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Idaho State Legislature

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MEMORANDUM

TO: Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Environment, Energy & Technology Committee

FROM: Principal Legislative Research Analyst - Katharine Gerrity

DATE: August 06, 2015

SUBJECT: Department of Environmental Quality

IDAPA 58.01.01 - Rules For the Control of Air Pollution in Idaho - Proposed Rule (Docket No. 58-0101-1501)

IDAPA 58.01.05 - Rules and Standards for Hazardous Waste - Proposed Rule (Docket No. 58-0105-1501)

1. IDAPA 58.01.01 - Rules For the Control of Air Pollution in Idaho

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.01 - Rules For the Control of Air Pollution in Idaho. According to the department, the rulemaking is necessary to ensure state rules are consistent with federal regulations, and that federal regulations incorporated by reference are updated, so that Idaho retains state primacy under the Clean Air Act programs. The department notes that there are three areas of revision:

- The greenhouse gas definition of major source at Section 008 is now obsolete and is being removed.
- Federal regulations that are incorporated by reference are updated as necessary.
- The permit to construct section is clarified to define a major source to include both the prevention of significant deterioration and nonattainment new source review definitions.

The department notes that negotiated rulemaking was not conducted due to the simple nature of the rulemaking and the fact that the department is required to make such changes for EPA approval of Idaho's Title V Operating Permit Program and state primacy of Clean Air Act programs. The department verifies that the 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. The rulemaking appears to be authorized pursuant to Sections 39-105 and 39-107, Idaho Code.

2. IDAPA 58.01.05 - Rules and Standards for Hazardous Waste

The Department of Environmental Quality submits notice of proposed rule at IDAPA 58.01.05 - Rules and Standards for Hazardous Waste. According to the department, the rules and standards for hazardous waste are updated annually to maintain consistency with EPA's federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). The department notes that the rulemaking also denotes areas of the rules that are non-delegable to the states and must be implemented by the EPA. The department states that Idaho has historically adopted both required and optional federal regulations so that Idaho's hazardous waste rules are the same as federal requirements. The department notes that optional federal regulations usually allow more flexibility to the regulated community and required federal regulations are necessary to maintain program primacy. The department adds that adoption by reference also simplifies compliance for the regulated community.

The department states that negotiated rulemaking was not conducted due to the simple nature of the rulemaking and the fact that it has no discretion with respect to adopting EPA's federal regulations implementing RCRA as directed by the HWMA. The department verifies that the 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. The rulemaking appears to be authorized pursuant to Chapters 44 and 58, Title 39, Idaho Code, and required pursuant to 40 CFR 271.21(e) and Section 39-4404, Idaho Code.

cc: Department of Environmental Quality
Paula J. Wilson