

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-1001

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The temporary rule is effective July 1, 2011.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226(1), Idaho Code, notice is hereby given that the Board of Environmental Quality has adopted a temporary rule and the Department of Environmental Quality is commencing proposed rulemaking. This action is authorized by Sections 39-105 and 39-107, Idaho Code, and House Bill 40 (to be codified at Section 39-114, Idaho Code).

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

July 7, 2011, 3:30 p.m.

**Department of Environmental Quality
Conference Room B
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 new crop residue burning rules have been in effect since 2008. Upon completion of the second year of burning under the new rules, it became apparent that some smaller crop residue burns could and should be regulated under the rules differently than those large scale high fuel content burns. This temporary/proposed rule sets out provisions for obtaining spot burn, baled agricultural residue burn, and propane flaming permits.

Farmers desiring to burn crop residue, members of the regulated community who may be subject to Idaho's air quality rules as well as special interest groups, Idaho State Department of Agriculture, tribes, 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 October 2011 for adoption of a pending rule. The pending rule is expected to become final and effective upon adjournment of the 2012 legislative session if adopted by the Board and approved by the Legislature.

DEQ will submit the final rule to the United States Environmental Protection Agency to be included in the State Implementation Plan as required by Section 110 of the Clean Air Act.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in that the rule confers a benefit. Adoption of a temporary rule enables farmers with small crop residue burns to burn within a streamlined process under certain conditions.

Adoption of Section 624 does not in itself authorize the open burning of crop residue in Idaho. Before burning under Section 624 can be conducted, several actions must take place, including development of a revised State Implementation Plan (SIP) and approval of the SIP by the U.S. Environmental Protection Agency (EPA). Prior to EPA SIP approval, those desiring to conduct spot burns, baled agricultural residue burns, or propane flaming must obtain a permit by rule in accordance with Sections 618 through 623. Contact DEQ before burning.

IDAHO CODE SECTION 39-107D STATEMENT: This 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: The text of the rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Section 67-5220, Idaho Code, and IDAPA 58.01.23.810-815. On June 2, 2010, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 10-6, page 64, and a preliminary draft rule was made available for public review. Meetings were held on June 30, August 10, and September 23, 2010. Several members of the public participated in this negotiated rulemaking process by attending the meetings and by submitting written comments. A record of the negotiated rule drafts, written public comments received, and documents distributed during the negotiated rulemaking process is available at http://www.deq.idaho.gov/rules/air/58_0101_1001_temporary_proposed.cfm.

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.

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 when the pending rule will become effective: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the negotiated rulemaking, contact Mary Anderson at (208)373-0202, mary.anderson@deq.idaho.gov.

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 July 7, 2011.

DATED this 26th day of April, 2011.

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 TEXT OF THE TEMPORARY RULE AND THE
PROPOSED RULE TEXT FOR DOCKET NO. 58-0101-1001**

617. CROP RESIDUE DISPOSAL.

The open burning of crop residue on fields where the crops were grown is an allowable form of open burning if conducted in accordance with Section 39-114, Idaho Code, and Sections 618 through 623~~4~~ of these rules.

~~(5-8-09)~~(7-1-11)T

618. PERMIT BY RULE.

01. General Requirements. All persons shall be deemed to have a permit by rule if they comply with all the provisions of Sections 618 through 623~~4~~. No person shall conduct an open burn of crop residue without obtaining the applicable permit by rule. Those persons applying for a spot burn, baled agricultural residue burn, or propane flaming permit shall comply with the provisions in Section 624. The permit by rule does not relieve the

applicant from obtaining all other required permits and approvals required by other state and local fire agencies or permitting authorities. ~~(5-8-09)~~(7-1-11)T

02. Forms. The Department shall provide the appropriate forms to complete the permit by rule. Forms may be available at the Department offices or on the Department website. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

620. REGISTRATION FEE.

01. Payment of Fee. The permit by rule registration fee set out in Section 39-114, Idaho Code, shall be paid in its entirety at least seven (7) days prior to the proposed burn date. See also Subsection 624.02.a. for registration and fee requirements for burning under a spot and baled agricultural residue burn permit. The permit by rule registration form and fee should be sent to:

