

Overview of Incorporations by Reference for the DEQ Air Quality Program - Docket No. 58-0101-1804

Required by Idaho Code § 67-5223(4)

An efficient way to implement new or updated federal regulations is to incorporate them by reference into state rule. Reproducing the Code of Federal Regulations in state rule is impractical and costly. Therefore when possible, and as supported by Idaho industry, DEQ incorporates federal regulations by reference. Sections with no changes are also incorporated to ensure the state rules are consistent with federal regulations and to provide one set of rules for industry to follow. Idaho industry is required to comply with all applicable new and updated federal rules regardless of whether DEQ incorporates them by reference.

In addition, for DEQ to be the implementing authority for the Clean Air Act in the state of Idaho, the agency is required to (1) implement the National Ambient Air Quality Standards (NAAQS) and (2) implement an air quality operating permit program for facilities with significant emissions.

- (1) **National Ambient Air Quality Standards (NAAQS) Implementation**—If an area in Idaho exceeds a NAAQS, DEQ will develop a state plan to improve air quality in that area. Whenever EPA updates a federal standard, DEQ also must demonstrate to EPA that it can implement the new standard. To obtain the appropriate authority to implement a new standard, DEQ incorporates by reference the following sections from the Code of Federal Regulations: Parts 50, 51, 52, 53, and 58.
- (2) **Operating Permit Program**—Operating permit requirements are outlined under Parts 64 and 70 of the Code of Federal Regulations. To write these permits in Idaho, DEQ must have the authority to include all of the applicable federal requirements. These requirements are contained in the Code of Federal Regulations Parts 52, 60, 61, 62, 63, 73, and 82.

To maintain authority for implementing the Clean Air Act in Idaho, DEQ is required to continually demonstrate that our air quality program meets minimum federal requirements.

Note, if DEQ's air program does not meet EPA's minimum requirements, EPA could impose sanctions on Idaho as outlined in the Clean Air Act ([42 USC § 7509](#)). Under certain circumstances, these sanctions could include withholding federal highway funds or DEQ operating funds.

The following table summarizes the Code of Federal Regulations sections the DEQ Air Quality Program incorporates by reference.

40 CFR Part	Title	Changes During Past Year?	Impact on Idaho	Number of pages with changes
50	National primary and secondary ambient air quality standards	No	—	—
51	Requirements for preparation, adoption, and submittal of implementation plans	Yes	Yes	3
52	Subparts A and N and Appendices D and E: Approval and promulgation of implementation plans	Yes	Yes	3
53	Ambient air monitoring reference and equivalent methods	No	—	—
58	Ambient air surveillance	No	—	—
60	Standards of performance for new stationary sources	Yes	Yes	4
61	National emission standards for hazardous air pollutants	No	—	—
62	Subpart HHH: Federal plan requirements for hospital/medical/infectious waste incinerators constructed on or before December 1, 2008	No	—	—
63	National emission standards for hazardous air pollutants for source categories	Yes	Yes	40
64	Compliance assurance monitoring	No	—	—
70	State operating permit programs	No	—	—
72	Permits	No	—	—
73	Sulfur dioxide allowance system	No	—	—
82	Protection of stratospheric ozone	Yes	No	1

These changes are discussed in more detail below. The associated Federal Register notices are denoted in parentheses as hyperlinks.

The following parts were revised:

National Ambient Air Quality Standards (NAAQS) Implementation

The NAAQS implementation rules promulgated by EPA in this time period are mostly administrative in nature. These rules mostly affect DEQ, e.g. updates to state implementation plan (SIP) requirements that DEQ will need to follow, or EPA actions in response to DEQ's SIP submittals.

A more detailed summary of the Code of Federal Regulations changes that impact NAAQS implementation is given below.

Part 51: Requirements for preparation, adoption, and submittal of implementation plans

- States are required to have a state implementation plan, which includes the rules and area-specific plans that address NAAQS. This section outlines the state implementation plan requirements for state environmental agencies.
- There were two actions in this section: one fixed an error in an equation ([FR-2018-03-21](#)), and another established the classifications assigned to the nonattainment areas for the 2015 ozone standard ([FR-2018-03-09](#)).

