

Dear Senators MARTIN, Souza, Jordan, and
Representatives VANDER WOUDE, Amador, Smith:

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.
58-0101-1903).

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 08/29/2019. 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 09/27/2019.

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.



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 09, 2019

SUBJECT: Department of Environmental Quality

IDAPA 58.01.01 - Rules for the Control of Air Pollution in Idaho - Proposed Rule (Docket No. 58-0101-1903)

Summary and Stated Reasons for the Rule

The Department of Environmental Quality submits notice of rulemaking at IDAPA 58.01.01 - Rules for the Control of Air Pollution in Idaho. According to the department, this rulemaking is in response to Executive Order No. 2019-02, the Red Tape Reduction Act (January 21, 2019). The department states that certain rules are outdated and/or unnecessary and that sections 590-591 (New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants), 845-848 (Rules for Control of Sulfur Oxide Emissions from Sulfuric Acid Plants, Emission Limits, Monitoring and Testing, and Compliance Schedule) and 855-859 (Combined Zinc and Lead Smelters - Control of Fugitive Sulfur Dioxide Emissions, Combined Zinc and Lead Smelters - Oxides of Sulfur Stack Monitoring Requirements and Standards of Performance for Municipal Solid Waste Landfills that Commenced Construction, Reconstruction or Modification on or after May 30, 1991) have been identified for deletion.

The department verifies that the 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

Negotiated rulemaking was conducted.

Statutory Authority

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

cc: Department of Environmental Quality
Paula J. Wilson

*** PLEASE NOTE ***

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

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

Tel: 208-334-2475
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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. 58-0101-1903

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.

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

PUBLIC HEARING

**Tuesday, September 10th, 2019
3:00 p.m. (MDT)**

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

The meeting location will be accessible to persons with disabilities, and language translators will be made available upon request. Requests for these accommodations must be made no later than five (5) days prior to the meeting date. For arrangements, contact the undersigned.

DESCRIPTIVE SUMMARY: DEQ initiated this rulemaking in response to [Executive Order No. 2019-02](#), Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ has determined that certain rules are outdated and/or unnecessary. Sections 590-591, 845-848, and 855-859 have been identified for deletion.

Members of the regulated community subject to Idaho's air quality rules, special interest groups including industry associations and conservation and environmental 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 Idaho Board of Environmental Quality (Board) in November 2019 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2020 legislative session if adopted by the Board and approved by the 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: Not applicable.

NEGOTIATED RULEMAKING: The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220. On April 24, 2019, DEQ posted notice of the negotiated rulemaking on its website, and a preliminary draft rule was made available for public review. The Notice of Negotiated Rulemaking was published in the May 2019 issue of the Idaho Administrative Bulletin, and a meeting was held on May 22, 2019. Key information was posted on the DEQ website and distributed to the public. Members of the public participated in the negotiated rulemaking process by attending the meeting. No written comments were received.

At the conclusion of the negotiated rulemaking process, DEQ formatted the draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule draft, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at www.deq.idaho.gov/58-0101-1903.

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 Carl Brown at carl.brown@deq.idaho.gov or (208) 373-0206.

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 10, 2019.

Dated this 7th day of August, 2019.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton Street
Boise, Idaho 83706
Phone: (208) 373-0418
Fax: (208) 373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0101-1903
(Only Those Sections With Amendments Are Shown.)

588. -- ~~589~~1. (RESERVED)

~~590. NEW SOURCE PERFORMANCE STANDARDS.~~

~~The owner or operator of any stationary source shall comply with 40 CFR Part 60 as applicable to the stationary source. The applicable definitions for this Section shall be the definitions set forth in 40 CFR Part 60. (4-5-00)~~

~~591. NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS.~~

~~The owner or operator of any stationary source shall comply with 40 CFR Part 61 and 40 CFR Part 63 as applicable to the stationary source. (5-1-94)~~

(BREAK IN CONTINUITY OF SECTIONS)

840. -- ~~844~~59. (RESERVED)

