IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.05 – RULES AND STANDARDS FOR HAZARDOUS WASTE

DOCKET NO. 58-0105-2601

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized by Chapters 1 and 44, Title 39, Idaho Code. In addition, 40 CFR 271.21(e)(1) and Section 39-4404, Idaho Code, require DEQ to adopt amendments to federal law as proposed under this docket.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 19, 2026.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

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 with the July 1, 2026 Code of Federal Regulations (CFR) effective date. The July 1, 2026 CFR is a codification of federal regulations published in the Federal Register as of July 1, 2026.

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 2027 Idaho Legislature, the rule will become effective on July 1, 2027, unless otherwise specified in the concurrent resolution.

FEE SUMMARY: No fees have been imposed or increased in this rulemaking.

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.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate activities that the federal government does not already regulate, and it is not broader in scope or more stringent than existing federal regulations.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted 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.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

Adoption of federal regulations is necessary to maintain program primacy, allows DEQ to keep its rules up to date with federal regulation changes and simplifies compliance for the regulated community. Information for obtaining a copy of the federal regulations is included in the rule.

In compliance with Idaho Code 67-5223(4), DEQ prepared a brief synopsis detailing the substantive differences between the previously incorporated material and the latest revised edition or version of the incorporated material being proposed for incorporation by reference. The Overview of Incorporations by Reference is available at Hazardous Waste: Docket No. 58-0105-2601 |Idaho Department of Environmental Quality.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical 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 26, 2026. Submit written comments to:

Albert Crawshaw
Department of Environmental Quality
1410 N. Hilton, Boise, ID 83706
albert.crawshaw@deq.idaho.gov

Dated this 5th day of August, 2026.

Diane Cutler
Rules and Planning Analyst
Department of Environmental Quality
1410 N. Hilton Street
Boise, Idaho 83706
208-373-0165
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0105-2601
(Only Those Sections With Amendments Are Shown.)

58.01.05 – RULES AND STANDARDS FOR HAZARDOUS WASTE

002. INCORPORATION BY REFERENCE.

01. Federal Regulations Incorporated by Reference. 40 CFR Parts 124, 260 - 268, 270, 271, 273, 278, and 279 revised as of July 1, ~~2025~~ 2026, are incorporated by reference into these rules. ~~(7-1-26)~~( )

02. Exceptions. Nothing in 40 CFR Parts 260 - 268, 270, 273, 278, 279 or Part 124 as pertains to permits for Underground Injection Control (U.I.C.) under the Safe Drinking Water Act, the Dredge or Fill Program under Section 404 of the Clean Water Act, the National Pollution Discharge Elimination System (NPDES) under the Clean Water Act or Prevention of Significant Deterioration Program (PSD) under the Clean Air Act is adopted or included by reference herein. (3-24-22)

(BREAK IN CONTINUITY OF SECTIONS)

356. VARIANCE APPLICATIONS FOR TSD FACILITIES OR SITES.

01. Application Contents and Standard of Review. Applications must be submitted ~~in triplicate~~ electronically and contain detailed plans, specifications, and information regarding objectives, procedures, controls, and other pertinent data as the Director may require. ~~(3-24-22)~~( )

02. Standard Of Review. The Director may grant a variance only if the applicant demonstrates to the Director's satisfaction that construction and operation of the TSD facility or site in the manner allowed by the variance and any term or condition imposed as part of the variance: (3-24-22)

a. Will avert unnecessary and significant hardship; (3-24-22)

b. Is consistent with EPA provisions; and (3-24-22)

c. Will not create a nuisance or a hazard to the public health, safety or the environment. (3-24-22)

03. Public Hearings. The Director may hold a public hearing on an initial application for a variance and will hold a public hearing on any application to renew or extend a variance. The public hearing will be held at a location in the county where the operations that are the subject of the application are conducted unless the Director determines that a different location or virtual format is more appropriate and convenient for interested members of the public. The Director will give at least twenty (20) days' notice of the hearing to the applicant by certified mail and publish at least one (1) notice in a newspaper with general circulation in either the county where the operation is conducted or the county where the hearing is to be held. The Director will maintain a complete record of the testimony and the evidence submitted at the hearing. (3-24-22)

04. Public Information. All information submitted as part of a variance application is public information and not subject to any claim of confidentiality. The information will be made available for public inspection at the Department's state office and following locations: (3-24-22)

a. Application –- appropriate regional office; and (3-24-22)

b. Current list of pending applications and schedule of pending hearings -– all regional offices. (3-24-22)

05. Director's Decision. No variance will be granted or denied until the Director has considered the relative interests of the applicant, other persons and property affected by the variance, and the public. Any variance granted will be for a period specified by the Director but not more than ~~one~~ three (~~1~~3) years. No variance will be granted or denied without a written order stating the findings upon which the decision is based. ~~(3-24-22)~~( )

06. Applicant to Bear Costs. The cost of public notice, recording and transcribing of testimony, and hearing facilities must be borne by the applicant whether or not a variance is granted. (3-24-22)