

From: [McGill, Richard](#)
To: [Brown, Don](#)
Subject: FW: Questions about 35 IAC 101 (44 IR 4316)
Date: Thursday, April 16, 2020 5:07:51 PM

Good evening, Mr. Clerk:

In R19-1, please docket as a public comment this forwarded e-mail correspondence with JCAR.

If you have any questions, please let me know. Thank you.

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(312) 814-6983

From: McGill, Richard
Sent: Thursday, April 16, 2020 5:00 PM
To: Eastvold, Jonathan C. <JonathanE@ilga.gov>
Subject: RE: Questions about 35 IAC 101 (44 IR 4316)

Good evening, Jonathan:

Below are our responses to your two numbered questions. For your convenience, I've repeated your questions, which appear in bold font.

1. In 101.202 ("OSFM record"), should "eligibility and deductible decision" be "eligibility and deductibility decision"?

At pages 46-47 of its first-notice opinion, the Board raised the same issue and asked whether it should make the change JCAR now suggests. IEPA responded that it was reluctant to agree to a revision without OSFM's consent. When the Board adopted its first-notice opinion, the question had not been resolved.

At page 160 of the first-notice opinion, after requesting comment generally, the Board specifically sought comment on the following:

IEPA's proposed definition of "OSFM record" in Section 101.202 refers to an "eligibility and deductible decision," and the Board questioned whether it should refer to an "eligibility and deductibility decision." IEPA suggested that it would not agree to revise this definition without OSFM's agreement. Section 105.508 of the Board's procedural rules, OSFM Record and Appearance, now refers twice to an OSFM

determination on “deductibility.” The Board specifically seeks comment on whether these provisions should be consistent with one another and whether either the proposed definition or the existing provisions should be revised.

The Board is confident that IEPA will consider and respond to this question in first-notice comments.

2. Why did it take 4 years to implement the PSD portion of PA-463? Is anything being done regarding Nonattainment New Source Review, which is also mentioned in that PA?

(In a subsequent message in this e-mail chain, you noted that you had answered the second question in No. 2 on your own and therefore no longer required a Board response to that question.)

IEPA reported that while it was preparing its rulemaking proposal, it “met with representatives from sources potentially impacted by Part 204.” Statement of Reasons (SR) at 102; PC 1 at 15 (¶1a); Tr.1 at 44.

On October 2, 2017, IEPA posted its draft proposal online. It also provided the proposal to entities including USEPA Region 5, the Illinois Environmental Regulatory Group; Sierra Club, Environmental Law & Policy Center, and Trinity Consultants. SR at 102; PC 1 at 15, 16 (¶¶1a, 1c); Tr.1 at 45. IEPA also prepared a “plain language fact sheet that accompanied these notifications.” PC 1 at 16 (¶1c).

On October 4, 2017, IEPA consulted with the Environmental Justice Commission about its proposal. PC 1 at 15-16 (¶1b); Tr.1 at 45.

Because the proposal distinguishes between Board review of IEPA administrative actions and OSFM administrative actions, IEPA provided drafts of proposed Parts 101 and 105 to OSFM. Counsel for IEPA and OSFM later discussed the proposed rules.

IEPA received several comments and reviewed and considered all of them. SR at 102. IEPA reported that, as appropriate, its proposal “incorporates suggestions set forth in those comments.” *Id.*

In January 2018, IEPA provided a revised proposal to USEPA for additional review and comment. SR at 102; PC 1 at 15 (¶1a); Tr.1 at 45; *see* Tr.1 at 65; PC 1 at 29 (¶3a-6), Exh. A.

IEPA stated that it submitted its proposal to the Board only “after interested parties have had an opportunity to review the proposal and discuss any issues” with IEPA. SR at 103.

Also, although it is not a part of its proposal to the Board, IEPA proposed amending its Part 252 public participation rules to accommodate implementation of the PSD program. SR at 3; *see* 43 Ill. Reg. 7028 (June 21, 2019).

On July 2, 2018, IEPA submitted its rulemaking proposal to the Board. IEPA's proposal, in addition to proposing a new Part and amendments to five existing Parts of the Board's regulations, included a lengthy Statement of Reasons and a separate Technical Support Document.

On August 23, 2018, the Board issued a proposal for public comment. The Board then held public hearings on November 27, 2018, and February 26, 2019. After receiving comments through May 2019, as well as two IEPA motions to amend its proposal (in November 2019 and January 2020), the Board adopted its first-notice proposal on March 5, 2020.

At the present time, the Board expects to submit a second-notice proposal to JCAR soon after the end of the statutory 45-day comment period.

Take care.

Best regards,

Richard

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From: Eastvold, Jonathan C. <JonathanE@ilga.gov>
Sent: Friday, April 10, 2020 11:25 AM
To: McGill, Richard <Richard.McGill@illinois.gov>
Subject: [External] RE: Questions about 35 IAC 101 (44 IR 4316)

Never mind on the 2nd part of question 2. I figured it out. 😊

From: Eastvold, Jonathan C.
Sent: Friday, April 10, 2020 10:40 AM
To: McGill, Richard <Richard.McGill@illinois.gov>
Subject: Questions about 35 IAC 101 (44 IR 4316)

Richard –

Greetings! I'm back on the job as of this morning, but telecommuting from home, and finally diving into the PSD rules.

Two questions on Part 101:

1. In 101.202 ("OSFM record"), should "eligibility and deductible decision" be "eligibility and deductibility decision"?
2. Why did it take 4 years to implement the PSD portion of PA-463? Is anything being done regarding Nonattainment New Source Review, which is also mentioned in that PA?

Thanks so much. Hope all is well with you.

Jonathan

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