Crop Residue Burning Registration Fees
Fiscal Office
Idaho Department of Environmental Quality
1410 N. Hilton, Boise, ID 83706-1255

~~(5-8-09)~~(7-1-11)T

02. Effect of Payment. Payment of the registration fee does not imply authorization or approval to burn. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

622. GENERAL PROVISIONS.

01. Burn Provisions. All persons in Idaho intending to dispose of crop residue through burning shall abide by the following provisions: (5-8-09)

a. Burning Prohibitions. Burning of crop residue shall not be conducted on weekends, federal or state holidays, or after sunset or before sunrise; (5-8-09)

b. Designated Burn Day. Burning of crop residue shall not be conducted unless the Department has designated that day a burn day and the permittee has received individual approval specifying the conditions under which the burn may be conducted; (5-8-09)

c. Portable Form of Communication. The person conducting the burning must have on their possession a portable form of communication such as a cellular phone or radio of compatible frequency with the Department in order to receive burn approval information or information that might require measures to withhold additional material such that the fire burns down; (5-8-09)

d. Location of Field Burning. Open burning of crop residue shall be conducted in the field where it was generated; (5-8-09)

e. Limitations on Burning. When required by the conditions of the notice of approval to burn, the permittee burning in proximity to institutions with sensitive populations shall immediately extinguish the fire or withhold additional material such that the fire burns down, unless the Department determines that the burn will not have an adverse impact on such institutions; (5-8-09)

f. Training Session. All persons intending to burn crop residue shall attend a crop residue burning training session provided by the Idaho Department of Environmental Quality or the Idaho State Department of

Agriculture and shall attend a crop residue disposal refresher training session every five (5) years; (5-8-09)

g. Air Stagnation or Degraded Air Quality. All field burning shall be prohibited when the Department issues an air quality forecast and caution, alert, warning or emergency as identified in Section 552 of these rules; (5-8-09)

h. Allowable Forms of Open Burning. The use of reburn machines, propane flammers, or other portable devices to ignite or reignite a field for the purposes of crop residue burning shall be considered an allowable form of open burning. Tires and other restricted material described in Subsection 603.01, of this rule, are not allowed for ignition of fields; (5-8-09)

i. Additional Burn Permits. All persons intending to burn crop residue shall obtain any additional applicable permits from federal, state or local fire control authorities prior to receiving approval from the Department to burn crop residue; and (5-8-09)

j. Reporting to the Department. All persons burning crop residue shall report to the Department the date burning was conducted, the actual number and location of acres burned, and other information as required by the Department. The Department may restrict further burning by a permittee until completed burns are reported. (5-8-09)

k. Specific Conditions. The open burning of crop residue shall be conducted in accordance with the specific conditions in the permittee's permit by rule. (7-1-11)T

02. Annual Report. The Department shall develop an annual report that shall include, at a minimum, an analysis of the causes of each exceedance of a limitation in Section 621 of this rule, if any, and an assessment of the circumstances associated with any reported endangerment to human health associated with a burn. The report shall include any proposed revisions to these rules or the Crop Residue Operating Guide deemed necessary to prevent future exceedances. (5-8-09)

03. Advisory Committee. The Department will assemble an advisory committee consisting of representatives from environmental organizations, farming organizations, health organizations, tribal organizations, the Idaho State Department of Agriculture, the Idaho Department of Environmental Quality, and others to discuss open burning of crop residue issues. (5-8-09)

623. PUBLIC NOTIFICATION.

01. Designation of Burn Days. The Director or his designee shall designate for a given county or airshed within a county burn or no-burn days. (5-8-09)

02. Posting on Website. The Department shall post daily on its website: ~~(5-8-09)~~(7-1-11)T

a. Whether a given day is a burn or no-burn day; (5-8-09)

b. The location and number of acres permitted to be burned; (5-8-09)

c. Meteorological conditions and any real time ambient air quality monitoring data; and (5-8-09)

d. A toll-free number to receive requests for information (1-800-345-1007). ~~(5-8-09)~~(7-1-11)T

03. E-Mail Update Service. The Department shall provide an opportunity for interested persons to sign up to receive automatic e-mail updates for information regarding the open burning of crop residue. (5-8-09)

624. ~~(RESERVED)~~ SPOT BURN, BALED AGRICULTURAL RESIDUE BURN, AND PROPANE FLAMING PERMITS.

