

Dear Senators BURTENSHAW, Adams, Semmelroth, and  
Representatives BARBIERI, Furniss, Chew:

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.  
58-0101-2301).

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 10/23/2023. 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 11/20/2023.

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 334-4854, or send a written request to the address on the  
memorandum attached below.



**Terri Kondeff**  
Director

# Legislative Services Office

## Idaho State Legislature

*Serving Idaho's Citizen Legislature*

### MEMORANDUM

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

**FROM:** Deputy Division Manager - Katharine Gerrity

**DATE:** October 05, 2023

**SUBJECT:** Department of Environmental Quality

IDAPA 58.01.01 - Rules for the Control of Air Pollution in Idaho - Proposed Rule (Docket No. 58-0101-2301)

#### 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 purpose of the rulemaking is to ensure that Idaho's rules remain consistent with federal regulations. The department notes that these rules are updated annually to be consistent with federal regulations implementing the Clean Air Act. The department notes that the definition of "excess emissions" was added to the rule because during negotiated rulemaking in 2021 the definition was supposed to be moved with other definitions to a different section but was inadvertently left out. The department states 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.

#### Negotiated Rulemaking / Fiscal Impact

The department indicates that negotiated rulemaking was not conducted because it determined that it would not be feasible 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 to approve Idaho's Title V Operating Permit Program and state primacy of Clean Air Act programs. There is no fiscal impact to the general fund.

#### Statutory Authority

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

cc: Department of Environmental Quality  
Caroline Moores

**\*\*\* PLEASE NOTE \*\*\***

Paul Headlee, Deputy Director    Matt Drake, Manager    Keith Bybee, Manager    April Renfro, Manager    Norma Clark, Manager  
Legislative Services Office    Research & Legislation    Budget & Policy Analysis    Legislative Audits    Information Technology

Statehouse, P.O. Box 83720  
Boise, Idaho 83720-0054

Tel: 208-334-2475  
legislature.idaho.gov

Per the Idaho Constitution, all administrative rules may 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. 58-0101-2301

### 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:** Pursuant to Section 67-5222(2), Idaho Code, a public hearing has been scheduled and will be held as follows:

**Tuesday, October 10, 2023, at 2:30 p.m. MT**

**ATTEND IN PERSON OR VIA MICROSOFT TEAMS**

**DEQ State Office  
Conference Rooms A & B  
1410 N. Hilton  
Boise, ID 83706**

**The Teams meeting link is available at:  
<https://www.deq.idaho.gov/docket-no-58-0101-2301/>**

The meeting location will be accessible to persons with disabilities, and language translators will be made available upon request. Requests must be made no later than five (5) business 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 with the July 1, 2023 Code of Federal Regulations (CFR) effective date. The July 1, 2023 CFR is a codification of federal regulations published in the Federal Register as of July 1, 2023. Section 107, Incorporations by Reference, has been streamlined per suggestions made by the Division of Financial Management, Office of the Governor (DFM), for consistency with [Zero-Based Executive Order 2020-01](#).

This rulemaking also adds the definition of “excess emissions” to Section 130 of the rule. During negotiated rulemaking for Docket No. 58-0101-2101, this definition, along with other definitions relating to excess emission events, was struck from Section 006 with the intention of moving them to Section 130. While the other definitions were moved to Section 130, definition of “excess emissions” was inadvertently overlooked. DEQ is now adding it to Section 130 as originally intended. For increased manageability and ease of use, the terms and definitions in Section 130 have been moved to a list and alphabetized.

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. The rule is expected to be final and effective

upon adjournment of the 2024 legislative session if adopted by the Board and approved by the Idaho 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 substantive differences between the previously incorporated material and 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 <https://www.deq.idaho.gov/docket-no-58-0101-2301/>.

**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: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Tiffany Floyd at [tiffany.floyd@deq.idaho.gov](mailto:tiffany.floyd@deq.idaho.gov) or (208) 373-0552.

**SUBMISSION OF WRITTEN COMMENTS:** Anyone may submit written comments regarding this proposed rule. The Department will consider all written comments received on or before October 10, 2023. Submit comments to:

Tiffany Floyd  
Department of Environmental Quality  
1410 N. Hilton Street  
Boise, Idaho 83706  
[Tiffany.floyd@deq.idaho.gov](mailto:Tiffany.floyd@deq.idaho.gov)

Dated this 6th day of September, 2023.