~~845. RULES FOR CONTROL OF SULFUR OXIDE EMISSIONS FROM SULFURIC ACID PLANTS.~~

~~The purpose of Sections 845 through 848 is to establish sulfur oxide emission limits for sulfuric acid plants using elemental sulfur for the production of sulfuric acid. (5-1-94)~~

~~846. EMISSION LIMITS.~~

~~01. **General Restrictions.** No person shall allow, suffer, cause or permit the operation of any sulfuric acid plant which emits sulfur oxides into the atmosphere in excess of twenty eight (28) lbs/ton of one hundred percent (100%) sulfuric acid produced. (4-5-00)~~

~~02. **Averaging Period.** For the purposes of Section 846, emissions shall be averaged according to the following, whichever is the lesser period of time: (4-5-00)~~

~~a. One (1) complete cycle of operation; or (4-5-00)~~

~~b. Three (3) hours of operation representing worst case conditions for the emissions of sulfur oxide. (4-5-00)~~

~~847. **MONITORING AND TESTING.**~~

~~The appropriate test method under Sections 845 through 848 shall be EPA Method 8 contained in 40 CFR Part 60 or such comparable and equivalent methods approved in accordance with Subsection 157.02.d. Test methods and procedures shall comply with Section 157. (4-5-00)~~

~~848. **COMPLIANCE SCHEDULE.**~~

~~Any owner or operator of a source subject to Sections 845 through 848 shall no later than December 31, 1972, submit to the Department a proposed Compliance Schedule that demonstrates compliance as expeditiously as feasible but no later than July 31, 1975. (5-1-94)~~

~~849.—854. **(RESERVED)**~~

~~855. **COMBINED ZINC AND LEAD SMELTERS.**~~

~~The purpose of Sections 855 through 858 is to establish requirements for combined zinc and lead smelters. (5-1-94)~~

~~856. **COMBINED ZINC AND LEAD SMELTERS — CONTROL OF FUGITIVE SULFUR DIOXIDE EMISSIONS.**~~

~~The owner or operator of any combined zinc and lead smelter shall utilize best engineering techniques to capture and vent fugitive sulphur dioxide emissions through one (1) or more stacks. Such techniques shall include, but not be limited to: (5-1-94)~~

~~01. **Condition of Ducts, Flues, and Stacks.** Maintaining and operating all ducts, flues, and stacks in a leak free condition. (5-1-94)~~

~~02. **Prevention of Leakage in Equipment and Systems.** Maintaining and operating all process equipment and gas collection systems in such a fashion that leakage of sulfur dioxide gases will be prevented to the maximum extent possible. (5-1-94)~~

~~03. **Other Techniques.** Wherever possible, using gas collection systems and/or ducting emissions through the tallest stack or stacks serving the facility. (5-1-94)~~

~~857. **COMBINED ZINC AND LEAD SMELTERS — OXIDES OF SULFUR.**~~

~~01. **Final Emission Limitation.** Oxides of sulfur, expressed as sulfur dioxide (SO₂), in excess of one thousand nine hundred (1900) pounds per hour from all sources within any combined zinc and lead smelter shall not be discharged into the atmosphere. To assure compliance with this requirement, the Director shall issue permits specifying emission limits for equipment within the smelter. (5-1-94)~~

~~02. **Effective Date.** Compliance with the emission limitation established in Subsection 857.01 may be delayed until December 31, 1984, provided that there is compliance with the provisions of Subsections 857.04, 857.05 and 857.06. (5-1-94)~~

~~03. **Exception.** The provisions of Section 857 shall not apply to emissions generated solely from the combustion of fuel for the exclusive purpose of space heating or steam generation. (5-1-94)~~

~~04. **Interim Emission Limitations.** The owner or operator of the combined zinc and lead smelter shall obtain a non ferrous smelter order for sulfur dioxide emissions issued pursuant to 42 U.S.C. Section 7419, which may be in the form of an interim compliance agreement, permit to operate, or regulation, covering the period from September 1, 1979, until December 31, 1982. Failure to adhere to the terms and conditions of such order shall result in the provisions contained in Subsection 857.01 becoming effective in accordance with a compliance schedule to be established by the Director which shall require compliance within the minimum time the Director determines is technically feasible.~~ (5-1-94)

