

Overview of Incorporations by Reference for the DEQ Hazardous Waste Program - Docket No. 58-0000-2000F IDAPA 58.01.05, Rules and Standards for Hazardous Waste

Required by Idaho Code § 67-5223(4)

Rulemaking Docket No. 58-0105-2001 describes incorporation by reference of final federal hazardous waste regulations promulgated with effective dates from July 1, 2019 through June 30, 2020.

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 Parts 260, 261, 262, 264, 265, 266, 268, 270, and 273](#)

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	No
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	Yes	Yes
268	Land Disposal Restrictions	Yes	Yes
270	Hazardous Waste Permit Program	Yes	Yes
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	Yes	Yes
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.

The following parts were revised and may have an impact on Idaho facilities:

[40 CFR Parts 260, 261, 262, 264, 265, 266, 268, 270, and 273](#)

- **Universal Waste Regulations: Addition of Aerosol Cans**

In this final rule, EPA added hazardous waste aerosol cans to the universal waste program under the Resource Conservation and Recovery Act (RCRA) regulations. Aerosol cans typically have flammable propellant and can contain other constituents that make them characterize as hazardous waste. With this new rule, businesses can manage their waste aerosol cans under the streamlined universal waste regulations instead of the full hazardous waste regulations.

The universal waste regulations include requirements for labeling and marking containers, accumulation time limits, employee training, responses to releases, export requirements, and tracking information. The new rule also includes specific standards for puncturing and draining aerosol cans. Puncturing will be allowed provided the puncturing devices are designed to safely puncture aerosol cans and effectively contain residual contents and emissions. Further the collected contents must be evaluated and managed appropriately.

The rule will benefit a wide variety of businesses by providing a clear, practical system for managing waste aerosol cans while easing regulatory burden. It will also promote the collection and recycling of waste aerosols cans, and encourage the development of municipal and commercial programs to reduce the quantity of these wastes going to municipal solid waste landfills.

- **Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine**

With this new rule, EPA has finalized a tailored set of management standards specifically designed to reduce the complexity of the RCRA hazardous waste regulations for industries that manage pharmaceutical waste. The rule creates a set of regulations specific to healthcare facilities and retailers, removes duplicative regulation of controlled substances, exempts certain nicotine products from management as acute hazardous waste, and bans sewerage hazardous waste pharmaceuticals as a means of disposal. The rule is expected to improve management of hazardous waste pharmaceuticals and decrease regulatory burden for many hazardous waste pharmaceutical generators.

- **40 CFR 266 Subpart P Hazardous Waste Pharmaceuticals**

A portion of this new rule is included under 40 CFR 266 Subpart P; Standards for management of specific hazardous waste. The new standards under this section apply only to hazardous waste pharmaceuticals and the entities that generate them. They clarify exemptions, generator size, accumulation limits, training requirements, and disposal options for healthcare facilities, pharmacies, and retailers that generate hazardous waste pharmaceuticals. Large Quantity Generators (LQG) and Small Quantity Generators (SQGs) are required to manage their hazardous waste pharmaceuticals under these standards. Very Small Quantity Generators (VSQGs) are

encouraged but not required to manage hazardous waste pharmaceuticals under these new standards.

○ Reverse Distribution vs Reverse Logistics

In the new rule, EPA also clarifies the difference between reverse distribution and reverse logistics. Reverse distribution is the mechanism by which prescription pharmaceuticals are returned from a facility to a reverse distributor to be evaluated for a manufacturer credit. Because the majority of these prescription pharmaceuticals are eventually disposed of, they are considered solid waste while moving through the reverse distribution chain. The generator must count the prescription pharmaceuticals that are hazardous towards their monthly generation regardless of whether they receive manufacturer credit.

Reverse logistics is the mechanism by which nonprescription pharmaceuticals and other retail products are returned from a facility for resale or reprocessing. These items are not considered solid waste when they leave the generator's site if there is a reasonable expectation of legitimate use or redistribution.

○ Exception of hazardous waste pharmaceuticals that are also DEA controlled substances.

The new rule also provides a conditional exemption from RCRA regulation for hazardous waste pharmaceuticals that are also listed on a schedule of controlled substances by the Drug Enforcement Administration (DEA). In order to be considered exempt, the hazardous waste pharmaceuticals must be combusted at a permitted large or small municipal waste combustor or at an interim status hazardous waste combustor and they must be managed and disposed of in compliance with all applicable DEA regulations.

○ Amendment to the P075 listing for Nicotine

The P-list of hazardous waste contains commercial chemical products that are considered acutely hazardous when discarded. Products with nicotine, P075, as a sole active ingredient are acutely hazardous when waste and businesses that generate over 2.2 pounds of acutely hazardous waste in a calendar month are considered LQGs. This new rule removes US Food and Drug Administration (FDA) approved other-the-counter (OTC) nicotine replacement therapies (NRT), such as gums, lozenges, and patches, from the definition of the P075 waste. This action is expected to significantly alleviate regulatory burden for those facilities that are only classified as LQGs due to generation of OTC NRT.

○ Sewer Ban

As part of this new rule, EPA prohibited discharging hazardous waste pharmaceuticals to a sewer that passes through to a publically owned treatment works (POTW). This portion of the rule, commonly called the sewer ban, was promulgated pursuant to the 1984 Hazardous and Solid Waste Amendments (HSWA). HSWA provisions do not require state adoption before becoming effective. The sewer ban became effective nationally on August 21, 2019.