

Overview of Incorporations by Reference for the DEQ Hazardous Waste Program - Docket No. 58-0105-1801 Required by Idaho Code § 67-5223(4)

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 |

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.