



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 17, 2017

**SUBJECT:** Department of Environmental Quality

IDAPA 58.01.01 - Rules for the Control of Air Pollution in Idaho - Proposed Rule (Docket No. 58-0101-1702)

IDAPA 58.01.05 - Rules and Standards for Hazardous Waste - Proposed Rule (Docket No. 58-0105-1701)

#### **1. IDAPA 58.01.01 - Rules for the Control of Air Pollution in Idaho**

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 purpose of the rulemaking is to update 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(1) of the Clean Air Act.

According to the department, negotiated rulemaking was not conducted due to the simple nature of the rulemaking 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 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 rulemaking appears to be authorized pursuant to Sections 39-105 and 39-107, Idaho Code.

#### **2. IDAPA 58.01.05 - Rules and Standards for Hazardous Waste**

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.05 - Rules and Standards for Hazardous Waste. According to the department, the purpose of the rulemaking is to ensure that the state rules remain consistent with federal regulations. The department notes that Idaho's Rules and Standards for Hazardous Waste, IDAPA 58.01.05, are updated annually to maintain consistency with the federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). The department states that the proposed rule updates federal

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regulations incorporated by reference to include those revised as of July 1, 2017. The department has also submitted a synopsis detailing the substantive difference between previously incorporated material and the latest revised edition or version of incorporated material being proposed.

According to the department, negotiated rulemaking was not conducted due to the simple nature of the rulemaking and because it has no discretion with respect to adopting federal regulations implementing the Resource Conservation and Recovery Act as directed by the Idaho Hazardous Waste Management Act. 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 rulemaking appears to be authorized pursuant to Chapters 44 and 58, Title 39, Idaho Code. The department also notes that 40 CFR 271.21(e) and Section 39-4404, Idaho Code, require DEQ to adopt amendments to federal law as proposed in the docket.

cc: Department of Environmental Quality  
Paula J. Wilson

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

Docket No. 58-0101-1702

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 (CFR) 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 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.

The following table summarizes the CFR 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	No	—
58	Ambient air surveillance	Yes	Yes
60	Standards of performance for new stationary sources	Yes	Yes
61	National emission standards for hazardous air pollutants	Yes	Yes
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:

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

The NAAQS implementation rules promulgated by EPA in this time period are mostly administrative in nature. While there is an impact on Idaho, these rules mostly affect DEQ, e.g., update to state implementation plan (SIP) requirements that DEQ would need to follow, update to public notice requirements for DEQ permitting actions, or EPA actions in response to DEQ's SIP submittals.

A more detailed summary of the CFR 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 three rules in this section: one updated requirements for state agencies as they implement the PM<sub>2.5</sub> NAAQS ([FR-2016-08-24](#)), one retained the NAAQS for lead ([FR-2016-10-18](#)), and another updates a minor correction to the PM<sub>2.5</sub> design value calculation ([FR-2017-03-20](#)).

#### **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 five actions in this section: one updated requirements for state agencies as they implement the PM<sub>2.5</sub> NAAQS ([FR-2016-08-24](#)), one determined that a specific compound was not a volatile organic compound ([FR-2016-08-01](#)), one updated corrections to source test regulations ([FR-2016-08-30](#)), one updated public notice requirements for permitting actions ([FR-2016-10-18](#)), and another updated state plan requirements for the regional haze rule ([FR-2017-01-10](#)).

#### **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 seven rules in this section: three are actions related to Idaho's SIP ([FR-2016-08-12](#), ([FR-2017-01-04](#)) ([FR-2017-05-12](#)), one updated public notice requirements for permitting actions ([FR-2016-10-18](#)), one updated requirements for the cross state air pollution rule (rule does not affect Idaho) ([FR-2016-10-26](#)), one removed a date restriction from a permit rescission provision ([FR-2016-11-07](#)), and the final one updated state plan requirements for the regional haze rule ([FR-2017-01-10](#)).

#### **Part 58: Ambient air surveillance**

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

- For this incorporation by reference period, there is one update in this section: an update to the near road NO<sub>2</sub> monitoring requirements ([FR-2016-12-30](#)).

### **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 category most affected is:

- Municipal Solid Waste Landfills. EPA promulgated two rules that control emissions from municipal solid waste landfills.
  - The new source performance standard for new facilities was stayed by EPA on May 31, 2017 for 90 days as EPA reconsiders certain aspects of this rule
  - The rules for existing facilities were also stayed by EPA on May 31, 2017. DEQ had begun a rulemaking to address this rule, but we vacated our rulemaking effort to wait on EPA's reconsideration.

