

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-1501

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: A public hearing concerning this proposed rulemaking will be held as follows:

Wednesday, September 9, 2015, 3:00 p.m.

**Department of Environmental Quality
Conference Room A
1410 N. Hilton, Boise, Idaho**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to ensure that the state rules are consistent with federal regulations and to update federal regulations incorporated by reference to include those revised as of July 1, 2015.

This rulemaking reconciles Idaho's state rules with federal regulations by making three minor revisions:

1. The greenhouse gas definition of major source at Section 008 is now obsolete after the federal definition was vacated by the U.S. Supreme Court. This definition is being removed.
2. The federal regulations incorporated by reference are updated by capturing revisions as of July 1, 2015 (Section 107) and by removing two federal provisions that are no longer required (Sections 107.03.q. and 564).
3. The permit to construct section (Section 200) is clarified to define a major source to include both the prevention of significant deterioration (PSD) and nonattainment new source review definitions. The current rule implies that only the PSD definition applies. Idaho is required by federal law to implement both as appropriate.

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.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2015 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2016 legislative session if adopted by the Board and approved by the Legislature. DEQ will submit the final rule to EPA for approval.

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:

Incorporation by reference is necessary to ensure that the state rules are consistent with federal regulations. Information for obtaining a copy of the federal regulations is included in the rule.

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) 373-0440.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 9, 2015.

DATED this 5th Day of August, 2015.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0101-1501
(Only those Sections being amended are shown.)

008. DEFINITIONS FOR THE PURPOSES OF SECTIONS 300 THROUGH 386.

- 01. Affected States.** All States: (5-1-94)
- a.** Whose air quality may be affected by the emissions of the Tier I source and that are contiguous to Idaho; or (5-1-94)
- b.** That are within fifty (50) miles of the Tier I source. (5-1-94)
- 02. Allowance.** An authorization allocated to a Phase II source by the EPA to emit during or after a specified calendar year, one (1) ton of sulfur dioxide. (5-1-94)
- 03. Applicable Requirement.** All of the following if approved or promulgated by EPA as they apply to emissions units in a Tier I source (including requirements that have been promulgated through rulemaking at the

time of permit issuance but which have future-effective compliance dates): (5-1-94)

a. Any standard or other requirement provided for in the applicable state implementation plan, including any revisions to that plan that are specified in 40 CFR Parts 52.670 through 52.690. (5-1-94)

b. Any term or condition of any permits to construct issued by the Department pursuant to Sections 200 through 223 or by EPA pursuant to 42 U.S.C. Sections 7401 through 7515; provided that terms or conditions relevant only to toxic air pollutants are not applicable requirements. (4-5-00)

c. Any standard or other requirement under 42 U.S.C. Section 7411 including 40 CFR Part 60; (5-1-94)

d. Any standard or other requirement under 42 U.S.C. Section 7412 including 40 CFR Part 61 and 40 CFR Part 63; (5-1-94)

e. Any standard or other requirement of the acid rain program under 42 U.S.C. Sections 7651 through 7651o; (5-1-94)

f. Any requirements established pursuant to 42 U.S.C. Section 7414(a)(3), 42 U.S.C. Section 7661c(b) or Sections 120 through 128 of these rules; (3-23-98)

g. Any standard or other requirement governing solid waste incineration, under 42 U.S.C. Section 7429; (5-1-94)

h. Any standard or other requirement for consumer and commercial products and tank vessels, under 42 U.S.C. Sections 7511b(e) and (f); and (5-1-94)

i. Any standard or other requirement under 42 U.S.C. Sections 7671 through 7671q including 40 CFR Part 82. (5-1-94)

j. Any ambient air quality standard or increment or visibility requirement provided in 42 U.S.C. Sections 7470 through 7492, but only as applied to temporary sources receiving Tier I operating permits under Section 324. (5-1-94)

04. Designated Representative. A responsible person or official authorized by the owner or operator of a Phase II unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a Phase II unit, and the submission of and compliance with permits, permit applications, and compliance plans for the Phase II unit. (5-1-94)

05. Draft Permit. The version of a Tier I operating permit that is made available by the Department for public participation and affected State review. (5-1-94)

06. Emergency. For the purposes of Section 332, an emergency is any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including acts of God, which situation requires immediate corrective action to restore normal operation and that causes the Tier I source to exceed a technology-based emission limitation under the Tier I operating permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error. (4-5-00)

07. Final Permit. The version of a Tier I permit issued by the Department that has completed all review procedures required in Sections 364 and 366. (5-1-94)

