



JANET T. MILLS  
GOVERNOR

011  
STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM  
COMMISSIONER

**To:** Board of Environmental Protection

**From:** Lynn Muzzey, Bureau of Air Quality

**Date:** May 4, 2023

**Re:** Chapter 101: *Visible Emissions Regulation*

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*Visible Emissions Regulation*, Chapter 101, establishes visible emission standards, also known as opacity limits, for facilities, both licensed and unlicensed, throughout the state. A State Implementation Plan (SIP) is a collection of regulations used by a state to fulfill requirements of the Clean Air Act. Chapter 101 is part of Maine's SIP.

Court decisions involving EPA have held that blanket exemptions for periods of Startup, Shutdown, and Malfunction (SSM) are not allowed in SIPs. In response to a petition by the Sierra Club, EPA took final action in May 2015 to ensure states have rules that are fully consistent with the Clean Air Act. The SIPs of 36 states were found to include inappropriate SSM exemptions, and EPA issued a "SIP Call" requiring those states to revise their rules to remove such exemptions. In accordance with the 2015 SIP Call, Maine was required to modify Chapter 101. In response, the Department completed rulemaking in February 2019, and the updated Chapter 101 was submitted to EPA for inclusion in Maine's SIP in May 2019. However, the federal administration at the time did not immediately move forward with reviewing the state's submission.

In October 2022, EPA notified the Department that the new version of Chapter 101 had several deficiencies that would prevent its approval into the SIP. Deficiencies noted included blanket exemptions for emission units subject to certain federal rules, the use of work practice standards that may be practically unenforceable, and the lack of technical demonstration justifying the need and appropriateness of alternative emission standards. This proposed rulemaking rectifies language and requirements to bring the Chapter in compliance with the SIP Call and CAA requirements.

Regulatory Framework:

This rule is being proposed under the authority granted by 38 M.R.S. §§ 585 and 585-A.

Requested Action:

The proposal is a routine technical rulemaking. The Department recommends that the proposed amendments be posted to a public hearing before the Board.

Estimated time of agenda item:

20 minutes

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-7688 FAX: (207) 287-7826

BANGOR  
106 HOGAN ROAD, SUITE 6  
BANGOR, MAINE 04401  
(207) 941-4570 FAX: (207) 941-4584

PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769  
(207) 764-0477 FAX: (207) 760-3143

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