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 seven updates to new source performance standards: these apply to internal combustion engines ([FR-2016-07-07](#)), petroleum refineries ([FR-2016-07-13](#)), MSW Landfills (two separate rules) ([FR-2016-08-29a](#), [FR-2016-08-29b](#)), facilities that use certain source testing methods ([FR-2016-08-30](#)), facilities that continuously monitor for PM ([FR-2016-11-21](#)), and a general correction for incorrect paragraph numbering ([FR-2017-06-23](#))

#### **Part 61:** National emission standards for hazardous air pollutants

- This section addresses the national emission standards for certain hazardous air pollutants.
- The current action includes two updates: these apply to facilities that use certain source testing methods ([FR-2016-08-30](#)) and radon emissions from Operating Mill Tailings ([FR-2017-01-17](#))

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

- This section addresses national emission standards for hazardous air pollutants for specific source categories (i.e., industries).
- There are currently nine updates to rules in this section that DEQ is incorporating by reference: these apply to petroleum refineries ([FR-2016-07-13](#)), two for Portland Cement manufacturing ([FR-2016-07-25](#), [FR-2017-06-23](#)), boilers ([FR-2016-09-14](#)), aerospace manufacturing ([FR-2016-08-03](#)), facilities that use certain source testing methods ([FR-2016-08-30](#)), a coke oven visible emission test method update ([FR-2016-11-22](#)), one specific to the Tennessee Department of Environment and Conservation ([FR-2017-06-29](#)) and one focused on ferroalloy production ([FR-2017-01-18](#)).

#### **Part 70:** State operating permit programs

- This section describes the minimum requirements for state permitting programs.
- DEQ is incorporating by reference one update to this section: updated public notice requirements for permitting actions ([FR-2016-10-18](#)).

**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 two updates to this section DEQ is incorporating by reference: one updates refrigerant management requirements ([FR-2016-11-18](#)) and the other updates minor stratospheric ozone rule requirements ([FR-2016-12-01](#)).

**The following parts were not revised:**

**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 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.

# Overview of Incorporations by Reference for the DEQ Hazardous Waste Program - Docket No. 58-0105-1701

Required by Idaho Code § 67-5223(4)

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Rulemaking Docket No. 58-0105-1701 describes incorporation by reference of final federal hazardous waste regulations promulgated with effective dates from July 1, 2016 through June 30, 2017.

Incorporation by reference of federal hazardous waste regulations is a routine procedure that DEQ performs annually to: 1) satisfy the consistency and stringency requirements of the Hazardous Waste Management Act (HWMA – Idaho Code § 39-4404); 2) meet the legislative intent to avoid the existence of duplicative, overlapping or conflicting state and federal regulatory systems; and 3) provide for DEQ to maintain primacy and authorization to operate the federal Resource Conservation and Recovery Act (RCRA) program in lieu of EPA.

This proposed rule is neither broader in scope nor more stringent than federal regulations, and does not regulate an activity that is not regulated by the federal government.



The following table summarizes the Code of Federal Regulations sections the DEQ Hazardous Waste Program incorporates by reference. References are listed in the order listed in IDAPA 58.01.05, Rules and Standards for Hazardous Waste. Excluded provisions are specifically identified in the rules.

40 CFR Part	Title	Changes During Past Year?	Impact on Idaho
260	Hazardous Waste Management System	Yes	Yes
261	Identification and Listing of Hazardous Waste	Yes	Yes
262	Standards Applicable to Generators of Hazardous Waste	Yes	Yes
263	Standards Applicable to Transporters of Hazardous Waste	Yes	Yes
264	Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities	Yes	Yes
265	Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities	Yes	Yes
266	Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Facilities	Yes	Yes
268	Land Disposal Restrictions	Yes	Yes
270	Hazardous Waste Permit Program	Yes	Yes
124	Procedures for Decision-Making (State Procedures for RCRA or HWMA Permit Applications)	Yes	No
279	Standards for the Management of Used Oil	Yes	Yes
273	Standards for Universal Waste Management	Yes	Yes
278	Criteria for the Management of Granular Mine Tailings (CHAT) in Asphalt Concrete and Portland Cement Concrete in Transportation Construction Projects Funded in Whole or in Part by Federal Funds	No	-
267	Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit	Yes	No

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These changes are discussed in more detail below. Links to the pdf files associated with the Federal Register notices are denoted in parentheses as hyperlinks.

The following parts were revised and may have minimal or no impact on Idaho facilities:

**Parts 260, 261, 262, 263, 264, 265, 266, 267, 271, 273, and 124**

- Hazardous Waste Export-Import Revisions: EPA has amended existing regulations regarding the export and import of hazardous waste from and into the United States (<https://www.gpo.gov/fdsys/pkg/FR-2016-11-28/pdf/2016-27428.pdf>). The purpose of these revisions is to provide greater protection to human health and the environment by making existing export and import related requirements more consistent with the current requirements for shipments between members of the Organization for Economic Cooperation and Development (OECD).

The rule improves and consolidates previous regulations so that one set of requirements – the OECD’s more stringent controlling transboundary movements of hazardous waste requirements – apply to all U.S. hazardous waste exports and imports.

More efficient compliance monitoring will be provided by the rule’s requirement to link the consent to export with the electronic export information submitted to U.S. Customs and Border Protection (CBP). These regulations support a broader U.S. government effort led by CBP to convert from a paper-based border-crossing approval process for a wide range of exports and imports, to an electronic border-crossing approval process. This rule covers the hazardous waste export component of this larger International Trade Data System initiative.

