaho using an HSM exclusion (generator-controlled) contained in the 2008 DSW final rule that will be impacted by the new requirements.
- **Coal Combustion Waste Rule:** In this rule, EPA is regulating disposal of residuals from coal combustion at electric utilities under solid waste regulations authorized by Subtitle D of RCRA (<https://www.gpo.gov/fdsys/pkg/FR-2015-04-17/pdf/2015-00257.pdf>). This rule establishes criteria for the safe disposal of coal combustion residuals in landfills and surface impoundments under Subtitle D of RCRA, it also contains a revision to the section of RCRA Subtitle C regulations that identifies solid wastes which are not hazardous wastes and are therefore excluded from regulation under Subtitle C. Impacts from this rule in Idaho should be minimal since there currently are no coal fired power plants located in Idaho. The reason for this rulemaking is to incorporate by reference clarifying exclusionary language for coal combustion residuals in the hazardous waste regulations authorized by RCRA Subtitle C, in 40 CFR Part 261.4(b)(4).
- **Technical Corrections:** EPA is also correcting typographical errors in the original final rule, published April 17, 2015, which resulted in 2 different effective dates in the regulatory text for the final CCR rule (<https://www.gpo.gov/fdsys/pkg/FR-2015-07-02/pdf/2015-15913.pdf>). The reason for this rulemaking is to provide accurate information for the incorporation by reference of the clarifying exclusionary language for coal combustion residues in the hazardous waste regulations authorized by RCRA Subtitle C, in 40 CFR Part 261.4(b)(4).
 - This rule corrected the effective date of the CCR rule, promulgated under Subtitle D of RCRA, from October 14, 2015 to October 19, 2015.
 - No Idaho facilities are currently burning coal to produce electricity.

- Transboundary Shipments Rule: EPA is amending certain existing regulations that apply to transboundary movement of hazardous waste among the Organization for Economic Cooperation and Development (OECD) Member countries (<https://www.gpo.gov/fdsys/pkg/FR-2015-07-02/pdf/2015-16400.pdf>) as promulgated under the hazardous waste provisions of RCRA. Specifically, EPA is updating the list of OECD member countries to add Estonia, Israel, and Slovenia. The reason for this rulemaking is to incorporate by reference the changes in 40 CFR 262.58.
 - 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.
 - The addition of these three countries to the OECD member list should have no impact on Idaho facilities.