

<p><b>Docket Number:</b> <u>58-0101-1603</u>  <b>Effective Date:</b> <u>2017 Sine die</u>  <b>Rules Title:</b> <u>Rules for the Control of Air Pollution in Idaho</u>  <b>Agency Contact and Phone:</b> <u>Tiffany Floyd, 373-0440</u></p>	<p style="text-align: center;"><b><u>Public Notice</u></b></p> <p><b>Hearings:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  <b>Locations and Dates:</b> Boise, ID – 9/6/16  <b>Written Comment Deadline:</b> 9/6/16</p>
<p><b>Descriptive Summary of Rule as Initially Proposed:</b></p> <p>The purpose of this rulemaking is to ensure that the state rules remain consistent with federal regulations. The Rules for the Control of Air Pollution in Idaho, IDAPA 58.01.01, are updated annually to maintain consistency with federal regulations implementing the Clean Air Act. This proposed rule updates federal regulations incorporated by reference to include those revised as of July 1, 2016.</p> <p>Adoption of federal regulations is necessary for EPA approval of Idaho's Title V Operating Permit Program and state primacy of Clean Air Act programs. Incorporation by reference allows DEQ to keep its rules up to date with federal regulation changes and simplifies compliance for the regulated community. The Overview of Incorporations by Reference is attached.</p> <p>DEQ recommends that the Board adopt the rule, as presented in the final proposal, as a pending rule with the final effective date coinciding with the adjournment <i>sine die</i> of the First Regular Session of the Sixty-fourth Idaho Legislature. The rule is subject to review by the Legislature before becoming final and effective.</p>	<p><b>Negotiated Rule Making:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <hr/> <p><b><u>Costs To the Agency:</u></b> No additional costs to the agency.</p> <p><b><u>Costs To the Regulated Community:</u></b> No additional costs to the regulated community.</p> <hr/> <p><b>Relevant Statutes:</b> Sections 39-105 and 39-107, Idaho Code</p> <hr/> <p><b>Idaho Code § 39-107D Statement:</b> This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.</p>

Temporary Rule	<input type="checkbox"/> Necessary to protect public health, safety or welfare <input type="checkbox"/> Compliance with deadlines in amendments to governing law or federal programs <input type="checkbox"/> Conferring a benefit
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Section	Section Title	Summary of Rule Changes Based on Public Comment
107.	<b>Incorporations by Reference.</b>	This section has not been changed. No comment received.

# Overview of Incorporations by Reference for the DEQ Air Quality Program

Docket No. 58-0101-1603

Required by Idaho Code § 67-5223(4)

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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 put in air permits all of the applicable requirements that have been listed by EPA. 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
50	National primary and secondary ambient air quality standards	Yes	Yes
51	Requirements for preparation, adoption, and submittal of implementation plans	Yes	Yes
52	Subparts A and N and Appendices D and E: Approval and promulgation of implementation plans	Yes	Yes
53	Ambient air monitoring reference and equivalent methods	Yes	Yes
58	Ambient air surveillance	Yes	Yes
60	Standards of performance for new stationary sources	Yes	Yes
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
64	Compliance assurance monitoring	No	—
70	State operating permit programs	Yes	Yes
72	Permits	No	—
73	Sulfur dioxide allowance system	No	—
82	Protection of stratospheric ozone	Yes	No

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

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

**National Ambient Air Quality Standards (NAAQS) Implementation**

The NAAQS implementation change that will have the largest impact on Idaho is:

- The ozone standard was reduced to 70 parts per billion.
  - The Treasure Valley is predicted to be close to exceeding, but overall in attainment with the new ozone standard. If in the future ozone concentrations exceed the standard, Idaho DEQ will need to develop a plan to reduce emissions.
  - The new ozone standard could have an impact on how the crop residue burn program is implemented in Idaho. Idaho DEQ has a separate rulemaking focused on ozone and the crop residue burning program.

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

**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 (PM<sub>10</sub> and PM<sub>2.5</sub>), ozone, sulfur dioxide (SO<sub>2</sub>), nitrogen dioxide (NO<sub>2</sub>), lead, and carbon monoxide (CO).
- This past year EPA promulgated one rule ([FR-2015-10-26](#)) in this section that updated the national ambient air quality ozone standard.

**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 six actions in this section: one removed court vacated greenhouse gas permitting requirements ([FR-2015-08-19](#)), one updated the national ambient air quality ozone standard ([FR-2015-10-26](#)), one updated the data requirements for the 2010 sulfur dioxide standard ([FR-2015-08-21](#)), one updated requirements for the cross state air pollution rule ([FR-2016-03-14](#)), one updated the volatile organic compound definition ([FR-2016-02-25](#)), and another updated permitting requirements for the oil and gas sector ([FR-2016-06-03](#)).