Caroline Moores  
Operations Senior Analyst  
Department of Environmental Quality  
1410 N. Hilton Street  
Boise, Idaho 83706  
Phone: (208)373-0149  
[caroline.moores@deq.idaho.gov](mailto:caroline.moores@deq.idaho.gov)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0101-2301  
(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 constitutes 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. (3-28-23)~~

~~02. Availability of Referenced Material. Copies of the documents incorporated by reference into these rules are available at the following locations: (3-28-23)~~

~~a. All federal publications: U.S. Government Printing Office at <http://www.ecfr.gov/cgi-bin/ECFR>; and; (3-28-23)~~

~~b. Statutes of the state of Idaho: <http://legislature.idaho.gov/idstat/TOC/IDStatutesTOC.htm>; and (3-28-23)~~

~~e. All documents herein incorporated by reference: (3-28-23)~~

~~i. Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706 1255 at [www.deq.idaho.gov](http://www.deq.idaho.gov). (3-28-23)~~

~~ii. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720 0051 at [www.isll.idaho.gov](http://www.isll.idaho.gov). (3-28-23)~~

~~03. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: (3-28-23)~~

~~a01. Requirements for Preparation, Adoption, and Submittal of Implementation Plans. 40 CFR Part 51 revised as of July 1, 2022<sup>3</sup>. All sections included in 40 CFR Part 51, Subpart P, Protection of Visibility, are excluded from incorporation except 51.301, 51.304(a), 51.307, and 51.308 are incorporated by reference into these rules. (3-28-23)(    )~~

~~b02. National Primary and Secondary Ambient Air Quality Standards. 40 CFR Part 50, revised as of July 1, 2022<sup>3</sup>. (3-28-23)(    )~~

~~e03. Approval and Promulgation of Implementation Plans. 40 CFR Part 52, Subparts A and N and Appendices D and E, revised as of July 1, 2022<sup>3</sup>. (3-28-23)(    )~~

~~d04. Ambient Air Monitoring Reference and Equivalent Methods. 40 CFR Part 53, revised as of July 1, 2022<sup>3</sup>. (3-28-23)(    )~~

~~e05. Ambient Air Quality Surveillance. 40 CFR Part 58, revised as of July 1, 2022<sup>3</sup>. (3-28-23)(    )~~

~~f06. Standards of Performance for New Stationary Sources. 40 CFR Part 60, revised as of July 1, 2022<sup>3</sup>. (3-28-23)(    )~~

~~g07. National Emission Standards for Hazardous Air Pollutants. 40 CFR Part 61, revised as of July 1, 2022<sup>3</sup>. (3-28-23)(    )~~

~~h08. 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, 2022; (3-28-23)( )

**i09. 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;** 40 CFR Part 62, Subpart OOO, revised as of July 1, 2022; (3-28-23)( )

**j10. National Emission Standards for Hazardous Air Pollutants for Source Categories;** 40 CFR Part 63, revised as of July 1, 2022; (3-28-23)( )

**k11. Compliance Assurance Monitoring;** 40 CFR Part 64, revised as of July 1, 2022; (3-28-23)( )

**l12. State Operating Permit Programs;** 40 CFR Part 70, revised as of July 1, 2022; (3-28-23)( )

**m13. Permits;** 40 CFR Part 72, revised as of July 1, 2022; (3-28-23)( )

**n14. Sulfur Dioxide Allowance System;** 40 CFR Part 73, revised as of July 1, 2022; (3-28-23)( )

**o15. Protection of Stratospheric Ozone;** 40 CFR Part 82, revised as of July 1, 2022; (3-28-23)( )

**p16. Clean Air Act;** 42 U.S.C. Sections 7401 through 7671g (1997). (3-28-23)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**130. STARTUP, SHUTDOWN, SCHEDULED MAINTENANCE, SAFETY MEASURES, UPSET AND BREAKDOWN.**

**01. Procedures.** Sections 130 through 136 establish procedures to be implemented in all excess emissions events and establish criteria to be applied by the Department in determining whether to take enforcement action to impose penalties for an excess emissions event where the excess emissions are caused by startup, shutdown, scheduled maintenance, upset, or breakdown of any emissions unit or that occur as a direct result of the implementation of any safety measure. ~~Startup is defined as the normal and customary time period required to bring air pollution control equipment or an emissions unit, including process equipment, from a nonoperational status into normal operation. Shutdown is defined as the normal and customary time period required to cease operations of air pollution control equipment or an emissions unit beginning with the initiation of procedures to terminate normal operation and continuing until the termination is completed. Upset is defined as an unplanned disruption in the normal operations of any equipment or emissions unit that may cause excess emissions. Breakdown is defined as an unplanned failure of any equipment or emissions unit that may cause excess emissions. Scheduled maintenance is defined as planned upkeep, repair activities and preventative maintenance on any air pollution control equipment or emissions unit, including process equipment, and including shutdown and startup of such equipment. Safety measure is defined as any shutdown (and related startup) or bypass of equipment or processes undertaken to prevent imminent injury or death or severe damage to equipment or property which may cause excess emissions.~~ (3-28-23)( )

