NOTICE OF INTENT

Department of Environmental Quality

Office of the Secretary

Legal Affairs and Criminal Investigations Division

Regulatory Permit for Boilers and Process Heaters

(LAC 33:III.323) (AQ383)

 Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.323 (AQ383).

 This Rule will establish a regulatory permit which can be used to authorize the construction and operation of certain boilers and process heaters. Authorization to construct and operate a boiler or process heater eligible for coverage under the regulatory permit shall become effective only upon notification by the department that the application required by the regulatory permit has been determined complete.

R.S. 30:2054(B)(9)(a) allows LDEQ to develop regulatory permits for certain sources of air emissions provided the conditions in R.S. 30:2054(B)(9)(b) are satisfied. A regulatory permit is a permit that is incorporated into the regulations in the form of a rule.

Pursuant to R.S. 30:2054(B)(9)(b)(viii), all regulatory permits shall be promulgated in accordance with the procedures provided in R.S. 30:2019. Promulgation of rules and regulations (i.e., the Administrative Procedure Act, R.S. 49:950 et seq.). The basis and rationale for this Rule are to establish a regulatory permit for boilers and process heaters. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Family Impact Statement**

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Poverty Impact Statement**

This Rule has no known impact on poverty as described in R.S. 49:973.

**Provider Impact Statement**

This Rule has no known impact on providers as described in HCR 170 of 2014.

**Public Comments**

 All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ383. Such comments must be received no later than July 4, 2019, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Affairs and Criminal Investigations Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to DEQ.Reg.Dev.Comments@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ383. These proposed regulations are available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

**Public Hearing**

A public hearing will be held on June 27, 2019, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

 These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

 Herman Robinson

 General Counsel

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 3. Regulatory Permits

§323. Regulatory Permit for Boilers and Process Heaters

 A. Applicability

 1. This regulatory permit authorizes the construction and use of boilers and process heaters, subject to the requirements established herein, upon notification by the department that the application (i.e., notification form) submitted in accordance with Subsection I of this Section has been determined to be complete.

 2. This regulatory permit shall not apply to boilers and process heaters:

 a. deemed insignificant in accordance with item A.1, A.5, or B.32 of the insignificant activities list in LAC 33:III.501.B.5.Table 1;

 b. that combust fuels other than natural gas, refinery gas, *other gas 1 fuel* as defined in 40 CFR 63.7575, or *ultra low sulfur liquid fuel* as defined in 40 CFR 63.7575; or

 c. subject to federal regulations not identified in Subsection D of this Section.

 3. This regulatory permit shall not be used to authorize a boiler or process heater that, when considering potential emissions from it and potential emissions from the remainder of the stationary source, would result in the creation of a major source of criteria pollutants, hazardous air pollutants, or toxic air pollutants.

 B. Definitions

 *Boiler—*as defined in 40 CFR 63.7575.

 *Process Heater—*as defined in 40 CFR 63.7575.

 C. Emission Limitations

 1. Emission limitations for the boiler or process heater shall be established by the application (i.e., notification form) submitted in accordance with Subsection I of this Section.

 a. The limitations shall be enforceable by the department.

 b. If actual emissions exceed these limitations for any reason other than as described in LAC 33:III.501.C.12, the permittee shall notify the Office of Environmental Compliance in accordance with Louisiana General Condition XI of LAC 33:III.537.A. For Part 70 sources, the reports required by Paragraph C.2 of this Section shall satisfy this requirement.

 2. The permittee shall address each boiler or process heater located at a Part 70 source in the submittals required by Part 70 General Conditions K, M, and R of LAC 33:III.535.A. Deviations from the terms and conditions of this regulatory permit, including the standards identified in Subsection D of this Section, shall not be considered violations of the stationary source’s Part 70 permit.

 D. Boiler and Process Heater Standards. The permittee shall comply with the provisions of the following federal and state regulations pertaining to boilers and process heaters, as applicable:

 1. LAC 33:III.2201;

 2. 40 CFR 60, subpart Db or Dc; and/or

 3. 40 CFR 63, subparts DDDDD or JJJJJJ.

