



Negotiated Rulemaking for Prescribed Burning Frequently Asked Questions

Why is DEQ undertaking this rulemaking and why are they doing it now?

DEQ initiated this rulemaking to update the prescribed burning rules in Idaho to ensure that smoke from this type of burning is properly managed and public health is protected. The Rules for the Control of Air Pollution in Idaho (IDAPA 58.01.01.614.02.b), requires DEQ to “develop and put into effect a Smoke Management Plan for Prescribed Burning consistent with the purpose of IDAPA 58.01.01.600 through 614,” (DEQ’s open burning rule). The open burning rules are designed to reduce the amount and impact of emissions, protect human health, and reduce the visibility impairment in Class I Federal Areas in accordance with the regional haze long-term strategy.

With the current level of prescribed burning and the expected increase in its use, smoke management is becoming more critical. A comprehensive smoke management program will increase coordination across all Idaho airsheds, level the playing field for all prescribed burners, and protect public health and economic vitality in affected communities.

Maintaining healthy air quality is also critical for long-term economic development opportunities in many of our smaller communities. High pollutant concentrations in an area can result in an expensive and difficult effort for facility expansion and permitting. A fully comprehensive smoke management program will assist in coordination of all burning to avoid smoke buildup and air quality degradation.

How does DEQ conduct rulemaking and why do they do it in this manner?

DEQ follows the Idaho administrative rulemaking process (Idaho Code Title 67, Chapter 52). Negotiated rulemaking is an informal part of the process that precedes all formal rulemaking proceedings. It allows interested parties and DEQ to discuss possible changes to the rule and attempt to reach a consensus on the proposed amendments. This may result in a proposed rule that could be implemented by the agency following regular (formal) rulemaking procedures.

Negotiated rulemaking is considered an informal part of the process because the agency has some flexibility in how it conducts the negotiated meetings. This flexibility is intended to facilitate participation by the greatest number of persons who might be affected by the possible rule changes. Constituencies vary greatly between agencies and a process that works well for one agency may not work at all for another.

DEQ strives to ensure that all interested parties have the opportunity to participate in the negotiated rulemaking process. Because of the complexity of prescribed burning, DEQ decided to focus on educational meetings with stakeholders and the public for the first three meetings.

Based on those meetings and feedback DEQ received, DEQ developed the first draft of a preliminary rule and DEQ will continue to accept input from the stakeholders via meetings and written comments, which will be used to modify the draft preliminary rule.

How does DEQ currently regulate smoke?

DEQ regulates smoke from all forms of open burning through the Open Burning Rules (IDAPA 58.01.01.600-624). Per these rules, DEQ is required to develop and implement a Smoke Management Plan for Prescribed Burning consistent with the purpose of DEQ's open burning rule. Currently, smoke management for prescribed burning in Idaho is a voluntary program amongst large property owners. Large private landowners, as well as state and federal land management agencies, are voluntary members of the Montana/Idaho Airshed Group. However, not all entities that conduct prescribed burning are members of this Airshed Group.

DEQ also regulates all open burning under the Air Pollution Emergency Rule (IDAPA 58.01.01.550-562), which authorizes DEQ to manage and remedy pollution levels that may constitute a health emergency. The Air Pollution Emergency Rule outlines criteria that enable DEQ to take appropriate action when levels of regulated air pollutants cause or are predicted to cause a health emergency. The rule identifies four emergency levels, with each stage addressing a progressively more serious air quality event. When the first stage, forecast and caution, is triggered all outdoor open burning, including prescribed burning, is prohibited outside of reservation boundaries. More information on the Air Pollution Emergency Rule can be found at: <http://www.deq.idaho.gov/air-quality/monitoring/air-pollution-emergencies/>.

DEQ communicates when an Air Pollution Emergency Rule stage has been triggered through the local media, fire protection districts and the DEQ Open Burn Map:

<https://www2.deq.idaho.gov/air/AQIPublic/Map/OutdoorBurn>. The map also has information on local fire safety restrictions and limited smoke management practices.

What is DEQ's goal for this rulemaking?

DEQ's aims to develop a smoke management program that protects public health and provides a framework for coordinating smoke generated from prescribed burning in Idaho. This program will also support land management goals by developing and maintaining a robust program to provide smoke management training and coordinate prescribed burning statewide. This will allow the use of the Exceptional Event provision of the Clean Air Act (CAA) when appropriate.

DEQ strives to establish rules that support the current procedures and functions of the Montana/Idaho Airshed Group in order to minimize changes to the process for member burners. As with all rulemakings, DEQ's goal is to develop the appropriate level of requirements commensurate with the amount of emissions and impact on public health.

What is the PM_{2.5} National Ambient Air Quality Standards (NAAQS)?

The CAA requires the U.S. Environmental Protection Agency (EPA) to set NAAQS for pollutants considered harmful to public health and the environment. EPA set NAAQS for six pollutants, referred to as criteria pollutants: carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO₂), ozone (O₃), sulfur dioxide (SO₂), and particulate matter (PM₁₀ and PM_{2.5}). EPA has set a primary standard for all of these pollutants which provides public health protection, including

protecting the health of sensitive populations such as asthmatics, children, and the elderly. PM_{2.5}, or fine particulate, is the main pollutant of concern from prescribed burning.