~~a. **Review of Non-Ferrous Smelter Order Provisions.** The owner or operator of a combined zinc and lead smelter shall obtain the Director's approval of any interim control measure to be employed pursuant to Subsection 857.04.~~ (5-1-94)

~~i. Use of any such interim control measure shall be disapproved by the Director if he has reasonable cause to believe it is not designed or implemented adequately to achieve and maintain the state and federal ambient air quality standards for sulfur dioxide.~~ (5-1-94)

~~ii. Prior to the Director's disapproval of use of any such interim control measure, he shall notify the owner or operator of the smelter of his intention and reasons for his decision.~~ (5-1-94)

~~iii. Prior to the Director's decision becoming final, the owner or operator of the smelter shall have thirty (30) days in which to either: amend the interim control measure to the Director's satisfaction; or request a public hearing on the matter.~~ (5-1-94)

~~iv. The Director shall not require enactment of any new interim control measures earlier than the timetable for implementation established by the nonferrous smelter order described in Subsection 857.04.~~ (5-1-94)

~~b. **Violations.** Once approved by the Director, a violation of any term or condition of an interim control measure shall constitute a violation of Section 857.~~ (5-1-94)

~~c. **Records Required.** The owner or operator of a combined zinc and lead smelter shall submit, on a monthly basis and within two (2) weeks after the end of each calendar month, copies of all records required pursuant to an applicable non ferrous smelter order, as described in Subsection 857.04.~~ (5-1-94)

~~05. **Compliance Schedule.** If the owner or operator of a combined zinc and lead smelter qualifies for a second nonferrous smelter order pursuant to 42 U.S.C. Section 7419, which may be in the form of an interim compliance agreement, permit to operate, or rule, and if the provisions of Subsection 857.01 are not being complied with on or before December 31, 1982, he shall comply with the following schedule of increments of progress. During the period of this compliance schedule, the owner or operator of the combined zinc and lead smelter shall comply with interim emission limitations established in the first non ferrous smelter order which has been approved by the Director and issued pursuant to 42 U.S.C. Section 7419.~~ (5-1-94)

~~a. By January 1, 1983, submit final plans and specifications of equipment or modifications to achieve compliance with Subsection 857.01.~~ (5-1-94)

~~b. By May 1, 1983, issue contracts or purchase orders for the required emission controls or process modifications.~~ (5-1-94)

~~c. By September 1, 1983, initiate on-site construction of the required emission controls or process modifications.~~ (5-1-94)

~~d. By September 1, 1984, complete on-site construction of the required emission controls or process modifications.~~ (5-1-94)

~~e. By December 31, 1984, assure final compliance with the provisions of Subsection 857.01.~~ (5-1-94)

~~06. **Extension of Compliance Date.** The following dates shall be extended for a period as prescribed by a second non ferrous smelter order, issued pursuant to 42 U.S.C. Section 7419, provided that such order has been~~

~~approved by the Director and provided that such order shall not exceed three (3) years: (5-1-94)~~

~~a. The compliance date extension allowed pursuant to Subsection 857.02; and (5-1-94)~~

~~b. The compliance schedule specified in Subsection 857.05. (5-1-94)~~

~~07. **Appeal.** On or before January 1, 1982, the owner or operator of the combined zinc and lead smelter may request a hearing on the emission limit set forth in Subsection 857.01. (5-1-94)~~

~~a. After public hearing and consideration of all testimony, if the Board determines that use of increased stack height or other dispersion techniques are valid pursuant to law, the Board shall amend Section 857 in accordance with the Idaho Administrative Procedure Act, Sections 67-5201 through 67-5299, Idaho Code, setting a new emission limit at a level to assure compliance with state and federal ambient air quality standards for sulfur dioxide. (5-1-94)~~

