

Dear Senators HEIDER, Souza, Jordan, and
Representatives RAYBOULD, Thompson, Smith:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Department of Environmental Quality:

IDAPA 58.01.01 - Rules for the Control of Air Pollution in Idaho - Proposed Rule (Docket No.
58-0101-1804).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 08/24/2018. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 09/24/2018.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Environment, Energy & Technology Committee

FROM: Deputy Division Manager - Katharine Gerrity

DATE: August 08, 2018

SUBJECT: Department of Environmental Quality

IDAPA 58.01.01 - Rules for the Control of Air Pollution in Idaho - Proposed Rule (Docket No. 58-0101-1804)

Summary and Stated Reasons for the Rule

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.01 - Rules for the Control of Air Pollution in Idaho. According to the department, the rulemaking updates federal regulations incorporated by reference as mandated by the EPA for approval of Idaho's Title V Operating Permit Program pursuant to 40 CFR Part 70 and fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act, and updates citations to other federal regulations necessary to retain state primacy of Clean Air Act programs.

The department confirms that the proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations. The department has complied with Section 67-5223(4), Idaho Code, including a synopsis detailing the substantive difference between the previously incorporated material and the latest revised version. The department notes that the parts revised include national ambient air quality standards implementation which are primarily updates to state implementation requirements, operating permit program implementation that affect source categories of phosphoric acid/fertilizer plants (which the department notes will affect Itafos, formerly Agrium, and Simplot), and Kraft Pulp Mills relating primarily to opacity monitoring, a revision the department notes will affect Clearwater Paper. According to the department, additional revisions include standards of performance for new stationary sources, national emission standards for hazardous air pollutants and protection of stratospheric ozone.

Negotiated Rulemaking / Fiscal Impact

The department notes that negotiated rulemaking was not conducted due to the simple nature of the changes and because it has no discretion with respect to adopting federal regulations that are necessary for EPA approval of Idaho's Title V Operating Permit Program and state primacy of Clean Air Act programs. The department states that there will be no fiscal impact on the general fund.

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

Statutory Authority

The rulemaking appears to be authorized pursuant to Sections 39-105 and 39-107, Idaho Code.

cc: Department of Environmental Quality
Paula J. Wilson

***** PLEASE NOTE *****

Per the Idaho Constitution, all administrative rules must be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 – RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-1804

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. The action is authorized by Sections 39-105 and 39-107, Idaho Code. This rulemaking updates federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency (EPA) for approval of Idaho’s Title V Operating Permit Program pursuant to 40 CFR Part 70 and fulfilling the requirements of Idaho’s delegation agreement with EPA under Section 112(l) of the Clean Air Act. It also updates citations to other federal regulations necessary to retain state primacy of Clean Air Act programs.

PUBLIC HEARING SCHEDULE: A public hearing concerning this proposed rulemaking will be held as follows:

PUBLIC HEARING
Wednesday, September 5, 2018 - 3:00 p.m. (MDT)
Department of Environmental Quality 1410 N. Hilton Street Conference Rooms C Boise, Idaho 83706

The meeting location will be accessible to persons with disabilities, and language translators will be made available upon request. Requests for these accommodations must be made no later than five (5) days prior to the meeting date. For arrangements, contact the undersigned.

DESCRIPTIVE SUMMARY: 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, 2018.

Members of the regulated community who may be subject to Idaho's air quality rules, special interest groups, public officials, and members of the public who have an interest in the regulation of air emissions from sources in Idaho may be interested in commenting on this proposed rule. 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.

After consideration of public comments, DEQ intends to present the final proposal to the Idaho Board of Environmental Quality (Board) in November 2018 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2019 legislative session if adopted by the Board and approved by the Legislature. DEQ will submit the final rule to EPA.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary:

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. 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 latest revised edition or version of the incorporated material being proposed for incorporation by reference. The Overview of Incorporations by Reference can be obtained at www.deq.idaho.gov/58-0101-1804 or by contacting the undersigned.

NEGOTIATED RULEMAKING: Negotiated rulemaking was not conducted. DEQ determined that negotiated rulemaking is not feasible due to the simple nature of this rulemaking and because DEQ has no discretion with respect to adopting federal regulations that are necessary for EPA approval of Idaho's Title V Operating Permit Program and state primacy of Clean Air Act programs. Whenever possible, DEQ incorporates federal regulations by reference to ensure that the state rules are consistent with federal regulations.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

FISCAL IMPACT STATEMENT: 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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Carl Brown at carl.brown@deq.idaho.gov or (208) 373-0206.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 5, 2018.