 E. Opacity

 1. Smoke. The emission of smoke shall be controlled so that the shade or appearance of the emission is not darker than 20 percent average opacity, except that the emissions may have an average opacity in excess of 20 percent for not more than one six-minute period in any 60 consecutive minutes.

 2. Monitoring, Recordkeeping, and Reporting

 a. The permittee shall inspect each boiler or process heater’s stack for visible emissions on a daily basis. If visible emissions are not detected during the initial six minutes of the inspection, the inspection may be concluded. If visible emissions are detected, the inspection period shall be extended to one hour (60 consecutive minutes).

 b. If visible emissions are detected for more than one six-minute period over the 60 consecutive minute test period, the permittee shall conduct a six-minute opacity reading in accordance with Method 9 of 40 CFR 60, Appendix A, within 24 hours.

 c. The permittee shall notify the Office of Environmental Compliance no later than 30 calendar days after any Method 9 reading in excess of 20 percent average opacity or, for *Part 70 sources*, as defined in LAC 33:III.502.A, in accordance with Part 70 General Condition R of LAC 33:III.535.A.

 d. Records of visible emissions checks shall be kept on-site and available for inspection by the Office of Environmental Compliance. These records shall include:

 i. the boiler or process heater’s ID number;

 ii. a record if visible emissions were detected during the initial six minutes of the inspection;

 iii. a record if visible emissions were detected for more than one six-minute period over the 60 consecutive minute test period, if required; and

 iv. a record and the results of any Method 9 testing conducted.

 3. Alternatives. As an alternative to the requirement to conduct Method 9 testing, the permittee may assume that any visible emissions detected constitute opacity greater than 20 percent. In this case, no visible emissions detected shall be considered opacity less than or equal to 20 percent, even if a qualitative assessment suggests otherwise. The permittee may also determine opacity via any federally-approved alternative to Method 9 (e.g., Method ALT-082). In lieu of performing daily visual inspections, the permittee may immediately perform a six-minute opacity reading in accordance with Method 9.

 4. When the presence of uncombined water is the only reason for failure of an emission to meet the requirements of this Subsection, this Subsection shall not apply.

 5. This Subsection shall not apply to boilers or process heaters described in LAC 33:III.1107.B.1.

 F. Particulate Matter. No person shall cause, suffer, allow or permit the emission of particulate matter to the atmosphere in excess of 0.6 pounds per 106 Btu of heat input.

 G. Performance Testing. The following performance testing requirements shall apply to boilers and process heaters that have the potential to emit more than 40 tons per year of nitrogen oxides (NOX) or more than 100 tons per year of carbon monoxide (CO).

 1. No later than 180 days after the boiler or process heater commences operation, the permittee shall conduct a performance test to determine NOX and CO emissions using Methods 7E (Determination of Nitrogen Oxides Emissions from Stationary Sources) and 10 (Determination of Carbon Monoxide Emissions from Stationary Sources) of 40 CFR 60, Appendix A. Each test run shall be conducted within 80 percent of the boiler or process heater’s maximum rated capacity or within 10 percent of the maximum achievable load. Alternate stack test methods may be used with the prior approval of the Office of Environmental Assessment.

 a. The permittee shall notify the Office of Environmental Assessment at least 30 days prior to the performance test in order to provide the department with the opportunity to conduct a pretest meeting and/or observe the test.

 b. The permittee shall submit the performance test results to the Office of Environmental Assessment no later than 60 days after completion of the test.

 2. This Subsection shall not apply to boilers or process heaters that remain at a stationary source for less than 12 consecutive months.

 H. Emissions Inventory. Each stationary source subject to LAC 33:III.919 shall include emissions from each boiler or process heater authorized by this regulatory permit in its annual emissions inventory.