**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 6 rules in this section: an ozone interstate transport state implementation plan approval ([FR-2015-12-18](#)), a removal of court vacated greenhouse gas permitting requirements ([FR-2015-08-19](#)), one updated the national ambient air quality ozone standard ([FR-2015-10-26](#)), one updated requirements for the cross state air pollution rule ([FR-2016-03-14](#)), an nitrogen dioxide interstate transport state implementation plan approval ([FR-2016-05-05](#)), and another that updated permitting requirements for the oil and gas sector ([FR-2016-06-03](#)).

**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.
- For this incorporation by reference period, there is one update to monitoring methods for the updated national ambient air quality ozone standard ([FR-2015-10-26](#)).

**Part 58:** Ambient air surveillance

- This section describes the requirements for states to operate a monitoring program.
- For this incorporation by reference period, there are 2 updates in this section: one is from the updated national ambient air quality ozone standard ([FR-2015-10-26](#)) and one updates monitoring requirements for state agencies ([FR-2016-03-28](#)).

**Operating Permit Program Implementation**

There were a number of 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:

- Power plants. EPA promulgated two rules to control carbon dioxide emissions from power plants.
  - The new source performance standard for power plants is currently in effect and applies to new facilities.
    - Sets a carbon dioxide standard for coal plants and requires carbon capture and sequestration.
    - Sets a carbon dioxide standard for natural gas plants.
  - The emission guidelines are for existing facilities. This rule is also known as the Clean Power Plan. It was stayed by the Supreme Court; therefore Idaho will not implement the rule pending judicial review.
    - If upheld, states would have to develop a state plan to implement the requirements or be subject to a federal plan.
    - Reduction goals have been promulgated for both natural gas and coal powered plants.
      - In Idaho, Rathdrum Power and Idaho Power's Langley Gulch natural gas plants are subject to the requirements.
      - Coal powered plants in surrounding states that supply electricity to Idaho would also be subject to the rule.
- Phosphoric acid manufacturing and phosphate fertilizer production
  - This rule affects Simplot in Pocatello and Agrium in Soda Springs.
  - It adds new requirements for mercury and fluoride emissions.
- Oil and natural gas industry
  - Adds methane to the pollutants covered by the existing new source performance standard. This is part of EPA's goal to reduce greenhouse gases.
  - Adds requirements for additional equipment and activities in the oil and gas production chain.

- Hydraulically fractured oil wells.
- Pneumatic pumps at well sites and gas processing plants.
- Compressors and pneumatic controllers at transmission and storage facilities.

A more detailed summary of the Code of Federal Register 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 11 updates to new source performance standards: these apply to electric generating units (regulations for new and existing sources i.e. Clean Power Plan) ([FR-2015-10-23](#), [FR-2015-10-23](#)), phosphate fertilizer production ([FR-2015-08-19](#)), oil and natural gas sector (two separate rules) ([FR-2015-08-12](#), [FR-2016-06-03](#)), Portland cement plants ([FR-2015-07-27](#)), facilities that continuously monitor for hydrochloric acid (two updates) ([FR-2015-07-07](#), [FR-2016-05-19](#)), petroleum refineries ([FR-2015-12-01](#)), commercial and industrial solid waste incineration units ([FR-2016-06-23](#)) and fossil fuel fired steam generating units ([FR-2016-04-06](#)).

**Part 63:** National emission standards for hazardous air pollutants for source categories

- This section addresses national emission standards for hazardous air pollutants for specific source categories (i.e., industries).
- There are currently 12 updates to rules in this section that DEQ is incorporating by reference: these apply to aerospace manufacturing ([FR-2015-12-07](#)), coal and oil fired electric utility steam generating units ([FR-2016-04-06](#)), boilers ([FR-2015-11-20](#)), brick and clay products manufacturing ([FR-2015-10-26](#)), primary aluminum production ([FR-2015-10-15](#)), secondary aluminum production (two updates) ([FR-2015-09-18](#), [FR-2016-06-13](#)), Portland cement manufacturing (2 actions) ([FR-2015-07-27](#), [FR-2015-09-11](#)), phosphoric acid manufacturing and phosphate fertilizer production ([FR-2015-08-19](#)), mineral wood production ([FR-2015-07-29](#)), petroleum refineries ([FR-2015-12-01](#)), and a coke oven visible emission test method update ([FR-2016-02-25](#)).

**Part 70:** State operating permit programs

- This section describes the minimum requirements for state permitting programs.
- DEQ is incorporating by reference three updates to this section: one is associated with the new source performance standard for electric generating units ([FR-2015-10-23](#)), one removes vacated greenhouse gas requirements ([FR-2015-08-19](#)), and the other is a source determination for the oil and natural gas sector ([FR-2016-06-03](#)).

The following parts were revised and will not impact Idaho facilities:

**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 are currently three updates to this section DEQ is incorporating by reference: one updates import/export requirements for ozone depleting chemicals([FR-2016-02-09](#)), one updates the 2016 critical use exemptions for methyl bromide ([FR-2015-10-15](#)), and the last one expands the list of substitutes for ozone depleting chemicals ([FR-2015-07-16](#)).

**The following parts were not revised:**

**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.

**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 SO<sub>2</sub> pollutant trading program.
- Idaho currently does not have any sources participating in a pollutant trading program.