



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 155
Seattle, WA 98101

AIR & RADIATION
DIVISION

October 11, 2022

Mr. Carl Brown
Idaho Department of Environmental Quality
1410 North Hilton
Boise, Idaho 83706

Dear Mr. Brown:

The U.S. Environmental Protection Agency has reviewed the rule changes proposed in the Idaho DEQ zero-based regulation docket 58-01-01-2101, posted on September 7, 2022. Enclosed is a document detailing our comments.

Thank you for the opportunity to engage with you on this topic. If you have any questions, please contact Kristin Hall at (206) 553-6357.

Sincerely,

Gina Bonifacino
Chief, Air Planning Section

Enclosure

cc: Ms. Mary Anderson
Idaho Department of Environmental Quality

EPA's Comments on Idaho Zero-Based Rulemaking
State Public Notice and Comment Version

Thank you for addressing many of the comments we previously submitted during the stakeholder review process. We especially appreciate that the Idaho DEQ added more language explaining the proposed changes in this package and making clear the changes are not intended to be substantive. These detailed explanations will facilitate the Idaho DEQ's implementation of the regulations in the event a regulated source later asserts that a change in meaning was intended by the revisions, and will facilitate EPA review and approval of requested revisions to Idaho DEQ's Clean Air Act approved and delegated programs.

Following are our comments on the public notice draft posted on September 7, 2022:

Comment 1: Definitions

Eliminating definitions and rules does not, in the EPA's view, ease the regulatory burden on sources if those sources cannot readily determine their compliance obligations from the rules that remain. In addition, the EPA will not be in a position to approve revised regulations if the rules do not make clear what definitions apply under what rules. The following are specific issues and concerns the EPA has with Idaho's proposed repeal of certain definitions:

Regional haze definitions at IDAPA 58.01.01.006. The EPA recommends Idaho retain all regional haze-related definitions in IDAPA 58.01.01.006. If Idaho decides not to retain them, the EPA requests an Attorney General (AG) opinion demonstrating that repeal of definitions related to regional haze requirements, including Best Available Retrofit Technology (BART), would not allow the removal or relaxation of a BART requirement and/or Long-Term Strategy requirement necessary for reasonable progress unless conditions for such removal or relaxation under Federal law are met. See comment 4.

Definition of "modification" at IDAPA 58.01.01.006.68. The EPA may not approve the proposed changes to the existing definition of modification without a demonstration from the Idaho DEQ that the changes are consistent with section 110(l) of the Clean Air Act. In addition, the EPA notes that the changes to the structure of the definition and addition of the word "and" in the definition have the effect of making the definition less stringent because it now requires a source to meet both criteria, rather than either of the two criteria, to trigger the definition of modification.

Ambient air quality standard definitions at IDAPA 58.01.01.006.92 and 105. The EPA recommends retaining the definitions of "primary ambient air quality standards" and "secondary ambient air quality standards" definitions because the definition of "attainment area" uses these terms.

Title V and related definitions at IDAPA 58.01.01.008, 009 and 010. The EPA recommends Idaho retain all title V-related definitions in IDAPA 58.01.01.008, as well as related definitions at IDAPA 58.01.01.009 and 010. The proposed repeals make it difficult to interpret where 40 CFR part 70 provisions apply, where Idaho Tier I rules apply and where there is overlap. For example, Idaho is proposing to repeal the definitions in IDAPA 58.01.01.009 and 010. However, these definitions appear necessary to make clear that for the NSPS and NESHAP delegations to Idaho, the specifically-defined

terms in Idaho's regulations do not supersede the federal definitions in 40 CFR parts 60, 61, and 63 for purposes of those respective subparts and that the Idaho DEQ is the authority implementing the requirements, as opposed to the EPA. If the Idaho DEQ decides not to retain the title V-related definitions, the EPA requests an AG opinion demonstrating that Idaho's Tier I permitting program remains consistent with the Clean Air Act and 40 CFR part 70 regulatory requirements. Such an AG opinion should address, among other requirements, why it is appropriate to repeal title V-related definitions. See comment 4.

Comment 2: "Shall" to "must" or "will"

We understand that Idaho agencies have been directed to eliminate the use of "shall" in rules and replace that word with more commonly understood words. We also understand that, in these proposed revisions, the Idaho DEQ has generally replaced "shall" with "must" with respect to obligations on regulated sources and has generally replaced "shall" with "will" with respect to requirements on the Idaho DEQ.

Following are specific instances where "will" is proposed in place of "shall" for an obligation on a regulated source, inconsistent with our understanding of the state's intent.

Nonmetallic mineral processing general requirements at IDAPA 58.01.01.791.01. The use of the word "will" is not appropriate. We suggest using "may".

Nonmetallic mineral processing permit requirements at IDAPA 58.01.01.794.02. The use of the phrase "will not be required" is not appropriate. We suggest using "are not required".

Comment 3: Transportation conformity rules

The proposed changes strike the transportation conformity rules in their entirety. We have previously communicated that this change to the SIP may be approved if Idaho replaces the rules with the federal program and a memorandum of understanding with sister agencies in Idaho that appropriately spells out consultation procedures and other aspects of the conformity process in Idaho. Our understanding is that such a memorandum of understanding is not yet in place. We would, therefore, be unable to approve the removal of the transportation conformity rules as a SIP revision at this time.

Comment 4: Attorney General opinion

The EPA requests an Attorney General opinion demonstrating that the Idaho DEQ retains all authorities necessary to implement and enforce EPA approved and delegated programs, including the title V major source operating permit program, the new source review pre-construction permit program, and the regional haze program, notwithstanding the removal of specific definitions and authority provisions from the Idaho air rules related to these requirements.