

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. 58-0110-2301 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized by Sections 39-105, 39-107, and 39-4405, Idaho Code.

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. Three public meetings were held during the negotiated rulemaking process.

DESCRIPTIVE SUMMARY: DEQ initiated this rulemaking in compliance with [Executive Order No. 2020-01, Zero-Based Regulation](#) (EO 2020-01), issued by Governor Little on January 16, 2020. Pursuant to EO 2020-01, each rule chapter effective on June 30, 2020, shall be reviewed by the agency that promulgated the rule. The review will be conducted according to a schedule established by the Division of Financial Management, Office of the Governor (DFM), posted at https://adminrules.idaho.gov/forms_menu.html. This is one of the DEQ rule chapters up for review in 2024. The goal of the rulemaking is to perform a critical and comprehensive review of the entire chapter in an attempt to reduce overall regulatory burden, streamline various provisions, and increase clarity and ease of use.

During the negotiated rulemaking process, DEQ reviewed the list of federal regulations incorporated by reference in Section 004. Based on that review, DEQ made the following adjustments:

1. 10 CFR 30.14 – 30.15, 30.18 – 30.21, 32.11, and 32.18 were identified for deletion from Section 004. These sections are referenced in Section 010, Definitions, but not intended to be incorporated by reference.
2. 10 CFR Part 20, Standards for Protection Against Radiation, was identified as a regulation meant to be incorporated by reference (with the exclusion of Subparts K, M, O, and 10 CFR Sections 20.1001, 20.1002, and 20.1006 through 20.1009) and added to Section 004. 40 CFR Part 20 is referenced in Section 020, Radiation Protection Standards, but had not been incorporated by reference in previous rulemakings.
3. The “revised as of date” of 10 CFR 40.13, Unimportant Quantities of Source Material, has been updated to January 1, 2024, even though 10 CFR 40.13 has not been revised since incorporated by reference into IDAPA 58.01.10 when promulgated in 2001. The purpose of this update is to simplify compliance by making the CFR citation more accessible.

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 State 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.

NEGOTIATED RULEMAKING: Negotiated rulemaking was conducted pursuant to Section 67-5220, Idaho Code. On September 6, 2023, the Notice of Intent to Promulgate Rules Zero-Based Regulation (ZBR) Negotiated Rulemaking was published in the Idaho Administrative Bulletin. At the conclusion of the negotiated rulemaking process, DEQ submitted the draft rule to the Division of Financial Management for review. DEQ formatted the draft for publication as a proposed rule and is now seeking public comment. The negotiated rulemaking record, which includes the negotiated rule drafts, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at <https://www.deq.idaho.gov/disposal-radioactive-materials-docket-no-58-0110-2301/>.

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:

1. Incorporation by reference allows DEQ to keep its rules up to date with federal regulations, includes terms and definitions used by the Nuclear Regulatory Commission, and simplifies compliance for the regulated community. Information for obtaining a copy of the federal regulations is included in the rule.
2. 10 CFR Part 20, Standards for Protection Against Radiation, was identified during negotiated rulemaking as a regulation meant to be incorporated by reference (with the exclusion of Subparts K, M, O, and 10 CFR Sections 20.1001, 20.1002, and 20.1006 through 20.1009) and added to Section 004. 40 CFR Part 20 is referenced in Section 020, Radiation Protection Standards, but had not been incorporated by reference in previous rulemakings.
3. For 10 CFR 40.13, Unimportant Quantities of Source Material, the “revised as of date” has been updated to January 1, 2024, even though 10 CFR 40.13 has not been revised since incorporated by reference into IDAPA 58.01.10 when promulgated in 2001. The purpose of this update is to simplify compliance by making the CFR citation more accessible.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule regulates an activity not regulated by the federal government and has previously been approved as meeting the requirements of Section 39-107D, Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this proposed rulemaking, contact Albert Crawshaw at 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

Dated this 7th day of August, 2024.

Janeena White
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Boise, Idaho 83706
208-373-0151
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0110-2301
(ZBR Chapter Rewrite)

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

000. LEGAL AUTHORITY.

~~The Idaho Legislature has given the Board of Environmental Quality the authority to promulgate these rules pursuant to Sections 39-105, 39-107, and 39-4405, Idaho Code. (3-31-22)()~~

001. TITLE AND SCOPE.

~~**01. Title.** These rules are titled IDAPA 58.01.10, “Rules Regulating the Disposal of Radioactive Materials Not Regulated Under the Atomic Energy Act of 1954, As Amended.” (3-31-22)~~

~~**02. Scope.** These rules regulate the disposal of radioactive materials not regulated under the Atomic Energy Act of 1954, As Amended, at facilities permitted and subject to the requirements of the Idaho Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code, and the Idaho Hazardous Waste Facility Siting Act, Chapter 58, Title 39, Idaho Code. These rules do not regulate NORM or TENORM waste from the production of elemental phosphorus or from the production of phosphate fertilizers, ~~which that~~ includes the production of wet and purified phosphoric acid. These rules also place restrictions on disposal of certain radioactive materials at municipal solid waste landfills and identify other approved disposal options for radioactive materials. (3-31-22)()~~