 I. Notification Requirements

 1. Written notification describing the boiler or process heater shall be submitted to the Office of Environmental Services using the appropriate form provided by the department.

 2. A separate notification shall be submitted for each boiler or process heater.

 J. Fees. Fees for this regulatory permit shall be as prescribed by fee number 1540 or 1550, as applicable, of LAC 33:III.223, Table 1, or the applicable major or minor modification fee for the stationary source as determined in accordance with LAC 33:III.211.B, whichever is lower. Applicable surcharges as described in LAC 33:III.211.A shall also be assessed.

 K. Boilers and process heaters authorized by this regulatory permit shall be included in the next application to renew or modify the stationary source’s existing permit.

 AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

 HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45

FISCAL AND ECONOMIC IMPACT STATEMENT

 FOR ADMINISTRATIVE RULES LOG #: AQ383

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| PersonPreparingStatement: | Bryan D. Johnston |  | Dept.: | Environmental Quality |
| Phone: | (225) 219-3450 |  | Office: | Environmental Services |
|  | bryan.johnston@la.gov |  |  |  |
| Return Address: | 602 North Fifth Street |  | Rule Title: | Regulatory Permit for Boilers and |
|  | Baton Rouge, LA 70802 |  |  | Process Heaters (LAC 33:III.323) |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  | Date Rule Takes Effect: | Upon Promulgation |

SUMMARY

(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no anticipated implementation costs or savings to the Department of Environmental Quality (DEQ) or local governmental units as a result of the proposed rule. The proposed rule establishes a regulatory permit to authorize the construction and use of boilers and process heaters, upon notification by the department that the application is submitted has been determined to be complete. It establishes emissions limitations for the boiler or process heater by the application submitted that are enforceable by the department, and if actual emissions exceed these limitations, the permittee shall notify the Office of Environmental Compliance. In addition, the proposed rule sets opacity limits and requires the permittee to inspect each boiler or process heater’s stack for visible emissions on a daily basis. The proposed rule also sets performance testing requirements that shall apply to boilers and process heaters that have the potential to emit more than 40 tons per year of nitrogen oxides or more than 100 tons per year of carbon monoxide. The performance testing requirements do not apply to boilers or process heaters that remain at a stationary source for less than 12 consecutive months. Fees for this regulatory permit shall be as prescribed as applicable.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No increase or decrease in revenues to state or local governmental units will be realized. R.S. 30:2054(B)(9)(b)(vii) requires an applicant seeking a regulatory permit to submit “any fee authorized by this Subtitle and applicable regulations to the secretary… in lieu of submission of a permit application.” This fee is equivalent to, and in place of, that which would have been required had a permit or permit modification been applied for pursuant to LAC 33:III.501.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

There are no anticipated costs to directly affected persons or non-governmental groups. R.S. 30:2054(B)(9)(b)(vii) requires an applicant seeking a regulatory permit to “submit a written notification … in lieu of submission of a permit application.” However, this notification form will be specifically tailored to the source addressed by the regulatory permit (i.e., boilers and process heaters) and used in place of the traditional, more generic permit application documents. Therefore, there will be no increase in costs to applicants seeking coverage under this regulatory permit.

Use of a notification form specifically tailored to boilers and process heaters should also facilitate the department’s review of such documents. Thus, a final decision on proposed projects should be reached more expeditiously, possibly resulting in economic benefits to applicants.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment in the public or private sector as a result of the proposed rule.

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Signature of Agency Head or Designee Legislative Fiscal Officer or Designee

Herman Robinson General Counsel

Typed Name and Title of Agency Head or Designee

 a

Date of Signature Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT

FOR ADMINISTRATIVE RULES

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

R.S. 30:2054(B)(9)(a) allows the department to develop regulatory permits. A regulatory permit is a permit that is incorporated into the regulations (LAC 33:III in the instant case) in the form of a rule. Regulatory permits may be used to authorize the construction and operation of certain sources or activities that generate air emissions, subject to the requirements and limitations set forth in R.S. 30:2054(B)(9)(b) (codified in LAC 33:III.303).