For additional information on the NAAQS: <https://www.epa.gov/criteria-air-pollutants/naaqs-table>

For additional information on PM_{2.5} NAAQS: <https://www.epa.gov/pm-pollution/table-historical-particulate-matter-pm-national-ambient-air-quality-standards-naaqs>

For additional information on the health effects of PM_{2.5}:
<https://airnow.gov/index.cfm?action=aqibasics.particle>

What is the Exceptional Events rule and why is it important?

Exceptional events are unusual or naturally occurring events that can affect air quality but are not reasonably controllable using techniques air quality agencies may implement in order to attain and maintain the NAAQS. Exceptional events may include wildfires, high wind dust events, prescribed fires, stratospheric ozone intrusions, and volcanic and seismic activities.

The CAA recognizes that it may not be appropriate to use monitoring data influenced by exceptional events collected by monitoring networks when making certain regulatory determinations (e.g., designating an area as nonattainment). For air quality impacts from a prescribed fire to be considered exceptional, the fire must be conducted under an adopted and implemented certified smoke management program or conducted using appropriate basic smoke management practices. The EPA exceptional events rule is important to Idaho to ensure that air quality data influenced by an exceptional event is not included in a regulatory decision.

What would smoke management training entail?

The smoke management training included in Draft 1 of the preliminary rule is intended to educate prescribed burners on how to comply with the smoke management program and how to implement basic smoke management practices. This training would focus on smoke management and air quality and not the fire ecology or fire safety aspect of prescribed burning. Topics would include meteorology, basic smoke management practices, and emission reduction techniques. DEQ anticipates different types of smoke management training based on the type of burner and/or the type or amount of burning that a single burner conducts.

Federal and state land managers, like the U.S. Forest Service and Idaho Department of Lands, have access to comprehensive prescribed burning smoke management education provided by the National Wildfire Coordinating Group. However, private burners do not have access to these courses and may be at a disadvantage. DEQ's goal is to ensure that all prescribed burners in Idaho, regardless of size, have equal access to the training and tools needed to comply with state rules and implement basic smoke management practices.

DEQ will incorporate feedback from the smoke management training for the crop residue burning program. Online training will be used whenever possible to meet the needs of burners.

What is DEQ’s definition of “prescribed fire”? What types of burning does this term contain? What types are excluded?

DEQ’s definition of prescribed fire is included in IDAPA 58.01.01.006.91.

91. Prescribed Fire Management Burning: The controlled application of fire to wildland fuels in either their natural or modified state under such conditions of weather, fuel moisture, soil moisture, etc., as will allow the fire to be confined to a predetermined area and at the same time produce the intensity of heat and rate of spread required to accomplish planned objectives, including:

- a. Fire hazard reduction;
- b. The control of pests, insects, or diseases;
- c. The promotion of range forage improvements;
- d. The perpetuation of natural ecosystems;
- e. The disposal of woody debris resulting from a logging operation, the clearing of rights of way, a land clearing operation, or a driftwood collection system;
- f. The preparation of planting and seeding sites for forest regeneration; and
- g. Other accepted natural resource management purposes.

DEQ’s definition is nearly identical to the definition used by the Idaho Department of Lands included in IDAPA 20.02.01.010.44.

44. Prescribed Fire. The controlled application of fire to wildland fuels in either their natural or modified state, under such conditions of weather, fuel moisture and soil moisture, to allow the fire to be confined to a predetermined area and at the same time to produce the intensity of heat and rate of spread required to meet planned objectives.

DEQ’s open burning rules (IDAPA 58.01.01.600-624) establish categories of open burning that are allowable when done in accordance with the rules.

DEQ’s definition excludes recreational fires, residential open burning, weed control, landfill fires, orchard fires, and crop residue burning, all of which are covered under other categories of allowable open burning. The definition of prescribed fire includes fire used to accomplish natural resource management planned objectives including those listed in IDAPA 58.01.01.006.91.

What types of air quality monitoring does DEQ conduct?

DEQ’s air quality monitoring program encompasses a network of air monitoring instrumentation, laboratory analysis of air samples, and quality assurance activities to ensure data integrity. The program collects and reports ambient levels of air pollutants at more than 30 sites throughout the state.

DEQ uses a variety of monitoring instruments, each provides unique information. For example, continuous monitors are used to provide real-time pollution levels year-round. Regulatory, filter-based monitoring can be used for chemical speciation; a key step in understanding the sources of smoke. Seasonal PM_{2.5} monitors are deployed for support of the crop residue burning program,

but are also a key resource in smoke management of all open burning.

DEQ also operates seven visibility cameras to aid in the evaluation of air quality. Real-time images from these images can be found at: <http://www.deq.idaho.gov/air-quality/visibility-cameras/>.

More information on air quality monitoring conducted by DEQ can be found at: <http://www.deq.idaho.gov/air-quality/monitoring/>. For a complete map of DEQ monitoring locations, see: <http://www.deq.idaho.gov/media/60176831/air-monitoring-network-map.jpg>.