002. WRITTEN INTERPRETATIONS.

~~Any written statements pertaining to the interpretation of these rules shall be available for review at the Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706 1255. (3-31-22)~~

002. (RESERVED)

003. ADMINISTRATIVE APPEALS.

Persons may be entitled to appeal agency actions authorized under this chapter pursuant to IDAPA 58.01.23, “Contested Case Rules and Rules for Protection and Disclosure of Records.” (3-31-22)

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. (3-31-22)~~

~~**02. Documents Incorporated by Reference.** The following documents are incorporated by reference into these rules: (3-31-22)~~

~~**a.** 10 CFR 30.14 through 30.15, revised as of January 1, 2014. (3-31-22)~~

~~**b.** 10 CFR 30.18 through 30.21, revised as of January 1, 2014. (3-31-22)~~

~~**e.** 10 CFR 32.11, revised as of January 1, 2014. (3-31-22)~~

~~**d.** 10 CFR 32.18, revised as of January 1, 2014. (3-31-22)~~

~~**01. Standards for Protection Against Radiation.** 10 CFR Part 20, revised as of January 1, 2024, are incorporated by reference into these rules with the following exclusions: Subparts K, M, O, and 10 CFR Sections 20.1001, 20.1002, and 20.1006 through 20.1009. ()~~

~~**e02. Unimportant Quantities of Source Material.** 10 CFR 40.13, revised as of January 1, 2014²⁴. (3-31-22)()~~

~~**03. Availability of Referenced Material.** Copies of the documents incorporated by reference into these rules are available at the following locations: (3-31-22)~~

~~**a.** Department of Environmental Quality, 1410 N. Hilton, Boise ID 83706 1255. (3-31-22)~~

- ~~b.~~ Idaho State Law Library, 451 W. State Street, P.O. Box 83720, Boise ID 83720-0051. (3-31-22)
- ~~e.~~ U.S. Government Printing Office, www.gpo.gov. (3-31-22)

005. OFFICE OFFICE HOURS MAILING ADDRESS AND STREET ADDRESS.

The state office of the Department of Environmental Quality and the office of the Board of Environmental Quality are located at 1410 N. Hilton, Boise, Idaho 83706-1255, telephone number (208) 373-0502. The office hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. (3-31-22)

006.5. -- 009. (RESERVED)

010. DEFINITIONS.

In addition to the definitions found in Section 39-4403, Idaho Code, terms in this chapter have the following definitions. ()

01. Accelerator-Produced Radioactive Material. Any material made radioactive by a particle accelerator. (3-31-22)

~~02. Board.~~ The Idaho Board of Environmental Quality. (3-31-22)

~~03.2. Byproduct Material.~~ ~~Byproduct Material means:~~ (3-31-22)()

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.~~ (3-31-22)()

b. The tailings or waste produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "byproduct material" within this definition. (3-31-22)()

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: (3-31-22)

i. Has been made radioactive by use of a particle accelerator; and (3-31-22)

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 (3-31-22)

d. Any discrete source of naturally occurring radioactive material, other than source material, that: (3-31-22)

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 (3-31-22)

ii. Before, on, or after August 8, 2005, is extracted for use in a commercial, medical, or research activity. (3-31-22)

~~04. Department.~~ The Idaho Department of Environmental Quality. (3-31-22)

05.3. 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). (3-31-22)

04. Licensee. When used in the context of 10 CFR and these rules, the definition is Operator or Owner.

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~~065.~~ **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.~~ Materials which contain any of the primordial radionuclides or radioactive elements as they occur in nature, such as radium, uranium, thorium, potassium, and their radioactive decay products. (3-31-22)()

~~076.~~ **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. (3-31-22)

~~087.~~ **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. (3-31-22)

~~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.~~ (3-31-22)

~~108.~~ **Radioactive Material.** Radioactive Material includes: (3-31-22)

a. Technologically Enhanced Naturally Occurring Radioactive Material; (3-31-22)

b. Byproduct material authorized for disposal pursuant to 10 CFR 20.2008(b); (3-31-22)

c. Exempt Quantities and Concentrations of Byproduct Materials; (3-31-22)

d. Unimportant Quantities of Source Material, not including the natural uranium and thorium concentrations of rocks or soils; and (3-31-22)()

e. Any other byproduct, source material, or special nuclear material or devices or equipment utilizing such material, which has been exempted or released from radiological control or regulation under the Atomic Energy Act of 1954, as amended, 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. (3-31-22)

~~109.~~ **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. (3-31-22)

~~120.~~ **Source Material.** ~~Source material means:~~ (3-31-22)()

a. Uranium or thorium, or any combination thereof, in any physical or chemical form; or (3-31-22)

b. Ores which contain by weight one-twentieth of one percent (0.05%) or more of: (3-31-22)

i. Uranium; (3-31-22)

ii. Thorium; or (3-31-22)

iii. Any combination thereof. (3-31-22)

c. Source material does not include special nuclear material. (3-31-22)