~~b. The emission limit in Subsection 857.01 shall become final after Board action in accordance with the Idaho Administrative Procedure Act either: (5-1-94)~~

~~i. As specified in Subsection 857.07.a.; or (5-1-94)~~

~~ii. On January 1, 1982, if no appeal and public hearing is requested pursuant to Subsection 857.07. (5-1-94)~~

858. ~~STACK MONITORING REQUIREMENTS.~~

~~The provisions of Section 858 shall apply during any time when a nonferrous smelter order, which may be in the form of an interim compliance agreement, permit to operate, or rule, is not in effect. (5-1-94)~~

~~01. **Measurement Systems.** The owner or operator of the combined zinc and lead smelter shall install, calibrate, maintain and operate measurement systems for continuously monitoring and recording emission rates of sulfur dioxide from each stack with an emission potential of fifty (50) tons or more sulfur dioxide per year. Measurement systems required pursuant to Subsection 858.01 shall be: (5-1-94)~~

~~a. Demonstrated in accordance with procedures prescribed by the Director; and (5-1-94)~~

~~b. Maintained, operated and calibrated in accordance with the methods prescribed by the Director. (5-1-94)~~

~~02. **Record Keeping and Reporting Requirements.** The owner or operator of the combined zinc and lead smelter shall maintain a record of all measurements required by Section 858. (5-1-94)~~

~~a. One (1) hour average sulfur dioxide emission rates shall be calculated each calendar month and submitted to the Director within fifteen (15) days following the end of each calendar month to enable him to determine the impact of the smelter on ambient air quality. The records of such measurements shall be retained by the owner or operator for a minimum of two (2) years following the date of such measurements. (5-1-94)~~

~~b. Records of maintenance and/or calibration of any measurement system required pursuant to Section 858 shall be kept on site for a minimum of two (2) years and shall be submitted to the Director upon request. These records shall clearly show instrument readings before and after such calibration and/or maintenance. (5-1-94)~~

~~e. When any ambient air quality monitor from which data are telemetered to the smelter indicates that a state or federal ambient air quality standard for sulfur dioxide is equalled or exceeded, the owner or operator of the combined zinc and lead smelter shall notify the Director within twelve (12) hours of the occurrence. (5-1-94)~~

859. ~~STANDARDS OF PERFORMANCE FOR MUNICIPAL SOLID WASTE LANDFILLS THAT COMMENCED CONSTRUCTION, RECONSTRUCTION OR MODIFICATION ON OR AFTER MAY 30, 1991.~~

~~01. **Applicability.** All owners or operators of each small or large municipal solid waste landfills in any~~

~~one (1) of the following categories are subject to Section 859:~~ (4-5-00)

~~a. Landfills constructed after May 30, 1991;~~ (4-5-00)

~~b. Existing landfills with modifications after May 30, 1991; or~~ (4-5-00)

~~c. Landfills that closed after November 8, 1987 with modifications after May 30, 1991.~~ (4-5-00)

~~02. Definitions. Unless specifically provided otherwise immediately below, the definitions for all terms set forth in Section 859 shall be the definitions set forth in 40 CFR Part 60. The following definitions apply to this Section:~~ (4-5-00)

~~a. "Closed municipal solid waste landfill" (closed landfill) means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed under 40 CFR 60.7(a)(4). Once a notification of modification has been filed, and additional solid waste is placed in the landfill, the landfill is no longer closed. A landfill is considered closed after meeting the criteria of 40 CFR 258.60.~~ (4-5-00)

~~b. "Effective date" means July 2, 1999.~~ (4-5-00)

~~c. "Existing municipal solid waste landfill" (existing landfill) means a municipal solid waste landfill that began construction, reconstruction or modification before May 30, 1991 and has accepted waste at any time since November 8, 1987 or has additional design capacity available for future waste deposition.~~ (4-5-00)