What level of prescribed burning is going on in Idaho?

The most recent estimate of how much prescribed burning occurs in Idaho was done for 2014 by the EPA for the 2014 national emission inventory (NEI). EPA used several methods to estimate the amount of burning such as data from the MT/ID Airshed Group and information gathered by satellites. EPA estimated about 140,000 acres in Idaho were burned using prescribed fire. Fire size ranged from 1 acre to 3,750 acres with an average size of about 80 acres. Pile burning was not included in the 2014 NEI due to the lack of usable data and methods.

The MT/ID Airshed Group tracks the number of acres that were burned using prescribed fire. In 2018, Airshed members burned about 63,000 acres—36,500 acres in north Idaho and 26,500 in south Idaho. About 32,500 acres have been burned throughout the state by members of the Airshed Group from January through September 2019.

How does this rulemaking fit into the Red Tape Reduction Act?

Governor Little's Red Tape Reduction Act (Executive Order No. 2019-02) states that for any proposed new rule, departments must identify the impact of the proposed rule on individuals and small businesses and identify at least two existing rules to be repealed or significantly simplified. DEQ will meet both of these requirements during this rulemaking.

The Air Quality division has already identified multiple sections of the Rules for Control of Air Pollution for deletion (sections 590-591, 845-848, and 855-859). They are currently in the negotiated rulemaking process and will be presented during the 2020 Legislative session. DEQ will also draft an impact statement regarding the prescribed burning rules when appropriate. DEQ sees this rulemaking as necessary to manage smoke impacts and protect public health at a time when burning including prescribed burning are on the rise to manage forested land and mitigate wildfire.

Will members of the Montana/Idaho Airshed Group need to get approval from both DEQ and Airshed Group?

The current process for the MT/ID Airshed group is for DEQ and the MT/ID Airshed Coordinator to collaborate on the final daily burn decisions. This is an effective process and DEQ anticipates that it will continue under the final rule. DEQ's goal is for burners that are members in good standing of a "recognized smoke management group" to obtain approval from that group and not obtain a second approval from DEQ.

Can you clarify the procedure DEQ envisions for certification of a Smoke Management Group?

At this early stage of the negotiated rulemaking process, it is difficult to describe the process and procedures that will be used for a group to become a “recognized smoke management group” under these rules. As Draft 1 is currently written, DEQ envisions the “smoke management group” will submit a letter to DEQ requesting initial “recognized” status and will document how their written policies, procedures, and tools meet DEQ’s rules. The group will then submit an annual letter certifying their policies, procedures, and tools have not changed, or if they have changed, how they still comply with DEQ rules.

DEQ would likely “Recognize” the smoke management group through a letter. The recognition letter will likely include a listing of each rule the smoke management group’s operation meets or exceeds and the dates the recognition is in effect.

How does DEQ distinguish prescribed fire smoke from other sources?

DEQ uses several methods to distinguish which sources are impacting air quality; such as visual observations and comments and complaints from members of the public. During certain times of the year certain emission sources are more prominent. For example, during the summer months wildfires are the primary causes of elevated particulate matter (PM_{2.5}). However, during the winter in mountain communities, woodstoves are the primary cause of elevated PM_{2.5}. This is because woodstove usage is high in mountain communities and the weather tends to allow the wood smoke to build up. Similarly, after wildfire smoke occurs and prior to extensive woodstove use, prescribed fire is the primary cause of elevated PM_{2.5} in many areas.

DEQ also evaluates air quality impacts after the impacts have occurred using the air quality monitoring data. At some locations in Idaho, DEQ operates filter-based PM_{2.5} monitors, which capture PM_{2.5} on a filter. DEQ contracts with consultants to analyze the chemical species that make up the PM_{2.5}. This allows DEQ to evaluate major emissions sources impacting the air quality monitor such as cars, industry, or burning.

During the designation process of the West Silver Valley PM_{2.5} nonattainment area EPA and DEQ evaluated the monitoring data collected using all these methods. By analyzing when pollutant concentrations were elevated it was determined that the main emission sources impacting that PM_{2.5} concentrations in that area are woodstoves and prescribed burning. Woodstoves cause elevated concentrations in the winter and prescribed burning in the spring. See the Technical Support Document prepared by EPA to support the nonattainment designation at: <https://www.regulations.gov/document?D=EPA-HQ-OAR-2012-0918-0331>.

What are Institutions with Sensitive Populations and why are they being considered for smoke management purposes?

The term “institutions with sensitive populations” (ISPs) defined in DEQ’s crop residue burning (CRB) rules (IDAPA 58.01.01.617-624), and include public schools while in session, hospitals, residential health care facilities for children, the elderly or inform, and other institutions with sensitive populations as approved by DEQ. EPA has identified the following groups as being more sensitive to air pollution: individuals with asthma and other respiratory diseases, individuals with cardiovascular diseases, the elderly, and children. It is

important for prescribed burners to be aware of the locations of these institutions because people who are more sensitive to air pollution frequent them and are, in most cases, not able to leave if a smoke impact occurs.

For additional information, contact
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