Dated this 1st day of August, 2018.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton St.
Boise, Idaho 83706-1255
Phone: (208) 373-0418
Fax: (208) 373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0101-1804
(Only Those Sections With Amendments Are Shown.)

107. INCORPORATIONS BY REFERENCE.

01. General. Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 107.03 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term "documents" includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-1-94)

02. Availability of Referenced Material. Copies of the documents incorporated by reference into these rules are available at the following locations: (5-1-94)

- and;
- a.** All federal publications: U.S. Government Printing Office at <http://www.ecfr.gov/cgi-bin/ECFR>; (3-25-16)
 - b.** Statutes of the state of Idaho: <http://legislature.idaho.gov/idstat/TOC/IDStatutesTOC.htm>; and (3-20-14)

- c. All documents herein incorporated by reference: (7-1-97)
0502. i. Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255 at (208) 373- (7-1-97)
- ii. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0051, (208) 334-3316. (7-1-97)
- 03. Documents Incorporated by Reference.** The following documents are incorporated by reference into these rules: (5-1-94)
- a. Requirements for Preparation, Adoption, and Submittal of Implementation Plans, [40 CFR Part 51](#) revised as of July 1, 2017~~8~~. The following portions of 40 CFR Part 51 are expressly excluded from any incorporation by reference into these rules: (~~3-28-18~~)()
- i. All sections included in 40 CFR Part 51, Subpart P, Protection of Visibility, except that 40 CFR 51.301, 51.304(a), 51.307, and 51.308 are incorporated by reference into these rules; and (3-30-07)
- ii. Appendix Y to Part 51, Guidelines for BART Determinations Under the Regional Haze Rule. (3-30-07)
- b. National Primary and Secondary Ambient Air Quality Standards, [40 CFR Part 50](#), revised as of July 1, 2017~~8~~. (~~3-28-18~~)()
- c. Approval and Promulgation of Implementation Plans, [40 CFR Part 52](#), Subparts A and N and Appendices D and E, revised as of July 1, 2017~~8~~. (~~3-28-18~~)()
- d. Ambient Air Monitoring Reference and Equivalent Methods, [40 CFR Part 53](#), revised as of July 1, 2017~~8~~. (~~3-28-18~~)()
- e. Ambient Air Quality Surveillance, [40 CFR Part 58](#), revised as of July 1, 2017~~8~~. (~~3-28-18~~)()
- f. Standards of Performance for New Stationary Sources, [40 CFR Part 60](#), revised as of July 1, 2017~~8~~. (~~3-28-18~~)()
- 2017~~8~~. g. National Emission Standards for Hazardous Air Pollutants, [40 CFR Part 61](#), revised as of July 1, (~~3-28-18~~)()
- h. Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or Before December 1, 2008, [40 CFR Part 62, Subpart HHH](#), revised as of July 1, 2017~~8~~. (~~3-28-18~~)()
- i. National Emission Standards for Hazardous Air Pollutants for Source Categories, [40 CFR Part 63](#), revised as of July 1, 2017~~8~~. (~~3-28-18~~)()
- j. Compliance Assurance Monitoring, [40 CFR Part 64](#), revised as of July 1, 2017~~8~~. (~~3-28-18~~)()
- k. State Operating Permit Programs, [40 CFR Part 70](#), revised as of July 1, 2017~~8~~. (~~3-28-18~~)()
- l. Permits, [40 CFR Part 72](#), revised as of July 1, 2017~~8~~. (~~3-28-18~~)()
- m. Sulfur Dioxide Allowance System, [40 CFR Part 73](#), revised as of July 1, 2017~~8~~. (~~3-28-18~~)()
- n. Protection of Stratospheric Ozone, [40 CFR Part 82](#), revised as of July 1, 2017~~8~~. (~~3-28-18~~)()
- o. Clean Air Act, 42 U.S.C. Sections 7401 through 7671g (1997). (3-19-99)
- p. Medical Waste Combustors, [Section 39-128, Idaho Code](#) (1992). (3-20-14)

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.