

## Overview of Incorporations by Reference for the DEQ Air Quality Division, Docket No. 58-0101-2101

### 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 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.

Overview of Incorporations by Reference for the DEQ Air Quality Program

<a href="#"><u>40 CFR Part</u></a>	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	4
52	Subparts A and N and Appendices D and E: Approval and promulgation of implementation plans	Yes	Yes	6
53	Ambient air monitoring reference and equivalent methods	No	—	—
58	Ambient air surveillance	No	—	—
60	Standards of performance for new stationary sources	Yes	Yes	1
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	—	—
62	Subpart OOO: Federal plan requirements for municipal solid waste landfills that commenced construction on or before July 17, 2014 and have not been modified or reconstructed since July 17, 2014	Yes	Yes	1
63	National emission standards for hazardous air pollutants for source categories	Yes	Yes	31
64	Compliance assurance monitoring	No	—	—
70	State operating permit programs	No	—	—
72	Permits	No	—	—
73	Sulfur dioxide allowance system	No	—	—

<a href="#">40 CFR Part</a>	Title	Changes During Past Year?	Impact on Idaho	Number of pages with changes
82	Protection of stratospheric ozone	Yes	No	7

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 Register 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 was one update in this section that updated/corrected several New Source Review regulations ([FR-2021-07-19](#)).

**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 changes in this section. Two changes focused on Idaho’s state implementation plan. One approved Idaho’s incorporation by reference rulemakings and rule revisions ([FR-2022-05-24](#)), and one redesignated the West Silver Valley nonattainment area to attainment for particulate matter ([FR-2021-11-16](#)). The final change updated/corrected several New Source Review regulations ([FR-2021-07-19](#)).

**Operating Permit Program Implementation**

Most of the updates to the subparts associated with DEQ’s operating permit program do not impact the majority of Idaho facilities. The updates impacting Idaho facilities are ones for municipal solid waste landfills. The changes to these rules update technical revisions and

clarifications. They also align the compliance times of the gas collection system installation. Affected facilities in Idaho include larger landfills throughout the state.

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.
- This year's revisions included one update that finalized technical revisions and clarification for rules affecting Municipal Solid Waste Landfills ([FR-2022-02-14](#)).

**Part 62, Subpart OOO:** Federal plan requirements for municipal solid waste landfills that commenced construction on or before July 17, 2014 and have not been modified or reconstructed since July 17, 2014

- This section describes the requirements for municipal solid waste landfills.
- This year's revisions included one update that finalized technical revisions and clarification for rules affecting Municipal Solid Waste Landfills ([FR-2022-02-14](#)).

**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: 4 are court mandated risk and technology reviews for the following categories: flexible polyurethane foam fabrication ([FR-2021-11-18](#)), carbon black production and cyanide chemicals manufacturing ([FR-2021-11-19](#), [FR-2022-05-23](#)), and mercury cell chlor-alkali plants ([FR-2022-05-06](#)). One finalized technical revisions and clarification for rules affecting Municipal Solid Waste Landfills ([FR-2022-02-14](#)), one added 1-bromopropane to the list of hazardous air pollutants ([FR-2022-01-05](#)), one removed a stay on applicability of the rule on certain engines pending evaluation of a proposal to stay the rule for those engines ([FR-2022-03-09](#)).

**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. Two changes updated the lists of refrigeration alternatives ([FR-2022-01-20](#), [FR-2022-05-04](#)), and one extended the laboratory exemption for use of class I ozone depleting substances ([FR-2021-08-23](#)).

***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 (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).

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