

Overview of Incorporations by Reference for the DEQ Air Quality Division, Docket No. 58-0101-2401

IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho

Required by Idaho Code § 67-5223(4)

Rulemaking Docket No. 58-0101-2401 describes incorporation by reference of final federal regulations promulgated with effective dates through July 1, 2024.

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 (CFR) in state rule is impractical and costly. Therefore, when possible, 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 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 [Title 40 Code of Federal Regulations](#) (40 CFR) Parts 50, 51, 52, 53, and 58.
- (2) **Operating Permit Program**—Operating permit requirements are outlined under 40 CFR Parts 64 and 70. To write these permits in Idaho, DEQ must have the authority to include all of the applicable federal requirements. These requirements are contained in 40 CFR 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.

Overview of Incorporations by Reference for the DEQ Air Quality Division

The following table summarizes the CFR sections the air quality division incorporates by reference.

<u>40 CFR Part</u>	Title	Changes During Past Year?	Impact on Idaho	Number of pages with changes
50	National primary and secondary ambient air quality standards	Yes	Yes	6
51	Requirements for preparation, adoption, and submittal of implementation plans	No	No	—
52	Subparts A and N and Appendices D and E: Approval and promulgation of implementation plans	Yes	Yes	44
53	Ambient air monitoring reference and equivalent methods	Yes	Yes	7
58	Ambient air surveillance	Yes	Yes	18
60	Standards of performance for new stationary sources	Yes	Yes	230
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	82
64	Compliance assurance monitoring			
70	State operating permit programs	Yes	Yes	1
72	Permits	No	—	—
73	Sulfur dioxide allowance system	No	—	—
82	Protection of stratospheric ozone	Yes	Yes	3

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.

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 (PM10 and PM2.5), ozone, sulfur dioxide (SO₂), nitrogen dioxide (NO₂), lead, and carbon monoxide (CO).
- There were two updates in this section. One updated the annual PM2.5 NAAQS ([FR-2024-03-06](#)). The second updated the methodology for measuring ozone concentrations ([FR-2023-10-12](#)).

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.
- Subpart N - Idaho: EPA promulgated one change in this section. The first focuses on Idaho's state implementation plan that approved the removal of Idaho's requirements for an inspection and maintenance program ([FR-2023-07-17](#)), and the second addresses Ozone transport for certain states in which Idaho wasn't included ([FR 2023-04-24](#))

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.
- There was one update to this section, it updated the annual PM2.5 NAAQS ([FR-2024-03-06](#))

Part 58: Ambient air surveillance

- This section describes the requirements for states to operate a monitoring program.
- There was one update to this section, it included changes to the annual PM2.5 NAAQS ([FR-2024-03-06](#))

Operating Permit Program Implementation

A detailed summary of the Code of Federal Regulation changes impacting DEQ's operating permit program is given below.

Part 60: Standards of performance for new stationary sources

- This section describes the permitting requirements for new facilities of specific industries.
- This year's revisions included five updates: one focused on equipment for steel plants ([FR-2024-02-14](#)), one updated state requirements for submitting state plans to implement emission guidelines ([FR-2023-11-17](#)), one updated regulations for lead smelters ([FR-2023-11-20](#)), one established performance standards for the Oil and Natural Gas sector ([FR-2024-03-08](#)), and one removed Title V requirements for air curtain incinerators ([FR-2024-04-17](#)).

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

- This section addresses national emission standards for hazardous air pollutants for specific sources of pollution.
- There are currently four updates to rules in this section that DEQ is incorporating by reference: these apply to taconite ore processing operations ([FR 2024-03-06](#)), iron and steel manufacturing facilities ([FR-2024-04-03](#)), miscellaneous organic chemical manufacturing, non-gasoline organic liquid distribution, and petroleum refineries ([FR-2024-04-04](#)), and copper smelting activities ([FR-2024-05-13](#)).

Part 70: State operating permit programs

- This section describes the minimum requirements for state permitting programs.
- There is one revision to this part this year that addresses the removal of Title V Emergency Affirmative Defense provisions from state operating permit programs ([FR-2024-07-21](#))

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 was one update to the rules in this section that updated the list of acceptable refrigerants ([FR-2023-09-08](#)).

The updates associated with DEQ's operating permit program do not impact most Idaho facilities. The two most relevant are related to new oil and natural gas operations and emergency affirmative defense provisions. One created emission guidelines and more stringent standards for the new oil and gas operations. The other requires the removal of the emergency affirmative defense provisions from Idaho's state operating permit programs for consistency with federal regulations.

The following parts were not revised:

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.

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 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.