Note: Adoption of Section 624 does not in itself authorize the open burning of crop residue in Idaho. Before burning under Section 624 can be conducted, several actions must take place, including development of a revised

State Implementation Plan (SIP) and approval of the SIP by the U.S. Environmental Protection Agency (EPA). Prior to EPA SIP approval, those desiring to conduct spot burns, baled agricultural residue burns, or propane flaming must obtain a permit by rule in accordance with Sections 618 through 623. Contact DEQ before burning. (7-1-11)T

01. Applicability. (7-1-11)T

a. Spot Burn. A spot burn includes no more than one (1) acre of evenly distributed crop residue or two (2) tons of piled crop residue. The open burning of weed patches, spots of heavy residue, equipment plugs and dumps, pivot corners of fields, and pastures may constitute a spot burn. Spot burn does not include the open burning of wind rows. (7-1-11)T

b. Baled Agricultural Residue Burn. An open burn used to dispose of broken, mildewed, diseased, or otherwise pest-ridden bales still in the field where they were generated. (7-1-11)T

c. Propane Flaming. The use of flame-generating equipment to briefly apply flame and/or heat to the topsoil of a cultivated field of pre-emerged or plowed-under crop residue with less than five hundred fifty (550) pounds of burnable, non-green residue per acre in order to control diseases, insects, pests, and weed emergence. (7-1-11)T

02. Spot and Baled Agricultural Residue Burn Permit. (7-1-11)T

a. Registration and Fee Requirements. Any person applying for a spot and baled agricultural residue burn permit under Section 624 shall provide the registration information listed in Subsections 619.01 and 619.02 and pay a nonrefundable fee of twenty dollars (\$20) to the Department (see Section 620) at least fourteen (14) days prior to the date the applicant proposes to conduct the first burn of the calendar year. (7-1-11)T

b. Term and Acreage. A spot and baled agricultural residue burn permit is valid for the calendar year in which it is issued and is good for a cumulative total of no more than ten (10) acres of spots and/or equivalent piled or baled agricultural residue during the year and no more than one (1) acre of spots and/or equivalent piled or baled agricultural residue per day. Two (2) tons of piled or baled agricultural residue is assumed to be equivalent to one (1) acre. (7-1-11)T

03. Propane Flaming Permit. Persons conducting propane flaming as defined under Subsection 624.01.c. shall be deemed to have a permit by rule if they comply with the applicable provisions in Subsections 624.04 and 624.05. (7-1-11)T

04. General Provisions. All persons intending to burn under Section 624 shall comply with the provisions of Subsections 622.01.c., 622.01.d., 622.01.f., through 622.01.i., and 622.01.k. in addition to the following: (7-1-11)T

a. The permittee is responsible to ensure that adequate measures are taken so the burn does not create a hazard for travel on a public roadway. (7-1-11)T

b. Burning is not allowed if the proposed burn location is within three (3) miles of an institution with a sensitive population and the surface wind speed is greater than twelve (12) miles per hour or if the smoke is adversely impacting or is expected to adversely impact an institution with a sensitive population. (7-1-11)T

c. Designated Burn Day. Burning shall not be conducted unless the Department has designated that day a burn day, which for purposes of Section 624 may include weekends and holidays, and the permittee burns within the burn window provided on the Department's website at www.deq.idaho.gov. Spot and baled agriculture residue burns shall not smolder and create smoke outside of the designated time period burning is allowed. (7-1-11)T

05. Recordkeeping. Permittees shall record the date, time frame, type of burn, type of crop, and amount burned on the date of the burn. Records of such burns shall be retained for two (2) years and made available to the Department upon request. (7-1-11)T