Additionally, the new rule requires mandatory electronic reporting to EPA, which will enable increased sharing of hazardous waste export and import data with state programs, the general public, and individual hazardous waste exporters and importers.

- EPA does not authorize states to administer federal import/export functions in any section of the RCRA hazardous waste regulations and must be notified of all imports/exports of hazardous waste. Nevertheless, state programs are still required to adopt these provisions to maintain their equivalency with the federal program.
- IDAPA 58.01.05.013 is being revised to clarify that 40 CFR 124.15(b)(2) is expressly excluded from the incorporation by reference. This section references a section (40 CFR 124.19) that is already listed in the sections of this part that were expressly omitted from incorporation by reference.
  - This change should have no impact to Idaho facilities.

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

**Parts 260, 261, 262, 263, 264, 265, 266, 267, 268, 270, 271, 273, and 279**

- Hazardous Waste Generator Improvements Rule: In this rule, EPA is revising the RCRA hazardous waste generator regulatory program (<https://www.gpo.gov/fdsys/pkg/FR-2016-11-28/pdf/2016-27429.pdf>). The objectives to these revisions include: 1) reorganizing the hazardous waste generator regulations to make them more user-friendly and thus improve their usability by the regulated community; 2) providing a better understanding of how the RCRA hazardous waste generator regulatory program works; 3) addressing gaps in the existing regulations to strengthen environmental protection; 4) providing greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner; and 5) making technical corrections and conforming changes to address inadvertent errors and remove obsolete references to programs that no longer exist.

This rule includes over 60 changes to the hazardous waste generator regulations that clarify existing requirements, increase flexibility, and improve environmental protection. These changes also reorganize the regulations to make them easier to follow and make certain technical corrections.

#### Provisions to increase flexibility for generators of hazardous waste

- Allowing very small quantity generators (VSQGs) (previously known in federal regulations as “conditionally exempt small quantity generators” CESQGs) to send hazardous waste to a large quantity generator (LQG) that is under the control of the same person and consolidate it there before sending it on to management at a RCRA-designated facility, provided certain conditions are met. In some situations, organizations in industry, government, and academia may have satellite locations that qualify as VSQGs. These organizations could take advantage of this provision to send material to an LQG within their company and ultimately to manage the hazardous waste in an environmentally sound manner rather than as an exempt waste.
- Allowing a VSQG or a small quantity generator (SQG) to maintain its existing generator category in the case of an event in which the VSQG or SQG generates a quantity of hazardous waste in a calendar month that would otherwise bump the generator into a more stringent generator regulatory category. Under this provision, generators that satisfy the listed conditions do not have to comply with the more stringent generator standards when an unusual event such as a cleanout or an act of nature causes its generator category to temporarily increase.

### Improvements of environmental protection

- Updating the emergency response and contingency planning provisions for SQGs and LQGs to include Local Emergency Planning Committees (LEPC) among those emergency planning organizations with which a generator may make response arrangements and require that new and existing LQGs submit quick reference guides with the key information when they either develop or update their contingency plans to local responders for easy access during an event.
- Requiring periodic re-notification for SQGs every four years (SQGs only notify once under the current system).
- Revising the regulations for labeling and marking of containers and tanks to clearly indicate the hazards of the hazardous waste contained inside.

### Provisions to improve generator compliance

- Clarifying inconsistent guidance on which generator category applies when a generator generates both acute and non-acute hazardous waste in a calendar month.
- Revising the regulations for completing the RCRA biennial report to be consistent with the current instructions distributed with the form.
- Replacing the phrase “conditionally exempt small quantity generator” with the phrase “very small quantity generator” to be consistent with the other two generator categories – LQGs and SQGs.

### Reorganization of the hazardous waste generator regulations

- Moving the VSQG regulations from 40 CFR 261.5 into 40 CFR part 262, where the regulations for SQGs and LQGs are located.
- Moving a number of the generator regulations that are currently located in other parts of the hazardous waste standards into 40 CFR part 262 to replace the current list of cross references.

Technical corrections

- Correcting inadvertent errors in the regulations, obsolete programs, and unclear citations
- These rules are a combination of less stringent, more stringent, and neither more nor less stringent than current requirements.
- Currently, there are approximately 1,000 active hazardous waste generators in Idaho ( $\approx 37$  LQGs,  $\approx 99$  SQGs, and  $\approx 863$  VSQGs) that could be affected by this rule.
- EPA estimates there are between 424,099 and 676,890 entities nationally that could be affected by this rule.
- VSQGs ( $\approx 86\%$  of the total no. of Idaho generators) will only be affected if they choose to take advantage of either of the two voluntary programs that were promulgated.
- National estimates indicate the annual cost to comply with the new requirements is between \$5.9 million and \$13.3 million.
- National annual cost savings or benefits for facilities opting to take advantage of the two voluntary programs are estimated to be between \$8.3 million and \$14.4 million.