Part 52, Subparts A and N and Appendices D and E: Approval and promulgation of implementation plans

- This section contains general provisions associated with state implementation plans and Idaho-specific state implementation plan actions.
- EPA promulgated three rules in this section related to Idaho's SIP: one approved certain portions of the Logan Utah/Idaho PM_{2.5} nonattainment area ([FR-2017-08-08](#)), one approving Idaho's PM_{2.5} infrastructure SIP submittal ([FR-2017-12-04](#)), and one approving Idaho's changes to the CRB program. ([FR-2018-06-19](#))

Operating Permit Program Implementation

There were updates to the subparts associated with DEQ's operating permit program that will have an impact on Idaho facilities. The source categories most affected are:

- Phosphoric Acid/Fertilizer Plants: EPA addressed the requests for reconsideration of the risk and technology review for phosphoric acid and phosphate fertilizer plants. In response to the requests, EPA extended the timeline for compliance with new monitoring requirements and for a new method of determining fluoride emissions. EPA also provided clarification on monitoring options. This affects Itafos (formerly Agrium) and Simplot.
- Kraft Pulp Mills: EPA completed a risk and technology review for chemical recovery units at Kraft Pulp Mills. The updates were minor and mostly addressed opacity monitoring. This rule affects Clearwater Paper.

A more detailed summary of the Code of Federal Regulations changes that impact DEQ's operating permit program is given below.

Part 60: Standards of performance for new stationary sources

- The section describes the permitting requirements for new facilities of specific industries. The current action includes four updates to new source performance standards: three are minor revisions to monitoring test methods ([FR-2017-08-07](#)), ([FR-2017-08-14](#)), ([FR-2017-09-21](#)), and one contains minor revisions to the oil and gas New Source Performance Standards ([FR-2018-03-12](#)).

Part 63: National emission standards for hazardous air pollutants

- This section addresses national emission standards for hazardous air pollutants for specific sources of pollution.
- There are currently seven updates to rules in this section that DEQ is incorporating by reference: these apply to Portland Cement manufacturing ([FR-2017-08-22](#)), phosphoric acid manufacturing and phosphate fertilizer production ([FR-2017-09-28](#)), Kraft pulp mills ([FR-2017-10-11](#)), nutritional yeast manufacturing ([FR-2017-10-16](#)), wool fiberglass manufacturing ([FR-2017-12-26](#)), off-site waste and recovery operations ([FR-2018-01-29](#)), and publicly owned treatment works ([FR-2017-10-26](#)).

Part 82: Protection of stratospheric ozone

- The purpose of this section is to implement the Montreal Protocol, which addresses substances that deplete the ozone layer.
- There is currently one update to this section DEQ is incorporating by reference: an update to refrigerant management requirements ([FR-2017-12-27](#)).

The following parts were not revised:

Part 50: National primary and secondary ambient air quality standards

- This section contains the air quality standards that EPA promulgates for the criteria pollutants: coarse and fine particulate matter (PM₁₀ and PM_{2.5}), ozone, sulfur dioxide (SO₂), nitrogen dioxide (NO₂), lead, and carbon monoxide (CO).

Part 53: Ambient air monitoring reference and equivalent methods

- DEQ is required to implement a NAAQS monitoring program in Idaho. Any updates to approved monitoring methods are included in this section. Approved industrial monitoring methods are also included in this section.

Part 58: Ambient air surveillance

- This section describes the requirements for states to operate a monitoring program.

Part 61: National emission standards for hazardous air pollutants

- This section addresses the national emission standards for certain hazardous air pollutants.

Part 62, Subpart HHH: Federal plan requirements for hospital/medical/infectious waste incinerators constructed on or before December 1, 2008

- This section describes the requirements for hospital/medical/infectious waste incinerators. DEQ took delegation of these federal plan requirements.

Part 64: Compliance assurance monitoring

- This section outlines the compliance assurance monitoring requirements for emission units at major sources of pollution.

Part 70: State operating permit programs

- This section describes the minimum requirements for state permitting programs.

Part 72: Permits

- This section establishes permit requirements under the Acid Rain Program.

Part 73: Sulfur dioxide allowance system

- This part establishes the requirements and procedures for an SO₂ pollutant trading program.
- Idaho currently does not have any sources participating in a pollutant trading program.