The proposed rule will establish a regulatory permit for boilers and process heaters. The authorization to emit air emissions pursuant to the provisions of this regulatory permit will become effective only upon notification by the department that the application required by the regulatory permit has been determined to be complete.

1. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

Per R.S. 30:2054(B)(9)(b)(viii), all regulatory permits shall be promulgated in accordance with the procedures provided in R.S. 30:2019-Promulgation of rules and regulations (i.e., the Administrative Procedure Act, R.S. 49:950 et seq.).

C. Compliance with Act 11 of the 1986 First Extraordinary Session

(1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No, the proposed rule will not result in any increase in the expenditure of funds.

(2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) Yes. If yes, attach documentation.

(b) No. If no, provide justification as to why this rule change should be published at this time.

This question is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

No costs or savings to state agencies are anticipated as a result of the proposed rule.

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COSTS FY 18-19 FY 19-20 FY 20-21

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PERSONAL SERVICES -0- -0- -0-

OPERATING EXPENSES -0- -0- -0-

PROFESSIONAL SERVICES -0- -0- -0-

OTHER CHARGES -0- -0- -0-

EQUIPMENT -0- -0- -0- a

TOTAL -0- -0- -0-

MAJOR REPAIR & CONSTR.

POSITIONS (#) -0- -0- -0-

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

This question is not applicable.

3. Sources of funding for implementing the proposed rule or rule change.

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SOURCE FY 18-19 FY 19-20 FY 20-21

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STATE GENERAL FUND -0- -0- -0-

AGENCY SELF-GENERATED -0- -0- -0-

DEDICATED -0- -0- -0-

FEDERAL FUNDS -0- -0- -0-

OTHER (Specify) -0- -0- -0- a

TOTAL -0- -0- -0-

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

No additional funds are required to implement the proposed action.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

 No impact on local governmental units is anticipated.

2. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

 There will be no costs or savings to local governmental units, so no funding sources will be affected.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

No increase or decrease in revenues to state and local governmental units will be realized. R.S. 30:2054(B)(9)(b)(vii) requires an applicant seeking a regulatory permit to submit “any fee authorized by this Subtitle and applicable regulations to the secretary… in lieu of submission of a permit application.” This fee is equivalent to, and in place of, that which would have been required had a permit or permit modification been applied for pursuant to LAC 33:III.501.

REVENUE INCREASE/DECREASE FY 18-19 FY 19-20 FY 20-21

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STATE GENERAL FUND -0- -0- -0-

AGENCY SELF-GENERATED -0- -0- -0-

RESTRICTED FUNDS\* -0- -0- -0-

FEDERAL FUNDS -0- -0- -0-

LOCAL FUNDS -0- -0- -0- a

TOTAL -0- -0- -0-

\*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

No increase or decrease in revenues will be realized.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

1. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

No entities will be immediately subject to the rule upon its promulgation. Only those owners or operators of facilities that require an air permit who obtain approval to construct and use a boiler or process heater pursuant to the terms and conditions of the regulatory permit will be affected.

With respect to workload adjustments and additional paperwork, R.S. 30:2054(B)(9)(b)(vii) requires an applicant seeking a regulatory permit to “submit a written notification … in lieu of submission of a permit application.” However, this notification form will be specifically tailored to the source addressed by the regulatory permit (i.e., boilers and process heaters) and used in place of the traditional, more generic permit application documents. Therefore, there will be no increase in costs to applicants seeking coverage under this regulatory permit.

Use of a notification form specifically tailored to boilers and process heaters should also facilitate the department’s review of such documents. Thus, a final decision on proposed projects should be reached more expeditiously, possibly resulting in economic benefits to applicants.

B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

No impact on receipts or income of the affected persons or non-governmental groups is expected.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

There will be no effect on competition or employment in the public or private sector.