~~d. "Large municipal solid waste landfill" (large landfill) means a municipal solid waste landfill with a design capacity greater than or equal to two point five (2.5) million megagrams or two point five (2.5) million cubic meters.~~ (4-5-00)

~~e. "Modification" means an action that results in an increase in the permitted volume design capacity of the landfill by either horizontal or vertical expansion based on its permitted design capacity as of May 30, 1991. Modification does not occur until the owner or operator commences construction on the horizontal or vertical expansion.~~ (4-5-00)

~~f. "Municipal solid waste landfill" (landfill) means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. A municipal solid waste landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of a municipal solid waste landfill may be separated by access roads and may be publicly or privately owned. A municipal solid waste landfill may be a new municipal solid waste landfill, an existing municipal solid waste landfill, or a lateral expansion (modification).~~ (4-5-00)

~~g. "New municipal solid waste landfill" (new landfill) means a municipal solid waste landfill that began construction, reconstruction or modification or began accepting waste on or after May 30, 1991.~~ (4-5-00)

~~h. "Small municipal solid waste landfill" (small landfill) means a municipal solid waste landfill with a design capacity less than two point five (2.5) million megagrams or two point five (2.5) million cubic meters.~~ (4-5-00)

~~03. General Requirements. All owners or operators of landfills subject to Section 859 must comply with 40 CFR Part 60, Subpart WWW, as amended by 63 Fed. Reg. 32,743-53 (June 16, 1998) and 64 Fed. Reg. 9,257-62 (February 24, 1999) and incorporated by reference into these rules at Section 107. Where "Administrator" or "EPA" appears in 40 CFR Part 60, "Department" shall be substituted, except in any section of 40 CFR Part 60 for which a federal rule or delegation specifically indicates that authority will not be delegated to the state.~~ (4-5-00)

~~04. Permitting Requirements. All owners or operators of landfills subject to Section 859 must comply with Federal Operating Permit Requirements (Title V) as specified in Sections 300 through 399 of these rules.~~ (4-5-00)

~~a. All owners or operators of existing large landfills with modifications after May 30, 1991 must submit a complete Federal Operating Permit application by June 1, 2000. (4-5-00)~~

~~b. All owners or operators of existing large landfills with modifications after March 12, 1996 must submit a complete Federal Operating Permit application the earliest of one (1) year from the date EPA approves the Clean Air Act Section 111(d) State Plan for Section 859, or within one (1) year of the modification. (4-5-00)~~

~~c. All owners or operators of new large landfills, which includes newly constructed large landfills after March 12, 1996 and existing small landfills that become large landfills after March 12, 1996 must submit a complete Federal Operating Permit application within one (1) year of becoming subject to this requirement. (4-5-00)~~

~~d. All owners or operators of new and modified existing small landfills that are major sources as defined in 40 CFR Part 60, Subpart WWW, as amended by 63 Fed. Reg. 32,743-53 (June 16, 1998) and 64 Fed. Reg. 9,257-62 (February 24, 1999), must submit a complete Federal Operating Permit application within one (1) year of becoming a major source. (4-5-00)~~

~~05. **Reporting Requirements.** All owners or operators of landfills subject to Section 859 must comply with the following: (4-5-00)~~

~~a. All owners or operators of large landfills must: (4-5-00)~~

~~i. Submit an Initial Design Capacity Report and an Initial Nonmethane Organic Compound Report within thirty (30) days of the effective date of Section 859; and (4-5-00)~~

~~ii. Submit an annual Nonmethane Organic Compound Report until nonmethane emissions are less than fifty (50) Mg/yr. (4-5-00)~~

~~b. All owners or operators of small landfills of Section 859 must submit an Initial Design Capacity Report and an Initial Nonmethane Organic Compound Report within thirty (30) days of the effective date of Section 859. (4-5-00)~~

~~c. All owners or operators of landfills subject to Section 859 after the effective date of Section 859 must submit an Initial Design Capacity Report and an Initial Nonmethane Organic Compound Report within thirty (30) days of becoming subject to Section 859. (4-5-00)~~