08. General Permit. A Tier I permit issued pursuant to Section 335. (3-23-98)

09. Insignificant Activity. Those activities that qualify as insignificant in accordance with Section 317. (3-23-98)

10. Major Facility. A facility (as defined in Section 006) is major if the facility meets any of the following criteria: (3-23-98)

a. For hazardous air pollutants: (3-23-98)

i. The facility emits or has the potential to emit ten (10) tons per year (tpy) or more of any hazardous air pollutant, other than radionuclides, which has been listed pursuant to 42 U.S.C. Section 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. (5-1-94)

ii. The facility emits or has the potential to emit twenty-five (25) tpy or more of any combination of any hazardous air pollutants, other than radionuclides, which have been listed pursuant to 42 U.S.C. 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. (5-1-94)

b. For non-attainment areas: (3-23-98)

i. The facility is located in a “serious” particulate matter (PM-10) nonattainment area and the facility has the potential to emit seventy (70) tpy or more of PM-10. (5-1-94)

ii. The facility is located in a “serious” carbon monoxide nonattainment area in which stationary sources are significant contributors to carbon monoxide levels and the facility has the potential to emit fifty (50) tpy or more of carbon monoxide. (5-1-94)

iii. The facility is located in an ozone transport region established pursuant to 42 U.S.C. Section 7511c and the facility has the potential to emit fifty (50) tpy or more of volatile organic compounds. (5-1-94)

iv. The facility is located in an ozone nonattainment area and, depending upon the classification of the nonattainment area, the facility has the potential to emit the following amounts of volatile organic compounds or oxides of nitrogen; provided that oxides of nitrogen shall not be included if the facility has been identified in accordance with 42 U.S.C. Section 7411a(f)(1) or (2) if the area is “marginal” or “moderate,” one hundred (100) tpy or more, if the area is “serious,” fifty (50) tpy or more, if the area is “severe,” twenty-five (25) tpy or more, and if the area is “extreme,” ten (10) tpy or more. (3-23-98)

c. The facility emits or has the potential to emit one hundred (100) tons per year or more of any regulated air pollutant. The fugitive emissions shall not be considered in determining whether the facility is major unless the facility belongs to one (1) of the following categories: (4-11-06)

i. Designated facilities. (3-23-98)

ii. All other source categories regulated by 40 CFR Part 60, 40 CFR Part 61 or 40 CFR Part 63, but only with respect to those air pollutants that have been regulated for that category and only if determined by rule by the Administrator of EPA pursuant to Section 302(j) of the Clean Air Act. (4-5-00)

~~**d.** For greenhouse gases: As of July 1, 2011, any facility that emits or has the potential to emit one hundred thousand (100,000) tpy or more of any of the aggregate group of six (6) greenhouse gases (carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride on a carbon dioxide equivalent basis) and one hundred (100) tpy or more of carbon dioxide on a mass basis, pursuant to 40 CFR 70.2, incorporated by reference into these rules at Section 107. (4-4-13)~~

(BREAK IN CONTINUITY OF SECTIONS)

107. INCORPORATIONS BY REFERENCE.

01. General. Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 107.03 shall constitute 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. (5-1-94)

02. Availability of Referenced Material. Copies of the documents incorporated by reference into these rules are available at the following locations: (5-1-94)

a. All federal publications: U.S. Government Printing Office at <http://www.gpoaccess.gov/ecfr/index.html> <http://www.ecfr.gov/cgi-bin/ECFR>; and; (3-20-14)()

b. Statutes of the state of Idaho: <http://legislature.idaho.gov/idstat/TOC/IDStatutesTOC.htm>; and (3-20-14)

c. All documents herein incorporated by reference: (7-1-97)

i. Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255 at (208) 373-0502. (7-1-97)

ii. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0051, (208) 334-3316. (7-1-97)

03. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: (5-1-94)

a. Requirements for Preparation, Adoption, and Submittal of Implementation Plans, **40 CFR Part 51** revised as of July 1, 2014⁵. The following portions of 40 CFR Part 51 are expressly excluded from any incorporation by reference into these rules: (4-11-15)()

i. All sections included in 40 CFR Part 51, Subpart P, Protection of Visibility, except that 40 CFR 51.301, 51.304(a), 51.307, and 51.308 are incorporated by reference into these rules; and (3-30-07)

ii. Appendix Y to Part 51, Guidelines for BART Determinations Under the Regional Haze Rule. (3-30-07)

b. National Primary and Secondary Ambient Air Quality Standards, **40 CFR Part 50**, revised as of July 1, 2014⁵. (4-11-15)()

c. Approval and Promulgation of Implementation Plans, **40 CFR Part 52**, Subparts A and N and Appendices D and E, revised as of July 1, 2014⁵. (4-11-15)()

d. Ambient Air Monitoring Reference and Equivalent Methods, **40 CFR Part 53**, revised as of July 1, 2014⁵. (4-11-15)()

e. Ambient Air Quality Surveillance, **40 CFR Part 58**, revised as of July 1, 2014⁵. (4-11-15)()

f. Standards of Performance for New Stationary Sources, **40 CFR Part 60**, revised as of July 1, 2014⁵. (4-11-15)()

g. National Emission Standards for Hazardous Air Pollutants, **40 CFR Part 61**, revised as of July 1, 2014⁵. (4-11-15)()

h. 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, 2014⁵. (4-11-15)()

- i. National Emission Standards for Hazardous Air Pollutants for Source Categories, 40 CFR Part 63, revised as of July 1, 2014~~5~~. ~~(4-11-15)()~~
 - j. Compliance Assurance Monitoring, 40 CFR Part 64, revised as of July 1, 2014~~5~~. ~~(4-11-15)()~~
 - k. State Operating Permit Programs, 40 CFR Part 70, revised as of July 1, 2014~~5~~. ~~(4-11-15)()~~
 - l. Permits, 40 CFR Part 72, revised as of July 1, 2014~~5~~. ~~(4-11-15)()~~
 - m. Sulfur Dioxide Allowance System, 40 CFR Part 73, revised as of July 1, 2014~~5~~. ~~(4-11-15)()~~
 - n. Protection of Stratospheric Ozone, 40 CFR Part 82, revised as of July 1, 2014~~5~~. ~~(4-11-15)()~~
 - o. Clean Air Act, 42 U.S.C. Sections 7401 through 7671g (1997). (3-19-99)
 - p. Medical Waste Combustors, Section 39-128, Idaho Code (1992). (3-20-14)
- ~~q. *Determining Conformity of Federal Actions to State or Federal Implementation Plans: Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws, 40 CFR Part 93, Subpart A, Sections 93.100 through 93.129, revised as of July 1, 2013, except that Sections 93.102(e), 93.104(d), 93.104(e)(2), 93.105, 93.109(e) (f), 93.118(e), 93.119(f)(3), 93.120(a)(2), 93.121(a)(1), and 93.124(b) are expressly omitted from the incorporation by reference.* (3-20-14)~~

(BREAK IN CONTINUITY OF SECTIONS)

200. PROCEDURES AND REQUIREMENTS FOR PERMITS TO CONSTRUCT.

The purposes of Sections 200 through 228 is to establish uniform procedures and requirements for the issuance of "Permits to Construct." As used throughout Sections 200 through 228 and 578 through 581, major facility shall be defined as major stationary source in 40 CFR 52.21(b) ~~and 40 CFR 51.165~~, incorporated by reference into these rules at Section 107, and major modification shall be defined as in 40 CFR 52.21(b) ~~and 40 CFR 51.165~~, incorporated by reference into these rules at Section 107. These CFR sections have been codified in the electronic CFR which is available at www.ecfr.gov. ~~(4-2-08)()~~

(BREAK IN CONTINUITY OF SECTIONS)

563. TRANSPORTATION CONFORMITY.

The purpose of Sections 563 through 574 is to adopt and implement Section 176(c) of the Clean Air Act (CAA), as amended [42 U.S.C. 7401 et seq.], and the related requirements of 23 U.S.C. 109(j), with respect to the conformity of transportation plans, programs, and projects developed, funded, or approved by the United States Department of Transportation (USDOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under Title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53). These sections set forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to an applicable implementation plan developed pursuant to Section 110 and Part D of the CAA. The publications referred to ~~or incorporated by reference~~ in Sections 563 through 574 are available from the IDEQ. ~~(3-30-01)()~~

564. ~~INCORPORATION BY REFERENCE. (RESERVED)~~

~~With the exception of Sections 93.102(e), 93.104(d), 93.104(e)(2), 93.105, 93.109(e) (f), 93.118(e), 93.119(f)(3), 93.120(a)(2), 93.121(a)(1), and 93.124(b), 40 CFR Part 93, Subpart A, Sections 93.100-93.129, are incorporated by reference into these rules at Section 107 of these rules.~~ ~~(3-30-01)~~