~~131.~~ **Special Nuclear Material.** ~~Special Nuclear Material means:~~ (3-31-22)()

a. Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material ~~which~~ that the U.S. Nuclear Regulatory Commission determines to be special nuclear material. (3-31-22)()

b. Any material artificially enriched by any of the material listed in Subsection 010.12.a. (3-31-22)

142. 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. Naturally occurring radioactive material whose radionuclide concentrations are increased by or as a result of past or present human practices.~~ (3-31-22)()

13. Total Effective Dose Equivalent (TEDE). The sum of the effective dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures). ()

154. Unimportant Quantities of Source Material. ~~Radioactive materials defined as a~~ Unimportant quantities of source materials defined by the U.S. Nuclear Regulatory Commission (10 CFR 40.13). (3-31-22)()

011. -- 018. (RESERVED)

019. NOTIFICATION OF RADIOACTIVE MATERIALS.

Any person with knowledge of the transfer, or proposed transfer, of radioactive materials for disposal to any location other than a location authorized by Section 020 to receive radioactive materials for disposal ~~shall~~ must notify the Department of the transfer as soon as the transfer takes place or as soon as the person learns of the transfer, or proposed transfer, whichever is sooner. (3-31-22)()

020. RADIATION PROTECTION STANDARDS.

01. General Protection Standards. (3-31-22)

a. All owners and operators ~~shall~~ must conduct operations in a manner consistent with radiation protection standards contained in 10 CFR Part 20; (3-31-22)()

b. No owner or operator ~~shall~~ may conduct operations, create, use or transfer radioactive materials in a manner such that any member of the public will receive an annual Total Effective Dose Equivalent (TEDE) in excess of one hundred (100) millirem per year (1 milliseivert/year); and (3-31-22)()

c. No person ~~shall~~ may release radioactive materials for unrestricted use in such a manner that the reasonably maximally exposed individual will receive an annual TEDE in excess of fifteen (15) millirem per year (fifteen one-hundredths (0.15) milliseivert/year) excluding natural background. (3-31-22)()

02. Protection of Workers During Operations. All owners and operators ~~shall~~ must conduct operations in a manner consistent with radiation protection standards for occupation workers contained in 10 CFR Part 20. (3-31-22)()

03. Disposal of Radioactive Material. No person, owner, or operator ~~shall~~ may dispose of radioactive materials by any method other than: (3-31-22)()

a. At a permitted treatment, storage or disposal facility under the authority of ~~the Idaho Hazardous Waste Management Act~~, Chapter 44, Title 39, Idaho Code, provided that the facility owner or operator complies with each of the following: (3-31-22)()

i. Department-approved waste acceptance criteria for radioactive material ~~defined in Section 010~~;

(3-31-22)()

ii. A Department-approved closure program that provides reasonable assurance that the radon emanation rate from the closed disposal unit will not exceed twenty (20) picocuries per square meter per second averaged across the entire area of the closed disposal unit and meets the requirements in Subsection 020.01.b.; and (3-31-22)

iii. A Department-approved environmental monitoring program that monitors air, ground-water, surface water, and soil for radionuclides and ambient radiation levels ~~in~~ at the ~~environs~~ boundary of the facility and which demonstrates that no member of the general public is likely to exceed a radiation dose of one hundred (100) millirem (one (1) milliseivert) per year from operations conducted at the site. (3-31-22)()

~~b.~~ By transferring wastes for disposal to a facility licensed under requirements for uranium or thorium byproduct materials in either 40 CFR 192 or 10 CFR 40 Appendix A; (3-31-22)

~~e.~~ By transferring wastes for disposal to a disposal facility licensed by the U.S. Nuclear Regulatory Commission, an agreement state, or a licensing state; or (3-31-22)

~~db.~~ In accordance with alternate methods authorized by the Department upon application or upon the Department's initiative, consistent with Section 020.01 and all applicable state statutes and regulations. (3-31-22)

04. Prohibit Disposal at a Municipal Solid Waste Landfill. No person ~~shall~~ may dispose of radioactive material ~~as defined in these rules~~ at a municipal solid waste landfill, except for individual consumer products containing radioactive material or as authorized under Subsection 020.03.b. (3-31-22)()

021. -- 029. (RESERVED)

030. RECORDS.

Records of disposal, ~~including such as a manifest or bill of lading,~~ shall must be maintained for three (3) years ~~in accordance with 40 CFR 262.40 and 40 CFR 262.23.~~ (3-31-22)()

031. -- 039. (RESERVED)

040. VIOLATIONS.

01. Failure to Comply. Failure by any person, owner, or operator to comply with the provisions of these rules ~~shall~~ will be deemed a violation of these rules. (3-31-22)()

02. Falsification of Statements and Records. It ~~shall be~~ is a violation of these rules for any person, owner, or operator to knowingly make a false statement, representation, or certification in any document or record developed, maintained, or submitted pursuant to these rules. (3-31-22)()

03. Penalties. Any person violating any provision of these rules or order issued thereunder ~~shall~~ may be liable for civil penalty in accordance with Chapter 44, Title 39, Idaho Code. (3-31-22)()

041. -- 999. (RESERVED)