

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 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

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

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. (3-28-23)~~

~~ii. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720 0051 at 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, 2022³. 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, 2022³. (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, 2022³. (3-28-23)()~~

~~d04. Ambient Air Monitoring Reference and Equivalent Methods. 40 CFR Part 53, revised as of July 1, 2022³. (3-28-23)()~~

~~e05. Ambient Air Quality Surveillance. 40 CFR Part 58, revised as of July 1, 2022³. (3-28-23)()~~

~~f06. Standards of Performance for New Stationary Sources. 40 CFR Part 60, revised as of July 1, 2022³. (3-28-23)()~~

~~g07. National Emission Standards for Hazardous Air Pollutants. 40 CFR Part 61, revised as of July 1, 2022³. (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. ()