**02. Definitions.** ( )

**a. Breakdown.** ~~An unplanned failure of any equipment or emissions unit that may cause excess emissions.~~ ( )

**b. Excess Emissions.** ~~Emissions that exceed an applicable emissions standard established for any facility, source or emissions unit by statute, regulation, rule, permit, or order.~~ ( )

**c. Safety Measure.** ~~Any shutdown (and related startup) or bypass of equipment or processes undertaken to prevent imminent injury or death or severe damage to equipment or property which may cause excess emissions.~~ ( )

d. Scheduled Maintenance. Planned upkeep, repair activities and preventative maintenance on any air pollution control equipment or emissions unit, including process equipment, and including shutdown and startup of such equipment. ( )

e. Shutdown. The normal and customary time period required to cease operations of air pollution control equipment or an emissions unit beginning with the initiation of procedures to terminate normal operation and continuing until the termination is completed. ( )

f. Startup. The normal and customary time period required to bring air pollution control equipment or an emissions unit, including process equipment, from a nonoperational status into normal operation. ( )

g. Upset. An unplanned disruption in the normal operations of any equipment or emissions unit that may cause excess emissions. ( )



# Overview of Incorporations by Reference for the DEQ Air Quality Division, Docket No. 58-0101-2301

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

Required by Idaho Code § 67-5223(4)

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Rulemaking Docket No. 58-0101-2301 describes incorporation by reference of final federal regulations promulgated with effective dates through July 1, 2023.

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, 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: 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 Title 40 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.

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Overview of Incorporations by Reference for the DEQ Air Quality Division

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The following table summarizes the Code of Federal Regulations sections the air quality division 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	2
52	Subparts A and N and Appendices D and E: Approval and promulgation of implementation plans	Yes	Yes	2
53	Ambient air monitoring reference and equivalent methods	No	—	—
58	Ambient air surveillance	No	—	—
60	Standards of performance for new stationary sources	Yes	Yes	87
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	63
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	Yes	13

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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 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 updates in this section. One updated the list of compounds excluded from the definition of volatile organic compounds ([FR-2023-02-08](#)) and the other corrected source testing regulations ([FR-2023-03-29](#)).

**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 two changes in this section. The first focused on Idaho's state implementation plan that approved Idaho's incorporation by reference of federal rules ([FR-2023-03-29](#)) and the second approved a statute change related to the Idaho DEQ Board composition ([FR-2023-05-26](#)).

**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

- The section describes the permitting requirements for new facilities of specific industries.
- This year's revisions included seven updates: one focused on stationary engines ([FR-2022-08-10](#)), one updated regulations for lead acid battery manufacturing facilities ([FR-2023-02-23](#)), one updated regulations for heavy duty engines ([FR-2023-01-24](#)), one updated performance standards for industrial surface coating ([FR-2023-03-27](#)), one corrected source testing regulations ([FR-2023-03-29](#)), one updated a test method for dioxins and furans ([FR-2023-03-20](#)), and one updated emission limits for volatile organic compounds for auto surface coating operations ([FR-2023-05-09](#)).

**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 nine updates to rules in this section that DEQ is incorporating by reference: these apply to stationary engines ([FR-2022-08-10](#)), paint stripping and surface coating operations ([FR-2022-11-10](#)), large facilities with boilers ([FR-2022-10-06](#)), site remediation ([FR-2022-12-22](#)), lead acid battery manufacturing facilities ([FR-2023-02-23](#)), miscellaneous coating operations ([FR-2023-02-22](#)), wood preserving facilities ([FR-2023-03-08](#)), one corrected source testing regulations ([FR-2023-03-29](#)), and one updated a test method for dioxins and furans ([FR-2023-03-20](#)).

**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-2023-04-28](#)).

The updates associated with DEQ's operating permit program do not impact most Idaho facilities. The two most relevant are related to paint stripping and surface coating operations. One change made minor clarifications and requires electronic reporting, but no revisions to the stringency of the regulation were made. The other one revised emission limits for volatile organic compounds to reflect updated control technologies.

***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.